
(2013) 02 GAU CK 0046
In the Gauhati High Court
Case No : WP (C) No. 149 and 159 of 2012

Tayenjam Herojit Singh and Others

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 07-02-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 16(1), 16(4)
Right of Children to Free and Compulsory Education Act, 2009 — Section 18, 2, 2(f),
23, 23(1)

Citation : (2013) 2 GLT 131

Hon'ble Judges : Tinlianhang Vaiphei, J; Subhasis Talapatra, J

Bench : Division Bench

Advocate : H.N.K. Singh, Mr. L. Somerendo and Mr. M. Hemchandra, for the Appellant; R.S. Raisang, S.G.A. and Mr. M. Rarry, for the Respondent

Judgement

Subhasis Talapatra, J.—The writ petitions sans some insignificant variations having been founded on identical fact and questions of law; are tied up for the purpose of disposal by a common judgment and order. The essential facts are required to be introduced at the outset for appreciating the controversy involved in these writ petitions.

With the advent of the Right of Children to Free and Compulsory Education Act, 2009, which came into force on 01.04.2010, certain authorities have been created for various purposes to provide free and compulsory education to all children of the age group of 6-14-year, meaning thereby the "elementary education" which has been defined in Section 2(f) of the Right of Children to Free and Compulsory Education Act, 2009 (for short "the RTE Act") as "(f) "elementary education" means the education from first class to eighth class".

2. Section 23 of the said RTE Act deals with qualifications for appointment and terms and conditions of service of teachers. It provides as under:

(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-section (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-section (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 be prescribed.

3. The Central Government, in exercise of power as conferred upon it by Section 38 of the RTE Act, has framed the Right of Children to Free and Compulsory Education Rules, 2010 (for short "the RTE Rules").

4. Part VI of the said RTE Rules delineates inter alia, the minimum qualifications, relaxation of minimum qualifications, acquiring minimum qualifications, salary and allowances and conditions of service, duties performed by teachers etc. Rule 17 of the RTE Rules provides that the Central Government shall within one month of the appointed date, notify an academic authority for laying down the minimum qualification for a person to be eligible to be appointed as a teacher. The said academic authority notified under sub-rule (1) shall within three months of such notification, lay down the minimum qualifications for persons to be eligible for appointment as a teacher in a elementary school [sub-rule (2)]. It further provides that the minimum qualification laid down by the academic authority referred to in sub-rule (1) shall be applicable to every school referred to in clause(n) of section 2 [sub-rule (3)]. Thereafter, Rule 18 of the RTE Rules provides relaxation of minimum qualification subject to certain conditions. The said provisions postulate that the State Government and the Union Territory shall, within six months from the commencement of the RTE Act, estimate the teachers requirement as per the norms in the schedule for all schools referred to in clause(n) of Section 2 [sub-rule (1)]. It further postulates that where a State Government or a Union Territory does not have adequate institutions offering courses or training in teacher education or person possessing minimum qualification as notified in sub-rule (2) of Rule 17 are not available in sufficient numbers in relation to the requirement of teachers estimated under sub-rule (1), the State Government or the Union Territory shall request within one year of the commencement of the RTE Act the Central Government for relaxation of the prescribed minimum qualifications [sub-rule (2)]. Having receipt such requests referred to in sub-rule (2), the Central Government shall examine the request of the State Government or the Union Territory and may by notification relax the minimum qualifications [sub-rule (3)]. It further provides that the notification

referred to in sub-rule (3) of Section 18 of the RTE Rules shall specify the nature of relaxation and the time period, not exceeding three years, but not beyond five years from the commencement of the RTE Act within which the teachers appointed under the relaxed conditions acquire the minimum qualifications specified by the academic authority notified under sub-section (1) of Section 23 of the RTE Act [sub-rule (4)]. It has been specified in Rule 18(5) of the RTE Rules that after six months from the commencement of the RTE Act, no appointment of the teachers of any school can be made in respect of any person not possessing the minimum qualifications notified under sub-rule (2) of Rule 17 unless relaxed as referred to in sub-rule (3). But a very stringent barrier has been created by Rule 18(6) of the RTE Rules that a person appointed as a teacher within six months of the commencement of the Act must possess at least the academic qualification not lower than higher secondary school certificate or equivalent.

5. National Council for Teachers Education having been designated and authorised by the Central Government, notified the minimum qualification for appointment of the Primary Teachers in exercise of power u/s 23(1) of the RTE Act. The Central Government thereafter, at the instance of the Manipur Government allowed some relaxation for the State of Manipur till 31.03.2013. The Government of Manipur has framed "the State Mission Authority, Sarva Shiksha Abhiyan (SSA), Manipur Primary Teacher Recruitment Rules, 2011" (for short "the Recruitment Rules") vide Notification No. 1/34/2011-RR(Edn-S)/DP(vii), dated 07.04.2011 w.e.f. 15.04.2011, the day when the notification was published in the Manipur Gazette as per condition of the Central Government. The said recruitment rules, according to the petitioners, has been framed in contravention of Section 23(1) and 23(2) of the RTE Act. In pursuance to the said Recruitment Rules. An employment notification vide advertisement No. 1/11/2011-SSA/SMA, dated 18.10.2011 was published inviting applications in prescribed format from eligible candidates for recruitment of the primary teachers under the Sarva Shiksha Abhiyan (for short "SSA") whereby 1951 vacancies were sought to be filled up. Thereafter, by the notification under No. 8/5/2011-SE(S)/SSA, dated 28.02.2012, the list of the selected candidates and candidates in the waiting for the post of primary teachers and upper primary teachers under Sarva Shiksha Abhiyan (SSA) were declared and the details were published at the Manipur Government Website.

6. As the private respondents, according to the writ petitioners have been selected without having such minimum qualifications as laid down by the academic authority authorised by the Central Government and the relaxed minimum qualifications as communicated by the Central Government in exercise of power u/s 23(2) of the said RTE Act, the writ petitioners prayed for quashing their selection as ineligible and they further prayed for quashing the said Recruitment Rules, the employment advertisement dated 18.10.2011 and the result of the impugned selection process as published by the notification dated 28.02.2012. Further, the writ petitioners prayed for commanding the State respondents to strictly adhere to the eligibility criteria as stipulated under the

notification dated 23.08.2010 (published in the Gazette of India dated 25.08.2010) and notification dated 15.07.2011 (published in the Gazette of India dated 29.07.2011) as issued by the Central Government respectively in exercise of power u/s 23(1) and 23(2) of the RTE Act.

7. There is no controversy that the notification dated 23.08.2010 has been issued in exercise of powers conferred by sub-section (1) of Section 23 of the RTE Act laying down the following minimum qualifications for a person to be eligible for appointment as a teacher in Class I-VIII in a school referred to in clause (n) of Section 2 of the RTE Act w.e.f. 25.08.2010 (the date of publication of the notification in the Gazette of India):

1. Minimum Qualifications:

(i) Classes-I-V

(a) Senior Secondary (or its equivalent) with at least 50% marks and two 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 of 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 the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE for the purpose.

2. Diploma/Degree Course in Teacher Education: For the purposes of this notification, a diploma/degree course in teacher education recognized by the National Council for Teacher Education (NCTE) only shall be considered. However, in case of Diploma in Education (Special Education) and B.Ed. (Special Education), a course recognized by the Rehabilitation Council of India (RCI) only shall be considered.

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 recognized 6 months special programme in Elementary Education.

(b) with D.Ed./(Special Education) or B.Ed. (Special Education) qualification shall undergo, after appointment, an NCTE recognized 6 months special programme in Elementary Education.

4. Teacher appointed before the date of this notification--

The following categories of teachers appointed for classes I to VIII prior to date of this notification need not acquire the minimum qualifications specified in Para (1) above.

(a) A teacher appointed on or after the 3rd September, 2001, i.e. the date on which the NCTE (Determination of Minimum Qualifications for recruitment of Teachers in Schools) Regulations, 2001 (as amended from the time to time) came into force, in accordance with that Regulation.

Provided that a teacher of class I to V possessing B.Ed. qualification, or a teacher possessing B.Ed. (Special Education) or D.Ed. (Special Education) qualification shall undergo an NCTE recognized 6 months special programme on Elementary Education.

(b) A teacher of Class I to V with B.Ed. qualification who has completed a 6 months Special Basis Teacher Course (Special BTC) approved by the NCTE.

(c) A teacher appointed before the 3rd September, 2001, in accordance with the prevalent Recruitment Rules.

5. Teacher appointed after the date of this notification in certain cases -- Where an appropriate Government or local authority or a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of this Notification, such appointments may be made in accordance with the NCTE (Determination of Minimum Qualification for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time).

8. It is also not in dispute that thereafter on request of the Government of Manipur, the Central Government relaxed the minimum qualification in exercise of its power as provided u/s 23(2) of the said RTE Act, by the notification dated 15.07.2010, which provides as under:

6. Now therefore, in exercise of the powers conferred by sub-section (2) of Section 23 of the RTE Act, the Central Government hereby grants relaxation to the State Government of Manipur in respect of the minimum teacher qualification norms notified by the NCTE, published on the 25th August 2010, in so far as they relate to classes I-VIII as under:

(a) 2-year Diploma in Elementary Education (by whatever name known) for appointment of a teacher in classes I-VIII; and

(b) 1-year Bachelor in Education (B.Ed) for appointment of a teacher in classes VI to VIII.

