

# Vishwanath vs The State Of Uttarakhand on 5 March, 2025

**Author: B.R. Gavai**

**Bench: B.R. Gavai**

2025 INSC 365

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (C) NOS. 42-43 OF 2025  
WITH  
IA NO. 37419 OF 2025  
IN  
TRANSFER PETITION (C) NOS. 42-43 OF 2025

VISHWANATH

...PETITIONER

VERSUS

THE STATE OF UTTARAKHAND  
AND OTHERS

...RESPONDENT(S)

JUDGMENT

B.R. GAVAI, J.

IA No. 37419 of 2025 in T.P.(C) NOS. 42-43 OF 2025

1. By way of this application, the applicants have approached this Court for a direction on the respondent to permit the applicants who are holding the 18 months D.El.Ed. qualification from the National Institute of Open Schooling (NIOS) under the Open and Distance Learning (ODL) mode to participate in the ongoing counselling process and to subsequently be appointed to the vacant posts in the ongoing recruitment.

2. The case has a chequered history.

3. In 2017, an amendment had been carried out to the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as "RTE Act") vide which clause (2) was inserted in Section 23 of the said Act. The Right to Free and Compulsory Education (Amendment) Act, 2017 was made retrospectively applicable from 31st March 2015. It was provided that every teacher who had been appointed or was in service as on 31st March 2015 but did not possess the minimum qualifications of two years as laid down under sub-section (1) of Section 23 would acquire such minimum qualifications within a period of four years from the date of commencement of the Amendment Act, 2017.

4. In view of the provisions of the second proviso to sub- section (2) of Section 23 of the RTE Act, Ministry of Human Resource Development (MHRD) had issued a letter on 3rd August 2017 to all the Secretaries of States and Union Territories directing that all the teachers in Government Schools must possess minimum qualifications as mandated under the RTE Act and a last chance was being given to all such teachers to acquire minimum qualifications till 31 st March 2019. Failure to acquire the said qualification within the stipulated period would result in dismissal from service.

5. Since the time gap between 31st March 2015 as provided in the 2017 Amendment Act and 31st March 2019 as specified in the direction issued by the MHRD was 18 months, the NCTE issued a recognition order dated 22nd September 2017 for conducting D.El.Ed. programme through ODL mode by NIOS through the SWAYAM portal of MHRD for in-service untrained teachers at elementary level working in Government, Government Unaided and Unaided Private Schools. The said recognition order also reduced duration of diploma from 2 years to 18 months.

6. Subsequently, the State of Uttarakhand issued district- wise advertisements for the post of Assistant Teachers in Primary Schools in accordance with the Uttarakhand Government Elementary Education (Teacher) Service Rules, 2012 (for short, “2012 Rules”) framed by the Government of Uttarakhand which provided that for being eligible to be appointed as teachers, it was necessary to have a diploma course of two years or equivalent.

7. Initially, on 15th January 2021, the Secretary, Government of Uttarakhand issued a letter to the Director, Elementary Education, Uttarakhand to permit such candidates who passed 18 months D.El.Ed. diploma of NIOS through ODL Mode to apply for the post of Assistant Teachers (Primary) against vacancies issued through the aforementioned district-wise advertisements. This was done in compliance with the letter dated 6th January 2021 issued by the NCTE to the Chief Secretaries to all the States and Union Territories requesting them to consider all those candidates who had completed D.El.Ed. course of NIOS through ODL Mode. However, shortly thereafter, upon realizing that the 2012 Rules did not recognize the 18 months D.El.Ed. diploma through ODL Mode from NIOS as a minimum qualification for eligibility, the Government of Uttarakhand issued another communication dated 10 th February 2021 whereby its earlier letter dated 15th January 2021 was withdrawn.

8. The aforesaid communication dated 10th February 2021 was challenged in a bunch of writ petitions before the High Court of Uttarakhand at Nainital. On 14th September 2022, the High Court held that the 18 months D.El.Ed. training/diploma conducted through the ODL Mode by NIOS cannot be said to be a lower or inferior qualification as compared with the 2 years D.El.Ed. programme and the same was valid for applying against the post of Assistant Teachers (Primary) in the State of Uttarakhand.

9. Challenging the aforesaid judgment and order passed by the High Court, a batch of appeals came to be filed before this Court. The said appeals were decided in the case of Jaiveer Singh and Others v. State of Uttarakhand and Others<sup>1</sup> dated 28th November 2023. In the said judgment (in which one of us was a Member), this Court upheld the validity of the 2012 Rules.

10. In the aforesaid case itself, this Court had clarified that the scheme which was framed by the Government of India vide the aforementioned recognition order was done in order to provide a one-time opportunity to such of the teachers who were already in employment as on 10 th August 2017 to get a qualification of a diploma course as required under Section 23(2) of the RTE Act which had been inserted by the 2023 SCC OnLine SC 1584 2017 Amendment Act with retrospective effect from 1st April 2015.

11. It had also been held by this Court that the period of 18 months had been prescribed in order to meet the deadline for appointment of teachers as specified under Section 23(2) of the RTE Act. Noticing how this was a one-time opportunity to ensure that in-service teachers remained in service, this Court had held that it would not be equivalent to the two- year diploma which is the requisite qualification.

12. It appears that there was some confusion in some of the States and, therefore review petitions/miscellaneous applications were filed.

13. This Court had declined to entertain the review petitions/miscellaneous applications on the ground that the judgment was clear enough and it held that One Time Scheme was provided solely to safeguard the interests of those teachers who were employed as on 10th August 2017.

