

(2012) 05 RAJ CK 0112

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 3520, 4521, 7122, 7112, 7121, 7113, 6919, 6923, 6922, 6920, 6989, 5360, 5361, 5356, 5357, 5384, 4705, 4728, 4748, 4730, 4741, 4704, 4735, 4722, 4122, 6435, 7375, 7374, 7373, 7371, 7381, 7367, 4805, 4813, 5832, 5815, 5835, 6815,

Rajesh Kumar Meena and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Right of Children to Free and Compulsory Education Act, 2009 — Section 23, 23(1), 23(2), 25, 34

Citation : (2013) 1 CDR 558

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Advocate : Anshuman Saxena, Mr. Vigyan Shah, Mr. Ram Pratap Saini, Mr. Raghunandan Sharma, Mr. R.D. Meena, Mr. Vivek Choudhary, Mr. N.S. Dhakar, Mr. Amit Jindal, Mr. Ajay Goyal, Mr. Jitendra Kumar Sharma, Mr. Surendra Meet, Mr. Chain Singh Rathore, Mr. Sandeep Garssa, Mr. P.C. Sharma, Mr. Rajendra Prasad, Mr. K.C. Surela, Mr. Manoj Sharma, Mr. Poonam Chand Bhandari, Mr. Ravi Meena, Mr. Pradeep Mathur, Mr. G.K. Sharma, Mr. Shrey Gaharana, Mr. Rajendra Sharma, Mr. Ashok Sharma, Mr. Kuldeep Sharma, Mr. Moharpal Meena, Mr. S.R. Soni, Mr. Gajanand Yadav, Mr. Hemraj Gaur, Mr. Praveen Sharma, Mr. Sanjay Khedar, Mr. Sita Ram Samota, Mr. Devendra Sharma, Mr. Neeraj Sharma, Mr. Nawal Singh Sikarwar, Mr. Ramavtar Bochalya, Mr. Om Prakash Kharra, Mr. Lokesh Parihar, Mr. Neeraj Joshi, Mr. Mohan Choudhary, Mr. T.C. Sharma, Mr. Sunil Kumar Jain, Mr. Om Veer Singh Saini, Mr. Yogesh Sharma, Mr. Surendra Singh, Mr. C.S. Katara, Mr. R.S. Bhardwaj, Mr. Sunil Yadav, Mr. Kamlesh Pareek, Mr. R.R. Sharma, Mr. B.S. Chhaba, Mr. R.D.S. Naruka, Mr. S.K. Saini, Mr. Amit Singh Shekhawat, Mr. R.K. Saini, Mr. Anil Kumar, Mr. Narpat Singh Shekhawat, Mr. Rajesh Chaturvedi, Mr. Prem Prakash Bunkar, Mr. A.K. Sharma, Mr. R.A. Verma, Mr. Amardeep Atwal, Mr. Sumer Singh, Mr. Aatish Jain, Mr. Mukesh Bijamia, Mr. Suresh Kumar, Mr. K.K. Bhinda, Mr. A.K. Bhamboo, Mr. Pawan Kumar Sharma, Mr. Rajeev Sogarwal, Mr. Poonam Chand Sharma, Mr. B.R. Vashishtha, Mr. Mahendra Kuldeep, Mr. Jitendra Mitruka, Mr. Dharmveer Barala, Mr. N.K. Tiwari, Mr. Vishesh Gupta, Mr. Hari Kishan Saini and Mr. Banwari Sharma, for the Appellant; S.N. Kumawat, Additional Advocate General for the State, Mr. Shantanu Sharma for NCTE., Mr. S.P. Sharma, with Mr. Sandeep Singh

Judgement

M.N. Bhandari, J.—Under the Rajasthan Panchayati Raj Act of 1994 and Rajasthan Panchayati Raj Rules of 1996 (for short "the Act of 1994" and "the Rules of 1996"), advertisements were issued by various Zila Parishad for the post of Teacher Gr. III. All the petitioners applied for the post, however, apprehending rejection of their candidature, these writ petitions have been filed. Learned counsel for petitioners submit that elementary education is now a fundamental right in view of the amendment in the Constitution of India. The Right of Children to Free and Compulsory Education Act, 2009 (for short "the Act of 2009") was enacted by the Union of India after the amendment in the Constitution to achieve object of free and compulsory education to all children at the age of six to fourteen years. Sec. 23(1) of the Act of 2009 empowers Central Government to authorise academic authority to lay down minimum qualification.

