

State Of U.P vs Shiv Kumar Pathak on 25 July, 2017

Equivalent citations: AIR 2017 SUPREME COURT 3612, 2018 (12) SCC 595, 2017 LAB IC 4250, (2017) 2 SERV LJ 296, (2017) 6 MAD LJ 546, (2017) 5 SERV LR 784, (2017) 4 ALL WC 3584, (2017) 3 KER LJ 617, (2017) 8 SCALE 202, (2017) 177 ALL IND CAS 210 (SC), (2017) 8 ADJ 164 (SC), (2017) 124 ALL LR 571, (2017) 3 SCT 704, (2017) 3 ESC 562, 2017 (11) ADJ 62 NOC

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Bench: Uday Umesh Lalit, Adarsh Kumar Goel

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4347-4375 OF 2014

STATE OF U.P. AND ORS. ETC. ETC.

...Appellants

Versus

SHIV KUMAR PATHAK AND ORS. ETC. ETC.

...

Respondents

WITH

CIVIL APPEAL NO. 4376 OF 2014

CIVIL APPEAL NO. 9530 OF 2017 @ SLP(C) No. 19087 OF 2017 @ SLP(C).....
CC 10408 OF 2014,

CIVIL APPEAL NO. 9704 OF 2017 @ SLP(C)No. 11671 OF 2014

CIVIL APPEAL NO. 9705 OF 2017 @ SLP(C)NO. 11673 OF 2014

W.P.(C)No. 135 OF 2015, W.P.(C)No. 89 OF 2015,

CIVIL APPEAL NO.9707 OF 2017 @ SLP(C)No. 62 OF 2014

CIVIL APPEAL NO.9708 OF 2017@ SLP(C)No. 1672 OF 2014

CIVIL APPEAL NO.9709 OF 2017@ SLP(C)No. 1674 OF 2014,

CONT. PETN(C)NOS. 199 OF 2015, 399 OF 2015, 262 OF 2016, 265 OF 2016, 264 OF 2016, 263 OF 2016, 266 OF 2016, 192 OF 2016, 191 OF 2016, 189 OF 2016, 190 OF 2016, 287 OF 2016, 286 OF 2016, 285 OF 2016, 290 OF 2016, 452 OF 2016, 454 OF 2016, 538 OF 2016, 537 OF 2016, 752 OF 2016, 776 OF 2016, 780 OF 2016, 607 OF 2017, 626 OF 2017, 627 OF 2017, 652 OF 2017 AND 651 OF 2017 IN CIVIL APPEAL NOS. 4347-4375 OF 2014 AND

WRIT PETITION (CIVIL)No. 100 OF 2016

JUDGMENT

ADARSH KUMAR GOEL, J.

1. This batch of cases arises out of judgment of the Allahabad 17:15:52 IST Reason:

High Court dated 20th November, 2013 in Shiv Kumar Pathak and Ors. v. State of U.P. and ors. 1 and involves the question of validity of decision of the State of Uttar Pradesh in prescribing qualifications for recruitment of teachers at variance with the guidelines of the National Council for Teachers Education (NCTE) dated 11th February, 2011 under Section 12(d) read with Section 12A of the National Council for Teachers Education Act, 1993 (NCTE Act) and Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) on the ground of repugnancy of State law with the Central law on a subject falling in concurrent list.

2. The following questions for consideration were framed by this Court vide its order dated 2nd November, 2015:

a) Whether the NCTE guidelines fixing the minimum qualification are arbitrary and unreasonable?

b) Whether the marks obtained in the TET Examination is the sole criterion for filling up the vacancies?

c) Whether the High Court is justified in declaring [sic quashing] the 15th Amendment brought in on 1 2013(10) ADJ 121 31.08.2012 to the U.P. Basic Education (Teachers) Service Rules, 1981?

d) Assuming, the guidelines framed by the NCTE are treated as intra vires, the question will be what interpretation would be placed by the Court on the concept of weightage as mentioned in the guidelines of the NCTE?

