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NEERAJ KUMAR RAI AND ORS.

v.

STATE OF U.P. & OTHERS

(Civil Appeal No. 9732 of 2017)

B

JULY 25, 2017

[ADARSH KUMAR GOEL AND UDAY UMESH LALIT, JJ.]

Service Law:

C *Recruitment – Eligibility for appointment of teachers in school – Requirement of 50% marks in graduation, made mandatory for appointment by Notification dated 29th July, 2011 issued by National Council for Teacher Education (NCTE) u/s. 23(1) of Right of Children to Free and Compulsory Education Act, 2009 – Challenged as arbitrary leading to violation of Art. 14 of the Constitution – Plea of the writ petitioners was that said requirement was not mandatory, in the earlier Notification dated 23rd August 2010, for those who had 50% marks in post graduation at the time when they took admission to B.Ed course – On appeal, held: Rajasthan High Court and Uttarakhand High Court had, in cases of similarly placed candidates, held that minimum qualifying marks shall not be insisted – In view thereof, claim of the appellants allowed – NCTE directed to issue clarification by way of supplementary clarification.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9732 of 2017.

F

From the Judgment and Order dated 25.02.2015 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 50570 of 2014.

G

ANS Nadkarni, ASG, Ajay Kumar Mishra, Sr.Adv.(AAG of U.P.), Ms. V. Mohana, Pramod Swarup, Ram Jethmalani, Shekhar Naphade, Jagdeep Dhankar, Shanti Bhushan, Manoj Prasad, R. S. Suri, Ms. Parag P. Tripathi, P. Chidambaram, Amit Sibal, Abhishek Manu Singhavi, K.T. S. Tulsi, Dushyant Dave, Salman Khurshid, Guru Charan, Guru Kishan Kumar, V. Shekhar, Harish N. Salve, P. N. Mishra, Sudhir Chandra Aggarwal, Mohan Parasaran, C. U. Singh, Ms. Mahalakshmi

H

Pavani, J. N. Dubey, Ajit Kr. Sinha, Dhruv Mehta, Susheel Kumar Jain, A
Pallav Sisodia, Nidesh Gupta, Vikas Singh, Ranji Thoms, Haren P.Ravel,
Rupendra Singh Suri, Krishanan Venugopal, Jaideep Gupta, Nagendra
Rai, Vikash Pahawa, S. R. Singh, Sudhir Aggrawala, P.N. Mishra,
Ms. Meenakshi Arora, R. Venkataramani, Nidesh Gupta, V. K. Uniyal,
Jayant Bhushan, S. N. Jha, Neeraj Kumar Jain, Subramonium Prasad, B
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Gonsalves, Rakesh Khanna, Pradeep Kant, Sr. Advs., Ms. S. Janani,
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Inderjeet Singh, Abhishek Gupta, M. R. Shamshad, Dharendra Singh
Parmar, Ajay Awasthi, Chirag Madan, Rajesh Srivastava, Kartik Seth,
Gaurav Yadav, Alexander Iqbal, Avinash C. Srivastava, Ajay Kumar C
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Singh, Kumar Gaurav, B. N. Dubey, Ms. Priyanka Agrawal, Ms. Maudak
Jai Singh, Robin Khokhar, Tom Joseph, P. Dayal, Amit Kumar, Prabhoo
Dayal Tiwari, Surya Kumar, Ajay Kumar Tiwari, Rameshwar Prasad
Goyal, K. L. Janjani, Ms. Varsha Rana, Shovan Mishra, Ms. Cordelia D
Slong, G Balaji, Anurag Dubey, Ms. Meenaesh Dubey, Ms. Meenakshi
Praihaar, Jayesh Gaurav, K. B. Upadhyay, S.N. Tripathi, E.P. Pandey,
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Dheeraj, Narender Kumar Verma, Prakash Ranjan Nayak,
Ms. Aishwarya Bhati, Susheel Tomar, Srisatya Mohanty, Balraj Dewan,
Ms. Abha R. Sharma, Puneet V., Uviti Gujval, Divy Partap, Mrinmay E
B., D. Partap, Dileep Kr. Dubey, Sanjay Kumar Tyagi, Manoj Kumar
Mishra, Umesh Dubey, Pradeep Kumar Dwivedi, S.K. Pathak, Sanjay
Kumar Tyagi, Nachiketa Joshi, Prashant Shukla, T.D. Bhaskar, Shiv
Baboo, A. Kalam, Satyajeet Kumar, Girdhar Upadhyay, Hari Shankar
Saran, Ms. Asha Upadhyay, Braham Singh, R. D. Upadhyay, Mohd. F
Shahid Hussain, Gaurav Yadav, Mohan Lal Sharma, Mehul M.Gupta, R.
P. Gupta, Ms. Charu Mathur, Mr. Ravindera Sethi, Haribansh M., Avnish
Singh, Ujjawal Pandey, Ms. Shweta Yadav, Shivam Tripathi, Ankur Yadav,
Yashpal Dhingra, B. K. Rai, J. K. Shukla, Prakash Kumar Singh,
Prashant Shukla, Ms. S. Janani, Jayant Mehta, Anand Nandan, Amit
Pawan, Abhishek Amritanshu, Gaurav Singh, Hassan Zubair Waris, G
Zubair Waris, Akshat Srivastava, Wills Mathews, Mukesh Kr. Verma,
Neeraj Kr. Sharma, Vivek Sharma, Sudhanshu Tomar, Ginesh P., Rabin
Majumder, Shivpati B. Pandey, V. N. Raghupathy, B. K. Jauhari,
Ms. Purnima Jauhari, Animesh Khanna, Deepak Anand, V. K. Mishra,
Ms. Radhika Dwivedi, Kundan Kumar Lal, K. K. Srivastava, Vijay Pal, H

