

(2013) 12 AHC CK 0001
In the Allahabad High Court
Case No : Special Appeal No. 1234 of 2013

Ram Surat Yadav and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-12-2013

Acts Referred:

Citation : (2014) 1 ADJ 1 : (2014) 1 ALJ 637 : (2014) 1 ESC 1 : (2014) LabIC 1212 : (2014) 1 UPLBEC 1

Hon'ble Judges : Dhananjaya Yeshwant Chandrachud, C.J.; Sanjay Misra, J; Dilip Gupta, J

Bench : Full Bench

Advocate : Ashish Kumar Ojha and Radha Kant Ojha, for the Appellant; Indra Raj Singh, R.S. Prasad and Additional CSC, for the Respondent

Judgement

1. On 4 September 2013, a Division Bench of this Court made a reference to the Full Bench, doubting the correctness of a judgment of a Division Bench in Rishi Kant Sharma Vs. State of U.P. and Others, . The referring judgment notes that the view in Rishi Kant Sharma is in conflict with the judgments of Division Benches of this Court in Sanjay Kumar Tyagi Vs. State of U.P. and Others, , Chandra Prakash Singh v. State of U.P. and others, Special Appeal No. 995 of 2007, decided on 28th September, 2007 and Committee of Management v. State of U.P. and others, 2009(1) ADJ 331 (DB): 2009(1) ESC 568. It appears that Savitri Devi was the sixth respondent to the special appeal and was the original petitioner before the learned Single Judge in that case.] Moreover, though there was a judgment of the Supreme Court in Mohd. Sartaj and Another Vs. State of U.P. and Others, , that was distinguished by the Division Bench in Rishi Kant Sharma's case, according to the referring judgment, incorrectly. The issue, which arises before the Full Bench, is whether the judgment of the Division Bench in Rishi Kant Sharma's case lays down the correct position in law. The Uttar Pradesh Basic Education Act, 1972 was enacted by the State legislature with a stated object of improving the administration of primary education in the State. The legislation was enacted in order to reorganize, reform and expand

elementary education in order to secure the object underlying Article 45 of the Constitution. Section 2(b) of the Act defines the expression "basic education" to mean education up to the eighth class imparted in schools other than High Schools or Intermediate Colleges. Section 3 contemplates the setting up of a Board of Basic Education. The function of the Board u/s 4(1) is to organize, coordinate and control the imparting of basic education and teachers' training in the State in order to raise its standards and to correlate it with the system of education as a whole in the State. Section 19 empowers the State Government to make Rules for carrying out the purposes of the Act. The Rules may extend, inter alia, to the recruitment and the conditions of service of persons appointed to the posts of officers, teachers and other employees u/s 6.

2. In exercise of the power conferred by the Act, the Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 were framed. Rule 2(e) defines the expression "Junior High School" to mean an institution other than a High School or Intermediate College imparting education to boys or girls or both from Class VI to Class VIII (inclusive). Rule 2(h) defines the expression "Recognized School" to mean any Junior High School not being an institution belonging to or wholly maintained by the Board or any local body recognized by the Board. Prior to its amendment on 12 June 2008, Rule 4(1), which prescribed the minimum qualifications for the post of an Assistant Teacher in a recognized school was as follows:

4. Minimum Qualification.--(1)The minimum qualifications for the post of Assistant Teacher of a recognized school shall be Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh or equivalent examination with Hindi and a teacher's training course recognized by the State Government or the Board such as Hindustani Teaching Certificate, Junior Teaching Certificate, Basic Teaching Certificate, or Certificate of Training.

3. With effect from 12 June 2008, Rule 4 has been substituted and sub-rule (1), as it now stands, reads as follows:

4. Minimum qualification.--(1) The minimum qualifications for the post of Assistant Teacher of a recognized school shall be a Graduation Degree from a University recognized by U.G.C., and a teachers training course recognized by the State Government or U.G.C. or the Board as follows:

1. Basic Teaching Certificate.
2. A regular B.Ed. degree from a duly recognized Institution.
3. Certificate of Teaching.
4. Junior Teaching Certificate.
5. Hindustani Teaching Certificate.

4. In the present case, the Committee of Management of the Jan Sewa Samiti Madhyamik Vidhyalaya, Naugeera, Mauaima, Allahabad initiated an exercise for

filling up posts of Assistant Teachers. Permission was accorded to the Committee of Management to do so in consonance with the Rules of 1978. The vacancies were advertised and a selection took place on 23 December 2006. After selection, the papers were forwarded to the District Basic Education Officer alongwith the objections which were raised. The claim was rejected on 23 May 2007. The Management represented the matter before the District Basic Education Officer and after a hearing, approval was granted to the appointment of the appellants on 8 August 2007. This order was challenged in writ proceedings by one Chandra Bali Patel and the petition was disposed of with a direction to the Director of Education (Basic) to adjudicate upon the controversy in accordance with law after furnishing an opportunity to the affected parties. Upon a reexamination of the matter, the claim of the appellants was disapproved. The order of disapproval was challenged in writ proceedings before this Court. The basis on which the claim of the appellants was rejected was that they did not fulfill the eligibility qualification required for the post of Assistant Teacher (Basic) since they did not possess a training certificate of BTC, HTC or JTC.