Note 1: The aforementioned relaxation shall be valid upto the 31st March, 2013 and shall be subject to the following conditions, namely:-

(i) as specified in the aforementioned notification of the NCTE, the State Government of Manipur shall conduct the Teacher Eligibility Test, (hereinafter referred to as TET) in accordance with the Guidelines dated the 11th February, 2011 issued by the NCTE and only those persons who pass the TET can be considered for appointment as a teacher in elementary classes.;

(ii) the State Government and other school managements shall amend the recruitment rules to correspond with the minimum qualification norms laid down by the aforementioned notification of the NCTE

(iii) in the matter of appointment, the State Government shall give priority to those eligible candidates who possess the minimum qualifications specified in the

NCTE notification dated the 25th August, 2010 and only thereafter consider the eligible candidates with the relaxed qualifications specified in this notification:

(iv) advertisement for appointment of teachers should be given wide publicity, including outside the State.

(v) the State Government and other school managements shall ensure that teachers not possessing the minimum academic and professional qualifications laid down in the aforementioned notification of the NCTE shall acquire the same within the time limit specified under sub-section (2) of Section 23 of the RTE Act, 2009.

(vi) the State Government and other school managements shall ensure that teachers who are appointed under the relaxed qualification norms acquire the minimum qualification specified in the NCTE notification within a period of two years from the year of appointment.

(vii) the relaxation specified in this notification shall be one-time and no further relaxation under sub-section (2) of Section 23 shall be granted to the State Government.

(viii) the State Government shall ensure that the annual intake capacity for the two year Diploma in Elementary Education and Training in Manipur is utilized only for preparing prospective elementary school teachers and not for imparting face to face Diploma in Elementary Education course to existing untrained teachers.

Note 2: In accordance with sub-para (iii) of para 5 of the TET guidelines issued by the NCTE vide its letter dated the 11th February, 2011, the following persons shall also be eligible for appearing in the TET conducted by the State Government of Manipur in respect of teacher appointments made in the State upto the 31st March, 2013.

(a) For classes I to V - Senior Secondary (or equivalent) with at least 50 per cent marks:

(b) For classes VI to VIII - Graduation with at least 50 per cent marks.

The said notification dated 15.07.2011 was published in the Gazette of India dated 29.07.2011. Note 2 of the said notification has no relevance so far as this case is concerned inasmuch as all the writ petitioners have succeeded in the TET and no claim has been founded on the said clause.

9. The educational and other qualification as prescribed in the said Recruitment Rules according to the writ petitioners are grossed up in contravention of the minimum qualifications as prescribed in those qualifications by way of exclusion and inclusion to frustrate the very object of the RTE Act. Profitably the essential and other qualifications required for direct recruitment as prescribed in the impugned Recruitment Rules are extracted hereunder:

10. Since the controversy relates to the appointment of the primary teachers

from Classes I to V and accordingly clause (1)(a) of the Notification as issued by the National Council for Teacher Education (for short "NCTE") in exercise of the powers conferred by sub-section (1) of Section 23 of the RTE Act, provided two categories of minimum qualifications: one, academic qualification and the other, professional qualification. Academic qualification provides Senior Secondary (or its equivalent) with at least 50% marks, meaning that a person to be eligible in terms of the academic qualification if he possesses the Senior Secondary or its equivalent with 50% marks and the professional qualification that has been provided are: (a) 2-year Diploma in Elementary Education or (b) 4-year Bachelor in Elementary Education or (c) 2-year Diploma in Education (Special Education). Some transitional minimum qualifications have also been prescribed in the para-3. The writ petitioners did not challenge the said minimum qualifications as prescribed by the academic authority. The writ petitioners have admitted that they do not possess any of the degrees in 2-year Diploma course or the academic qualification as mentioned in clause 1(i) of the NCTE Notification, but the writ petitioners do possess the minimum qualification as laid down in the para-3 of the principal Notification dated 23.08.2010 and the relaxed minimum qualification as laid by the NCTE notification dated 15.07.2011 where it has been provided that - (a) 2-year Diploma in Elementary Education (by whatever name known) for appointment of a teacher in classes I to VIII and (b) 1-year Bachelor in Education (B.Ed.) for appointment of teachers in classes VI-VIII. It is claimed that the writ petitioners possess B.Ed and as such they are covered by the said relaxed qualification and in terms of the provision as incorporated in the said notification as issued u/s 23(2) of the RTE Act they should be appointed on preference to the candidates who do not possess the minimum qualification as prescribed by the notification issued u/s 23(1) of the RTE Act. The Central Government has by the notification dated 15.07.2011 as published in the Gazette of India on 29.07.2011 categorically prescribed that:

in the matter of appointment, the State Government shall give priority to those eligible candidates who possess the minimum qualification specified in the NCTE notification dated 25th August, 2010 and only thereafter considered the eligible candidates which the relaxed qualifications specified in those notifications.

If a comparison is carried out, it would transpire that the impugned Recruitment Rules (Rule 7 of the said Recruitment Rules) have not been framed in conformity to the notification dated 23.08.2010 (as published in the Gazette of India on 25.08.2010) and the Ministry of Human Resource Development notification dated 15.07.2011 (as published in Gazette of India in 29.07.2011).

11. In this regard, Mr. H.N.K. Singh, learned senior counsel for the petitioners, referring to the incongruity and the element of repugnancy, submitted that Rule 7 of the said Recruitment Rules be struck down and as corollary thereto the employment notification/advertisement dated 18.10.2011 and the notification publishing the results for appointing the Primary Teachers issued on 28.02.2012 be quashed as the respondents issued those notifications in colourable exercise

of power. The Recruitment Rules, Rule 7 in particular, are stated to stand repugnant to Section 23 of the RTE Act. Mr. H.N.K. Singh, learned senior counsel relied on a decision of the Apex Court in *Ranu Hazarika and Others Vs. State of Assam and Others*, , where it has been held as under:

13. Insofar as the recruitment process initiated by the issuance of advertisement dated 2.12.2005 by the State Government, granting preference to the trained teachers was concerned, the High Court observed that since the Amendment Rules, 2005, which had now been adjudged as illegal and ultra vires the Act, were in force when the said advertisement was issued, if the State is inclined to complete the recruitment process initiated pursuant to the said advertisement, it may be completed in terms of the said advertisement. However, henceforth and in the future, the process of recruitment of teachers in the lower primary schools will have to conform to the requirement of academic and professional qualifications spelt out by the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001.

21. We are of the view that the impugned observation by the High Court would be clearly inimical to the rule of law. While it is trite that courts can exercise judicial discretion in moulding the relief, however, such discretion cannot be exercised to perpetuate and encourage an illegality. [See *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*,].

12. Mr. H.N.K. Singh, learned senior counsel further submitted that the notification which relaxed the minimum qualification for the State of Manipur till 31.03.2013 provides that the relaxation so granted by the Central Government shall be followed till the date as notified subject to the following conditions:

(a) as specified in the aforementioned notification of the NCTE, the State of Manipur shall conduct the Teacher Eligibility Test (hereinafter referred to as TET) in accordance with the guidelines dated the 11th February, 2011 issued by the NCTE and only those persons who passed the TET can be considered for appointment as a teacher in elementary classes; and

(b) the State Government and other school managements shall amend the recruitment rules to correspond with the minimum qualification norms laid down by the aforementioned notification of the NCTE.

Mr. H.N.K. Singh, learned senior counsel further submitted that in the last TET all the writ petitioners have passed successfully and demonstrated higher merit in comparison to the private respondents. As such, non-consideration of the case of the writ petitioners by the parameters as set up is absolutely denial to the right of being considered in terms of the Central Government notification for relaxation as stated. To buttress his submission, he relied on a decision of the Apex Court in *Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others*, .

13. Mr. H.N.K. Singh, learned senior counsel submitted that even though the petitioners have the qualification as per the NCTE principal notification dated

23.08.2010 for appointment to the post of Primary Teacher/SSA, but their cases were completely sidelined on an unsustainable basis while making selection in terms of the relaxed qualification as laid u/s 23(2) of the RTE Act. According to Mr. Singh, learned senior counsel, the meaning of qualification as prescribed by the principal notification for a person to be eligible for appointment as a Primary Teacher/SSA has been provided in para 1(i) of the principal notification. He further submitted that para-3 of the said principal notification if read with its amended notification should provide as under:

A person-

(a) with graduation with at least 50% marks and B.Ed. qualification or with at least 45% marks and one year Bachelor in Education (B.Ed.) in accordance with NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard shall also be eligible for appointment to Class 1 to V upto 1st January, 2012, provided he/she undergoes, after appointment, an NCTE recognized 6 months Special Programme in Elementary Education.

14. The said Recruitment Rules, which have been framed in exercise of the power as conferred by proviso to Article 309 of the Constitution prescribed qualifications lower than those prescribed under the principal notification dated 23.08.2010 and the impugned recruitment rules are not supplemental in nature, but abrogative. According to Mr. H.N.K. Singh, learned senior counsel, the said Recruitment Rules have been framed in derogation of the principal notification for the broad reasons as categorised.

(a) The Recruitment Rules have been substantially diluted. The prescribed minimum percentage of marks in the academic qualification has been taken out,

(b) Essential qualification as prescribed therein does not contain the graduation which was one of the minimum academic qualification but was kept only as desirable and

(c) Graduates with at least 50% marks and B.Ed. qualification who are also eligible for selection/appointment till 01.01.2012 in terms of para-3 of the principal notification read with its amended notification has been totally ignored in the Recruitment Rules.

