

Anand Yadav vs The State Of Uttar Pradesh on 12 October, 2020

Equivalent citations: AIR 2020 SUPREME COURT 5383, AIR ONLINE 2020 SC 786

Author: Sanjay Kishan Kaul

Bench: Krishna Murari, Aniruddha Bose, Sanjay Kishan Kaul

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2850 OF 2020

ANAND YADAV & ORS.

Versus

STATE OF UTTAR PRADESH & ORS.

JUDGMENT

SANJAY KISHAN KAUL, J.

1. The competing interests of post-graduates having the degree of M.A. (Education) and M.Ed. has given rise to a spate of litigation, and the present dispute flows from this. There are judicial precedents dealing with this issue, but in a relevant factual context. Further, there has been, to some extent, a pendulum swing in the stand of the concerned authorities in analysing this controversy based upon inputs from experts. The Factual Matrix:

2. The origination of the dispute is Advertisement No. 46, which was issued by respondent No. 2, the Uttar Pradesh Higher Education Service Selection Commission (for short 'UPHESSC') in March, 2014 inviting applications for the post of Assistant Professors in various subjects, including 'Education'. The candidature of appellant No. 2 was rejected on the ground that he did not fulfill the minimum criteria set out by the University Grants Commission (for short 'UGC'), respondent No. 4, although he had an M.Ed. Degree. This caused the said appellant to approach the High Court by filing Writ-A No. 61 of 2015.

3. The process in pursuance of the aforesaid advertisement was nearly completed while the writ petition was still pending, and a subsequent advertisement, i.e., Advertisement No. 47 of 2016 was

issued. This was once again for the post of Assistant Professor in various subjects, including hundred posts in 'Education' in Government aided non-Government universities. The eligibility criteria for the same was specified in para 6 of the advertisement, the relevant portion of which reads as under:

“Minimum Educational Qualifications

6. Mandatory Educational Qualification The prescribed minimum educational qualification for the post of Assistant Professor mentioned in this advertisement is described under:

6.1 For the post of Assistant Professor for the subjects other than Singing and Fine Arts 6.1.1 Good academic record with 55 Percent score in relevant subject at Post Graduate Level (Or with similar scoring in relation to grades wherever grading system is prevalent).

6.1.2 Obtained passing marks in National Eligibility Test (NET) or U.P. State Level Eligibility Test (SET) or State Level Eligibility Test (SLET) as conducted by University Grants Commission (U.G.C.).

xxxx xxxx xxxx xxxx xxxx” The twin criteria specified as the eligibility, thus, was (a) the requirement of a 55 per cent score in a relevant subject at the Post Graduate Level or with a similar scoring in relation to grades wherever there is a grading system; and (b) passing marks in the National Eligibility Test (for short 'NET'), or U.P. State Level Eligibility Test (for short 'SET'), or State Level Eligibility Test (for short 'SLET') as conducted by UGC.

4. The controversy, which arose from the aforesaid was on two aspects: (a) would an M.Ed. Degree be treated as an equivalent degree to M.A. (Education) for the purposes of appointment to the post of Assistant Professor?, and (b) even if it was treated as an equivalent, could it be said that an M.Ed. is a post-graduation in the relevant subject?

5. In order to resolve the issues, respondent No. 2 constituted a four- member expert panel to render its opinion on the said subject. This panel consisted of four eminent persons: (i) Professor Bhoo Dev Singh, Professor and Dean of the Department of Education, Banaras Hindu University, Varanasi; (b) Professor P.C. Shukla, Department of Education, Banaras Hindu University; (c) Professor Amita Bhajpayee, Department of Education, Lucknow University; and (d) Professor P.K. Sahu, Department of Education, Allahabad University.

6. The opinion of the four experts was unanimous and was received with their inputs. Thus, according to Professor Bhoo Dev Singh, the test conducted for the NET/JRF (Junior Research Fellowship) certificate is the same for both students with an M.A. (Education) and an M.Ed. Degree – with the test being conducted on the same day, at the same time, with the same syllabus, same items and the same paper. The consequent certificate issued was only on the subject of 'Education'

and there was no separate mention of either of the two degrees. The advertisement issued in 2016 did not specify either of the aforesaid two qualifications, but only that there should be a post-graduation with requisite marks in the relevant subject. Professor P.C. Shukla also opined that for the post of Assistant Professor (Teaching), Faculty of Arts, the degree of M.Ed., as well as, the qualification of M.A. (Education) should be accepted, more so as the students holding an M.Ed. degree have completed a graduation degree of B.Ed. These two opinions were concurred with by the other two experts.

7. The aforesaid resulted in the issuance of a corrigendum of 11.7.2016 by the UPHESSC/respondent No. 2 for the posts in question. It is this corrigendum, which was assailed before the High Court by respondent No. 3, who was an applicant under both the advertisements, in Writ-A No. 16127 of 2017.

8. In order to appreciate the aforesaid, it would be appropriate to take note of two aspects. Firstly, as far back as 1.12.1958, the UGC/respondent No. 4 had issued a list of degrees for the purposes of Section 22 of the University Grants Commission Act, 1956 (hereinafter referred to as the 'UGC Act'), wherein it was specified that the Master's Degree would, inter alia, include an M.A. and M.Ed. The said Section specifies the right of conferring or granting degrees shall be exercised only by a University established or incorporated in terms of sub-section (1) of Section 22, while sub-section (3) stipulates what a degree would mean. The Section reads as under:

“22. Right to confer degrees. – (1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees.

(2) Save as provided in sub-section (1), no person or authority shall confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree.