5. Before the learned Single Judge, it was contended on behalf of the original petitioners that their appointments had been validly made in terms of the Rules of 1978 and having been paid their salary, the approval which had been granted could not be revoked. On the other hand, it was urged on behalf of the respondents that the petitioners did not possess the requisite minimum qualification on the date when they were appointed and their appointments were unlawful. All of the appellants have a BA degree. Three of them have a B.Ed., while the fourth (appellant No. 3) has an LT qualification. The learned Single Judge, while rejecting the petition, noted that none of the petitioners was possessed of a certificate of training prescribed by the Rules, such as the HTC, JTC BTC or CT. Consequently, their appointments were held to be invalid at the inception since the petitioners did not fulfill the qualifications prescribed by the statutory Rules. However, it was sought to be urged on behalf of the original petitioners that since the Rules have been amended with effect from 12 June 2008 and now the B.Ed. qualification has been accepted, the claim of the petitioners should be considered from that perspective. The learned Single Judge held that the amended Rules in question have been enforced on 12 June 2008 and will not apply retrospectively. Consequently, any person, who was appointed prior to 12 June 2008, was required to possess the criteria of eligibility as they existed at the point in time when the selection process had been undertaken. The petitioners having failed to meet the eligibility criteria, as they existed on the date of the commencement of the selection process, the petition has been dismissed.

6. Before we deal with the submissions of the appellants, it is necessary to note that Rule 4(1) provides minimum qualifications for appointment to the post of an Assistant Teacher. Rule 4(1) as it existed prior to 12 June 2008 prescribed as qualifications of eligibility (i) Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh or an equivalent examination

with Hindi; and (ii) a teachers' training course recognized by the State Government or the Board of Basic Education, such as Hindustani Teaching Certificate (HTC), Junior Teaching Certificate (JTC), Basic Teaching Certificate (BTC) or Certificate of Training (CT). The selection process was undertaken in pursuance of an approval which was received with reference to the Rules of 1978 as they stood prior to the amendment which took place on 12 June 2008 obviously because the selection process was initiated and completed before the amendment had taken effect. Where statutory Rules prescribe conditions of eligibility for appointment to a post, a person who does not possess the qualification which is prescribed cannot have a lawful entitlement to hold the post. The appointment of a person who does not fulfill the eligibility qualification would be unlawful, being contrary to the Rules.

7. Rules of eligibility for recruitment of primary or upper primary teachers prescribe conditions of eligibility, such as holding a certificate course in the training of teachers relevant to the imparting of education to a particular category of students whom the teacher is required to teach. When a primary school teacher or, as in the present case, a junior high school teacher who imparts education to students from class six to class eight, is required to hold a particular qualification, a candidate who does not possess the required qualification is not eligible. In several cases including those which have fallen for decision before the Supreme Court, it was sought to be contended that a candidate who holds "a higher qualification", such as a B.Ed. must be treated as being eligible as well. Such an argument has been consistently repelled on the ground that a teacher who has to teach primary students must possess the ability to teach students of that category, age and maturity, and a candidate who does not possess the qualification cannot fall within the zone of consideration nor can such a candidate be considered on the specious ground that she or he holds another qualifications, such as the B.Ed. The Supreme Court has held that a B.Ed. cannot be regarded as a higher qualification at all.

8. This issue came up for consideration before the Supreme Court in a decision in *P.M. Latha and Another Vs. State of Kerala and Others*, . In that case, it was urged that, though the holding of the B.Ed. qualification had not been prescribed as an eligibility requirement in an advertisement issued for recruitment to the post of teachers in Government primary schools, candidates holding a B.Ed. degree should be included in the select list prepared by the Public Service Commission. A learned Single Judge of the Kerala High Court held that B.Ed. candidates could not have been included in the select list since they were not eligible under the terms of the advertisement. In appeal, the Division Bench upheld the judgment of the learned Single Judge but nonetheless upset the directions made in favour of the candidates with a TTC certificate on an undertaking given by the State that the rules of recruitment would be suitably amended to provide avenues of recruitment to B.Ed. degree holders as teachers in Government primary schools. The Supreme Court held that since the recruitment rules for Government primary schools did not prescribe B.Ed. as an

eligibility qualification for primary school teachers, those who did not hold such qualifications could not be regarded as being eligible. The Supreme Court held as follows:

10. We find absolutely no force in the argument advanced by the respondents that B.Ed. qualification is a higher qualification than TTC and therefore, the B.Ed. candidates should be held to be eligible to compete for the post. On behalf of the appellants, it is pointed out before us that Trained Teacher's Certificate is given to teachers specially trained to teach small children in primary classes whereas for B.Ed. degree, the training imparted is to teach students of classes above primary. B.Ed. degree-holders, therefore, cannot necessarily be held to be holding qualification suitable for appointment as teachers in primary schools. Whether for a particular post, the source of recruitment should be from the candidates with TTC qualification or B.Ed. qualification, is a matter of recruitment policy. We find sufficient logic and justification in the State prescribing qualification for the post of primary teachers as only TTC and not B.Ed.. Whether 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.

9. Consequently, the judgment of the Supreme Court holds that (i) the B.Ed. qualification cannot be regarded as a "higher qualification" than a prescribed certificate of training for primary school children; (ii) whether for a particular post, the source of recruitment should be from candidates with a particular degree is a matter of recruitment policy; and (iii) whether the B.Ed. qualification can also be prescribed for primary school teachers is a question to be considered by the recruiting authority.

10. In *Yogesh Kumar and Others Vs. Government of NCT, Delhi and Others*, , the Supreme Court considered an appeal by candidates who were holders of B.Ed. degrees who sought recruitment to the post of Assistant Teachers in primary schools of the Municipal Corporation. A Division Bench of the Delhi High Court dismissed the claim of B.Ed. candidates for appointment as primary school teachers holding that under the terms of the advertisement, this was not one of the prescribed qualifications. While rejecting the appeal, the Supreme Court observed as follows:

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-recognized 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 latter cannot be treated as higher qualification to the former.

In that case, it was also sought to be urged before the Supreme Court that there was a paucity of candidates holding the TTC qualification and, in consequence, a deviation had been made in the past by recruiting B.Ed. qualified candidates. Holding that this would not justify a departure from the prescribed qualifications, the Supreme Court held as follows:

...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....

11. In Dilip Kumar Ghosh and Others Vs. Chairman and Others, , the Supreme Court considered the provisions of the statutory rules in the State of West Bengal. In that case, B.Ed. degree holders who had applied for the post of primary school teachers were aggrieved by the denial of marks against the training qualification on the ground that they did not hold the Junior Basic Training/Primary Teachers Training Certificate. The issue before the Supreme Court was, whether the appellants who had BA/B.Ed./PhEd qualifications could be equated with candidates who are holders of Junior Basic Training or Primary Teachers' Training Certificates for the purpose of appointment to the post of primary school teachers. In that context, the Supreme Court held as follows:

10. The rules, as noticed above, were framed primarily for recruitment of teachers for primary school and the Rules were designed to give an incentive to the teachers who are specifically trained to teach in primary schools. The rationale behind the framing of this Rule is that the JBT/PTTC certificate trained teachers should be appointed so that they can impart proper education to the primary school students in terms of the aims and object with a trained hand. The Rules purposely laid an emphasis that all the candidates for teachers in primary schools who possessed JBT/PTTC should be appointed for the development of the child. The primary education is up to 4th standard. There is a middle education and then secondary and higher secondary education. For teaching in the primary school, therefore, one must know the child psychology and development of a child at a tender age. As already noticed, the candidates like the appellants who are trained in B.Ed. degree are not necessarily to be equipped to teach the students of primary class. They are not trained and equipped to understand the psychology of a child of tender age.

The principles which were formulated by the Supreme Court are as follows:

(i) In the case of the junior basic training and primary teachers training certificate the emphasis is on the development of the child. The primary education is up to IVth standard. Thereafter there is middle education and then the secondary and higher secondary education. But in the primary school one has to study the psychology and development of child at a tender age. The person who is trained in B.Ed. degree may not necessarily be equipped to teach a student of primary class because he is not equipped to understand the psychology of a child at that early stage.

(ii) This is only peculiar to the curriculum of the junior basic training course and primary teachers training certificate course. Therefore, looking to the curriculum one can appreciate the distinction between the two courses and the same policy is reflected in Rules framed by the State in exercise of its statutory power.

(iii) To accept a proposition that a candidate who holds a B.Ed. degree, that is, higher degree cannot be deprived appointment to the post of primary school teacher would negate the aims and objects of the Rules for the purpose for which it is framed.

(iv) These Rules were framed primarily for recruitment of the teachers for primary schools and in that context the Rules were designed to give credit to the candidates who are specifically trained to teach in primary schools. The idea behind the framing of these Rules was that the junior basic training and primary teachers training certificate trained teachers should be appointed so that they can impart proper education to the child of tender age who require expert and tending hand.