14. This Court had further clarified vide paragraphs 3 and 4 of the order dated 10th December 2024 passed in R.P.(C) Diary No. 4961 of 2024 titled as “Viswanath and Others v. The State of Uttarakhand and Others”, as under:

3. However, to avoid any confusion, we again clarify that the 18 months diploma obtained by such persons, who were in employment as on 10.08.2017 and who have completed the diploma course of 18 months, would be treated as valid diploma holders for the purpose of applying in other institutions or for promotional avenues.

4. Needless to state that the clarification will be effective from the date of pronouncement of the judgment under review.

15. The grievance of the applicants herein is that though they are eligible as per the original judgment of this Court dated 28th November 2023 and the clarification dated 10th December 2024, inasmuch as the advertisement in State of Uttarakhand is dated 29th May 2024, that is after the judgment was delivered on 28th November 2023, the State of Uttarakhand is not considering their claim.

16. It is submitted that in the reply given by the State Government, it is stated that the selection process is almost complete and, therefore, the claim of the applicants cannot be considered.

17. Shri. Gopal Sankaranarayanan, learned senior counsel appearing for the applicant(s) submits that the information received under the Right to Information Act, 2005 would reveal that there are 279 posts vacant and the number of applicants are 239.

18. Shri Sankaranarayanan, fairly, states that the applicants do not intend to affect the selection process already done.

19. Ms. Vanshaja Shukla, learned counsel appearing on behalf of the State, on the contrary, submits that vide the judgment dated 28th November 2023, this Court had upheld the 2012 Rules of the State of Uttarakhand which provided that a diploma of two years' or equivalent was necessary for being appointed as teachers. She further states that any interference, at this stage, would cause the complications in the selection process already completed.

20. No doubt that, this Court has upheld the 2012 Rules framed by the State Government, vide the judgment dated 28th November 2023. However, at the same time, this Court had clarified that such of the teachers, who were already in employment as on 10th August 2017, would be entitled to the benefit of One Time Scheme provided by the Government of India. This Court had held that such of the teachers who have completed the diploma course of 18 months would be treated as valid diploma holders for the purpose of applying in other institutions or for promotional avenues.

21. Indisputably, the 'other institutions' would also include the schools run by the State Governments.

22. We find that the case of the present applicants would be covered by this Court's clarification dated 10th December 2024.

23. We, therefore, direct the State Government to consider the claim of the applicants in accordance with the clarification dated 10th December 2024 and if the applicants are found to be eligible, to appoint them in accordance with law. The same shall be done within a period of three months from today.

24. We further clarify that while doing so, the State Government would not reopen the selection already conducted, which has reached finality.

25. The application is, accordingly, disposed of T.P.(C) NOS. 42-43 OF 2025

1. The transfer petitions are taken on Board.

2. In view of the aforesaid order passed in IA No. 37419 of 2025 in T.P.(C) NOS. 42-43 OF 2025, no order is required to be passed in the transfer petitions. The transfer petitions are, accordingly, disposed of.

3. We further find that the grievance of the petitioner(s) as raised in the writ petitions would stand satisfied with the aforesaid observations. Consequently, the writ petition being Nos. WPSS/2419/2024 and WPSS/04/2025 pending before the High Court of Uttarakhand stand disposed of in terms of the aforesaid order.

4. Pending applications, if any, stand disposed of.

.....J. (B.R. GAVAI) .....J. (AUGUSTINE GEORGE MASIH)  
New Delhi March 05, 2025.

ITEM NO.41

COURT NO.2

SECTION X

S U P R E M E C O U R T O F  
RECORD OF PROCEEDINGS

I N D I A

Transfer Petition(s) (Civil) No(s). 42-43/2025

VISHWANATH

Petitioner(s)

VERSUS

THE STATE OF UTTARAKHAND & ORS.

Respondent(s)

(IA No. 37419/2025 - APPROPRIATE ORDERS/DIRECTIONS) Date : 05-03-2025 This matter was called on for hearing today. CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI HON'BLE MR. JUSTICE AUGUSTINE  
GEORGE MASIH For Petitioner(s) :

Mr. Gopal Sankaranarayanan, Sr. Adv. Mr. Mandeep Kalra, AOR Mr. Vaibhav Yadav,  
Adv.

Ms. Anushna Satapathy, Adv. Ms. Radhika Jalan, Adv.

Mr. Yashas J, Adv.

Ms. Widaphi Lyngdoh, Adv. Ms. Anchita Nayyar, Adv. Ms. Shefali Tripathi, Adv. Mr.  
Tushar Shrivastava, Adv. Mr. Shourya Dasgupta, Adv.

For Respondent(s) :

Ms. Vanshaja Shukla, AOR Ms. Ankeeta Appanna, Adv. Mr. Ajay Bahuguna, Adv.

Mr. Arun Kumar, Adv.

Mr. Abhinav Kumar, Adv.

UPON hearing the counsel the Court made the following O R D E R IA No. 37419 of  
2025 in T.P.(C) Nos. 42-43 of 2025 The application is disposed of in terms of the  
signed judgment.

T.P.(C) Nos. 42-43 of 2025

1. The transfer petitions are taken on Board.
2. The transfer petitions are disposed of in terms of the signed judgment.
3. Pending application(s), if any, stand disposed of.

(DEEPAK SINGH)  
ASTT. REGISTRAR-cum-PS

(ANJU KAPOOR)  
COURT MASTER (NSH)

[Signed non-reportable judgment is placed on the file]