

(2014) 02 GUJ CK 0033
In the Gujarat High Court

Case No : Special Civil Application No. 7769 of 2012, Spl. C.A. Nos. 8202, 7269 and 7575 of 2012, Civil Appli. No. 13703 of 2013 in Spl. C.A. No. 7769 of 2012 with Civil Appli No. 502 of 2014 in Civil Application No. 13703 of 2013

Makwana Mahesh R.

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Constitution of India, 1950 — Article 14
Right of Children to Free and Compulsory Education Act, 2009 — Section 23, 38
University Grants Commission Act, 1956 — Section 26(1)

Citation : (2015) 1 GLH 61 : (2014) 2 GLR 1043 : (2014) LabIC 2278 : (2014) 3 SCT 746

Hon'ble Judges : C.L. Soni, J

Bench : Single Bench

Advocate : K.B. Pujara for Petitioner Nos. 1 to 124, Vijay N. Raval and Sanjay D. Suthar, Advocate for the Appellant; Ronak Raval, Niraj Ashar, A.G.Ps. for Respondent No. 1 and P.S. Champaneri for Respondent No. 4, Advocate for the Respondent

Final Decision : Dismissed

Judgement

C.L. Soni, J.—Common question posed for consideration of this Court in this group of petitions is whether after coming in to force the Right of Children to Free and Compulsory Education Act, 2009 ("the Act" for short), the Certificate in Physical Education (C.P.Ed.) could be said to have been prescribed or recognised as one of the qualifications for appointment of primary teachers? In Special Civil Application No. 7769 of 2012, Civil Application No. 13703 of 2013 is preferred for interim order to restrain the respondent authorities from making recruitment of Vidya Sahayak-Primary Teacher for Classes 1 to 5 as per news paper report dated 25-12-2013 without first holding Teachers' Eligibility Test ("T.E.T.") for C.P.Ed. candidates. In the said application, vide order dated 27-12-2013, the Court granted ad-interim order restraining the respondents from making any

recruitment of Vidya Sahayak-Primary Teacher for Classes 1 to 5.

2. The State, has therefore, moved Civil Application No. 502 of 2014 praying to vacate the above said ad-interim relief granted by the Court.

3. Since, the Court finds that substantial time might be consumed in hearing and deciding the Civil Applications, the Court took up the main petitions for final disposal.

4. The petitioners claimed to have passed H.S.C. And C.P.Ed. Examination from the institutions duly recognized by the National Council for Teacher Education ("N.C.T.E."). It is their say that the State Authorities have consistently followed the policy of appointing candidates with C.P.Ed. qualification as primary teacher for the last more than 20 years along with P.T.C. candidates. It is their further say that the Government have made provision to fill 5% of the vacancies of primary teachers by C.P.Ed. candidates. It is further case of the petitioners that even after the Act, there was no change in such policy of the Government. But suddenly, the Government issued Resolution dated 3-5-2012 whereby the qualification of C.P.Ed. is deleted for appointment of primary teachers as a result of which the candidates possessing C.P.Ed. qualification are excluded from being considered for appointment to the post of primary teachers.

5. In the background of the aforesaid brief facts, the petitioners have challenged Resolution dated 3-5-2012 of the State Government whereby it deleted the qualification of C.P.Ed. which was prescribed as qualification for primary teaches along with qualification of P.T.C. in its earlier Resolution dated 27-4-2011. While challenging the above resolution, the petitioners have prayed to declare them eligible and qualified to be appointed as primary teacher and entitled to clear the T.E.T. and prayed to direct the respondents to fill up at least 5 % of the posts of primary teachers by the candidates possessing C.P.Ed. qualification at the time of making recruitment of primary teachers.