3. It will be appropriate to mention the background facts briefly for deciding the above questions. The Uttar Pradesh Basic Education Act, 1972 was enacted by the State of Uttar Pradesh to regulate basic education. The Act sets up a Board which is to organize, coordinate and control the imparting of basic education and teachers' training. The State of Uttar Pradesh framed 1981 Rules under the Act to deal with the appointment of teachers.

4. In the wake of Eighty-Sixth Amendment to the Constitution of India inserting Article 21A for providing free and compulsory education to children of age of 6 to 14 years, the RTE Act was enacted. The RTE Act inter alia lays down qualifications for appointment and terms and conditions of service of teachers. The Central Government in exercise of its powers under Section 23 of the Act, issued Notification dated 31 st March, 2010 authorising the NCTE as the "academic authority" to lay down the minimum qualifications for a person to be eligible for appointment as a teacher. The NCTE thereafter issued Notification dated 23 rd August, 2010 laying down qualifications for appointment of teachers for elementary education. The NCTE also issued guidelines dated 11th

February, 2011 for conduct of Teachers Eligibility Test (TET) and also providing for weightage to the marks in the said test for recruitment of teachers. The 1981 Rules of the State were amended on 9th November, 2011 (the 12th Amendment) to bring the same in consonance with the Notifications dated 23rd August, 2010 and 11th February, 2011. Accordingly, the TET was held on 13th November, 2011 and result thereof was declared on 25th November, 2011. Thereafter on 30th November, 2011, an advertisement was issued for appointment of 'trainee teachers' in primary schools. The candidates submitted their applications. However, the said advertisement was cancelled and a fresh advertisement dated 7th December, 2012 was issued which came to be challenged and has been set aside by the impugned judgment. The justification given by the State of Uttar Pradesh for such cancellation is that the result of TET was influenced by the money consideration. On 31st December, 2011 the amount of several lacs was seized with lists of candidates. FIR No. 675 of 2011 was lodged. Residence of Director of Secondary Education was also searched leading to recovery of certain lists and cash. The State constituted a high powered committee headed by the Chief Secretary on 10th April, 2012 which gave its report dated 1st May, 2012. It was recommended that candidates found involved in any irregularity/criminal activity in the TET examination be prohibited from the selection. The State Government took a decision dated 26th July, 2012 which was followed by 15th Amendment to the 1981 rules on 31st August, 2012 to the effect that instead of giving weightage to the TET marks as per 12th Amendment, the criteria of 'quality point marks' as prevalent prior to 12th Amendment was adopted. This amendment was challenged on the ground that it rendered the rules inconsistent with the NCTE guidelines referred to above.

5. Writ petitions were filed by the affected candidates against the cancellation of advertisement dated 30th November, 2011 and the new advertisement dated 7th December, 2012 incorporating the criteria by way of 15th Amendment to the Rules which was at variance with the guidelines of the NCTE dated 11th February, 2011, supra to the extent that weightage for marks in TET was not contemplated.

6. The Single Judge of the High Court dismissed the writ petitions vide order dated 16th January, 2013. Appeal against the said judgment has been allowed by the Division Bench by the impugned order. The Division Bench inter alia followed the judgment dated 31st May, 2013 by three Judges (Full Bench) in Shiv Kumar Sharma and Ors. v. State of U.P. and ors. 3 The High Court held that the decision dated 26th July, 2012 of the State Government to change the criteria of selection by way of 15th Amendment in the Rules to make TET as a minimum qualification (without giving weightage for the marks in the said qualification as per NCTE guidelines) and cancelling the advertisement dated 30th November, 2011 was not sustainable and that the NCTE guidelines were binding. Accordingly, the 2 WP No. 39674 of 2012 Akhilesh Tripathi v. State of U.P. 3 2013(6) ADJ 310 State was directed to proceed and conclude the selection as per advertisement dated 30th November, 2011.