(v) There is prohibition contained in Rule 6(d) that no extra credit shall be given for higher qualification.

Consequently, while following the earlier decision in P.M. Latha's case, the Supreme Court affirmed the view of the Division Bench of the High Court holding that persons who did not hold the qualification prescribed for primary teachers could not be considered eligible.

12. Several Division Benches of this Court have also considered the same issue particularly in the context of the applicable statutory Rules in the State of Uttar Pradesh. In Sanjay Kumar Tyagi (supra), the question that arose for consideration was whether a teacher possessing a B.Ed. certificate could be considered to be eligible for appointment to the post of Head Master of a recognized junior high school under Rule 4(2)(d) of the Rules of 1978. The Rules of 1978 apply to the recruitment and conditions of service of teachers in privately managed recognized junior high schools. The Division Bench held as follows:

15. It cannot be disputed that the Teacher's Training imparted to teachers for B.Ed. course equips them for teaching higher classes whereas the Basic Teaching Certificate (hereinafter referred to as "BTC") is given to teachers for teaching

small children and the two cannot be compared with, as has been clearly observed by the Supreme Court in the case of Yogesh Kumar and Others Vs. Government of NTC, Delhi and Others, . The duration of courses of BTC and LT/ B.Ed. are entirely different and have been devised keeping in view the stages through which the students pass. In the case of BTC, the method of Training Course is devised so as to meet the requirement of teaching at a formative stage for a student who enters the School. Thus, it is evident that the training qualification for teaching small children is BTC while the training qualification for teaching children in High Schools and Intermediate Colleges is B.Ed. or LT.

Consequently, in the view of the Division Bench, the subordinate legislation has specifically referred to such training courses which are specifically confined to specialized training for imparting education to small children. Though the subordinate legislation uses the expression "such as", even if it is held that the four courses are illustrative, only such other certificates can be taken into consideration which relate to specialised training for imparting education to small children. Bed/LT/BPEd/CPed or DPED certificates, it was held, could not be taken into consideration. The Division Bench also noted that the subordinate legislation had furnished specific instances of teaching certificates all of which related to certificates granted in respect of imparting education to young children.

13. The effect of the subsequent amendment of the Rules in 2008 has been considered in a judgment of a Division Bench of this Court in Smt. Madhubala Upadhyay v. State of U.P. and others, Special Appeal No. 395 of 2007, decided on 19th January, 2009. In that case, in pursuance of an advertisement, which was issued in August 1998, the appellant had applied for appointment to the post of Assistant Teacher in an institution recognized under the Uttar Pradesh Basic Education Act, 1972. The learned Single Judge had held that the appellant did not possess the necessary qualifications and that the B.Ed. degree, which the appellant had acquired, was not a prescribed training qualification under Rule 4(1) of the Rules of 1978. This view was affirmed by the Division Bench. The decision in Sanjay Kumar Tyagi's case also followed. An alternate submission that the amendment which was brought about in Rule 4(1) was clarificatory in nature and hence the B.Ed. qualification must be taken as a recognized training qualification at all material times was urged. This argument was repelled, holding that substantial changes have been made in the qualifications for teachers by the amendment as a result of which the amendment could not be regarded as clarificatory. The same view has been expressed in another judgment of a Division Bench of this Court in Akhilesh Kumar Pandey v. State of U.P. and others, 2009 (9) ADJ 9. The Division Bench has held that the amending Rules of 2008 would not apply to a situation where an appointment was made when the unamended Rule was in existence. The Division Bench has followed the earlier view in Madhubala Upadhyay's case holding that the amendment of 2008 was not clarificatory.

14. In Mohd. Sartaj (supra), the Supreme Court dealt with a case where the

Basic Shiksha Adhikari in the district of Muzaffarnagar had issued an advertisement for the post of Assistant Teachers in Urdu. The minimum educational qualification prescribed was that the candidate should have passed either the Higher Secondary, Intermediate or equivalent examination recognized by the Government alongwith Urdu as a subject and must possess the BTC, HTC, JTC or CT qualification or a qualification equivalent thereto recognized by the Government. The appointments of the appellants were cancelled on the ground that they did not possess the BTC qualification. The appellants failed in their writ petition and appeal before this Court. The Supreme Court held that under the Rules, the basic qualification for the post of Assistant Teacher, apart from holding the prescribed educational qualification, was a training qualification of the Basic Teaching Certificate, Hindustani Teaching Certificate, Junior Teaching Certificate or Certificating of Teaching or an equivalent course recognized by the State Government. Admittedly, on the date of the appointment, the appellants did not hold the training qualification prescribed by Rule 8 of the Uttar Pradesh Basic (Teachers) Service Rules, 1981. The Supreme Court held that in view of the lack of basic qualification, the appellants could not have been appointed and their appointments could not have been continued and hence it was held that the appellants did not hold any right over the post and the cancellation of their appointments was not contrary to law even though no opportunity of a hearing was furnished. On the point that no hearing had been given, the Supreme Court held that no hearing was required before the cancellation, particularly since the appointments had been cancelled within a short span of time without giving rise to a legitimate expectation.