6. I have heard the learned Advocates for the parties.

7. Learned Advocate Mr. K.B. Pujara appearing for the petitioners in Special Civil Application No. 7769 of 2012 submitted that the qualification of C.P.Ed. has long been recognized for appointment of primary teachers. Mr. Pujara submitted that after the N.C.T.E. issued Notification in the year 2001 providing for qualifications for recruitment of primary teachers which included C.P.Ed. qualification, the State not only has followed the notification of N.C.T.E. for the last many years but also made provisions to fill 5% of vacancies of primary teachers with the candidates possessing C.P.Ed. qualification. Mr. Pujara submitted that even after the Act came into force, qualification of C.P.Ed. has continued to be recognised by the N.C.T.E. for primary teachers. Mr. Pujara submitted that the Schedule attached to the Act also provides for appointment of Physical Instructor which could be only from the candidates having qualification of C.P.Ed. Mr. Pujara submitted that N.C.T.E. is academic authority for the purpose of prescribing minimum qualification for primary teachers and vide Notification dated 29-7-2011 has

continued to recognise C.P.Ed. as qualification for primary teacher. As per the Resolution dated 27-4-2011 of the Government, petitioners stood qualified for appointment as primary teacher. However, only on the basis of the communication of the N.C.T.E. inviting attention to the letter of the State of U.P. for inclusion of the C.P.Ed. as qualification for appointment as primary teachers for class 1 to 5 and relying on the letter of Hon'ble Union Minister, the State Government made change in qualification vide Resolution dated 3-5-2012. Mr. Pujara submitted that such change made by the State Authority runs counter to the N.C.T.E. Notification dated 3rd September, 2001 and against its own policy of reserving five percent vacancies in appointment of primary teachers for C.P.Ed. candidates. Mr. Pujara thus urged to allow the petition.

8. Learned Advocate Mr. Vijay Raval and Mr. Sanjay Suthar appearing for the petitioners in Special Civil Application Nos. 8202, 7269 and 7575 of 2012 have adopted the arguments of the learned Advocate Mr. K.B. Pujara.

9. Learned A.G.P. Mr. Ronak Rawal for the State submitted that in the Notification dated 23rd August, 2010 and subsequent Notification dated 29th July, 2011 issued by the N.C.T.E. in exercise of the powers conferred by sub-sec. (1) of Sec. 23 of the Act, since C.P.Ed. is not recognised as qualification for appointment as primary teacher, the State being only implementing authority has deleted C.P.Ed. from being considered as qualification. Mr. Raval submitted that T.E.T. examination is also a part of the qualification prescribed by the N.C.T.E. in its above-said notifications and made available to only those candidates who satisfied qualifications prescribed in the said notification. Mr. Raval submitted that since C.P.Ed. is not prescribed as qualification in the said notifications, the petitioners cannot claim to appear in the T.E.T. examination. Mr. Raval submitted that in order to comply with the N.C.T.E. Requirement, for the qualification of Primary Teacher, the State Government came out with the Resolution dated 3-5-2012 so as to amend its earlier resolution to delete qualification of C.P.Ed. for primary teacher. Mr. Raval submitted that such Resolution dated 3-5-2012 is not only in consonance with the Act and N.C.T.E. Notifications issued under the Act. Mr. Raval submitted that under Sec. 23 of the Act, N.C.T.E. is academic authority for prescribing minimum qualification for primary teacher and the State being the implementing authority for such qualification, State has issued resolution to amend in its earlier policy which provided for C.P.Ed. qualification for primary teachers. Mr. Raval submitted that the substitution/amendment made in Para 5 of Notification dated 23-8-2010 of the N.C.T.E. by its subsequent Notification dated 29th July, 2011 cannot be read as if the qualification of C.P.Ed. is continued for the post of primary teacher by N.C.T.E. Mr. Raval submitted that the above such amendment in Para 5 was to take care of the recruitment process for appointment of primary teachers already commenced prior to N.C.T.E. Notification dated 23rd August, 2010. Mr. Raval submitted that once N.C.T.E. issued Notification dated 23rd August, 2010 under the Act, appointment of the teacher would be governed as per the qualification provided in such notification. Mr. Raval submitted that in view of the notification issued dated 23rd August,

2010 and 29th July, 2011 by the N.C.T.E. earlier Notification of 2001 of N.C.T.E. providing for qualification of teachers would lose its legal efficacy and cannot be now relied for the purpose of appointment as primary teacher. Mr. Raval has relied on the following judgments:

(1) Judgment of Allahabad High Court in the case of Abhishek Kumar Pandey v. State of U.P., in Misc. (Civil) Writ Petition No. 58165 of 2011 dated 11-11-2011.

(2) Parmar Alpaben Sanabhai Vs. State of Gujarat, .

(3) State of Jharkhand and Others Vs. Ashok Kumar Dangi and Others, .