2. The Central Government issued a Notification on 5.4.2010 authorising National Council of Teacher Education (for short "the NCTE") to prescribe requisite qualification. The NCTE issued Notification on 23.8.2010 to provide requisite qualification at different levels. It was then amended vide Notification dated 29.7.2011.

3. The present matters pertain to selection and appointment of Teachers at Level-I i.e. for students of classes I to V. As per para (3) of the Notification issued by the NCTE, candidates holding qualification of B.Ed. apart from 50% marks at the level BA/B.Sc. etc were made also eligible for appointment upto 1.1.2012 with a condition to possess requisite qualification or take special training within a period of six months thereupon. The respondent State Government failed to carry out mandate of the Act of 2009 and Notification issued under Sec. 23 of the aforesaid Act by initiating process of selection on or prior to 1.1.2012, thereby, minimum qualification prescribed in para (3) is made redundant. The candidates like petitioners holding qualification of B.Ed. with Teacher Eligibility Test (for short "the TET") would not be eligible for appointment as Teacher at Level-I.

4. Section 25 of the Act of 2009 directs to ensure pupil-teacher ratio whereas, Sec. 34 provides for constitution of State Advisory Council for advising State Government on implementation of provisions of the Act of 2009. Section 35 is for issuance of directions by the Central Government to the appropriate Government and local authority for implementation of provisions of the Act.

5. Rule 18 of The Right of Children to Free and Compulsory Education Rules, 2010 (for short "the Rules of 2010") provide for minimum qualifications and relaxation. Thus as per Rule 18 of the Rules of 2010, the State Government should have relaxed minimum qualification looking to delay in initiation of

process of selection of Teacher at Level-I.

6. A reference of the proviso to Sec. 23(2) of the Act of 2009 is also given to indicate that the teachers who do not possess minimum qualification as laid down under sub-sec. (1) of Sec. 23 of the Act of 2009, may acquire minimum qualifications within a period of five years. If petitioners are not in possession of required qualification then they should be governed by the proviso and not only to treat them eligible but to give them further period of five years to possess requisite qualification. Accordingly, petitioners' case is covered by the proviso to Sec. 23(2) of the Act of 2009. This is more so when the Rajasthan Panchayati Raj Rules, 1996 (for short "the Rules of 1996") were amended vide Notification dated 11.5.2011. As per the amended Rules, the qualification for teacher at level-I and II would be as provided by the NCTE pursuant to Sec. 23(1) of the Act of 2009. In the aforesaid background also, Sec. 23 of the Act of 2009 comes in picture along with proviso to Sec. 23(2) of the Act of 2009.

7. It is further urged that all the candidates possessing qualification of B.Ed. were allowed to appear in the TET for Teacher at Level-I and II. The test was held pursuant to advertisement in the month of March, 2011 followed by declaration of result on 28.8.2011. Once a candidate holding qualification of B.Ed. was allowed to appear in the TET, that too, for the post of Teacher at level-I then should not be rendered ineligible only for the reason that selection to the post could not be held on or prior to 1.1.2012. If the respondents had no intention to hold selection on or prior to 1.1.2012 then appearance of the petitioners in TET remains nothing but an empty formality for the post of Teacher at Level-I. The TET was held for making them eligible for the post of Teacher Level-I thus to make it logical, the respondents should have alternatively taken guidelines/directions from the NCTE/Government of India for relaxing cut off date of 1.1.2012 or for advancing it so that one time relaxation is given to B.Ed. degree holders for their appearance on the post of Teacher at Level-I in the State of Rajasthan. The respondents' failed to act as per Sec. 35 of the Act of 2009 and Rule 18 of the Rules of 2010. This is more so when petitioners are ready to undergo training of six months after their appointment as is given in the Notification dated 23.8.2010.

8. Learned counsel further made a reference of Rule 29 of the Rules of 2010 to indicate that if there was an ambiguity in the mind of the respondents then necessary guidelines should have been taken from the Government of India. This is more so when in few States, the cut off date of 1.1.2012 has been relaxed. Presently, 41000 posts have been advertised for the post of Teacher Gr. III by various Zila Parishads in the State of Rajasthan. This shows that pupil-teacher ratio was not maintained as per the mandate of Sec. 25 of the Act of 2009 otherwise 41000 posts would not have been advertised by the respondents for all the Zila Parishads in the State.