7. Before proceeding further, it will be appropriate to reproduce the statutory provisions and the notifications to the extent relevant which are as follows:

“Sections 12 and 12A of the NCTE Act

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

(a) ...

(b) ...

(c) ...

(d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognized institutions.

...
...

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

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

Provided further that the minimum qualifications of a teacher referred to in the first proviso shall be acquired within the period specified in this Act or under the Right of Children to Free and Compulsory Education Act, 2009.” Section 23 of the RTE Act “23. Qualifications for appointment and terms and conditions of service of teachers.-(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-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.

... ..

8. Notifications dated 31st March, 2010 and 23rd August, 2010 issued by the NCTE are as under:

Notification dated 31st March, 2010 “NATIONAL COUNCIL FOR TEACHER EDUCATION NOTIFICATION New Delhi, the 31st March, 2010 S.O.750(E).- In exercise of the powers conferred by sub-section(1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009, the Central Government hereby authorizes the National Council for Teacher Education as the academic authority to lay down the minimum qualifications for a person to be eligible for appointment as a teacher.

Notification dated 23rd August, 2010 NATIONAL COUNCIL FOR TEACHER EDUCATION NOTIFICATION New Delhi, the 23rd August, 2010 F. No. 61-03/20/2010/NCTE/(N & S).-In exercise of the powers conferred by Sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009), and in pursuance of Notification No. S.O. 750(E) : MANU/HRDT/0013/2010 dated 31st March, 2010 issued by the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, the National Council for Teacher Education (NCTE) hereby lays down the following minimum qualifications 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 Right of Children to Free and Compulsory Education Act, 2009, with effect from the date of this notification:-

1. Minimum Qualifications:-

(i) CLASSES I-V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2 year Diploma in Elementary Education (by whatever name known) OR Senior Secondary (or its equivalent) with at least 45% marks and 2 year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and

Procedure), Regulations 2002.

OR Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor of Elementary Education (B.El.Ed.) OR Senior Secondary (or its equivalent) with at least 50% marks and 2 year Diploma in Education (Special Education) AND

(b) Pass in the Teacher Eligibility Text (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

(ii) Classes VI-VIII

(a) B.A./B.Sc. and 2 year Diploma in Elementary Education (by whatever name known) OR B.A./B.Sc. with at least 50% marks and 1 year Bachelor in Education (B.Ed.) OR B.A./B.Sc. with at least 45% marks and 1 year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard.

OR Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor in Elementary Education (B.El.Ed.) OR Senior Secondary (or its equivalent) with at least 50% marks and 4 year BA/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 Text (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 month 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 month special programme in Elementary Education.”

9. Notifications issued by the NCTE on 11 th February, 2011 and 29th July, 2011 are as follows:

Notification dated 11th February, 2011 “The implementation of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 requires the recruitment of a large number of teachers across the country in a time bound manner. In spite of the

enormity of the task, it is desirable to ensure that quality requirement for recruitment of teachers are not diluted at any cost. It is therefore necessary to ensure that persons recruited as teachers possess the essential aptitude and ability to meet the challenges of teaching at the primary and upper primary level.

2. In accordance with the provisions of sub-section (1) of section 23 of the Right of Children to Free and Compulsory Education (RTE) Act, 2009, the National Council for Teacher Education (NCTE) has laid down the minimum qualifications for a person to be eligible for appointment as a teacher in class I to VIII, vide its Notification dated August 23, 2010. A copy of the Notification is attached at Annexure 1. One of the essential qualifications for a person to be eligible for appointment as a teacher in any of the schools referred to in clause (n) of section 2 of the RTE Act is that he/she should pass the Teacher Eligibility Test (TET) which will be conducted by the appropriate Government.

