

**(2014) 07 GAU CK 0005**

**In the Gauhati High Court**

**Case No :** Writ Petition (Civil) Nos. 4824 and 4825 of 2012

Nripen Chandra Kalita

APPELLANT

Vs

State of Assam

RESPONDENT

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**Date of Decision :** 17-07-2014

**Acts Referred:**

Right of Children to Free and Compulsory Education Act, 2009 — Section 2, 23, 23(2)

**Citation :** (2014) 3 GLD 80 : (2014) 4 GLT 720

**Hon'ble Judges :** Biplab Kumar Sharma, J

**Bench :** Single Bench

**Advocate :** M. Sharma and U.K. Das, Advocate for the Appellant; U.K. Goswami, Advocate and J. Abedin, S.C, Advocate for the Respondent

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## **Judgement**

Biplab Kumar Sharma, J.—Both the writ petitions based on the same set of facts raising the same issue have been heard analogously and are being disposed of by this common judgment and order. In both the writ petitions, the petitioners are Assistant Teachers of M.E. Schools. While in WP(C) No. 4824/2012, the petitioner is B.A., B.Ed., in the second writ petition being WP(C) No. 4825/2012, the petitioner is B.Sc. Degree holder.

2. Referring to the provisions of the National Council for Teacher Education Regulation (in short, "NCTE") notified vide notification dated 23rd August, 2010 and the Right of Children to Free and Compulsory Education Act, 2009 as well as the Assam Right of Children to Free and Compulsory Education Rules, 2011, it is the case of the petitioners that the private respondents being not graduate, they are not entitled to get promotion to the post of Headmasters. It will be pertinent to mention here that the said two respondents have been promoted to the post of Headmasters having been empanelled pursuant to the selection.

3. I have heard Mr. U.K. Das, learned counsel for the petitioners and have also heard both Mr. U.K. Goswami and Mr. J. Abedin, learned standing counsel, Education Department.

4. As per the NCTE Regulation (Annexure-10 notification dated 23rd August, 2010) for Classes-VI to VIII, the qualification of a teacher must be graduate. Similarly, as per the provisions of the aforesaid Act and the Rules, a teacher of M.E. School must be a graduate. However, Section 23 of the Act makes provision for relaxation of minimum qualification by the Central Government, where a State does not have adequate institutions offering courses and training in teacher education, or teachers possessing minimum qualifications are not available in sufficient numbers, provided that a teacher who, at the commencement of the act, does not possess minimum qualification shall acquire the same within a period of 5 (five) years. Rule 16 of the aforesaid Rules dealing with relaxation of minimum qualification for the purposes of Section 23 provides as follows:-

"16. Relaxation of minimum qualification for the purposes of Section 23(2)-(1) The Government shall estimate the teacher requirement as per the norms in the Schedule for all schools referred to in clause (n) of Section 2 within the State, within three months from the date of notification of these rules.

(2) Till the State does not have adequate institutions offering courses or training in teacher education, or persons possessing minimum qualification as laid down under sub-rule (2) of Rule 15 are not available in sufficient numbers in relation to the requirement of teachers estimated under sub-rule (1), the Government shall request, within one year of the commencement of the Act, the Central Government for relaxation of the prescribed minimum qualification.

(3) On receipt of the request referred to in sub-rule (2), the Central Government shall examine the request of the Government and may relax the minimum qualifications by way of a Notification.

(4) The Notification referred to in sub-rule (3) shall specify the nature of relaxation and the time period, not exceeding three years, but not beyond five years from the commencement of the Act, within which the teachers appointed under the relaxed conditions acquire the minimum qualifications prescribed by the academic authority notified under sub-section (1) of Section 23.

(5) After six months after the commencement of the Act, no appointment of teacher for any school can be made in respect of any person not possessing the minimum qualifications prescribed by the National Council for Teacher Education.

(6) A person appointed as a teacher within six months of the commencement of the Act, must possess at least the academic qualifications not lower than higher secondary school final or equivalent for primary school and graduate degree for Upper Primary School."

Rule 17 provides as follows:-

"17. Acquiring minimum qualifications under proviso to Section 23(2)-(1) The Government shall provide adequate teacher education facilities to ensure that all teachers in schools referred to in sub-clauses (i) and (iii) of clause (n) of Section 2, who do not possess the minimum qualifications laid down under rule 15 at the

time of commencement of the Act, to acquire such minimum qualifications within a period of five years from the commencement of the Act.

(2) For a teacher, of any school referred to in sub-clause (ii) and (iv) of clause (n) of Section 2, who does not poses the minimum qualifications laid down rule 15 at the time of commencement of the Act, the management of such school shall enable such teacher to acquire such minimum qualifications within a period of five years from the commencement of the Act."

5. While Mr. Das, learned counsel for the petitioners has argued that the private respondents being not graduate are not qualified to hold the promotional post of Headmasters, both Mr. Goswami and Mr. Abedin, learned counsel representing the Education Department submit that the provisions of the NCTE Regulation and the aforesaid Act and the Rules may not be applicable for existing teachers for whom relaxation is also provided for. They submit that as per the proviso to Section 23, the teachers who are not graduate or lack in other qualification are entitled to acquire the said qualification within a period of 5 (five) years. Referring to the notification dated 2nd March, 2010 laying down the procedures for promotion to the post of Headmasters of M.E. Schools, they submit that as per the said procedure there is no requirement of the incumbent being a graduate.

6. As per the said notification, the teachers, who have passed metric/HSLC/ Normal or have at least intermediate or have equivalent qualification or above and have successfully undergone necessary training, as may be prescribed by the Department shall only be entitled for promotion. However, Mr. Das, learned counsel for the petitioners submits that the said notification dated 2nd March, 2010 cannot override the provision of the NCTE Regulation and the aforesaid Act and the Rules. In this connection, he has referred to Rule 15 of the aforesaid Rules, which while providing that minimum qualifications for a person to be eligible for appointment as a teacher in elementary schools shall be as per the said notification dated 23rd August, 2010, also provides that the provisions of all the Rules/Notifications/Orders of the Government prescribing qualifications for teacher, which are repugnant to the stipulations laid down by the NCTE shall stand superseded.

7. It is not the case of the respondents that any relaxation has been provided for and/or obtained from the Central Government. It is also not the case of the respondents that the private respondents have been asked to acquire the minimum qualification within any stipulated period of time. That apart, as to what will be the consequence of laying down the minimum qualification for being appointed as Assistant Teacher in M.E. Schools and for that matter even promotion to the post of Headmaster in the said schools, in reference to the NCTE Regulation and the aforesaid Act and the Rules vis-a-vis the notification dated 23rd August, 2010 is a matter, which may require engagement of consideration of the official respondents and then to pass an appropriate order.

8. In view of the above, both the writ petitions are disposed of directing the respondents to take a conscious decision in the matter towards resolving of the issue raised in the writ petitions once for all. Let the required exercise in terms of the judgment and order be carried out and completed as expeditiously as possible, preferably within 3 (three) months. Depending upon the consequence thereof further follow up action will be followed.