- A Ms. Mamta Chandel, Kundan Pal, Avinash Kumar Jain, Amit Kumar, Swet Kumar, Arun Kumar, Avinash Kumar Jain, Ram Swarup Sharma, Dinesh Kr. Tiwary, Mrs. Rajmala Dohare, Rakesh Kumar, Sanjay Chakraborty, Sandeep Kr. Dwivedi, Umesh Dubey, Vivek Tiwari, Ms. Madhu Bala, D.N. Dubey, Dheeraj Kumar Dubey, Pradeep Kumar
- B Tewari, S. Pal, Anupam Dwivedi, Dr. Vinod Kumar Tewari, Vipin Kumar, K. K. Srivastava, Yashwant Yadav, Vijay Pal, Anubhav, Shwet Kumar, Vijay Kumar, Dr. Kailash Chand, Ms. Rashmi Nandakumar, Mrigank Prabhakar, Aman Mishra, Shovan Mishra, Ms. Parul Shukla, Udayaditya Banerjee, E. C. Agrawala, Yashraj Singh Bundela, Anuvrat Sharma, B. N. Dubey, Tom Joseph, Robin Khokhar, Kumar Gaurav, Swarupama
- C Chaturvedi, P. Dayal, Sajith. P, Dinesh K. Garg, Deepak Mishra, Abhishek Garg, Dhananjay Garg, M. M. Singh, Rahul Gupta, Ali Mushtaq Nawazish, Dinesh Kr. Tiwary, Chandan Kumar, Mrs. Rajmala Dohare, Keshav Chaudhary, Prakash Ranjan Nayak, Sanjay Singh, Umang Shankar, Ajayinder Sangwan, Tarunesh Kumar, Sunil Kr. Pandey, Rohan Sharma, Irfan Firidaus, Ms. Sweety Chatopadhyay, Pradeep Kumar,
- D Anirudh Kr. Rai, Kundan Kumar Lal, Dr. Bheem Pratap Singh, Pramod K. Singh, J.R.D. Singh, Manish Khandelawal, R. Gopalakrishnan, Rajiv Ranjan Dwivedi, Jitendra Tripathi, Anshuman Nayak, Vipul Agarwal, Vinay Navare, Ram Anu Grah Singh, Rakesh Tiwari, Dr. Rajeev Sharma, Suryerdaya Prakash Tiwari, Rahul Kumar Tripathi, R. K. Chaudhary,
- E T.N. Saxena, H.C. Kharbanda, Vipin Kumar Saxena, Anil Kumar, Hari Om Yadhuvansh, Dr. Monika Gusain, Dinesh Kumar Tiwary, Mrs. Rajmala Dohare, Ramesh Thakur, Raghwendra Tiwary, Mrs. Kirti Renu Mishra, Ms. Apurna U., Ms. K. Sarda Devi, Mrs. Shally Bhasin, Ms. Bina Gupta, Aftab Ali Khan, Md. Rashid Saeed, Ms. Ranjeeta Rohatgi, Fuzail Ahmad Ayyubi, Anjani Kumar Mishra, Ms. Pragya Baghel,
- F R. Gopalakrishnan, Praveen Swarup, Raj Kishor Choudhary, Hemal Kiritkumar Sheth, Ajay Awasthi, Varun Chauhan, Rajesh Srivastava, Ms. Asha Gopalan Nair, Ms. Nivedita Nair, Pitamber Dutt Nautiyal, Nishit Agrawal, Shrey Kapoor, Sitesh N. Singh, Talha A. Rahman, Utkarsh Sharma (for M/s Aura & Co.), Prashant Shukla, Ms. Disha Vaish, Ms.