3. The rationale for including the TET as a minimum qualification for a person to be eligible for appointment as a teacher is as under:

i. It would bring national standards and benchmark of teacher quality in the recruitment process;

ii. It would induce teacher education institutions and students from these institutions to further improve their performance standards;

iii. It would send a positive signal to all stakeholders that the Government lays special emphasis on teacher quality Qualifying marks

9. A person who scores 60% or more in the TET exam will be considered as Teachers Eligibility Test pass. School managements (Government, local bodies, government aided and unaided)

(a) may consider giving concessions to persons belonging to SC/ST, OBC, differently abled persons, etc., in accordance with their extant reservation policy;

(b) should give weightage to the TET scores in the recruitment process; however, qualifying the TET would not confer a right on any person for recruitment/employment as it is only one of the eligibility criteria for appointment." Notification dated 29th July, 2011 "(i) Training to be undergone,-A person-

(a) with Graduation with at least 50% marks and B.Ed. qualification or with at least 45% marks and 1-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 I to V up to 1st January, 2012, provided he/she undergoes, after appointment, an NCTE recognized 6-month Special Programme in Elementary Education;

(b) with D.Ed. (Special Education) or B.Ed. (Special Education) qualification shall undergo, after appointment an NCTE recognised 6-month Special Programme in Elementary Education....”

10. Though the State Government made an amendment in the 1981 Rules on 9th November, 2011 by providing that the names of the candidates shall be placed in descending order on the basis of the marks obtained in Teacher Eligibility Test conducted by the Government of Uttar Pradesh, this scheme was given a go by by withdrawing the amendment of Rule 14 and restoring the position as it stood prior to 12th Amendment [of selecting teachers on the basis of ‘quality points’ as per appendix to Rule 14(3)] by Amendment dated 31st August, 2012 to the following effect:

“(3) The names of candidates in the list prepared under sub-rule (2) shall then be arranged in such manner that the candidate shall be arranged in accordance with the quality points specified in appendix. In the said rules the following appendix shall be inserted at the end.

Provided that if two or more candidates obtain equal marks, the candidate senior in age shall be placed higher.”

11. Rule 14(4) of the 1981 Rules of the State prior to the Notification dated 23rd August, 2010 which was restored in 2012 was as follows:

“(4) The names of candidates in the list prepared under sub-rule (2) shall then be arranged in such manner that the candidates who have passed the required training course earlier in point of time shall be placed higher than those who have passed the said training course later and the candidates who have passed the training course in a particular year shall be arranged in accordance with the quality points specified in the Appendix.

”

12. We have heard learned counsel for the parties. Main contention raised on behalf of State of Uttar Pradesh is that while it was permissible for the Central Government to lay down eligibility qualifications for appointment of a teacher for elementary education by virtue of Section 23 of the RTE Act, the NCTE could not lay down any guideline so as to affect the power of a State to prescribe norms for selection of a teacher consistent with the qualifications under Section 23 of the RTE Act.

13. On the other hand, the stand of the original writ petitioners is that the subject of education falls under Entry 25 of List III of 7th Schedule of the Constitution after the 42nd Amendment. Thus, by virtue of Article 254 of the Constitution, the law made by the Parliament prevails over any law made by the State. It was submitted that The NCTE Act has been enacted by the Parliament to achieve ‘planned and coordinated development of the teacher education system’. The Council constituted under the Act is empowered to issue guidelines under Sections 12 and 12A for ensuring planned and coordinated development of teacher education and also to lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher. Further, vide Notification dated

31st March, 2010 under Section 23 of the RTE Act, the Central Government has authorized the NCTE as the 'academic authority' to lay down minimum qualifications for a person to be eligible for appointment as a teacher.