15. In response to the request made by the Govt. of Manipur by its letter dated 16.06.2011 for relaxation of the minimum qualification norms as laid by the principal notification dated 23.08.2010, the Ministry of Human Resource Development (Department of School Education and Literacy) has relaxed the minimum qualification in exercise of the powers provided u/s 23(2) of the RTE Act. The relaxation as granted to the Govt. of Manipur in respect of minimum teacher qualification norms notified by the NCTE on 23.08.2010 (published in the Gazette of India dated 25.08.2010) relates to appointment of teachers from Class I-VIII as under:

(a) 2-year Diploma in Elementary Education for appointment of a teacher in

classes I-VIII; and

(b) 1 year Bachelor of Education (B.Ed.) for appointment of a teacher in classes VI-VIII.

16. According to Mr. Singh, learned senior counsel on grant of relaxation, the minimum qualification norms as notified by the NCTE read with amended notification 29.07.2011 for appointment of teachers of classes I-VIII, the relaxed minimum qualification would be subject to condition as under:

(a) Senior Secondary (or its equivalent) with at least 50% marks; 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 equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education); OR

Graduation; AND

(b) Pass in the Teacher Eligibility Test to be conducted by the appropriate Government in accordance with the guidelines framed by the NCTE for the purpose.

Mr. Singh, learned senior counsel made a reference to Clause (ii) and (iii) of Note-1 appended to the notification dated 15.07.2011 (Annexure-A/6)*, which postulate thus:

(ii) The State Government and other school management shall amend the recruitment rules to correspond with the minimum qualification norms laid down by the aforementioned notification of the NCTE; and

(iii) in the matter of appointment the State Government shall give priority to those eligible candidates who possess the minimum qualification specified in the NCTE notification dated 25.08.2010 and only thereafter consider the eligible candidates with the relaxed qualification specified in the said notification.

17. The Recruitment Notification/Advertisement dated 18.10.2011 which has been purportedly issued in terms of the Recruitment Rules has substantially diluted the NCTE norms published by the principal notification. It has been further brought to the notice of this court that the Recruitment Rules provides the essential qualification as under:

(a) 2-year Diploma in Elementary Education;

(b) 4 year Bachelor of Elementary Education (B.El. Ed.);

(c) 2-year Diploma in Elementary Education (Special Education); and

(d) 1 year Bachelor in Education (B.Ed.).

18. On a comparison of the principal notification as issued u/s 23(1) of the RTE

Act and the said Recruitment Rules, 2011 as framed in exercise of powers conferred by proviso to Article 309 of the Constitution of India it would surface that the eligibility criteria are at variance and not compatible. The eligibility criteria as adverted was conditionally relaxed by the Govt. of India by the notification dated 15.07.2011 for a definite period, till 31.03.2012 (31.03.2013).

19. Mr. Singh, learned senior counsel for the petitioners therefore contended that the eligibility criteria as provided in the advertisement dated 18.10.2011 cannot be sustained. The law is when there is a rule, it should be followed and any process which is in derogation of that process cannot stand the test under Article 14 of the Constitution of India. He also stated that the said derogation has been seriously observed by the Ministry of Human Resource Development (School Education & Literacy), Govt. of India and by the letter dated 18.10.2011, strong objection had been raised for not specifying the 50% marks in the secondary or equivalent examination in the recruitment rules or in the advertisement/notification dated 18.10.2011. The State Government was requested to make necessary rectification/amendment of the said provision to ensure conformity in terms of the teachers' qualification norms as determined by the NCTE by the principal notification read with its amendment as might be relevant. The said letter dated 18.10.2011 (Annexure-A/7) also stated that clause (iii) of Note-1 of the notification dated 15.07.2011 provides as under:

In the matter of appointment the State Government shall give priority to those eligible candidates who possess the minimum qualifications specified in the NCTE notification dated 25.08.2010 and only thereafter consider the eligible candidates with the relaxed qualifications specified in this notification.

20. The Govt. of Manipur, without making required amendment in accordance with the principal notification in the advertisement notification dated 18.10.2011, notified on 23.02.2012 for insertion of the words as under:

In the process of selection of the Primary Teachers and Upper Primary Teachers, preference will be given to those candidates who possess the minimum qualifications specified in the NCTE Notification dated 25.08.2010 and recruitment rules notified by the Government and thereafter the cases of eligible candidates with relaxed qualifications will be considered for remaining vacancies.

Without explaining how the impugned Recruitment Rules would coexist with the principal notification for apparent incompatibility of the provisions, it has been further submitted that the said notification dated 23.02.2012 (Annexure-A/8A) is absolutely improper and ultra vires the statute/statutory rules inasmuch as the clause (ii) of Note-1 as appended to the notification dated 15.07.2011 provides as under:

The State Government and other school management shall amend the recruitment rules to correspond with the minimum qualification norms laid down by the aforementioned notification by the NCTE.

21. The writ petitioners therefore contended that the Government of Manipur failed to adhere to their own notification dated 23.02.2012 and the Govt. of India's letter dated 18.10.2011. Defying the procedure as prescribed, they published the impugned relaxed qualification (RQ)/List-B under Annexure-II vide notification dated 29.12.2012 (Annexure A/9), selecting the candidates who have passed in Senior Secondary or Class XII or its equivalent and passed the Teacher Eligibility Test Paper-I (TET Paper-I) in terms of the advertisement/notification dated 18.10.2011. The notification dated 29.12.2012 (Annexure-A/9) is also in derogation of the Recruitment Rules, 2011 (Annexure-A/4), notification dated 15.07.2011 (Annexure-A/6) and the qualification norms stipulated under the principal notification (Annexure-A/1) read with its amended notification (Annexure-A/2). The principal notification includes para-3 which provides that the graduates with at least 50% marks and B.Ed. qualification shall also be eligible for selection/appointment till 01.01.2012. In the Essential Qualification (EQ)/List-A under its Annexure-1 of the notification dated 29.12.2012 (Annexure-A/9) for the selected primary teachers all are graduates with one year B.Ed. qualification, possessing the similar qualifications as of the petitioners. Therefore, the selection of certain candidates and ignoring the petitioners who are similarly situated, according to Mr. Singh, learned senior counsel is violation of the provisions of Article 14 and 16 of the Constitution of India. The writ petitioners further contended that in the State of Manipur there are sufficient graduates with B.Ed. qualification and in terms of para-3 of the principal notification (Annexure-A/1) read with amended notification (Annexure-A/2), the State Government would have carried out the recruitment process for the post of primary teachers. The candidates under the Essential Qualification (EQ)/List-A are not having the minimum qualification in terms of the principal notification for the fact that the candidates under the said list are graduates with B.Ed., but the petitioners were denied the similar consideration under para-3 of the principal notification. It has been further contended that the Relaxed Qualification (RQ)/List-B under Annexure-II of the notification dated 29.02.2012 (Annexure-A/9) has been prepared without exhausting the candidates in terms of the para-3 of the principal notification read with the amended notification (Annexure-A/2). The impugned merit list-A(EQ) as published by the notification dated 29.02.2012 (Annexure-A/9) also violated the reservation policy by adjusting the reserved category candidates who were selected on merit against the Reserved quota when the well settled principle is that they should be included in the General category.

22. In support of the contention, Mr. H.N.K. Singh, learned senior counsel relied on *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others*, , where the Apex Court has re-stated the law as under:

18. It is well settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise

in a mode other than the One provided, will be violative of the fundamental principles of natural justice. Now, in the present case, if the telephones of the appellants were to be disconnected on the ground of misuse, then they had to give, in consonance with the principles of natural justice, opportunity to the appellants to explain their conduct before taking action under Rule 427 read with Rules 416 and 421. Resort to the wrong and more drastic course provided in Rule 422, on a ground which was not germane to an action under that Rule, vitiates the impugned order, particularly when it is manifest that in making the impugned order, the General Manager was influenced more by this ground and less, if at all, by the existence of "public emergency" certified by the Delhi Administration.

23. The similar principle of justice has been approved by the Apex Court in *J and K Housing Board and Another Vs. Kunwar Sanjay Krishan Kaul and Others*, , where it has been provided as under:

32. It is settled law that when any statutory provision provides a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefore in the Act. Merely because the parties concerned were aware of the acquisition proceedings or served with individual notices does not make the position alter when the statute makes it very clear that all the procedures/modes have to be strictly complied with in the manner provided therein. Merely because the land owners failed to submit their objections within 15 days after the publication of notification u/s 4(1) of the State Act, the authorities cannot be permitted to claim that it need not be strictly resorted to.

24. A decision of this court also stated the same principle in *Manipur Electronics Development Corporation and Others Vs. Manipur Human Rights Commission and Another*, . This court in *Manipur Electronics Development Corporation (supra)* held as under:

12. Since the Service Rules, 1998 is binding to the Respondent No. 2, he is to take necessary recourse/remedy against the said order of the Petitioner No. 2 dated 3.6.1999 and 8.6.1999 in the manner prescribed in the Service Rules, 1998. The Apex Court in *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others*, held that "it is well settled that where the power is required to be exercised by certain authority in a certain manner/certain way, it should be exercised in that manner or not at all, and all other mode of performance are necessarily forbidden." The Respondent No. 2 who is abide by the Service Rules, 1998 has to seek remedy in the manner prescribed in the Service Rules, 1998 against the said order of the Respondent dated 3.6.1999 and 8.6.1999, but he approached the learned Manipur Human Rights Commission by filing the complaint case being No. 90 of 1999.