15. The judgment of the Supreme Court in Mohd. Sartaj's case has been followed in a subsequent decision of the Supreme Court in Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others, , where the Supreme Court has held as follows:

If the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularized, particularly, when the statute in no unmistakable term says so.

16. Now, it is in this background that we must consider the correctness of the judgment of the Division Bench in Rishi Kant Sharma's case. In that case, an advertisement was issued in June 2002 for the post of a Head Master and the appellant was selected in September 2002 following which his appointment was approved. About a year later, a petition was filed challenging the appointment. No interim stay was granted but about seven years after the filing of the petition, the approval to the appointment of the appellant was cancelled upon the writ petition being allowed. The Division Bench, in appeal, noted that the controversy was whether the appellant possessed the requisite qualification prescribed in Rule 4(2) of the Rules of 1978 of a teachers' training course recognized by the

State Government or the Board, such as the HTC, JTC CT or BTC. The Division Bench held that the appointment of the appellant was made following due process of law after an advertisement was issued and selection was processed. The Division Bench held that there was a long standing dispute as to whether the B.Ed. course could be taken as a superior course to BTC when sufficient teachers with BTC qualification were not available and the State Government had issued a Government Order incorporating a B.Ed. degree to satisfy the requirement. In this background, the Division Bench held that the Basic Shiksha Adhikari could not have ignored the qualifications of the appellant. The decision in Mohd. Sartaj's case rendered by the Supreme Court was sought to be distinguished on the ground that in that case the cancellation of the order of appointment was issued within a very short span of time giving no probability for any legitimate expectation to the appellants regarding their continuation in service. In the case at hand, the Division Bench held that the appellants had continued in service for eight years during the pendency of the writ proceedings. On this ground, the decision of the Supreme Court in Mohd. Sartaj's case was distinguished and the judgment of the learned Single Judge was set aside.

17. In our view, the decision of the Division Bench in Rishi Kant Sharma's case cannot be regarded as laying down the correct principle of law. First and as a matter of fundamental principle, when a requirement of eligibility is prescribed in statutory Rules which govern a selection, appointment of a person who does not fulfill the norm of eligibility cannot be regarded as lawful. Secondly, when a selection process is initiated in pursuance of an advertisement and the advertisement lays down the conditions of eligibility, a person who does not fulfill the required qualifications can have no legitimate entitlement to hold the post. Thirdly, the view which has been taken by the Division Bench is clearly contrary to the law laid down by the Supreme Court in a line of authority. We have already adverted to the decisions in P.M. Latha, Yogesh Kumar, Dilip Kumar Ghosh and Pramod Kumar. Once the Rules which have been framed under the Statute prescribe the eligibility qualifications, those qualifications have to be adhered to. A candidate who does not fulfill the required qualifications has no entitlement to the post and even if such an appointment is made, it would be contrary to law. Fourthly, the ground on which the decision in Mohd. Sartaj has been distinguished is, with respect, erroneous. Mohd. Sartaj's case was sought to be distinguished on the ground that the appointment of the appellant in that case as an Assistant Teacher in Urdu was sought to be cancelled within a short span of time from the date of his appointment. Now, a careful reading of the decision in Mohd. Sartaj's case would indicate that the cancellation of the order of appointment in that case was questioned on the ground that it had been effected without allowing to the appellant a due opportunity of being heard. The argument in regard to the non-observance of the principles of natural justice was repelled by the Supreme Court, holding that the case fell within the exception carved out in the decision in S.L. Kapoor Vs. Jagmohan and Others, , that where on the admitted or indisputable facts only one conclusion is possible and under

the law only one penalty is permissible, the Court may not issue a writ to compel the observance of natural justice, not because it is not necessary to observe it but because Courts do not issue futile writs. Since the appellant did not possess the BTC, HTC, JTC or CT or any other training course recognized by the Government of Uttar Pradesh, it was held that the case fell within the exception to the principles of natural justice. Moreover, in that context, it was also held by the Supreme Court that the cancellation order had been issued within a short span of time giving no probability for a legitimate expectation regarding the continuance in service. Hence, it is clear that the issue as to whether a short span of time had elapsed since the date of the appointment was a factor which was considered by the Supreme Court in relation to the argument that there had been a breach of the principles of natural justice. This point, with respect, has been missed in the judgment of the Division Bench in Rishi Kant Sharma's case. Again, the decision in Rishi Kant Sharma's case cannot be regarded as laying down the correct principle in law when it holds that there was a long standing dispute as to whether the B.Ed. degree course can be taken as a superior course to the BTC. Such a contention has been expressly turned down in the judgments of the Supreme Court in P.M. hatha, Yogesh Kumar and Dilip Kumar Ghosh. The Division Bench in Rishi Kant Sharma's case relied upon a Government Order. But it is well-settled that a Government Order cannot override statutory Rules. For all these reasons, we are of the view that the judgment in Rishi Kant Sharma's case cannot be regarded as laying down the correct principle of law.