- G Anisha Mathur, Sanjai Kumar Pathak, Wasim A. Qadri, D. Gobardhan, Sarad Kr. Singhania, Gurmeet Singh Makker, Prashant Shukla, A. Qadir, Abbula Kalam, Farrukh Rasheed, Mrigank Prabhakar, Rajesh Srivastava, Susheel Tomar, Srisatya Mohanty, Balraj Dewan, R. D. Upadhaya, Shovan Mishra, Nishit Agrawal, Shrey Kapoor, Sitesh Narayana Singh, Talha A. Rehman, Sunny Choudhary, Sudhandhu Palo, Gunjan Singh,
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Manohar Pratap, Ms. Priyanka Singh, Ms. Manju Jetley, Pradeep Kumar
Yadav, Ms. Jaya Yadav, Ashutosh Yadav, Alok Singh, Purvish Jitendra
Malkan, Arun Kumar Singh, Satya Mitra, Sanjay Kumar Yadav, Abhishek
Sarkar, Y. K. Pandey, Partha Sil, Mukesh Verma, Pawan Kumar Shukla,
Bikash Kumar Sinha, D. N. Dubey, Avnish Singh, Yash Pal Dhingra, B
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Ajay Kumar Singh, Bijender Chaudhary, Hitesh Kumar Sharma, T. Vijay
Pratap Singh, Shreekant N. Terdal, Anilendra Pandey, Karunakar
Mahalik, Yogesh Kumar Sharma, Amit Kumar, Neeraj Sharma, Ali
Mushtaq, Pranav Kumar, Dushyant Parashar, D. P. Singh Yadav, Varinder
Kumar Sharma, Devesh Kumar Tripathi, Rohit Pandey, Dinesh Tiwari, C
Dinesh Kumar T., Chandan Kumar, Ramesh Thakur, Rajmala Dohare,
Swami Nath, Vinay Pandey, Sanjay Chakrabarty, Anupam Mishra,
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Kumar Tripathi, Devesh Kumar Shukla, Harish Pandey, Manoj K. Mishra,
Umesh Dubey, S. K. Pathak, Ashish Kumar Mishra, Yunus Malik, Anish
Maheshwari, Prashant Chaudhary, Praveen Kumar Rai, Hemal Kirti
Kumar Sheth, D. P. Shukla, Devyanshu S., Jetendra Singh, Ms. Kalpana
Sabharwal, Ms. Priyanka Singh, V. K. Kaushik, Ms. Manju Sharma
Jetley, Mahendra Pratap Singh, K. Parameshwar, Prashant Shukla,
Yashpal Dhingra, Anup Jain, Abhishek Baid, Anup Jain, Pulkit, E
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Prakash Srivastava, M. R. Shamshad, Santosh Kumar Tripathi,
Ms. Kamakshi S. Mehlwal, Sunny Choudhary, Ms. S. Ramamani, Deepak
Anand, Pahlad Singh Sharma, Ritesh Agrawal, Dr. Vinod Kumar Tewari,
Ms. Charu Mathur, Abhish Kumar, Venkita Subramoniam T. R., Fuzail
Ahmad Ayyubi, Ravi Prakash Mehrotra, Sanjay Kumar Tyagi, F
K. L. Janjani, Sibon Sankar Mishra, R. P. Wadhvani, Mohan Lal Sharma,
Ms. Arti Gupta, Kedar Nath Tripathy, Gaurav Sharma, Ms. K. Sarda
Devi, Ms. Archana Pathak Dave, R. P. Wadhvani, Ms. Mridula Ray
Bharadwaj, Gyan Prakash Srivastava, Arvind Minocha, Vikrant Singh
Bais, Advs. for the appearing parties.