9. Looking to the above, petitioners may be treated eligible for appointment to the post of Teacher Gr. III (at level-I) as they are having qualification of B.Ed.

with TET. For the aforesaid purpose, if need be, NCTE and the State Government may be given appropriate directions to relax cut off date of 1.1.2012 or any other appropriate directions as this Court may deem just and proper in the facts and circumstances of the case.

10. Learned Additional Advocate General Mr. SN Kumawat, on the other hand, contested the matter. It is submitted that the Act of 2009 came into effect from 26.8.2009. As per Sec. 23 of the Act of 2009, NCTE is authorised and issued Notification to provide requisite qualification. As per qualification provided by the Notification dated 23.8.2010, a candidate is eligible for appointment to the post of Teacher Level-I as per qualification prescribed in para 1 of the Notification. Para 3 of the said Notification provides B.Ed. degree holders to be eligible for the post of Teacher level 1 upto 1.1.2012 and not beyond it.

11. The Zila Parishads issued advertisements on 24.2.2012 for the post of Teachers. It was after same litigation regarding requirement of qualification of TET and interim order passed by this Court. It was even due to clarification sought and given by the Government of India. Thus, Zila Parishads had no intention to delay recruitment, rather, it has been conducted at the first available occasion. The Government of Rajasthan even sought clarification from NCTE in regard to eligibility of B.Ed. degree holders after 1.1.2012 but it was answered in negative. The State Government thus tried to get clarification on the issue raised by the petitioners but opinion thereupon is adverse to the petitioners.

12. The State Government amended Rajasthan Panchayati Raj Rules vide its Notification dated 11.5.2011 As per Notification, required qualification for Teacher level-I is as prescribed by the NCTE under Sec. 23 (1) of the Act of 2009. The NCTE provided minimum qualification, thus State Government has kept the same qualification under its legislative domain and amended the Rules of 1996 thus cannot flout it. This Court may not grant prayer contrary to the Rules as while exercising jurisdiction under Art. 226 of the Constitution of India, can declare any provision of law to be unconstitutional if its validity is challenged however, if validity of the rules is not under challenge then directions can be in conformity to the provisions and cannot be sought contrary to it. Reference of the judgment of the Hon"ble Supreme Court in the case of State of Jammu & Kashmir and Another Vs. Ajay Dogra, is given. Therein, petitioner sought relaxation in standard of physical condition specified in the advertisement. The advertisement was in reference to the statutory provisions. The validity of the Rules or prescription of such condition was not challenged. The appeal preferred by the State was allowed by setting aside order of the Division Bench of J & K High Court.

13. Learned AAG further submits that interpretation of Sec. 23 of the Act of 2009 has not been taken correctly by the petitioners. Sec. 23(1) of the Act of 2009 provides that any person possessing such minimum qualification, as laid down by an academic authority, authorised by the Central Government would be eligible for appointment. In view of the mandate of aforesaid provisions, no person is

eligible for appointment unless possesses qualification as prescribed by academic authority. The academic authority in the present matter is NCTE which issued Notification to provide qualification on 23.8.2010. Sub-section (2) of Sec. 23 of the Act of 2009 provides for relaxation in qualification but applies only in two circumstances; (i) Where a State does not have adequate institutions offering courses or training in teacher education and (ii) teachers possessing minimum qualifications as laid down under sub-sec. (1) are not available in sufficient number. In the aforesaid two circumstances, the Central Government is given powers to relax minimum qualification by issuing a Notification but in no case beyond a period of five years.