(4) Judgment of Allahabad High Court dated 11-11-2011 in the case of Kamal Kishore Pal v. State of U.P., Misc. (Civil) Writ Petition No. 58884 of 2011.

10. Learned Advocate Mr. P.S. Champaneri appearing for the N.C.T.E. submitted that in view of the mandate given by the Act for prescribing minimum qualification for recruitment of primary teachers, N.C.T.E. issued Notification dated 23-8-2010 prescribing qualification for recruitment of primary teachers in Standard I to V and for Standard VI to VIII. Mr. Champaneri submitted that since N.C.T.E. deemed it necessary to make amendment in the said notification, it issued further Notification dated 29-7-2011 for amendment. Mr. Champaneri submitted that in the minimum qualification recognised prescribed by N.C.T.E., the C.P.Ed. is not recognised as qualification for recruitment of primary teachers. Mr. Champaneri submitted that the qualification of C.P.Ed. provided by earlier Notification of 2001 issued by the N.C.T.E. under the provisions of N.C.T.E. Act, 1993 was made applicable for limited purpose of recruitment process already undertaken for primary teachers prior to notification issued by the N.C.T.E. dated 23-8-2010. Mr. Champaneri submitted that the recruitment of primary teachers to be initiated after the Notification dated 23-8-2010 shall be strictly governed by Notification dated 23-8-2010 as per which C.P.Ed. is not provided as qualification for primary teachers. Mr. Champaneri submitted that even the schedule attached to the Act clearly reveals the intention of the Legislature not to treat the candidates with C.P.Ed. qualification eligible for appointment as primary teachers. Mr. Champaneri submitted that since the State Government is bound to act as per the N.C.T.E. notifications and as per the provisions of the Act for the purpose of recruitment to the post of primary teacher, the State Government is justified in issuing Resolution dated 3-5-2012 excluding the qualification of C.P.Ed. for recruitment of primary teachers. Mr. Champaneri submitted that since the C.P.Ed. is no longer a qualification for the primary teachers, candidates possessing such qualification cannot insist to appear for T.E.T. examination. Mr. Champaneri thus urged to dismiss these petitions.

11. Having heard the learned Advocates for the parties and having perused different resolutions of the State Government annexed with the petitions and notifications issued by the N.C.T.E. issued under the Act prescribing minimum qualifications for recruitment of primary teachers and having considered the provisions of the Act, it appears that long before the Act came into force,

N.C.T.E. made regulations called as National Council for Teacher Education (Determination of Minimum Qualification for teachers in Schools) Regulations, 2001 for providing qualifications for recruitment of teachers in all the schools run by the Central Government, State Governments and other authorities for imparting education at elementary (Primary and Upper Primary), middle school (secondary and senior secondary) level in exercise of the powers conferred under the N.C.T.E. Act of 1993. Such regulations provided for qualifications for the teachers of two different categories. One for the teachers teaching subjects and the second was for teachers for physical education.

12. For the teachers at elementary level, following were the qualifications prescribed for two different categories of teachers:

First Schedule to the National Council for Teacher Education (Determination of Qualifications for Recruitment of Teachers) Regulations, 2001.

Recruitment qualifications for recruitment of teachers in educational institutions mentioned in Sec. 2 of the Regulations.

Second Schedule to the National Council for Teacher Education (Determination of Qualifications for Recruitment of Teachers) Regulations, 2001.

Qualifications for recruitment of Physical Education in Educational Institutions mentioned in Sec. 2 of the Regulations.

13. As per the above Regulation, undisputedly, by Notification dated 3rd September, 2001, C.P.Ed. was considered to be the qualification with other qualifications for primary teachers.

14. However, by the Act, the Legislature mandated to prescribe minimum qualification by the academic authority and made it compulsory for appointment as teacher. The Legislature also provided for relaxation in minimum qualification required for appointment of teacher by the State Government not exceeding five years.