18. On behalf of the appellants, it has, however, been submitted that (i) The amendment to the Rules, which was brought about in 2008, must be regarded as being retrospective and clarificatory; (ii) There has been paucity of candidates holding the BTC qualification and the law does not contemplate an impossibility; (iii) Upon the enforcement of the National Council for Teacher Education Act, 1993 and the Regulations which have been framed thereunder, the Rules of 1978 must be regarded as being inconsistent therewith, and since the parliamentary legislation has been framed with respect to Entry 66 of the Union List of the Seventh Schedule to the Constitution, it must prevail; and (iv) The Regulations which have been framed by the NCTE must have binding effect.

19. Now, in the background of what we have discussed, we will take up the first two submissions for consideration. With effect from 12 June 2008, Rule 4(1) has been amended. Prior to the amendment, a candidate for the post of Assistant Teacher of a recognized school was required to complete the Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh or an equivalent examination with Hindi. After the amendment, Rule 4(1) requires the holding of a graduation degree from a University recognized by the University Grants Commission. Prior to the amendment, the additional requirement was a teachers' training course recognized by the State Government or the Board, such as HTC, JTC, BTC or Certificate of Training. After the amendment, Rule 4(1) requires a Teachers' Training Course recognized by the State Government or the UGC or the Board as follows:

1. Basic Teaching Certificate;
2. A regular B.Ed. degree from a duly recognized institution;
3. Certificate of Teaching;
4. Junior Teaching Certificate; and
5. Hindustani Teaching Certificate.

Hence a substantial change has been made in the provisions of Rule 4(1) after the amendment. This aspect was noticed in the judgment of the Division Bench in Madhubala Upadhyay (supra) where the Court also noted that amendments have also been made in Rule 4(2) relating to the qualifications for appointment to the post of Head Master and in Rule 8 relating to the minimum age of appointment of Assistant Teachers and of Head Masters. We are in respectful agreement with the view which has been expressed by the Division Bench in Madhubala Upadhyay's case. This view in Madhubala Upadhyay has been followed in a subsequent Division Bench judgment in Akhilesh Kumar Pandey (supra). As regards the argument that there was a paucity of teachers with a BTC certificate, we may only note that the same argument was urged before the Supreme Court in Yogesh Kumar's case. In that case also, it was sought to be urged that more candidates were available for recruitment to primary schools from the B.Ed. category than from the TTC category. The Supreme Court held that whether, for the aforesaid reasons, the B.Ed. qualification can also be prescribed for primary teachers had to be considered by the authorities concerned but B.Ed. candidates could not be regarded as eligible for the vacancies which had been advertised. The amendment which was made to the Rules of 1978 on 12 June 2008 cannot be regarded as being clarificatory or retrospective in nature.

20. That leaves us with the final submission which has been urged on behalf of the appellants which relates to the effect of the legislation enacted by Parliament in 1993, namely the NCTE Act, 1993. Section 2(e) defines the expression "institution" to mean an institution, which offers courses or training in teacher education. Section 2(1) of the said Act defines the expression teacher education" as follows:

2(1) "teacher education" means programmes of education, research or training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools, and includes non-formal education, part-time education, adult education and correspondence education.

Section 2 defines the expression teacher education qualification" as follows:

2(m) "teacher education qualification" means a degree, diploma or certificate in teacher education awarded by a University or examining body in accordance with the provisions of this Act.

Section 12 of the said Act provides for the function of the Council. u/s 12, it is

the duty of the Council to take all such steps as it may think fit for ensuring planned and coordinated development of teacher education and for the determination and maintenance of standards for teacher education. For the purpose of performing its functions under the Act, the Council, inter alia, may lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognized institutions." Section 12 provides as follows:

12. Functions of the Council.--It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and coordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act, the Council may--