14. In view of sub-sec. (2) of Sec. 23 of the Act of 2009, relaxation in minimum qualification for five years is not automatic on two eventualities but on exercise of process by the Central Government. The proviso to Sec. 23(2) of the Act of 2009 has to be read with main provision. The proviso is applicable for those teachers, who, at the commencement of the Act of 2009, are not in possession of minimum qualification as laid down, then to possess qualification within a period of five years. It is applicable to the existing teachers. The language of the proviso is different than interpreted by the learned counsel for petitioners. If interpretation taken by the petitioners is accepted to treat every person to be eligible for five years then there was no need to have sub-sec. 2 of Sec. 23 of the Act of 2009 to give authority to the Central Government to relax qualification for maximum period of five years in two eventualities given therein. The aforesaid provision is required to be looked into in reference to Rule 18 of the Rules of 2010 also. The aforesaid rule is akin to the provision of Sec. 23(2) of the Act of 2009. It again provides that if adequate number of institutions or teachers are not available then relaxation can be granted. The case in hand is not of that nature. It is not a case of the petitioners that adequate number of institutions to provide courses or training are not available in the State of Rajasthan or that adequate number of candidates with required qualification are short. In the aforesaid background, the plea raised by learned counsel for petitioners is not tenable for relaxation of qualification.

15. Referring to Secs. 25, 34 and 35 of the Act of 2009, it is submitted that none of the petitioners have raised plea to indicate that pupil-teacher ratio has not been maintained in the State of Rajasthan as per Sec. 25. The argument has been raised without factual matrix.

16. So far as Sec. 35 of the Act of 2009 is concerned, language does not indicate that State Government should seek guidelines from the Government of India or from any other authority. The State Government yet sought clarification from the NCTE followed by reply vide its letter dated 10.5.2012. Therein, NCTE has refused to grant relaxation, rather cut off date of 1.1.2012 is to be adhered to as it was fixed after due deliberations. It is clearly mentioned that a person with B.Ed. qualification would be eligible for appointment upto 1.1.2012 and such person would be ineligible for appointment after that for the post of Teacher at

Level-I. The Rajasthan Panchayati Raj Rules of 1996 were also amended to make it in consonance with the Act of 2009 and, accordingly, qualification provided pursuant to Sec. 23(1) is applicable for recruitment pursuant to the advertisement in reference. The respondents are having more than 41000 eligible candidates for consideration thus State is neither short of educational institutions nor required strength of candidates. In the aforesaid background, neither Sec. 23 of the Act of 2009 comes in picture nor Rule 18 of the Rules of 2010.

17. Coming to other argument as regard to TET, it is submitted that upto 1.1.2012 candidates like petitioners were eligible for appointment at level-I thus they could not have been debarred from TET. All candidates holding qualification of B.Ed. were accordingly allowed to appear in TET but, merely for that reason they cannot be treated eligible for recruitment contrary to the Notification dated 23.8.2010 issued by the NCTE and as per amended rules of 1996.

18. It is lastly contended that reference of some action by the State of UP for relaxation has been given by learned counsel for petitioners while making oral arguments, however, it is not coming out from pleadings and no document has been placed on record for the aforesaid purpose. The State Government is having authority under Schedule VII of the Constitution to regulate and legislate the subject. The State of Rajasthan under its legislative competence, amended Rajasthan Panchayati Raj Rules to provide minimum qualification for Teacher level-I and II. It is as prescribed by the NCTE. The petitioners are not in possession of requisite qualification which is provided in para (1) of the Notification for the post of Teacher Level-I thus action of the respondents cannot be said to be illegal. A reference of the judgment of the Hon''ble Apex Court in the case of "Kailash Chandra Harijan vs. State of Rajasthan & Ors.", reported RLR 2006 (1) 665 has been given to show that as per judgment therein and also of the Hon''ble Apex Court in the case of Yogesh Kumar and Others Vs. Government of NCT, Delhi and Others, is taken as basic qualification at the elementary level i.e. for classes I to V. In the light of arguments advanced, the writ petitions deserve to be dismissed and interim orders passed by this Court deserve to be vacated.

19. Learned counsel for NCTE has adopted the arguments of learned Additional Advocate General. It is submitted that basic qualification for Teacher at Level-I is as laid down in para (1) of the Notification dated 23.8.2010, para (3) provides for exception upto 1.1.2012 only.

20. I have heard learned counsel for the parties and perused the record.

21. By virtue of an amendment in the Constitution, elementary education is now a fundamental right. To provide free and compulsory education, the Act of 2009 was brought by the Union of India. Section 23 of the said Act is for qualification and conditions of service of teachers. The NCTE is authorised to lay down minimum qualification, which issued Notification on 23.8.2010 and 29.7.2011.

