
(2021) 08 KL CK 0121

In the High Court Of Kerala

Case No : Writ Petition (C) Nos.7612, 13479, 13895 Of 2021

Sreekala.S

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 13-08-2021

Acts Referred:

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

Citation : (2021) 08 KL CK 0121

Hon'ble Judges : Anu Sivaraman, J

Bench : Single Bench

Advocate : G.Biju, S.Jayaprakash, V.A.Vinod, Bobby U. Nair, M.A.Shaji,
Dr.Abraham P.Meachinkara, P.C.Sasidharan, Parvathy Kottol

Judgement

Anu Sivaraman, J

1. The petitioners in these writ petitions are elementary school teachers in unaided elementary schools who have passed the Diploma in Elementary

Education Course (for short, 'D.El.Ed course') conducted by the NIOS in the ODL mode. The exhibits are being referred to in this judgment as in

W.P.(C) No.13479/2021, unless otherwise specifically mentioned.

2. The petitioners contend that the NCTE is the authority competent to fix the minimum qualification for appointment of Elementary School teachers in

terms of Clause (n) of Section 2 of the Right of Children to Free and Compulsory Education Act, 2009. It is submitted that by Ext.P14 notification

dated 23.8.2010, the NCTE has fixed the qualification as Senior Secondary with at least 50% marks with two year Diploma in Elementary Education

by whatever name known or Senior Secondary or its equivalent with 45% marks and two year Diploma in Elementary Education by whatever name

known in accordance with the NCTE Recognition Norms and Procedure

Regulations, 2002. It is submitted that by Ext.P16 letter dated 6.1.2021, taking note of the judgments of the various High Courts, the NCTE had requested all States to consider those candidates who had completed D.El.Ed course of NIOS in ODL mode and give them an opportunity to apply for fresh recruitment at par with other D.El.Ed candidates subject to adherence of all other criteria and qualifications requirements such as passing of the TET etc. as per the NCTE notification dated 23.8.2010 and any other, as mandated by the State. It is submitted that by Ext.P17, the State Government had recognised the D.El.Ed qualification acquired from the NIOS during 2017-19 and completed the course before 31.3.2019 as a one time measure for continuance in service of existing teachers and for all benefits. It is submitted that in spite of the directives of the NCTE, the qualification of D.El.Ed from NIOS (ODL) had not been accepted as a required qualification for fresh appointments. Relying on Exts.P18, P19 (in W.P.(C) No.7612/2021) and Ext.P22 judgments of the various High Courts, it is contended that the petitioners who have all other qualifications including K-TET are eligible for being considered for fresh appointment as well taking note of Exts.P14 and P16. The learned counsel for the petitioners submits that considering the contentions raised by the petitioners and the NCTE, the appropriate respondents were directed to issue the K-TET certificates provisionally to the petitioners and such certificates had been issued. Further, relying on the decision of the Apex Court in State of UP and others v. Shiv Kumar Pathak and others [2017 KHC 6486], it is contended by the learned counsel for the petitioners that the NCTE is the academic authority under the Right to Education Act (for short, 'the RTE Act') and is, therefore, fully empowered to issue notifications dated 23.8.2010 and 11.2.2011. It was held by the Apex Court that the State Government was under obligation to act as per the notifications and therefore, the limitation in the Government Order to the effect that D.El.Ed qualification acquired from the NIOS through ODL mode would be considered only as required qualification for teachers who are already in service is bad in law.

3. The learned Standing Counsel appearing for the NCTE would submit that the NCTE is authorised to lay down the minimum qualifications for a person to be eligible for appointment as a teacher in terms the RTE Act by notification dated 31.3.2010. It is submitted that in pursuance to the

notification the NCTE has, by Ext.P14, prescribed the minimum qualification. By Ext.P16 clarification dated 6.1.2021 has also been issued by the

NCTE specifically stating that all candidates who have completed D.El.Ed courses of NIOS in ODL mode are to be given an opportunity to apply for

fresh recruitment at par with other D.El.Ed candidates, subject to other qualifications.

4. The learned Standing Counsel appearing for the Kerala Public Service Commission submits that the issue before this Court is only with regard to

the equivalency of the qualification of D.El.Ed ODL course conducted by the NIOS and any further directions with regard to the qualification and the

eligibility for appointment in public services is to be considered by the Kerala Administrative Tribunal in accordance with law.

5. The learned Government Pleader would submit that the stand of the Government is clear from Exts.P17 and P19 orders and that the further

matters are to be considered by the Kerala Administrative Tribunal.

6. I have considered the contentions advanced. It is clear that in terms of the RTE Act, the NCTE has been authorised to lay down the minimum

qualification for eligibility for appointment as a teacher under Section 23 of the Act. The minimum qualifications have been laid down by Ext.P14 dated

23.8.2010. The NCTE has also addressed the State Government by Ext.P16 communication to consider all candidates who have completed D.El.Ed

course of the NIOS in the ODL mode and to give them an opportunity to apply for fresh recruitment at par with other D.El.Ed candidates, subject to

other qualifications. However, by Ext.P17, the Government passed an order referring to Ext.P16 also limiting the benefit to teachers who are in

service in Government, aided, unaided schools alone. The request in Ext.P16 for making available the benefit for fresh appointments apparently was

not considered. The request of the petitioners for a reconsideration was also rejected by Ext.P19. In view of the judgment of the Apex Court in Shiv

Kumar Pathak's case, I find that the position that the NCTE is the authority empowered to fix the minimum qualifications for appointment in

elementary schools and that the State Government is obliged to act as per the notifications of the NCTE stands settled.

In the above view of the matter, I am of the opinion that the contention raised by the petitioners that the D.El.Ed course undergone by them is also

liable to be treated as equivalent to the D.El.Ed qualifications required for fresh appointment is liable to be allowed. The writ petitions are, therefore, ordered directing the respondents to accept the D.El.Ed certificate acquired by the petitioners from the NIOS under the ODL mode as valid for all purposes including for undertaking the K-TET examination. The interim direction issued directing the respondents to issue the K-TET certificates to the petitioners provisionally is, therefore, made absolute. The petitioners will be entitled to the benefit of Ext.P16 de hors the limitations contained in Exts.P17 and P19 orders of rejection. The claim of the petitioners for appointment shall be considered accordingly.