- (a) undertake surveys and studies relating to various aspects of teacher education and publish the result thereof;
- (b) make recommendations to the Central and State Governments, Universities, University Grants Commission and recognized institutions in the matter of preparation of suitable plans and programmes in the field of teacher education;
- (c) co-ordinate and monitor teacher education and its development in the country;
- (d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognized institutions;
- (e) lay down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum;
- (f) lay down guidelines for compliance by recognized institutions, for starting new courses or training, and for providing physical and instructional facilities, staffing pattern and staff qualification;
- (g) lay down standards in respect of examinations leading to teacher education qualifications, criteria for admission to such examinations and schemes of courses or training;
- (h) lay down guidelines regarding tuition fees and other fees chargeable by recognized institutions;
- (i) promote and conduct innovation and research in various areas of teacher education and disseminate the results thereof;
- (j) examine and review periodically the implementation of the norms, guidelines and standards laid down by the Council, and to suitably advise the recognized institutions;
- (k) evolve suitable performance appraisal systems, norms and mechanisms for

enforcing accountability on recognized institutions;

(l) formulate schemes for various levels of teacher education and identify recognized institutions and set up new institutions for teacher development programmes;

(m) take all necessary steps to prevent commercialization of teacher education; and

(n) perform such other functions as may be entrusted to it by the Central Government.

Under Section 32, the Council is empowered to frame Regulations. Under clause d(i) of sub-section 2 of Section 32, the Council may frame norms, guidelines and standards in respect of the minimum qualifications for a person to be employed as a teacher under clause (d) of Section 12.

21. The effect of the enactment of the aforesaid legislation was considered in a judgment of the Supreme Court in *Basic Education Board, U.P. Vs. Upendra Rai and Others*, . In *Upendra Rai*, the Supreme Court noted that the NCTE Act regulates the teachers training system and the teachers training institutes in the country. The view of the Supreme Court was as follows:

19. A perusal of the NCTE Act shows that this Act was made to regulate the teachers' training system and the teachers' training institutes in the country. It may be mentioned that there are two types of educational institutions (1) ordinary educational institutions like primary schools, high schools, intermediate colleges and universities, and (2) teachers' training institutes. The NCTE Act only deals with the second category of institutions viz. teachers' training institutes. It has nothing to do with the ordinary educational institutions referred to above. Hence, the qualification for appointment as teacher in the ordinary educational institutions like the primary school, cannot be prescribed under the NCTE Act, and the essential qualifications are prescribed by the local Acts and Rules in each State in U.P. the essential qualification for appointment as a primary school teacher in a Junior Basic School is prescribed by Rule 8 of the U.P. Basic Education (Teachers) Service Rules, 1981 which have been framed under the U.P. Basic Education Act, 1972. A person who does not have the qualification mentioned in Rule 8 of the aforesaid Rules cannot validly be appointed as an Assistant Master or Assistant Mistress in a Junior Basic School.

The Supreme Court held that the NCTE Act does not deal with ordinary educational qualifications like primary schools, high schools, intermediate colleges or universities and would consequently not override the U.P. Basic Education Act and the Rules made thereunder. In the view of the Supreme Court, the two Acts operated in two different fields: The NCTE Act deals with teachers' training institutions, while the U.P. Basic Education Act deals with ordinary primary schools in Uttar Pradesh and not a teachers training institute. Since the two pieces of legislation operate in two different fields, it was held that Article

254 of the Constitution has no application.

22. On 3 September 2001, the NCTE notified the National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001. Regulation 2 provides that the Regulations shall be applicable for recruitment of teachers in all formal schools established, run or aided or recognized by Central or State Governments and other authorities for imparting education at the elementary (primary and upper primary/middle school), secondary and senior secondary stages. Regulation 3(i) provides that the qualifications for recruitment of teachers in educational institutions mentioned in Regulation 2 shall be as prescribed in the First Schedule for teaching school subjects. Regulation 4 provides that the existing recruitment Rules may be modified within a period of three years so as to bring them in conformity with the qualifications prescribed in the Schedules. Meanwhile, teachers appointed in accordance with the existing recruitment qualifications, subsequent to the issuance of the Regulations, would be required to acquire the qualifications as prescribed in the Schedules. The First Schedule to the Regulations includes a graduate with a degree of Bachelor of Education (B.Ed.) or its equivalent as a permissible qualification for appointing teachers to the upper primary (middle school section). The Note appended to the First Schedule provides as follows:

Note : 1. For appointment of teachers for primary classes, basic teachers' training programme of 2 years' duration is required. B.Ed. is not a substitute for basic teachers' training programme.

2. Some of the States are having basic teachers' training courses of one year duration only, while in some other States students passing secondary level examination are admitted to primary level teacher training courses. Such States may, by 2005, conduct basic teachers' training programmes of a duration of not less than two years with admission being open to Senior Secondary/Intermediate pass candidates. In the meantime candidates who have undergone basic teachers' training courses of one year duration or were admitted to such training programmes after passing secondary level examination only may be given employment in the concerned States only.