The State Government amended Panchayati Raj Rules of 1996 vide Notification dated 11.5.2011. Thus qualification of teachers is governed by Central and State legislation.

22. These writ petitions have been filed as petitioners are not treated eligible for appointment to the post of Teacher level-I. It is precisely due to cut off date provided for those candidates holding qualification of B.Ed. The qualification aforesaid was provided by the NCTE on authorisation by the Central Government vide its Notification dated 5.4.2010. It is under Sec. 23(1) of the Act of 2009. For ready reference, Sec. 23 of the Act of 2009 is quoted hereunder -

23. Qualification for appointment and terms and conditions of service of teachers.--(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-sec. (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-sec. (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.

23. Perusal of Sec. 23 reveals that minimum qualification for teachers would be laid down by the academic authority authorised by the Central Government. In view of the aforesaid provision, the NCTE was authorised to provide minimum qualification which issued Notification on 23.8.2010. The minimum qualification for teachers at level-I for classes I to V is provided in para (1) and (3) of the said Notification which is quoted hereunder for ready reference --

(1) 1 Minimum Qualifications:--

(i) Classes I - V

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

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2 - year 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 Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

(ii) 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.)

OR

B.A./B.Sc. with at least 45% 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 in Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year B.A./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 Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

(3) Training to be undergone - A person --

(a) with B.A./B.Sc. with at least 50% marks and B.Ed. qualification shall also be eligible for appointment for class I to V upto 1st January, 2012, provided he undergoes, after appointment, an NCTE recognised six month special programme

in elementary education.

(b) with D.Ed. (Special Education) or B.Ed. (Special Education) qualification shall undergo, after appointment, an NCTE recognised six month programme in elementary education.

24. Perusal of paras quoted above reveals that para (1) lays down basic qualification for Level-I, which does not includes qualification of B.Ed. Para (3) provides that candidate holding qualification of B.Ed. would also be eligible for Level-I upto 1.1.2012. Keeping in mind cut off date of 1.1.2012, the respondents are treating all the petitioners holding qualification of B.Ed. to be ineligible now as they are not in possession of requisite qualification as provided under para (1) of the Notification dated 23.8.2010. The cut off date provided in para (3) for B.Ed. holders, is not under challenge in any of the writ petitions. This is more so when by amendment in the Rajasthan Panchayati Raj Rules of 1996, State Government laid down qualification as prescribed by the NCTE under Sec. 23(1) of the Act of 2009. The amended Rules of 1996 are also not under challenge. The only prayer is to give relaxation in the qualification looking to the delay in holding selection. It should have been conducted prior to 1.1.2012. I am of the opinion that this Court cannot be prayed for a direction contrary to the statutory provisions. The amendment in the Panchayati Raj Rules was brought vide Notification dated 11.5.2011 and is not under challenge. The qualification as provided in the aforesaid Notification is quoted hereunder--

25. The respondent State is bound by their own Rules and direction contrary to statutory provisions cannot be issued unless held unconstitutional.

26. Reference of Sec. 23(2) of the Act of 2009 and Rule 18 of the Rules of 2010 is relevant because relaxation in minimum qualification can be under the circumstances given therein i.e. if adequate number of institutions offering courses or training in teacher education are not there or adequate number of candidates with minimum qualifications are not available. Both the circumstances do not exist in the State of Rajasthan. In the aforesaid background, this Court cannot issue direction to relax the qualification when it does not fall within the purview if Sec. 23(2) of the Act of 2009 and Rule 10 of the Rules of 2010. For the aforesaid purpose, reference of the judgment of the Hon"ble Supreme Court in the case of State of J & K (supra) is relevant. Paras 14, 15 and 20 to 24 of the said judgment are quoted hereunder--

14. A perusal of the writ petitions would prove and establish that the only prayer made in those writ petitions was to grant relaxation to the criteria and standard of physical conditions prescribed for and required to be fulfilled. In aforesaid writ petitions, neither tile validity of Rule 176 with regard to physical conditions were challenged nor such conditions 9 prescribed in the advertisement were challenged on the ground of its validity contending inter alia that there is no nexus of the said conditions with the object sought to be achieved. We find that the physical conditions prescribed in the advertisement are in consonance with

Rule 176 of the Police Rules which are statutory Rules. No where in the pleadings, it is stated that such conditions prescribed are illegal or invalid. Constitutional validity of the aforesaid Rule was never challenged in any of the writ petitions.