15. As per the provisions of Sec. 38 of the Act, the Central Government then made rules called Right of Children to Free and Compulsory Education Rules, 2010 ("the Rules"). These Rules came into force on 9-4-2010. As per Rule 17 of the Rules, the Central Government was required to notify academic authority within one month from the appointed date for laying down the minimum qualifications for a person to be eligible for appointment as a teacher. Rule 17(2) provides that the academic authority notified under sub-rule (1) shall, within three months of such notification, lay down the minimum qualifications for persons to be eligible for appointment as a teacher in an elementary school. Sub-rule (3) of Rule 17 provides that the minimum qualifications laid down by the academic authority shall be applicable for every school referred in clause (n) of Sec. 2 which includes school established, owned and controlled by the appropriate Government or the local authority. Thus, the minimum qualifications prescribed by the academic authority as notified by the Act and Rules are made

compulsorily applicable for appointment of primary teachers in schools run by the State and the authority.

16. It appears that after the Act came into force, the State through its Education Department issued Notification dated 15-4-2010 deciding to treat primary education in the State for the Classes of 1 to 8 instead of 1 to 7. It was further decided to treat Classes 1 to 5 as lower primary education and Classes 6 to 8 as Upper Primary Education. However, it also continued its policy of treating C.P.Ed. as qualification for primary teachers. As per Resolution dated 15-4-2010, the State decided to fill up 3% of the posts of Vidya Sahayaks in all the districts from the candidates having qualification of H.S.C./C.P.Ed. and to fill 2% of the vacancies from the candidates having qualification of H.S.C./A.T.D. When the above Resolution dated 15-4-2010 was in force, the N.C.T.E. issued Notification dated 23-8-2010 in exercise of the powers conferred by Sec. 23 of the Act and laid down the minimum qualification for Classes 1 to 5 and Classes 6 to 8. By the said notification, it also provided for passing of T.E.T. Examination to be eligible for appointment as primary teacher. Such T.E.T. Examination was made to be conducted by the appropriate Government in accordance with the guidelines framed by the N.C.T.E. for the purpose.

17. The N.C.T.E. then issued guidelines for conducting the T.E.T. Examination with its communication dated 11-2-2011 Annexure-F. In the said guidelines, following is the eligibility prescribed for appearing in the T.E.T.

Eligibility

5. The following persons shall be eligible for appearing in the T.E.T.:

(i) A person who has acquired the academic and professional qualifications specified in the N.C.T.E. Notification dated 23rd August, 2010.

(ii) A person who is pursuing any of the teacher education courses (recognised by the N.C.T.E. or the R.C.I., as the case may be) specified in the N.C.T.E. Notification dated 23rd August, 2010.

(iii) The eligibility condition for appearing in T.E.T. may be relaxed in respect of a State/U.T. which has been granted relaxation under sub-sec. (2) of Sec. 23 of the R.T.E. Act. The relaxation will be specified in the Notification issued by the Central Government under that sub-section.

18. As per the above, person who has acquired qualification specified in Notification dated 23-8-2010 of the N.C.T.E. would be eligible to appear in the T.E.T. Examination. Since, C.P.Ed. is not the qualification prescribed in the N.C.T.E. Notification dated 23-8-2010 for recruitment of the primary teachers, persons holding qualification of C.P.Ed. shall not be eligible for appearing in the T.E.T. Examination.

19. On 27-4-2011, the State through its Education Department issued two different resolutions. First was for fixing norms for recruitment of Vidya Sahayak

in furtherance of its policy dated 15-4-2010 for Vidya Sahayak in primary schools and the second resolution was for guidelines for T.E.T. Examination as mandated by the N.C.T.E. In the Resolution dated 27-4-2011 for recruitment of Vidya Sahayaks in Class 1 to 5 while continuing with C.P.Ed. qualification, the State also provided for minimum vacancies of Vidya Sahayak at every districts with the candidates holding C.P.Ed. qualification and also provided for passing of T.E.T. Examination.

20. After the State Government issued above Resolution dated 27-4-2010 laying down norms for Vidya Sahayaks including C.P.Ed. as one of the qualifications for primary teachers, it issued one more Resolution dated 14-7-2011 providing for some amendment as regards norms of recruitment of Vidya Sahayak in upper primary section i.e. Classes 6 to 8. It is after the above resolution of State Government, the N.C.T.E. issued one more Notification dated 29th July, 2011 for amendments in its earlier Notification dated 23-8-2010. By this Notification dated 29th July, 2011, with other amendments, Para 5 of notification was substituted by following Para 5(a) and (b) which reads as under:

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 N.C.T.E. (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 N.C.T.E. 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 N.C.T.E. Says down the minimum qualifications in respect of such teachers.