25. Mr. H.N.K. Singh, learned senior counsel submitted that if the foundation is removed the superstructure falls. Meaning thereby if the initial action is not in consonance with law, subsequent proceeding would not sanctify the same. On

referring a decision of the Apex Court in *Chairman-Cum-M.D., Coal India Ltd. and Others Vs. Ananta Saha and Others*, , Mr. Singh, learned senior counsel further stated that once the basis is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequences is applicable to judicial and quasi-judicial proceeding and is equally applicable in the domain of the administrative law. In *Ananta Saha (supra)*, the Apex Court held as under:

32. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact-situation, the legal maxim "sublato fundamento cadit opus" is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.

33. In *Badrinath Vs. Government of Tamil Nadu and Others*, , this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders.

26. It is the well settled principle as referred by Mr. Singh, learned senior counsel that the recruitment in the Government service must be carried out in terms of the rules framed under the relevant statute. In *State of Uttaranchal Vs. Alok Sharma and Others*, , the Apex Court held that:

15. The relationship between the respondents herein and the said government companies was that of employee and employer. The companies under liquidation although were incorporated and registered under the Companies Act, 1956, they are "State" within the meaning of Article 12 of the Constitution of India. As "State", therefore, they were bound to comply with the equality clause contained in Articles 14 and 16 of the Constitution of India; in terms whereof cases of all the eligible candidates for appointment were required to be considered. Recruitment in government service must be carried out in terms of the Rules framed under a statute or the proviso appended to Article 309 of the Constitution of India.

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22. Keeping in view the principles laid down by the Constitution Bench of this Court in *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, , there cannot be any doubt whatsoever that any condition laid down in any rules which is in derogation of the recruitment rules framed by the State, should receive strict construction.

27. In *State of Orissa and Others Vs. Prasanna Kumar Sahoo*, , it has been held that the policy decision is subject to the statutory circumspection. The state is bound by the constitutional scheme to treat all persons equally in the matter of grant of public employment as envisaged under Article 14 and 16 of the Constitution. The policy decision taken by the State in exercise of its jurisdiction under Article 162 would be subservient to the recruitment rules framed by the

State either in terms of a legislative Act or under the proviso to Article 309. A purported policy decision issued by way of an executive instruction cannot override the statute or statutory rules far less the constitutional provisions. In *Prasana Kumar Sahoo (supra)*, the Apex Court held as under:

11. It is now well-settled that a State is bound by the constitutional scheme to treat all persons equally in the matter of grant of public employment as envisaged under Articles 14 and 16 of the Constitution of India.

12. Even a policy decision taken by the State in exercise of its jurisdiction under Article 162 of the Constitution of India would be subservient to the recruitment rules framed by the State either in terms of a legislative act or the proviso appended to Article 309 of the Constitution of India. A purported policy decision issued by way of an executive instruction cannot override the statute or statutory rules far less the constitutional provisions.

28. Any appointment made in violation of the prescribed qualification laid down under a statute is a nullity. The Apex Court in *Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others*, , held as follows:

16. The qualifications for holding a post have been laid down under a statute. Any appointment in violation thereof would be a nullity.

Pramod Kumar (supra) further enunciated that an appointment which is contrary to the statute/statutory rules would be void in law and an illegality cannot be regularised, particularly when the statute in no unmistakeable terms say so. In *Pramod Kumar (supra)*, the Apex Court observed as under:

18. 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. Only an irregularity can be.

29. In *Bedanga Talukdar Vs. Saifudaullah Khan and Others*, , the Apex Court in a similar context held that the condition of the advertisement unless such a power is specifically reserved cannot be regularised. In *Bedanga Talukdar (supra)*, the Apex Court held as under:

28. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of

relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of quality contained in Articles 14 and 16 of the Constitution of India.

30. Finally, Mr. H.N.K. Singh, learned senior counsel emphatically submitted that the minimum qualifications as prescribed by the competent authority as constituted under the RTE Act have been totally discarded on making passage for a diluted and lower qualifications. In *Ranu Hazarika and Others Vs. State of Assam and Others*, , in the similar context it has been held that the requirement of adherence to the statutory regulations framed by the academic authority cannot be left to be determined at the discretion of the authorities of the State. It has been also observed that the enhanced quality of education at the primary level cannot be allowed to be compromised in absence of any compelling reason to justify a reason therefrom and the court would lean in favour of an interpretation that would advance the cause of quality education in the State. In *Ranu Hazarika (supra)*, the Apex Court held as under:

12. As stated above, by the impugned judgment, the High Court has struck down the Amendment Rules, 2005, observing thus:

15. In the present group of cases, as already noticed, the State has neither filed an affidavit nor has the State taken any particular stand before the Court. No compelling reasons dictated by public interest have been disclosed by the State to enable the Court to understand that the provisions of the Amendment Rules, though in departure from the Regulations framed by the Council, is dictated by acceptable reasons in public interest. Though in the course of the hearing the learned Standing Counsel of the Department has pointed out that in the State of Assam teachers in lower Primary schools are required to undergo a Basic training course after their appointment and till completion of the said course such teachers are not put on the regular scale of pay, the said facts cannot constitute adherence or even substantial compliance with the provisions of the Regulations in as much as the Regulations prescribe completion of the teachers training course as a positive condition of eligibility which is conspicuously absent in the Amendment Rules. The failure of the State to show any compelling or supervening circumstances justifying the said departure from the Regulations has, therefore, to be understood by the Court to be due to the absence of any such reasons. In such a situation, the requirement of adherence to the statutory Regulations framed by the Council cannot be left to be determined at the discretion of the authorities of the State Government of Assam. That apart, the Regulations framed (sic) by the Council has the effect of enhancing the quality of education at the primary level and in the absence of any compelling reason to

justify a departure therefrom, the Court would lean in favour of an interpretation that would advance the cause of quality education in the State.

16. Consequently and in the light of the foregoing discussions the provisions of the Assam Elementary Education (Provincialization) (Amendment) Rules, 2005 insofar as giving of preference to trained teachers is concerned is held to be invalid being contrary to the provisions of the National Council for Teachers Education Act, 1993 and the Regulations framed thereunder. As a corollary thereto, it will now be incumbent on the part of the State Government to revive the training institutes for imparting pre-service teachers training of two years duration leading to award of diploma.

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19. Having bestowed our anxious consideration to the matter, we are of the opinion that the decision of the High Court, permitting the State Government to continue with the recruitment process, initiated on the basis of the Amendment Rules, 2005 which have been declared by it to be illegal is clearly indefensible. Having clearly held that:

the requirement of adherence to the Statutory Regulations framed by the NCTE cannot be left to be determined at the discretion of the authorities of the State Government and that there was no compelling reason with the State to justify a departure from the Statutory Regulations, any action under illegal rules would be null and void,

the High Court could not have permitted the State Government to perpetuate an illegality.

31. Mr. H.N.K. Singh, learned senior counsel, to buttress his contention as regards to the candidates from the reserved category who are found to be selected on merit have been adjusted against the Reserved category disregarding the settled position of law, referred the decision in *Indra Sawhney and Others Vs. Union of India (UOI)*, , where it has been sounded that it is well to remember that reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging the reserved category have been selected in the open competition filed on the basis of their own merit. They would not be counted against the reserved quota for the reserved category, they will be treated as the open category candidates. In para-811 of *Indra Sawhney (supra)*, it has been held as under:

811. In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition filed on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates.

The Apex Court also re-stated the same position of law in *Ritesh R. Sah Vs. Dr.*

Y.L. Yamul and others, .

32. While dilating the issue further, Mr. H.N.K. Singh, learned senior counsel also referred the celebrated decision of R.K. Sabharwal and others Vs. State of Punjab and others, , where in no uncertain terms the Apex Court stated that while the general category candidates are not entitled to be considered for the Reserved post, but if the reserved category candidates are found in the select list in terms of the merit, they shall be adjusted against the general category.

33. Mr. M. Hemchandra, learned counsel appearing for the other set of the petitioners adopted the submissions as placed by Mr. H.N.K. Singh, learned senior counsel. However, by way of supplementing he stated that the education being in List III, Schedule VII of the Constitution of India, the Recruitment Rules in question has suffered repugnancy in terms of Section 23 of the RTE Act. He contended further that the recruitment advertisement being a consequence of the said Recruitment Rules is held to be ultra vires to the statutory provisions.

34. Mr. R.S. Raisang, learned Senior Govt. Advocate appearing for the State-respondents strongly disputed the contention of the writ petitioners that "B.Ed." is one of the essential qualifications. To derive nourishment he re-visited the provisions of the principal notification as well as the amended notification. He emphatically submitted that the selection has been made in a transparent manner and the merit has been scrutinised by way of the comparative assessment and so far the question of reservation is concerned, Mr. R.S. Raisang, learned Senior Govt. Advocate stated that such challenge has been floated by the writ petitioners without required illustration or reference to the records. However, he stated that the Govt. of Manipur has given due consideration to the reservation. He further referred to certain elements of public interest as attached to this petition, stating that for purpose of implementation of the RTE Act, the Central Government has provided substantial fund and if that fund remains unutilised it would lapse. In addition thereto he submitted that the educational institutions are suffering from inadequacy of the teaching personnel and thus the students at large are suffering detriment which this court would not definitely allow to continue. Apart that, he raised a jurisprudential objection regarding maintainability of the writ petitions. With sufficient vehemence he submitted that these writ petitions are not maintainable as after publication of the advertisement in terms of the Recruitment Rules all the writ petitioners appeared in the selection procedure and when the selection list was published they challenged the provisions of the Recruitment Rules as regards the minimum qualification and the desired qualification. The advertisement was issued for recruitment of the primary teachers under the SSA and the select panel was published for two categories of the candidates as stated.