15. The High Court, however, without there being any pleading in that regard went beyond the pleadings and held that such physical conditions laid down are bad and arbitrary as what has been prescribed have no nexus with the object sought to be achieved.

20. This Court while upholding the aforesaid contentions held in paragraph 16 thus (Para 15 of AIR SCW):--

16. Having heard the learned counsel on both sides for the different contending parties, we are of the view that the impugned judgment of the High Court needs to be interfered with. As already observed, there was no challenge to the Rules in the writ petition. The learned Single Judge was, therefore, justified in applying the Rules and upholding the selection process 13 made by the State authorities. It was wholly unjustified on the part of the Division Bench to have interfered with the selection process on the basis of the criteria which were not laid down in the Rules and that too on an erroneous appreciation of the Rules. The High Court failed to see that the Rules made no distinction, whatsoever, between degree-holders and diploma-holders at the stage of recruitment for the purpose of minimum qualifications. In other words, no distinction was made between the two categories at the stage of recruitment, but a greater weightage was given to the degree-holders in the post-recruitment period in the form of a higher starting pay and also lesser number of years of service requirement for qualifying for promotion to the higher post. We agree with the contention expressed by the learned counsel for the appellants that there was sufficient inbuilt balance maintained between the two categories of candidates and the impugned judgment of the High Court completely throws the Rules out of balance. What the executive did not think fit to do by prescription in the Rules, could not have been done by a judicial fiat.

21. The qualifications to be possessed by the applicants have been prescribed in the Rules and also in the advertisement for the reason that some of them are required to be posted at high altitude and therefore they are required to have proper physique so as to be able to be posted to those places.

22. In our considered opinion, the ratio of the aforesaid decisions of this Court are squarely applicable to the facts of the present case. There was no challenge to the constitutional validity of Rule 176 of the Police Rules so far as it relates to prescribing physical conditions regarding the height and the chest. The stipulations in the advertisement regarding standard of physical condition was also not challenged in the Writ Petition. The High Court was not justified in going into the validity of the aforesaid criterion in absence of any such challenge. The High Court also has not specifically declared the Rule prescribing minimum

height standard and chest standard ultra vires and, therefore, so long as that Rule exists in the statute book, no such direction as issued by the High Court could be issued. Consequently, the directions issued by the High Court in the present case are required to be set-aside.

23. We, therefore, hold that the High Court was not justified to decide the validity of the aforesaid Rule and the advertisement without there being any challenge to the same. We also hold that it was not appropriate for the High Court to set aside the said conditions which are mandatory in nature.

24. Considering the aforesaid facts and circumstances of the case and in the light of the settled principles of law of this Court, we allow these appeals and set aside the judgments and orders passed by the High Court both by the Division Bench and by the Single Judge and dismiss the writ petitions.

27. This Court can very well struck down legal provisions if found to be unconstitutional but if the Act and Rules are not challenged, it cannot pass directions contrary to the statutory provisions. The validity of Rajasthan Panchayati Raj Rules as amended is not under challenge and otherwise validity of rule can be examined by the Division Bench only.

28. An argument has also been raised that petitioners were allowed to appear in the TET for Teacher Level-I. The result of which was declared on 28.8.2011. Petitioners have qualified TET for becoming eligible for appointment to the post of Teacher Level-I. According to the petitioners, once they were allowed to appear in the TET for Level-I, cannot be treated ineligible for selection. The argument aforesaid seems to be attractive but cannot be accepted. The crucial date of 1.1.2012 came in there for eligibility and validity thereof is not under challenge. In the aforesaid circumstances, even if there is hardship to the petitioners yet directions to treat them to be eligible would then be in violation of Rajasthan Panchayati Raj Rules as amended and quoted above.

29. In the aforesaid background, mere appearance of the petitioners in TET in the month of March, 2011 followed by result on 28.8.2011 cannot make them eligible contrary to the provisions.