21. The State Government through its Education Department then issued Resolution dated 3-5-2012 for amendment in the qualification provided in its earlier Resolution dated 27-4-2011 for recruitment of teachers in Class I to V. By such amendment, it deleted qualification of C.P.Ed. for primary teachers and also deleted the provisions for 5 % vacancies of primary teachers for C.P.Ed. candidates and further deleted provisions for considering marks of C.P.Ed. candidates in T.E.T. Examination. This Resolution dated 3-5-2012 is the bone of contention in these petitions.

22. Though, learned Advocate Mr. Pujara submitted that it is not possible to think about education in primary schools without teachers for physical education and as further submitted by him even as on today in every primary schools, amongst

other subjects, Physical Training (P.T.) is one of the subjects regularly taught as a part of education. Mr. Pujara submitted that in view of the above indispensable situation of requirement of teacher for physical education, N.C.T.E. decided to continue with its earlier Notification dated 3-9-2001 which originally provided for C.P.Ed. qualification for teachers in elementary schools, and therefore, it substituted Para 5 of Notification dated 23-8-2010. Mr. Pujara submitted that clause (b) Para 5 of Notification dated 29th July, 2011 of N.C.T.E. in clear terms provides for minimum qualification for teachers for physical education as per N.C.T.E. Regulation dated 3rd November, 2001. By such reading, learned Advocate Mr. Pujara submitted that C.P.Ed. is continued to be recognized as minimum qualification with other qualifications for primary teachers and even the State Government recognised such qualification, and therefore, it provided for 5% vacancies for C.P.Ed. candidates in every district. Mr. Pujara submitted that in view of substitution of Clause 5 of earlier Notification dated 23-8-2010, the State Government was not justified in making any change/amendment as regards qualification for primary teacher prescribed by its earlier Resolution dated 27-4-2011.

23. Having carefully gone through the provisions of the Act with the Rules and the N.C.T.E. Notification dated 23-8-2010 and dated 29-7-2011, the Court finds that the minimum qualification prescribed by N.C.T.E. under the Act take absolute field for recruitment of primary teachers after the date of Notification issued by the N.C.T.E.

24. As stated above, when the Act mandated by making provisions in Sec. 23 that only those persons possessing such minimum qualification as laid down by the academic authority shall be eligible for appointment as teacher unless relaxed by the State authority, and when Rule 17 of the Rules makes it compulsory for every school run and controlled by the State Government and the local authority to follow such minimum qualification prescribed by the academic authority, there is no escape from the conclusion that only those persons who possess qualification as prescribed by the academic authority shall be eligible for appointment as primary teacher. C.P.Ed. being not recognised as one of the qualifications for appointment as primary teacher, no person holding C.P.Ed. qualification can claim to be eligible for appointment as primary teacher. As per the Legislature intention, when N.C.T.E. has laid down minimum qualifications for recruitment of primary teachers, earlier Notification of 2001 issued by the N.C.T.E. recognising C.P.Ed. qualification for primary teachers will lose its legal efficacy and cannot be pressed into service. The Notification of 2001 issued by the N.C.T.E. was on the basis of Regulation of 2001 framed by N.C.T.E. in exercise of powers conferred under the provisions of the N.C.T.E. Act. Now when by the Act, the N.C.T.E. has prescribed new minimum qualifications, earlier Notification of 2001 not in consonance with the provisions of the Act, cannot hold any field.

25. There is one more reason why C.P.Ed. qualification cannot be considered for

recruitment of primary teachers. From Clauses 5(a) and (b) of notification of the N.C.T.E. dated 29th July, 2011, it appears that the N.C.T.E. wanted to apply minimum qualification norms for recruitment process to be initiated after it prescribed minimum qualification by its notification, and therefore, it provided in Para 5(a) that 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 its notification, such appointment may be made in accordance with the N.C.T.E. (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001. By clause (b) it is provided that the minimum qualification norms referred to in this notification apply to teachers of Languages, Social Studies, Mathematics, Science etc. However, in respect of teachers for Physical Education, the minimum qualification norms for physical education teachers referred to in N.C.T.E. Regulation dated 3rd November, 2001 as amended from time to time was made applicable. Therefore, Clause 5(b) is required to be read so as to apply to recruitment process initiated prior to notification issued under the Act.