35. Mr. Raisang, learned Senior Govt. Advocate, referring to paragraph 9 of the affidavit-in-opposition, submitted that the Central Government by notification in the Gazette of India dated 29.07.2011 has provided relaxation with a direction to give priority to those eligible candidates who possess the minimum qualification

as specified and thereafter consider the eligible candidates with the relaxed qualification. The same was placed before the State Cabinet for its consideration and the State Cabinet has decided to provide preference to the candidates in Diploma in Elementary Education or B.Ed. by providing additional marks-weightage. He further submitted that the petitioners cannot claim as a matter of right the appointment to the post of Primary Teacher in terms of the notification published in the Gazette of India dated 25.08.2010 as B.Ed. is not an essential qualification. The claim of the petitioners is misleading. By virtue of that qualification, the petitioners are possessing essential qualification only for the post of Upper Primary Teachers as per the NCTE norms. He submitted by saying that the Govt. of Manipur issued a corrigendum to the advertisement dated 18.10.2011 on 23.02.2012 (Annexure-R/6 to the affidavit-in-opposition by the respondent No. 1). Mr. Raisang, learned Senior Govt. Advocate further contended that on the basis of what has been averred in para-11 that "the notification directed to give priority to the candidates with essential qualification before considering the candidates with relaxed qualification" stated that the notification does not ipso facto provide selection of all candidates with essential qualification but directed to provide priority. Accordingly, priority has been given to such candidates in the selection process. He further stated having reference to the averments made in para-14 of the said affidavit-in-opposition that "the answering respondent denies the allegations made therein and humbly begs to state that the entire process was done in conformity with the NCTE norms. For primary teachers B.Ed. is not an essential qualification notified by the NCTE. Hence, the petitioners are misleading the Hon'ble Court". He further submitted that there is no illegality or infirmity in the recommendation by the selection committee for appointment to the post of Primary Teachers.

36. Mr. M. Rarry, learned counsel appearing for the private respondents has supplemented the objection as raised by the learned Senior Govt. Advocate and questioned the very basis of the writ petitions. He made a distinction between the minimum qualification and the essential qualifications and contended that the minimum qualifications have been laid down by the academic authority in terms of Section 23(1) of the RTE Act for a person to be eligible for appointment as a teacher. According to him, the professional qualifications as prescribed by the academic authority by the principal notification dated 23.08.2010 cannot be treated as a part of the essential qualification. To buttress his contention he made a reference to sub-section (6) of Section 18 of the RTE Act, where it has been stipulated as under:

A person appointed as a teacher within six months of the commencement of the Act must possess at least the academic qualification not lower than Higher Secondary School Education Certificate or equivalent.

Thus, he stoutly defended the impugned Recruitment Rules. He further contended that the writ petitioners have completely misconceived the provisions as engrafted in the principal notification dated 23.08.2010 as issued by the

National Council for Teacher Education, which provides as under:

With BA/B.Sc. with at least 50% marks and B.Ed. qualification shall be eligible for appointment for Class I to V upto 1st January, 2012, provided he undergoes after appointment an NCTE recognised 6 months special programme in Elementary Education.

37. Mr. Rarry, learned counsel denied that these are not parts of the minimum qualification for a person to be eligible for appointment as a teacher in Class I to VIII in a school referred to in clause (n) of Section 2 of the RTE Act. He further submitted that as per records it appears that on the strength of the B.Ed. degree the writ petitioners have been claiming that they are possessing the minimum qualification for appointment as the Primary Teachers for Class I to V in terms of the principal notification dated 23.08.2010 and that they should all be selected. He further submitted that the writ petitioners does not possess any of the degrees in 2-year Diploma courses or professional degree as mentioned in clause 1(i) of the principal notification. The petitioners also do not possess the minimum qualification as laid by the principal notification, however, they belong to the category of the relaxed qualification. He reiterated that 1 year Bachelor in Education (B.Ed.) has not find place in the minimum qualification as laid in the principal notification for Classes VI to VIII. He however, admitted that the said clause (3) of the principal notification as extracted stipulated that a person after his appointment having BA/B.Sc. with at least 50% and B.Ed. qualification shall also be eligible for appointment for Classes I to V, provided he undergoes an NCTE recognised 6 months special programme in Elementary Education, but he does not fail to mention that the said Clause 3 does not form part of clause (1) as it only provides about the training to be undergone after appointment, whereas clause 1(i) deals only with the minimum qualification as required for appointment as a teacher in Class I to V. Clause (3) provides that a person with B.Ed. and Graduation can also be appointed as a teacher in Class I to V, but he has to undergo training in Elementary Education. He submits that the person who has acquired the academic and professional qualifications specified in the principal notification dated 23.08.2010 shall be eligible for appearing in the TET. He made a further statement that the minimum qualifications specified in the principal notification shall make the person eligible for appearing in the TET and accordingly the TET examination was conducted and neither of the writ petitioners has ever challenged the said examination. He further submitted that both the writ petitioners and the private respondents who appeared in the TET were academically and professionally qualified to appear in the TET for the reason that the Central Government granted relaxation by the amended notification dated 15.07.2011 as regards the 2-year Diploma in Elementary Education. The learned counsel for the private respondents therefore contended that the writ petitioners are from the category under the relaxed qualification and they do not possess the minimum qualification of Diploma in Elementary Education. They would not have otherwise allowed to appear in the TET without such relaxation as allowed.

38. Mr. Rarry, learned counsel for the private respondents continued to submit that the relaxation as granted on request of the Govt. of Manipur as regards the minimum qualification norms as notified by the principal notification so far as they relate to the eligibility to be appointed as a teacher for Class I to VIII is confined to the relaxation of 2-year Diploma in Elementary Education. He further reiterated that the B.Ed.(1 year) has been relaxed not for the primary but for the upper primary classes and that has been mentioned as one of the alternative minimum qualification. B.Ed. is also not referred as an alternative qualification for appointment as a teacher in Classes I to V. He projected that if in case the B.Ed. was mentioned as one of the alternative qualifications for Classes I to V, it would have been relaxed only in the same line as has been done for Classes VI to VIII. According to Mr. Rarry, learned counsel for the private respondents, the academic qualification for two categories of the teachers are as follows:

39. Mr. M. Rarry, learned counsel for the private respondents also supported the contention of the learned Senior Govt. Advocate that the reservation has been provided as per the reservation policy. While focussing his submission on the selection process he submitted that no written examination was held except the TET. The rest is based on the marks obtained in Classes X, XII, TET and Diploma in Elementary Education or B.El. Ed. or B.Ed. Thereafter, he referred that the Govt. of Manipur subsequent to the recruitment advertisement published a notification that the preference would be given to those candidates possessing the minimum qualification as specified in the NCTE notification dated 23.08.2010 and only thereafter the candidates having relaxed qualification will be considered. However, he admitted that in the general list at Sl. No. 120 to 198 (page Nos. 198-199), which has been prepared as per the vertical reservation and the petitioners who are from the OBC could not be accommodated as they have availed relaxation in the TET examination. However, he admitted that the writ petitioners also passed the TET successfully, securing 75-89 marks out of 150 marks i.e. 50% while for the unreserved candidates they had to secure 90 marks to be successful in the TET. That is the reason why the candidates from the OBC have not been accommodated in the UR list. He seriously disputed that the challenge is not against the Recruitment Rules, but the challenge is fundamentally against the select panel. For illustrating, he pointed out that one Seram Nabadwip Singh, respondent No. 774, secured 61.867% in the TET whereas none of the petitioners has secured above this score. All the petitioners have secured less than that score. For example, the petitioner No. 41, who secured the highest amongst the petitioners, got 61.611%. Therefore, the writ petitioners secured less than the cut off marks. He did not forget to remind this court that the writ petitioners do not have any right to be selected, but their right is limited to the right to be considered. He further submitted that some irrelevant papers have been annexed to the writ petitions deliberately for creating confusion.

40. Mr. Rarry, learned counsel appearing for the private respondents, referring to the averments made in para-9 of the affidavit-in-opposition filed by the 391

private respondents, submitted that the petitioners by alleging that "no untrained candidates is eligible for any post under the SSA Scheme, making a blatant false statement on oath. The petitioners who claimed themselves to have completed B.Ed. and seeks appointment as Primary Teacher necessarily falls under the category of candidates seeking appointment under "Relaxed Qualification" as the NCTE Notification does not provide B.Ed. as a qualification for appointment as Primary Teacher under SSA". He further submitted that the petitioners have admitted that the Central Government had issued the notification dated 15.07.2011 granting relaxation of eligibility criteria by stating certain conditions till 31.03.2013. The petitioners have also reproduced the condition No. (iii) of the said notification dated 29.07.2011. He further submitted that in terms of the said condition No.(iii) what has been contemplated can be understood in the following manner:

- (a) In the matter of appointment, the State Government shall give priority
- (b) to those eligible candidates who possess the minimum qualifications specified in the NCTE Notification dated 25.08.2010; and
- (c) only thereafter consider the eligible candidates with the relaxed qualifications specified in this notification.

He contended that "priority" means precedence in claims, a preference in order, an earlier attention.