30. So far as reference of Secs. 25, 34 and 35 of the Act of 2009 is concerned, again, there is no direction or mandate on State Government to seek guidelines or instructions from NCTE or from Central Government, yet, learned Additional Advocate General has shown a letter sent to the NCTE to seek clarification and reply thereupon vide their letter dated 10.5.2012. A specific reference of sub-para (iii) and para 2 is given. The aforesaid is quite relevant to the issue thus quoted hereunder for ready reference--

(iii) On the issue of persons with B.Ed. qualifications being considered eligible for classes I to V, it may be mentioned that this provision was a temporary measure and after due deliberations in the Council, a decision was taken to allow the B.Ed. as an eligible qualification for appointment as a teacher upto a specified period

i.e. upto 01.01.2012. However, in order to ensure that persons with B.Ed. qualification are equipped and prepared to teach in class I to V, it has been provided that such persons after appointment shall have to undergo a six month special course on elementary education.

2. In the light of the above Notification, persons with B.Ed. qualification were eligible for appointment as teacher for class I to V only upto 1st January, 2012 and they would not be eligible for appointment in class I to V after that date.

31. Perusal of the clarification given by the NCTE, relaxation for B.Ed. holders was given as a temporary measure with cut off date of 1.1.2012, after due deliberations. The NCTE has clarified that a candidate in possession of qualification of B.Ed. would not be eligible for appointment for Level-I after 1.1.2012. In the aforesaid back, even if argument of the learned counsel for petitioners in reference to Sec. 35 is accepted, a clarification has already been given by the NCTE which is now the competent authority to provide minimum qualification for teachers and accepted by the State Government in view of amendment in the Panchayati Raj Rules of 1996. In the light of aforesaid argument in reference to Secs. 25, 34 and 35 cannot be accepted.

32. The question now comes for interpretation to proviso to Sec. 23 (2) of the Act of 2009. To consider the aforesaid argument, it would be relevant to first refer to the mandate of Sec. 23 of the Act. It provides that a person possess such minimum qualification as laid down by the academic authority, authorised by the Central Government by Notification, alone would be eligible for appointment as a teacher. Sub-section 2 of Sec. 23 however gives authority to the Central Government to relax qualification for a maximum period of five years, however, such powers can be exercised only when a State is not having sufficient institutions to provide required course or training in teacher education or in case of non-availability of teachers with minimum qualification. The relaxation is not automatic therein but it can be granted by the Central Government by issuing a Notification. Both the circumstances do not exist herein to direct the Central Government to issue Notification to grant relaxation.

33. Now the proviso is required to be looked into in reference to the main provision inasmuch as the proviso cannot nullify main provision. The proviso is applicable in those cases where teachers, at the commencement of the Act of 2009, do not possess minimum qualifications thus should acquire qualification within a period of five years. The proviso does not lay down or makes a reference of relaxation in appointment. When proviso does not make a mention about relaxation of five years for appointment then how it can be applied in the present case. If the interpretation given by learned counsel for petitioners is accepted then all the petitioners/candidates who are not in possession of requisite qualifications have to be treated eligible and can possess qualification within a period of five years, then there was no purpose to have sub-sec. (2) of Sec. 23 of the Act of 2009 authorising Central Government to relax qualification for five years in two eventualities. The interpretation should be as per object and without

making other provisions to be redundant.

34. In the light of the discussion made above, proviso to sub-sec. (2) of Sec. 23 of the Act of 2009 is of no help to the petitioners, rather, it does not make them eligible for appointment to the post of teacher Level-I for a period of five years. Thus aforesaid argument of learned counsel for petitioners cannot be accepted.

35. So far as the issue in reference to other States namely State of UP and any other State other than the State of Rajasthan is concerned, facts and documents are not before this Court thus oral argument cannot be accepted. Even if it is assumed that some State has given relaxation in qualification, the State of Rajasthan is not bound by such an act as they are governed by their own Rules.

36. It is also seen by this Court that the Rajasthan Panchayati Raj Rules, 1996 have also been amended vide Notification dated 11.5.2011 which mandates requirement of qualification as provided by NCTE pursuant to Sec. 23 (1) of the Act of 2009. The Notification of the NCTE so as the Rules of 1996 are not under challenge before me thus this Court cannot give direction contrary to statutory provisions so as to make them redundant. The issue of required qualification at the level of elementary education was declared by the Hon"ble Apex Court in the case of Yogesh Kumar (*supra*) holding that B.Ed. holders are not eligible for appointment. Relevant paras 4, 5 and 8 of the said judgment are quoted hereunder--

4. The second contention advanced is that B.Ed. qualification should be treated as higher qualification than TTC because primary teachers recruited on TTC qualification can get promotion as teachers to teach higher classes and B.Ed. is the prescribed qualification for higher classes.