The Judgment of the Court was delivered by

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ADARSH KUMAR GOEL, J. 1. Leave granted. This appeal
has been preferred against the judgment of the Allahabad High Court

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A dated 25th February, 2015 in *Neeraj Kumar Rai and ors. versus State of U.P. and ors*¹.

2. The High Court repelled the challenge to the validity of notification dated 29th July, 2011 issued by the National Council for Teacher Education (NCTE) under Section 23 (1) of the Right of Children to Free and Compulsory Education Act, 2009 (RTE). The challenge was raised on the ground of arbitrariness leading to violation of Article 14. Under the impugned notification, requirement of 50% marks in graduation was made mandatory apart from other qualifications for appointment of teachers in schools. The said requirement was not mandatory earlier for those who had 50% marks in post graduation at the time when they took admission to the B.Ed., which was also the relevant qualification for appointment as teacher in terms of notification dated 23rd August, 2010 under Section 23 of the RTE. Further contention of the appellants was that even according to the NCTE those who had 50% marks in post graduation, and were eligible for admission to B.Ed. on that basis, could be treated as qualified in terms of the said notification. The High Court held that once the petitioners are not covered by the notification dated 29th July, 2011, the stand of the NCTE to the contrary could not be relied upon.

3. Thus, the question for consideration is whether the candidates who had already passed B.Ed., had the requisite percentage in post graduation and are otherwise covered by notification dated 23rd August, 2010, will stand excluded only on the ground that their marks in graduation were less than the percentage prescribed in the notification dated 29th July, 2011.

4. The case of the appellants is that they had the post graduation and B.Ed. qualifications. They also had the TET qualification. In post-graduation their marks are more than 50%. The NCTE is a statutory body under the NCTE Act to achieve the planned and coordinated development of the teacher education system. It lays down qualification for recruitment of teachers and also criteria for admission to training in teacher education. The NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 prescribe qualification for recruitment of teachers. The said regulations were amended from time to time. Regulations were also framed for admission to teacher education programmes including for admission to B.Ed. The

H ¹ 2015(2) ADJ 795, 2015 (4) ALJ 94

said regulations prescribed requirement of 45% / 50% either in graduation or in post graduation for admission to the B.Ed. which the appellants possessed. Only the impugned notification dated 29th July, 2011 prescribed requirement of 50% marks in graduation which was earlier optional for those who had 50% marks in post graduation. On that basis, the State of Uttar Pradesh declared candidates who were B.Ed. and TET and were otherwise qualified in terms of the qualifications laid down by the NCTE for appointment of teachers as ineligible. Some persons who were earlier appointed but their services were later terminated. The claim of similarly placed candidates was supported by the NCTE and was also upheld by the High Courts of Rajasthan and Uttarakhand which judgments were operative and had become final.

5. To appreciate the submissions reference may briefly be made to relevant notifications. The 2003 amendment to the 2001 regulations provides for requirement of graduation along with B.Ed or its equivalent without any minimum marks in graduation. The 2007 Norms and Standards for Secondary Teacher Education Programme leading to B.Ed. require 45% marks either in Bachelor's degree or in Master's degree or any other qualification equivalent thereto. The 2009 Norms and Standards for Secondary Teacher Education Programme through Open and Distance Learning System leading to B.Ed. do not provide for any minimum percentage of marks in Bachelor's degree. However, in the NCTE notification dated 23rd August, 2010 the requirement of prescribed percentage of marks in graduation was laid down on which basis the said requirement was laid down in the impugned notification dated 29th July, 2011 denying eligibility to the appellants.