26. The above such being the provisions made in respect of advertisement already issued for appointment of primary teachers prior to N.C.T.E. notification issued after coming into force of Act, the submissions made by the learned Advocate Mr. Pujara that the C.P.Ed. qualification has still continued to be recognised by virtue of Paras 5(a) and (b) cannot be accepted.

27. Learned Advocate Mr. Champaneri and learned A.G.P. Mr. Raval were right in submitting that considering the Schedule attached with the Act, the Legislature has not intended to appoint any teacher for physical education for Classes 1 to 5, and therefore, provision is made for part-time instructors for health and physical education only for Classes 6 to 8.

28. In the affidavit-in-reply filed by Mr. H.A. Shah, Under Secretary, Education Department as also in the affidavit of Mr. Bipinchandra M. Ninama, Administrative Officer (Legal) Directorate of Primary Education, Gujarat State, Gandhinagar, the State authorities have come out with clear stand that the considering the provisions made in the Schedule for teacher-student ratio in different subjects for Classes 1 to 5 and the provision of "Part-time Instructor" only in Classes 6 to 8 and C.P.Ed. Having not been prescribed by N.C.T.E. as qualification for primary teacher, the cannot be considered eligible for appointment as teacher.

29. Learned Single Judge of this Court while considering the claim of the petitioner for head teacher in Special Civil Application No. 1941 of 2012 has held and observed in oral order dated 10-7-2012 in Para 4.0 as under:

4. Affidavit-in-reply was filed on behalf of the respondent No. 1 wherein it is stated that the C.P.Ed./B.P. Ed./D.P.Ed., are not one of the qualifications even for becoming Primary or Upper Primary teacher. The Regulations of National Council for Teacher Education dated 23-8-2010 does not mention C.P.Ed., B.P. Ed./D.P.Ed., as one of the qualifications. The necessary training qualification for

becoming teachers in Primary/Upper Primary is either P.T.C. (Diploma in Education) or B.Ed. (Bachelor in Education) and such other qualification as prescribed in the said regulations. Since, at present C.P.Ed./B.P.Ed./D.P.Ed. is not included as the qualification in the Regulation of the N.C.T.E. for appointment of teacher, it is not possible to prescribe these qualifications for Head Teacher because the Head Teacher shall have to inspect the teachers teaching in the class as well as he has to evaluate the result of each teacher of the school and hence, petitioners cannot be allowed to appear for the said examination. Hence, petitioners having possessed degree of B.P.Ed. and D.P.Ed. is not entitled for the post of Head Teacher as the petitioners are not having required qualification to fill up the form. The contention raised by the petitioner is misconceived. All the qualifications are required to be decided by the expert committee and this Court cannot substitute such opinion. The petition is devoid of merits and the same is dismissed.

30. Abovesaid view of learned Single Judge was confirmed in Letters Patent Appeal No. 1062 of 2012 vide oral judgment dated 28-2-2013. Observation made in Para 4 are quoted as under:

4. In the field of education, what will be the proper qualification should be left to the academicians and this Court cannot sit in appeal over such decision, nor this Court will substitute its own wisdom as against the wisdom of the educationists. When the authorities, on account of the certain qualifications recognised by the N.C.T.E., has not included the qualification of C.P.Ed./B.P.Ed./D.P.Ed., as qualifications for Head Teacher, the decision cannot be said to be arbitrary, which may call for interference.

31. The contention of Mr. Pujara in connection with clause (b) of Para 5 of Notification of N.C.T.E. dated 29th July, 2011 is not acceptable also for additional reason that the N.C.T.E. has made T.E.T. Examination compulsory for the persons eligible as per the norms of qualification for appointment as a teacher in exercise of the powers under Sec. 23 of the Children Education Act, the petitioners since not fulfilling minimum qualification prescribed by N.C.T.E. vide Notification dated 23-8-2010 are not eligible to appear in T.E.T. Examination. Consequently, they shall not be eligible for appointment as a teacher after N.C.T.E. prescribed minimum qualification. The Court finds that since the Resolution dated 3-5-2012 annexure-K is in consonance with N.C.T.E. Notification dated 29th August, 2010 followed by Notification dated 29th July, 2011 and State Government is just implementing authority as stated in the affidavits filed by the learned Under Secretary and Administrator on behalf of the State Authority, decision taken by the State Government to exclude the qualification of C.P.Ed. for recruitment of teachers for Classes 1 to 5, the prayers of the petitioners cannot be accepted.