5. The Division Bench of the Delhi High Court in the impugned judgment has dealt with the above two arguments in great detail. In our considered opinion, it has rightly come to the conclusion that B.Ed. qualification, although a well-recognised qualification in the field of teaching and education being not prescribed in the advertisement, only some of the B.Ed. candidates who took a chance to apply for the post cannot be given entry in the field of selection. We also find that the High Court rightly came to the conclusion that teacher training imparted to teachers for B.Ed. course equips them for teaching higher classes. A specialized training given to teachers for teaching small children at primary level cannot be compared with training given for awarding B.Ed. degree. Merely because primary teachers can also earn promotion to the post of teachers to teach higher classes and for which B.Ed. is the prescribed qualification, it cannot be held that B.Ed. is a higher qualification than TTC. Looking to the different nature of TTC qualification, the High Court rightly held that it is not comparable with B.Ed. degree qualification and the latter cannot be treated as higher qualification to the former.

8. This last argument advanced also does not impress us at all. Recruitment to public services should be held strictly in accordance with the terms of

advertisement and the recruitment rules, if any. Deviation from the rules allows entry to ineligible persons and deprives many others who could have competed for the post. Merely because in the past some deviation and departure was made in considering the B.Ed. candidates and we are told that was so done because of the paucity of TTC candidates, we cannot allow a patent illegality to continue. The recruitment authorities were well aware that candidates with qualification of TTC and B.Ed. are available yet they chose to restrict entry for appointment only to TTC-pass candidates. It is open to the recruiting authorities to evolve a policy of recruitment and to decide the source from which the recruitment is to be made. So far as B.Ed. qualification is concerned, in the connected appeals (CAs Nos. 1726-28 of 2001) arising from Kerala which are heard with this appeal, we have already taken the view that B.Ed. qualification cannot be treated as a qualification higher than TTC because the nature of the training imparted for grant of certificate and for degree is totally different and between them there is no parity whatsoever. It is projected before us that presently more candidates available for recruitment to primary school are from B.Ed. category and very few from TTC category. Whether for the aforesaid reasons, B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider B.Ed. candidates for the present vacancies advertised as eligible. In our view, the Division Bench of the Delhi High Court was fully justified in coming to the conclusion that B.Ed. candidates were rightly excluded by the authorities from selection and appointment as primary teachers. We make it clear that we are not called upon to express any opinion on any B.Ed. candidates appointed as primary teachers pursuant to advertisements in the past and our decision is confined only to the advertisement which was under challenge before the High Court and in this appeal.

37. The last issue is regarding delay in holding selection by the State Government. It is submitted that the Act of 2009 came in effect on 26.8.2009 followed by a Notification by NCTE to provide minimum qualification on 23.8.2010 but further Notification was issued on 29.7.2011 thus should have conducted selections immediately thereafter. I find that result of TET was declared on 28.8.2011 thus first available occasion to hold selection came thereafter only as NCTE issued one Notification on 29.7.2011 and the Rajasthan Panchayati Raj Rules, 1996 were amended on 11.5.2011 thus it is not a case of gross delay. The ideal situation would have been if selection could have been before 1.1.2012 as after the aforesaid date, candidates holding qualification of B.Ed. and qualified TET would not be eligible for appointment to the post of teacher Level-I. The fact however remains that cut off date of 1.1.2012 has not been challenged, more so when as per amended Rules of 1996 under which selections are held provides so, in view of applicability of NCTE Notification. Thus date aforesaid is coming as per statutory rules and are not under challenge hence no directions can be issued against the legal provisions.

38. In view of the discussion made above, I am unable to accept pleas taken by the learned counsel for petitioners. In the result, all these writ petitions are

dismissed, however, if any of the petitioners intend to challenge validity of the Notification or Rules, he/she would be free to do so because this judgment has been rendered without touching validity of the Rules/Notification. In view of dismissal of the writ petitions, stay applications also stand dismissed.