41. For the private respondents, Mr. Rarry, learned counsel contended that the selection committee prepared the select panel against the total number of vacant posts available at the relevant point of time in two categories namely, for those candidates who possess the minimum qualification by enjoining them with precedence and preference and thereafter for those candidates who were considered under the relaxed qualification. The select list "A" is comprised of the persons who are having the minimum qualification as stated and the list "B" is comprised of the persons who are considered on the relaxed qualification. According to Mr. Rarry, learned counsel, the writ petitioners cannot claim the right in the list "A" select panel. He further submitted that B.Ed. is not even a qualification mentioned in the list of minimum qualification or even as an alternative minimum qualification for appointment of the Primary Teacher. Therefore, a candidate having B.Ed. cannot claim of having the minimum qualification. The learned counsel further submitted that the post of Primary Teacher being a selection post requires primacy of merit and nobody can claim right to consideration for appointment without assessment of the merit. He submitted that the recruitment process in this case was an open process and was conducted in a totally transparent manner, the manner in which the percentage were to be allotted to each candidates based on the marks scored in Classes X, XII, D.El.Ed. and TET were shown in Column No. 10 of the "Instruction to the applicant for filling up of application form for Primary Teacher post under SSA". Those instructions were handed over to each and every candidates and

thereafter based on the documents submitted, marks scored by each candidates were published for public scrutiny. Thereafter, the following methods were adopted for selection:

(1) All qualified candidates stated to have been possessing essential qualifications were short-listed category-wise. The List-A contains the selected candidates possessing the minimum qualification. The qualifying score for different categories are different.

(2) All qualified candidates stated to have been possessing the essential qualifications. For shortage of vacancies they were clubbed with the candidates with relaxed qualifications and a combined merit list were prepared for filling up of the unfilled un-reserved vacancies. The unfilled vacancies are thereafter filled from the left-over candidates from each category, based on merit and those candidates appear in the List-B.

42. Mr. Rarry, learned counsel for the private respondents, while refuting the submissions made by the writ petitioners, submitted that the rules as framed by the Government of Manipur has been so framed in exercise of power as provided under the proviso to Article 309 of the Constitution of India and as such those are statutory and legislative in character, cannot be impeached on the ground that the authorities have prescribed tailor made qualifications to suit the individuals whose names have figured in the process. To support that contention, reference has been made on a decision of the Apex Court in V.K. Sood Vs. Secretary, Civil Aviation and others, , where the Apex Court held as under:

3. It is not in dispute that these rules have been made by the President exercising the power under Proviso to Article 309 of the Constitution which reads thus:

309. Recruitment and conditions of service of persons serving the Union or a State.-- Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such service and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

It would thus be clear that the rules made by the President or authorised person under proviso to Article 309 are subject to any law made by the Parliament and the power includes rules regulating the recruitment and the conditions of service

or post. They are statutory and legislative in character. The statutory rules thus made are subject to the law that may be made by the Parliament.

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6. Thus it would be clear that, in the exercise of the rule-making power, the President or authorised person is entitled to prescribe method of recruitment, qualifications both educational as well as technical for appointment or conditions of service to an office or a post under the State. The rules thus having been made in exercise of the power under proviso to Article 309 of the Constitution, being statutory, cannot be impeached on the ground that the authorities have prescribed tailor made qualifications to suit the stated individuals whose names have been mentioned in the appeal. Suffice to state that it is settled law that no motives can be attributed to the Legislature in making the law. The rules prescribed qualifications for eligibility and the suitability of the appellant would be tested by the Union Public Service Commission.

43. To hold that the rules made under the proviso to Article 309 of the Constitution of India being legislative in character cannot be struck down merely because the court thinks that they are unreasonable and that the rules can be struck down only on the ground upon which a legislative measure can be struck down, Mr. Rarry, learned counsel for the private respondents placed reliance to a decision of the Apex Court in *R.L. Bansal and others Vs. Union of India and others*, , where the Apex Court held:

21. Now it is true that rules made under the proviso to Article 309 of the Constitution being legislative in character cannot be struck down merely because the Court thinks that they are unreasonable, -- and that they can be struck down only on the grounds upon which a legislative measure can be struck down. Vide *B.S. Vadera Vs. Union of India (UOI) and Others*, and *B.S. Yadav and Others Vs. State of Haryana and Others*, , we are yet of the opinion that Rule 4 of 1979 Rules (as amended in 1982) insofar as it predicates seniority on the date of confirmation -- which confirmation is directed to be made on a wholly unequal and discriminatory basis -- is violative of the equal opportunity clause enshrined in Article 16 of the Constitution. The cadre, it is admitted consists of both permanent and temporary members. The rules do not say that promotees shall not be appointed against permanent posts or that they shall be appointed only against temporary posts. It is true that generally direct recruitment is made only against permanent vacancies/posts whereas promotions may be made both against permanent as well as temporary vacancies/posts. But in this service, it is clear from the rules themselves that even the direct recruitment is made against temporary posts. In short, there is no distinction between the four erstwhile categories mentioned in unamended Rule 3. They could be appointed both against permanent as well as temporary posts. If so there appears to be no justification for treating all the appointees under clauses (b) and (c) of Rule 3, en bloc, on par with direct recruits against temporary posts (as has been done by Rules 4 and 5 of 1979/1982 Rules) which suggests as if all such appointments

were made, at all points of time, only against temporary posts. At the cost of repetition, we may mention that those appointed under unamended clause (b) of Rule 3 were expressly referred to as direct appointees and yet they are now converted into promotees en bloc and downgraded vis-a-vis direct recruits under unamended clause (a) of Rule 3. All this, in our opinion, is discriminatory and violative of Articles 14 and 16(1). There were four channels/sources of appointment. Direct recruitment was one of them -- unamended clause (a). Unamended clause (b) provided for another type of direct appointment while unamended clause (c) provided for promotion. True, there was no quota fixed as between them as held by this Court and Delhi High Court but the rules nowhere stated that appointment under unamended clauses (b) and (c) shall be made only against temporary posts. All the four sources were equal -- qualitywise. Neither was superior to the other. In these circumstances, bringing in new concepts of "Assistant Engineers recruited against permanent posts", and "Assistant Engineers promoted from the lower ranks" through the 1979 Rules (as amended by 1982 Rules) and treating the latter category unfavourably on that basis (vide Rules 4 and 5 of 1979/1982 Rules) is a clear case of hostile discrimination. In this context, if we recall the principles enunciated by the Delhi High Court and this Court in the earlier writ petition referred to hereinbefore, the intention of the rule-making authority to undo the effect of the said judgments, to the grave prejudice of the Assistant Engineers appointed under clauses (b) and (c) of unamended Rule 3 becomes crystal clear. The entire course of amendments and new rules appears to be designed to undo the effect of the said judgment with retrospective effect. Not only the classification has no basis in the rules -- or in the factual situation -- it is unreasonable and unjust; it is also unrelated to the object -- the object being efficiency of administration.

44. Mr. Rarry, learned counsel further submitted that the fundamentally the challenge by the writ petitioner is based on non-incorporation of the qualification "B.Ed." as the minimum qualification for appointment as a teacher in the primary classes whereas the NCTE, the authorised academic authority has consciously not incorporated the said qualification. To support his contention that the statutory language should be given its most obvious meaning, thus, the claim of the petitioners are contrary to the settled provisions of law, reference has been made to a decision of the Apex Court in Nyadar Singh Vs. Union of India (UOI) and Others, , where it has been held as under:

23. It is true that where statutory language should be given its most obvious meaning -- "to accord with how a man in the street might answer the problems posed by the words" -- the statute must be taken as one finds it. Considerations relevant to interpretation are not whether a differently conceived or worded statute would have yielded results more consonant with fairness and reasonableness. Consequences do not alter the statutory language, but may only help to fix its meaning.

45. Mr. Rarry, learned counsel further contended that the said Recruitment Rules

of the Primary Teachers, 2011 was not challenged before the selection process commenced instead the writ petitioners chose to participate in the selection process held in terms of the said Rules. The petitioners therefore cannot be allowed to challenge the selection procedure. He made reference to the Apex Court decision in K.H. Siraj Vs. High Court of Kerala and Others, , where it has been observed:

50. What the High Court has done by the notification dated 26.3.2001 is to evolve a procedure to choose the best available talent. It cannot for a moment be stated that prescription of minimum pass marks for the written examination or for the oral examination is in any manner irrelevant or not having any nexus to the object sought to be achieved. The merit of a candidate and his suitability are always assessed with reference to his performance at the examination and it is a well-accepted norm to adjudge the merit and suitability of any candidate for any service, whether it be the Public Service Commission (IAS, IFS, etc.) or any other. Therefore, the powers conferred by Rule 7 fully justified the prescription of the minimum eligibility condition in Rule 10 of the notification dated 26.3.2001. The very concept of examination envisaged by Rule 7 is a concept justifying prescription of a minimum as benchmark for passing the same. In addition, further requirements are necessary for assessment of suitability of the candidate and that is why power is vested in a high-powered body like the High Court to evolve its own procedure as it is the best judge in the matter. It will not be proper in any other authority to confine the High Court within any limits and it is, therefore, that the evolution of the procedure has been left to the High Court itself. When a high-powered constitutional authority is left with such power and it has evolved the procedure which is germane and best suited to achieve the object, it is not proper to scuttle the same as beyond its powers. Reference in this connection may be made to the decision of this Court in Union of India (UOI) and Others Vs. Kali Dass Batish and Another, , wherein an action of the Chief Justice of India was sought to be questioned before the High Court and it was held to be improper.