23. The NCTE, while framing its Regulations, did contemplate that there were existing recruitment Rules in force in the various States of the country. The NCTE, therefore, contemplated that the existing recruitment Rules may be modified within a period of three years so as to bring them in conformity with the qualifications in the Schedules.

24. The correctness of the judgment in Upendra Rai was referred by the Supreme Court in Irrigineni Venkata Krishna and Others Vs. Government of Andhra Pradesh and Another, for consideration by a three Judge Bench on the following questions of law:

1. Whether NCTE Act only deals with the teachers' training institutes and the

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

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

25. During the pendency of the reference, Parliament enacted the National Council for Teacher Education (Amendment) Act, 2011 (Act No. 18 of 2011). The amending Act introduced sub-section (4) in Section (1) to provide that the Act shall apply, inter alia, to schools imparting pre-primary, primary, upper primary, secondary or senior secondary education and colleges providing senior secondary or intermediate education and to teachers of such schools and colleges. Similarly, Section 2(ka) was inserted to define the expression "school" to mean any recognised school imparting pre-primary, primary, upper primary, secondary or senior secondary education, or a college imparting senior secondary education. Section 12A was also inserted which provides as follows:

12A. For the purpose of maintaining standards of education in schools, the Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognised by the Central Government or a State Government or a local or other authority:

Provided that nothing in this section shall adversely affect the continuance of any person recruited in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate schools or colleges, under any rule, regulation or order made by the Central Government, a State Government, a local or other authority, immediately before the commencement of the National Council for Teacher Education (Amendment) Act, 2011 solely on the ground of non-fulfilment of such qualifications as may be specified by the Council:

Provided further that the minimum qualifications of a teacher referred to in the first proviso shall be acquired within the period specified in this Act or under the Right of Children to Free and Compulsory Education Act, 2009.

26. The Amending Act has been enforced with prospective effect. The Amending Act came into force on 1 June 2012.

27. In view of the amending Act," the Bench of three learned Judges of the Supreme Court while deciding the reference on the correctness of the view in Upendra Rai observed that during the pendency of the appeals, the Amending

Act of 2011 had been enacted as a result of which the questions which were referred to a larger Bench by the order dated 9 November 2009 had become academic and did not require any answer. In view of the amendments which have been brought about by Amending Act 18 of 2011 with effect from 12 October 2011, it is clear that the NCTE is empowered by Regulations to determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college which is established, run, aided or recognised by the Central Government or by a State Government or a local or other authority. The first proviso to Section 12A, however, protects the continuance of persons who are recruited immediately prior to the enactment of the amending Act which would not be called into question solely on the ground of non-fulfilment of the qualifications as may be specified by the Council. The second proviso, however, stipulates that the minimum qualifications so prescribed shall be acquired within the specified period. Consequently, in view of the enactment of the Amending Act of 2011, the controversy has been set at rest by Parliament having provided that the NCTE is duly empowered to prescribe the qualifications for persons who are recruited as teachers from the pre-primary to the intermediate school or college level. The provisions of the Act and the Regulations have been held by a Full Bench of this Court in Shiv Kumar Sharma and Others Vs. State of U.P. and Others, , to be binding.

28. We clarify that the issue before the Full Bench in the present case relates to the period prior to the enactment of the Right of Children to Free and Compulsory Education Act, 2009. Similarly, the period to which the recruitment process in this case relates is before Amending Act 18 of 2011 was enacted by Parliament to amend the NCTE Act, 1993. However, by way of abundant clarification, we clarify that nothing contained in this judgment would affect the binding character of the Regulations which have been framed by the NCTE in view of the amended provisions of law as enacted by Parliament. In the present case, the Court is concerned with a limited issue which related to a prior period and which is being set at rest in the reference which has been made by the Division Bench.

29. As we sum up our judgment, we must emphasize that the Full Bench is seized of a reference made by the Division Bench of a specific question. The question is as to whether the judgment of the Division Bench in Rishi Kant Sharma's case can be regarded as laying down the correct principle of law having regard to the judgments which have been referred to in the referral order, noticed earlier. For the reasons, which we have indicated, we hold that the Division Bench while deciding Rishi Kant Sharma's case was not correct in distinguishing the decision of the Supreme Court in Mohd. Sartaj's case. The view which has been taken by the Division Bench is also contrary to the judgments of the Supreme Court in P.M. Latha, Yogesh Kumar, Dilip Kumar Ghosh and Pramod Kumar. Besides, in view of the consistent strand of reasoning as reflected in the judgments of the Division Benches in Sanjay Kumar Tyagi,

Madhubala Upadhyay and Akhilesh Kumar Pandey, we hold that the decision in Rishi Kant Sharma's case cannot be regarded as laying down the correct principle of law. We answer the reference accordingly. The special appeal shall now be placed before the Division Bench for hearing in the light of the observations contained herein above.