14. Learned counsel for the NCTE submitted that notification dated 11th February, 2011 suggesting weightage to TET marks was merely a guideline and was not intended to be binding on the States. While TET was a mandatory requirement, weightage to the marks in the TET was merely a suggestion. This stand has also been taken by some of the learned counsel in connected matters. Reliance was placed on the stand of the NCTE in its affidavit dated 1st May, 2014 in CWP 346 of 2013 before the Punjab and Haryana High Court as follows:

“That in view of the said recommendations of the Committee, it is stated that the guidelines contained in Clause 10 and 11 of NCTE guidelines dated 11th February, 2011 are directory in nature. Appropriate Government may in its own wisdom decide as to the eligible candidates on the basis of having qualified the Central Teachers Eligibility Test. However, education being the subject matter of concurrent list of the power to frame appropriate legislation/regulations/rules works with the appropriate legislature of the State Government and as such State Government is well within its rights to prescribe the qualification of eligibility in the form that the candidates wanting to apply for the said post must necessarily qualify the Teachers Eligibility Test of said State. There would be no legality in the same and merely because a state government had failed to conduct the State Teachers Eligibility Test (STET) in a given year would not amount to taking a decision not to hold the exams and to hold the candidates having qualified Central Teacher Eligibility Test as eligible.”

15. Reliance was also placed on clarification dated 2 nd September, 2016 by NCTE in reply to a question under the Right to Information Act, 2005(at page no. 733 of the SLP paper book in SLP(Civil)No. 1121 of 2017) as follows:

“1. CTET/TET is an examination to qualify to become eligible for appointment as a teacher from classes I to VIII.

2. There is no binding to State/Central Government to select the candidate as a teacher basis on TET marks. TET is just eligibility for the appointment of teachers.”

16. There is no manner of doubt that the NCTE, acting as an 'academic authority' under Section 23 of the RTE Act, under the Notification dated 31st March, 2010 issued by the Central Government as well as under Sections 12 and 12A of the NCTE Act, was competent to issue Notifications dated 23 rd August, 2010 and 11th February, 2011. The State Government was under

obligation to act as per the said notifications and not to give effect to any contrary rule. However, since NCTE itself has taken the stand that notification dated 11 th February, 2011 with regard to the weightage to be given to the marks obtained in TET is not mandatory which is also a possible interpretation, the view of the High Court in

quashing the 15 th Amendment to the 1981 Rules has to be interfered with. Accordingly, while we uphold the view that qualifications prescribed by the NCTE are binding, requirement of weightage to TET marks is not a mandatory requirement.

17. As a result of above, in normal course the State would have been at liberty to proceed with the selection in terms of advertisement dated 7th December, 2012 in accordance with the amended rules by way of 15th amendment, in view of developments which have taken place during pendency of these appeals, the said advertisement cannot proceed and while upholding the said advertisement, relief has to be moulded in the light of developments that have taken place in the interregnum.

18. Vide interim order dated 25th March, 2014, this Court directed the State of Uttar Pradesh to fill up the vacancies of Assistant Teachers in terms of the impugned judgment. Thereafter, on 17th December, 2014, the said order was modified and the State was directed to appoint candidates whose names were not involved in malpractices in the TET test and who had obtained 70% marks (65% for SC, ST, OBC and physically handicapped or any other category covered by the Government policy for reservation). 54,464 posts have already been filled up in compliance of the orders of this Court. The said appointments were subject to result of these matters. It was also observed that if anyone without TET qualification is appointed his services will be terminated. Vide order dated 2 nd November, 2015 it was noted that against 72,825 posts which were advertised, 43,077 candidates had completed training and were working while 15,058 candidates were undergoing training. Around 14,690 posts were vacant. It was further observed that candidates who had the required percentage of marks in terms of order dated 27 th July, 2015 were to file their applications and a Committee constituted for the said purpose could verify such percentage and if parity was found the same benefit could be extended.

19. We have been informed that 66,655 teachers have already been appointed in pursuance of the interim orders of this Court. Having regard to the entirety of circumstances, we are not inclined to disturb the same. We make it clear that the State is at liberty to fill up the remaining vacancies in accordance with law after issuing a fresh advertisement.

20. The matters will stand disposed of in above terms.

.....J. (Adarsh Kumar Goel)J. (Uday Umesh Lalit)
New Delhi;

25th July, 2017.