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72. The appellant-petitioners, in any event, are not entitled to any relief under Article 226 of the Constitution of India for more reasons than one. They had participated in the written test and in the oral test without raising any objection. They knew well from the High Court's notification that minimum marks had to be secured both in the written test and in the oral test. They were also aware of the High Court decision on the judicial side in S. Remany Vs. High Court of Kerala and Others, . This case deals with prescription of minimum qualifying marks of 30% for viva voce test. C.S. Rajan, J., in the above judgment, observed as under: (KLT pp. 441-42, para 5)

On the basis of the aggregate marks in both the tests, the selection has to be made. In P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, also the relevant rules did not enable the Selection Board to prescribe minimum

qualifying marks to be obtained by the candidate at the viva voce test. In Delhi Judicial Service case as also Umesh Chandra Shukla Vs. Union of India (UOI) and Others, the rules did not empower the committee to exclude candidates securing less than 600 marks in the aggregate. Therefore, in all these cases, the Supreme Court came to the conclusion that prescription of separate minimum marks for viva voce test is bad in law because under the rules, no minimum qualifying marks were prescribed.

The High Court also relied on P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, and Umesh Chandra Shukla Vs. Union of India (UOI) and Others, .

73. The appellant-petitioners having participated in the interview in this background, it is not open to the appellant-petitioners to turn round thereafter when they failed at the interview and contend that the provision of a minimum mark for the interview was not proper. It was so held by this Court in para 9 of Madan Lal and Others Vs. State of Jammu and Kashmir and Others, as under: (SCC p. 493)

9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

74. Therefore, the writ petition filed by the appellant-petitioners should be dismissed on the ground of estoppel is correct in view of the above ruling of this Court. The decision of the High Court holding to the contrary is per incuriam without reference to the aforesaid decisions.

75. The writ petitions have also to fall on the ground of absence of necessary parties in the party array. Though the appellant-petitioners contend that they are

only challenging the list to a limited extent, acceptance of their contention will result in a total rearrangement of the select list. The candidates will be displaced from their present ranks, besides some of them may also be out of the select list of 70. It was, therefore, imperative that all the candidates in the select list should have been impleaded as parties to the writ petitions as otherwise they will be affected without being heard. Publication in the newspaper does not cure this defect. There are only a specified definite number of candidates who had to be impleaded, namely, 70. It is not as if there are a large unspecified number of people to be affected. In such cases, resort cannot be made to Rule 148 of the Kerala High Court Rules. That rule can be applied only when very large number of candidates are involved and it may not be able to pinpoint those candidates with details. In our view, the writ petition have to fail for non-joinder of necessary parties also.

46. Mr. Rarry, learned counsel for the petitioners stoutly contended that the writ petitions are hit by the principle of estoppel and for that purpose he referred a few decisions of the Apex Court. For appreciating the legal position in the context of the fact, the said decisions are required to be considered. However, for the shake of brevity, the relevant passages would be excerpted.

47. In *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, , the Apex Court held as under:

24. Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the district of Kanpur also. They were not responsible for the conduct of the examination.

48. In *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, , the Apex Court held:

9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of

the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.

49. In Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others, , the Apex Court held as under:

32. In conclusion, this Court recorded that the issue of estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and it is on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status -- the situation, however, presently does not warrant such a conclusion and we are thus not in a position to lend concurrence to the contention of Dr. Dhavan pertaining to the doctrine of estoppel by conduct. It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not bar a contention as regards the right to challenge an appointment upon due participation at the interview/selection. It is a remedy which stands barred and it is in this perspective in Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, a three-Judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise.

33. Subsequently, the decision in Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others, stands followed by a later decision of this Court in Madan Lal and

Others Vs. State of Jammu and Kashmir and Others, wherein this Court stated as below: (SCC p. 493, paras 9-10)

9. Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

10. Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.

34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seems to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not "palatable" to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.

50. In *Dhananjay Malik and Others Vs. State of Uttaranchal and Others*, , the Apex Court held:

7. It is not disputed that the respondent-writ petitioners herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as BPE or graduate with diploma in Physical Education. Having unsuccessfully participated in the process of selection without any demur they are stopped from challenging the selection criterion *inter alia* that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

8. In *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, , this Court pointed out that when the petitioners appeared at the oral interview conducted by the members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned, the petitioners took a chance to get themselves selected at the said oral interview. Therefore, only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed writ petitions. This Court further pointed out that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted.

9. In the present case, as already pointed out, the respondent-writ petitioners herein participated in the selection process without any demur; they are estopped from complaining that the selection process was not in accordance with the Rules. If they think that the advertisement and selection process were not in accordance with the Rules they could have challenged the advertisement and selection process without participating in the selection process. This has not been done.

51. In *Sadananda Halo and Others Vs. Momtaz Ali Sheikh and Others*, , the Apex Court held as under:

59. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule. This position was reiterated by this Court in its latest judgment in *Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others*, , where one of us (Sinha, J.) was a party. This was a case where different cut-off marks were fixed for the unreserved candidates and the Scheduled Caste and Scheduled Tribe candidates. This Court in para 10 of its judgment endorsed the action and recorded a finding that there was a power in the employer to fix the cut-off marks which power was neither denied nor disputed and further that the cut-off marks were fixed on a rational basis and, therefore, no exception could be taken. The Court also referred to the judgment in *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, , where it has been held specifically that

when a candidate appears in the examination without protest and subsequently is found to be not successful in the examination, the question of entertaining the petition challenging such examination would not arise. The Court further made observations in para 34 of the judgment to the effect: (S. Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others,)

19. ... "34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seems to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not "palatable" to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process."

In para 20 this Court further observed that there are certain exceptions to the aforementioned rule. However, the Court did not go into those exceptions since the same were not material.

52. In Amlan Jyoti Borooah Vs. State of Assam and Others, , the Apex Court held:

36. The matter again came up for consideration before this Bench in Sadananda Halo and Others Vs. Momtaz Ali Sheikh and Others, , where in this Bench held:

59. It is also a settled position that the unsuccessful candidates cannot turn back and assail the selection process. There are of course the exceptions carved out by this Court to this general rule.

53. Having considered the submissions and on scrutiny of the records, it appears to this court that the petitioners projected that-

(i) Rule 7 of the said Recruitment Rules is repugnant to the provisions of the principal notification issued in exercise of the powers u/s 23(1) of the RTE Act;

(ii) the candidates who were brought into the zone of consideration by the Central Government on relaxing the minimum qualification by the amendment notification were not considered appropriately in terms of clause (iii) of the said amendment notification; and the Para-3 of the principal notification was given decent burial.

(iii) the persons having so called essential qualification/desirable qualification were considered by the State-respondents in infraction to the provisions of Sections 23(1) and 23(2) of the RTE Act, 2009.

54. Therefore, their contention as voiced by the counsel is that the entire selection process is liable to be interfered with and quashed. A direction has also been sought from this Court for holding the selection of the Primary Teachers in terms of the minimum qualification and the relaxed qualification and in the manner as prescribed by the academic authority and the Central Government. Since the recruitment advertisement dated 18.10.2011 has been issued in contrast to the minimum qualification and the relaxed qualification for appointment of the Primary Teachers, the said advertisement is also required to

be quashed. Further direction also has been sought by the writ petitioners to quash the List-A and the List-B containing the names of the candidates as recommended by the selection committee as consequence of such illegality as stated.

55. This court does not find any merit in the jurisprudential objection as raised by the learned counsel for the respondents inasmuch as the decisions as referred have responded to the estoppel by conduct. But, in this case the challenge is fundamental on usurpation of the authority in contravention of the express statutory provisions and as it has surfaced is based on illegal encroachment of the occupied province by the state action. Estoppel cannot operate against the law. The principle of estoppel being principally based on doctrine of equity cannot be made a shield against the law. In *Jalandhar Improvement Trust Vs. Sampuran Singh*, , it has been held as under:

13. The High Court as well as the lower appellate court also relied upon the fact that the Trust had made similar preferential allotments as local displaced persons in favour of other persons. Therefore, the courts below came to the conclusion that even the plaintiff-respondents were entitled to such allotment. In our opinion, before coming to this conclusion the courts below should have first decided the question whether the allotment in favour of those persons was within the scope of the rules applicable. If it was not within the scope of the rules then even those allotments in favour of other persons will not create a right in the respondents to claim equality with them; maybe, if the allotments were made wrongly in favour of those persons, the same may become liable for cancellation, if permissible in law, but that will not create an enforceable right on the respondents to claim similar wrongful allotments in their favour. In our opinion, even this ground relied upon by the High Court as well as the lower appellate court is unsustainable. The courts below next relied upon the fact that in regard to some of the respondents, the Trust itself at a point of time made allotments and accepted initial deposits towards the consideration of the plots which were subsequently cancelled. Based on those facts, the courts below held that the Trust having once allotted the plots and having collected part of the consideration, it could not have cancelled the allotments, probably basing the respondents' case on the principle of promissory estoppel. Here the courts below have failed to notice the legal principle that there is no estoppel against law. The allotment of plots by the Trust is controlled by the statutory rules. Any allotment contrary to those rules will be against the law. Since the allotments made in favour of some of the respondents was based on wrong application of the reservation made for "local displaced person" those allotments were contrary to law. Hence, the principle of promissory/equitable estoppel cannot be invoked to protect such illegal allotments. In the said view of the matter, we are unable to sustain the judgments and decrees impugned in these appeals.