6. It is submitted that similarly placed candidates approached the Rajasthan High Court by way of D.B. Civil Writ Petition No. 3964 of 2011 etc. titled *Sushil Sompura and Ors. versus State (Education) and Ors.* The Division Bench of the High Court in its judgment dated 20th May, 2011 upheld their stand and observed:-

"The relief prayed by the petitioners stands satisfied in view of the agreement expressed on behalf of NCTE to the effect that in case they have passed B.A., B.Sc., B.Com., Senior Secondary or its equivalent qualification and obtained admission in the requisite courses such as B.Ed., B.El.Ed., D.Ed. etc. as mentioned in para-1 of the Notification dated

A *23.8.2010, prior to the prescription of the minimum qualifying*
 marks by NCTE in Bachelor's degree or Master's degree
 etc. or any other qualification equivalent thereto vide
 notification dated 27.9.2007 and 31.8.2009, the minimum
B *qualification of having 45% or 50% marks, as the case may*
 be, in the Bachelor's degree or Master's degree etc. or any
 other equivalent qualification, shall not be insisted as stated
 by Mr. Kuldeep Mathur, learned counsel appearing on behalf
 of the NCTE on being instructed by Regional Director, NCTE.
 Thus, the major grievance of the petitioners that their
 qualifications of B.Ed. B.El.Ed. etc. mentioned in para 1 are
C *being derecognized with retrospective effect when there was*
 no prescription of minimum qualifying marks of 45% or 50%,
 as the case may be, stands redressed in view of the statement
 made by learned counsel appearing on behalf of the NCTE.
 It has been further stated by the learned counsel for the NCTE
D *that for the first time, de-novo qualifications were prescribed*
 by the NCTE vide Notification dated 27.9.2007 and further,
 qualifications were prescribed vide Notification dated
 31.8.2009 and in case admission has been taken by the
 incumbents in any of the courses of B.Ed. B.El.Ed. etc. as
 mentioned in para-1 of the Notification dated 23.8.2010 prior
E *to aforesaid dates, they shall not insist for having 45% or*
 50% marks, as the case may be, in qualifying examination
 for aforesaid courses. Thus, respondents have to allow
 aforesaid incumbents in TET examination, 2011."

(emphasis added)

F 7. Again, similar issue was raised before the High Court of
Uttarakhand in Writ Petition No. 772(SS) of 2011 etc. titled *Baldev*
Singh and ors. versus State of Uttarakhand and ors. The High
Court in its judgment dated 20th August, 2011, after noticing the
observations in the Rajasthan High Court judgment, observed:

G *"Apparently therefore the restriction of a minimum*
 percentage of marks in graduation (45% or 50% as the case
 might be) is not going to be enforced by NCTE, as it is evident
 from the above paragraph, as these were the instructions of
 the Regional Director, NCTE to its counsel before the Hon'ble
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Rajasthan High Court. The counsel representing NCTE Mr. Sudhir Singh has fairly submitted before this Court that he also gets his instructions from the same Regional Director, NCTE, yet there are no such instructions with him. That being the factual position, we leave it at that.

However, even assuming for the sake of argument that the above decision of the Hon'ble Rajasthan High Court does not help the case of the petitioners, yet this Court is of a considered view, as it has already been discussed in the preceding paragraphs, that such a restriction (of having minimum percentage in graduation) is both unreasonable, unjust and violative of Article 14 of the Constitution of India. Therefore, this Court declares such condition of asking a minimum percentage of marks in graduation from those candidates who are B.Ed. qualified in NCTE notification dated 23.8.2010 and subsequent State Government Order dated 29.4.2011 as violative of Article 14 of the Constitution of India. Further this Court directs the respondents to permit the petitioners to appear in TET examination treating them to be qualified under Clause 3 of the notification dated 23.8.2010 and State Government Order dated 29.4.2011."

8. Mr. AS Nadkarni, learned Additional Solicitor General, appearing for the NCTE fairly stated that the appellants may be treated at par with those covered by the Rajasthan and Uttarakhand High Courts judgments which have been accepted by the NCTE.

9. In view of fair stand of learned Additional Solicitor General and the view of Rajasthan and Uttarakhand High Courts, we do not find any reason to deny similar relief to the appellants. No doubt, as rightly held by the High Court the NCTE ought to have issued a clarification by way of a supplementary notification but the NCTE may now do so within one month from today. Accordingly, we direct that if the appellants or any other similarly placed persons are entitled to any further relief in terms of judgments of Rajasthan and Uttarakhand High Courts, they will be at liberty to put forward their claim before the concerned authorities

A who may take a decision thereon in accordance with law within one month. We have not examined any such claim in these proceedings except what has been stated hereinabove.

10. The appeal stands disposed of accordingly.

Kalpana K. Tripathy

Appeal disposed of.