32. In the case of reported in University Grants Commission and Another Vs. Neha Anil Bobde (Gadekar), , Hon"ble the Supreme Court held and observed in Paragraphs 22, 25 and 31 as under:

22. We have elaborately referred to various statutory provisions which would clearly indicate that the U.G.C. as an expert body has been entrusted by U.G.C. Act the general duty to take such steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in Universities. It is also duty-bound to perform such functions as may be prescribed or as may be deemed necessary by the Commission for advancing the cause of higher education in India. The U.G.C. has also got the power to define the qualification that should ordinarily be required for any person to be appointed to the teaching staff of the University and to regulate the maintenance of standards and co-ordination of work and faculties in the Universities.

25. U.G.C., in exercise of its powers conferred under clauses (e) and (g) of Sec. 26(1) of the U.G.C. Act, issued the U.G.C. (Minimum Qualification of Teachers and other Academic Staff in Universities and Colleges and other measures for Maintenance of Standards of Higher Education) Regulations, 2010. Clause 3.3.1 of the Regulation specifically states the N.E.T. shall remain the minimum eligibility condition for recruitment and for appointment of Assistant Professors in the Universities/Colleges/Institutions. Clause 4.4.1 stipulates that before fulfilling the other prescribed qualifications, the candidates must have cleared the National Eligibility Test conducted by the U.G.C. Therefore, the power of the U.G.C. to prescribe, as it thinks fit the qualifying criteria for maintenance of standards of teaching, examination etc. cannot be disputed. It is in exercise of the above statutory powers, the U.G.C. has issued the notification for holding the N.E.T. on 24th June, 2012.

31. We are of the view that, in academic matters, unless there is a clear violation of statutory provisions, the Regulations or the Notification issued, the Courts shall keep their hands off since those issues fall within the domain of the experts. This Court in *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, *Tariq Islam Vs. Aligarh Muslim University and Others*, and *Dr. Rajbir Singh Dalal Vs. Chaudhari Devi Lal University, Sirsa and Another*, has taken the view that the Court shall not generally sit in appeal over the opinion expressed by expert academic bodies and normally it is wise and safe for the Courts to leave the decision of academic experts who are more familiar with the problem they face, than the Courts generally are U.G.C. as an expert body has been entrusted with the duty to take steps as it may think fit for the determination and maintenance of standards of teaching, examination and research in the University. For attaining the said standards, it is open to the U.G.C. to lay down any "qualifying criteria", which has a rational nexus to the object to be achieved, that is for maintenance of standards of teaching, examination and research. Candidates declared eligible for lectureship may be considered for appointment as Assistant Professors in Universities and colleges and the standard of such a teaching faculty has a direct nexus with the maintenance of standards of education to be imparted to the students of the universities and colleges. U.G.C. has only implemented the opinion of the Experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or discriminatory or

violative of Art. 14 of the Constitution of India.

33. In light of the above, and for the reasons stated above, the petitions are dismissed. Rule in each of the petitions is discharged. Interim relief if any stands vacated.

34. Since, the main petitions are dismissed. Both the Civil Applications are disposed of accordingly. Ad-interim relief granted in Civil Application No. 13703 of 2013 shall stand vacated. At this stage, learned Advocate Mr. Pujara, Mr. Vijay Raval and Mr. Suthar for the petitioners requests to extend interim relief granted in Civil Application No. 13703 of 2013 to enable the petitioners to approach the higher forum. Learned A.G.P. Mr. Ronak Raval has objected to such request. The Court finds that interim relief which was granted and prevailing till today cannot be continued. However, considering the claim of the petitioners on 5% of the vacancies of primary teachers, the Court finds that for about 10 days, the State Authorities could be directed not to finalise recruitment of primary teachers if initiated to the extent of 5% of the vacancies of primary teachers. The State Authorities are, therefore, directed not to finalise recruitment of primary teachers to the extent of 5 % of the vacancies of primary teachers till 25-2-2014.