56. It appears to this court that the minimum qualification as prescribed in terms of the power as provided u/s 23(1) of the RTE Act and the essential qualification

as prescribed under Rule 7 of the Recruitment Rules are not supplemental but conflicting. At the cost of the repetition, a comparative table is provided here in below:

57. It is apparent that no percentage of marks have been quantified in the Recruitment Rules, contrary to what has been provided to guarantee the quality education by the academic authority u/s 23(1) of the RTE Act, 2009. Apart that, some other categories of persons having different academic and professional qualifications have also been excluded by the said Recruitment Rules. In response to the point whether the relaxed qualification would be included as the essential qualification in the Recruitment Rules it is stated such argument is as fragile as such transitional provisions. Those cannot be made part of the Recruitment Rules, but their paramountcy would last till the prescribed time-limit is exhausted. The relaxation has been made temporarily to remove the difficulties in implementing the RTE Act, in those provinces where initially adequate members of persons having the minimum transitional qualification were available. Therefore, this cannot be the part of the essential/minimum qualification in the Recruitment Rules. By the amendment notification dated 15.07.2011 as published in the Gazette of India on 29.07.2011 the following qualifications have been declared by way of relaxation also as minimum qualification subject to certain conditions as proved in Note-1 and Note-2:

- (a) 2-year Diploma in Elementary Education (by whatever name known) for appointment of a teacher in classes I-VIII; and
- (b) 1-year Bachelor in Education (B.Ed.) for appointment of a teacher in classes VI to VIII.

Therefore, those persons who are having 2-year Diploma in Elementary Education can also be appointed as the Primary Teacher and Upper Primary Teacher. However, the relaxation would be subject to passing of the Teacher Eligibility Test (TET) and most importantly the condition that has been laid stipulates that the State Government and the other school management shall amend the Recruitment Rules to correspond the minimum qualification norms laid down by the notification of the NCTE. It has also been stated that in the matter of appointment the State Government shall give priority to those eligible candidates who possess the minimum qualification specified in the NCTE notification dated 25.08.2010 and only thereafter the candidates having the relaxed qualification specified in the notification dated 15.07.2011 shall be considered for appointment.

58. Education is the subject matter of the List-III vide Entry-25, Schedule VII and as such when there is conflict in the provisions of law as made by the parliament and that has been legislated by the Govt. of Manipur, the doctrine of repugnancy would come into play inasmuch as both the Union Legislature and the State Legislatures have concurrent powers to legislate with respect to this List. Logically, therefore, legislation by both legislatures relating to the same

subject matter within List-III shall be valid. Hence, "an absurd situation would result if two inconsistent laws, each of equal validity, could exist side by side within the same territory". [Subramaniam Vs. Muthuswami (1940) F.C.R. 188 (200)].

59. The doctrine of repugnancy has been engrafted to obviate such an absurd situation. Though the words "competent to enact" as provided in clause (1) of Article 254 of the Constitution of India are rather wide and might include laws made under List-I as well, the scope of Clause (1) is made clear by the words "subject to the provisions of clause (2)", for Clause (2) contemplates only a State law relating to the concurrent list. Hence, clause (1) speaks of repugnance between a Central law and a State law, relating to the same matter included in the concurrent list. The question then arises, which one shall prevail in case an Act of the one legislature be in conflict with an Act of the other, relating to the same subject, in the concurrent sphere, the general rule that in case of repugnancy of a State law with a Union law relating to the same matter in the concurrent list, the Union law will prevail and the State law will fail to the extent of the repugnancy, whether the Union law is prior or subsequent to the State law. But to this general rule, Clause (2) engrafts an exception, viz., that if the President assents to a State law which has been reserved for his consideration (Article 200), it will prevail notwithstanding its repugnancy to an earlier law of the Union. This exception, again, is to be read subject to the proviso. The proviso to Clause (2) of this present Article empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the President's assent. This power, however, may be exercised by Parliament only by making another law relating to the same concurrent subject. In short, the result of obtaining the assent of the Parliament to a State Act which is inconsistent with a previous Union law relating to a concurrent subject would be that the State Act will prevail in that State and override the provisions of the Central Act in their applicability to that State only. The predominance of that State Act may, however, be taken away if Parliament legislates under the proviso to clause (2).

60. In this case, there is no such State Act which has been assented by the President of India in exercise of the power as prescribed under Article 200 of the Constitution of India. Another ancillary element is also required to be considered. Whether the repugnancy creates ultra vires or not. Ultra vires is more fundamental than repugnancy. Shortly speaking, it becomes ultra vires, when a State Legislature makes a law with respect to a subject included in List-I. Similarly, a Union law may be ultra vires, if it deals directly with a subject included in List-II (the State List) without any constitutional provision sanctioning such encroachment. But a question of repugnancy can arise only when both the legislatures are competent to legislate with respect to the same subject, a subject included in the concurrent list (List-III). Again the idea of superiority or paramountcy is involved in the conception of repugnancy. There is no provision of a Union law to be void by reason of its inconsistency with any State law. But a State law will be void by reason of its being inconsistent with a Union law

(subject, of course, to clause (1) of Article 254). If, however, there is no such inconsistency, the State legislature is free to legislate upon that concurrent subject, without any consent of the Union, where the State law merely supplements the Union law. For the same reason, no question of repugnancy arises where, by the terms of the Constitution itself, the State legislature is given the power to legislate with respect to a subject-matter only so long and insofar as the Parliament does not legislate with respect to the subject-matter. In this case, the Parliament has expressly provided the powers of regulating the standards of the education to the Central Government and so far the appointments of the primary and the upper primary teachers are concerned. Section 23(1) of the RTE Act, 2009 being one of such areas designates the Central/Union Government to determine such minimum qualification through an academic authority in exercise of the powers as provided u/s 23(1) of the RTE Act and the rules as stated. Therefore, the provisions of Rule 7 of the said Recruitment Rules is hit by the doctrine of repugnancy and as such this cannot stand as valid law. Accordingly, the said Recruitment Rules is struck down and as in absence of Rule 7 the said Recruitment Rules cannot operate and by the doctrine of severality its remaining provisions cannot have any meaningful purpose so far the impugned Recruitment Rules are as a whole declared invalid and inoperative since inception. As consequence thereof, the select panel as referred to as the List-A and List-B for appointment to the post of the Primary Teachers in terms of the Recruitment Rules (Annexure-A/2) as well as the recruitment advertisement dated 18.10.2011 (Annexure-A/3) are also interfered with and set aside.

61. While rejecting the contention of Mr. Rarry, learned counsel for some of the private respondents that para-3 of the principal notification dated 23.08.2010 is not part of the minimum qualification, this Court declares that the candidates with B.A./B.Sc. with at least 50% marks and B.Ed. qualification shall be eligible for appointment for Classes I to V up to 1st January, 2012 provided he undergoes after appointment an NCTE recognised six months special programme in Elementary Education. As the Recruitment Advertisement vide Notification dated 18.10.2011 (Annexure A/3 to the writ petition, being W.P. (C) No. 149/2012) provides the last date for receiving the application from the eligible candidates on 03.11.2011, the persons who were having the said qualification as provided in para-3 of the principal Notification dated 23.08.2010 as published in the Gazette of India dated 25.08.2010 shall also be considered within the category of the persons having the minimum qualifications and they shall be allowed to apply for the post of Primary Teachers under the SSA and their cases would be considered within the category of the persons having the minimum qualification.

62. Since the Central Government has extended the relaxation so far the minimum qualification is concerned for a period till 31.03.2013 and since the core issue is related to the appointment of the Primary Teachers, it has been attended by a serious urgency. As such, the State-respondents are directed to

publish a fresh Recruitment Advertisement for the candidates who were qualified as on 28.10.2011 in terms of the principal notification dated 23.08.2010, as published in the Gazetted of India dated 25.08.2010 (Annexure-A/1) and the amendment Notification dated 15.07.2011, as published in the Gazette of India on 29.07.2011 (Annexure-A/4) for filling up of the vacancies to the extent of 1951 posts as notified by the notification dated 18.10.2011 (Annexure-A/3), within 7(seven) days from today and giving the last date of the application duly filled along with the testimonials/declaration etc. within 15(fifteen) days therefrom, but those candidates who applied earlier may be relaxed from applying afresh. Thereafter, the State-respondents by constituting the selection committee shall complete the entire exercise of selection within 31.03.2013. It is made further clear that the comparative merits of the candidates shall be assessed by a scientific and transparent method. It is further clarified that the persons having the minimum qualifications in terms of the principal notification dated 23.08.2010, as published in the Gazetted of India dated 25.08.2010 (Annexure-A/1) should form a category in terms of merits and the vacancies shall initially be filled up from the candidates of the said category and thereafter the candidates from the relaxed qualifications shall be accommodated against the remainder of the vacancies in order of merit, subject to the reservation policy. In this regard, it is further clarified that if the reserved category candidates are found selected by virtue of merit they shall be adjusted against the General category, not against the reserved category. It has come to the notice of the Court that after the Notification dated 28.10.2011, the division of the vacancies as per the reservation policy has been made public by the Notification dated 10.12.2011, inviting objections. The State-respondents shall strictly follow the reservation policy, both vertical and horizontal while filling up the vacancies to the post of the Primary Teachers. It is also made clear that, in terms of the Clause (2) of Note-1 appended to the amendment Notification dated 15.07.2011, as published in the Gazetted of India dated 29.07.2011 (Annexure-A/4), the State Government shall frame the Recruitment Rules in strict adherence to the minimum qualifications as embodied in the principal notification dated 23.08.2010, as published in the Gazette of India dated 25.08.2010 (Annexure-A/1) without much delay. In the result, both the writ petitions, being W.P. (C) No. 149/2012 and W.P. (C) No. 159/2012 stand allowed to the extent as indicated above. There shall be no order as to costs.

The records as produced by the state-respondents be returned forthwith.