(3) For the purposes of this section, “degree’ means any such degree as may, with the previous approval of the Central Government, be specified in this behalf by the Commission by notification in the Official Gazette.”

9. Secondly, on 30.6.2010, the UGC/respondent No. 4 issued the University Grants Commission (Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2010 (hereinafter referred to as the 'UGC Regulations') (these Regulations were, inter alia, amended in 2016 and 2018). Regulation 4.4.1 dealt with the qualifications of Assistant Professor, inter alia, in 'Education' and stipulated that a good academic record with at least 55 per cent marks with a Master's Degree in the relevant subject from an Indian university or an equivalent degree from an accredited foreign university, along with having cleared the NET or similar other tests. Regulation 4.4.7 contains the qualifications prescribed by respondent No. 5/National Council for Teacher Education (for short 'NCTE') for faculty positions. The relevant portion of the Regulation reads as

under:

“4.4.7. QUALIFICATIONS PRESCRIBED FOR FACULTY POSITIONS IN THE REGULATIONS OF NCTE.

A. QUALIFICATIONS FOR B. Ed. COURSE:

(ii) ASSISTANT PROFESSOR:

a. Foundation Courses

1. A Master's Degree in Science/Humanities/Arts with 50% marks (or an equivalent grade in a point scale wherever grading system is followed);
2. M.Ed. with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed); and
3. Any other stipulation prescribed by the UGC/any such affiliating body/State Government, from time to time for the positions of principal and lecturers, shall be mandatory;

OR

1. M.A. in Education with 55% marks (or an equivalent grade in a point scale wherever grading system is followed);
2. B.Ed. with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed); and
3. Any other stipulation prescribed by the UGC/any such affiliating body/State Government, from time to time for the positions of principal and lecturers, shall be mandatory.

XXXX XXXX XXXX XXXX XXXX”

10. The challenge laid by respondent No. 3 in the writ petition was primarily predicated on grounds that:

- (i) In a previous consideration in Dr. Prit Singh v. S.K. Mangal & Ors.,¹ this Court had opined that an M.Ed. degree would not be at par with an M.A. (Education) degree;
- (ii) A similar view as aforesaid was taken by the Himachal Pradesh High Court in Praveen Kumar v. State of Himachal Pradesh & Ors.² which held that an M.Ed. degree is not a master's degree, but is only a training qualification;

(iii) Advertisement No. 46 of 2014 only prescribed a minimum qualification of M.A. (Education) for the post of Assistant Professor in Education, and an Expert Committee constituted pursuant to this advertisement also opined that M.A. (Education) and M.Ed. are two different courses and cannot be equated with each other;

(iv) Advertisement No. 47 of 2016, as initially issued, did not make M.Ed. candidates eligible for appointment as Assistant Professors in Education and it was only few days before the last date for 1993 Supp (1) SCC 714 2014 SCC OnLine HP 4307 submission of application forms that the corrigendum dated

11.7.2016 was issued; and

(v) NCTE/respondent No. 5 in their reply dated 4.10.2016 to the respondent No. 3 (not on record) had stated that M.A. (Education) is not a teacher's education programme, while M.Ed. is so.

11. Respondent No. 2 sought to contest the writ petition and took a stand in its counter affidavit that the requirement put forth in advertisement No. 47 of 2016 prescribed that a candidate who possessed a post graduate degree in 'Education' could apply for the post of Assistant Professor in Education. The background to the matter being referred to the Expert Panel was stated to be a controversy which arose when some candidates filed their applications with their NET/JRF certificates wherein it was demonstrated that although they had M.Ed. degrees, respondent No. 4 had declared that they are eligible for lecturer-ship in Education. The corrigendum was issued in consonance with the opinion of the experts as well as the eligibility certificates issued by respondent No. 4.

12. One aspect which is relevant is that in the writ proceedings neither was the UGC nor the NCTE made a party, both of whom could have thrown light, being the competent parties on the subject. Moreover, not only that the persons who would be affected were not impleaded as parties, but also, not even anyone in a representative capacity from such persons was impleaded. Thus, there was complete absence of assistance to the High Court insofar as both the competent authorities and the affected persons were concerned.

13. The Division Bench of the Allahabad High Court, in the impugned order dated 14.5.2018, opined after looking at the judgment in the Dr. Prit Singh³ case, as followed in the Praveen Kumar⁴ case, the issue was no more res integra. That is, while M.A. (Education) is a master's degree in the subject concerned, M.Ed. is not so, as it is only a training qualification. The conclusion reached was that an M.Ed. qualified person could not be appointed to the post of Assistant Professor in Education, and consequently the corrigendum dated 11.7.2016 was quashed.

14. Respondent No. 2 in compliance with the aforesaid decision, in its meeting held on 5.9.2018, decided to change the qualifications prescribed supra supra for the post of Assistant Professor in Education so as to only treat candidates with M.A. (Education) as eligible for the said post.

15. The candidates who had M.Ed. qualifications were naturally aggrieved and twelve of such candidates filed a Special Leave Petition before this Court, along with an application for leave to file the same, impleading the first three respondents who were parties before the High Court. Subsequently, other appellants who were similarly situated joined in and were impleaded as appellant Nos. 13 to 213 vide order dated 31.8.2018. On a consideration of the controversy, UGC was impleaded as respondent No. 4 vide order dated 31.8.2018. Learned Senior Counsel for the appellants, Mr. P.S. Patwalia submitted that the interest of the appellants was only in participating in the 2016 selection process for the post of Assistant Professor in Education, for which the last date of application was 14.7.2016 and for which the corrigendum had been issued on 11.7.2016. Accordingly, this Court recorded that the pendency of the Special Leave Petitions would not stand in the way of the competent authority proceeding with appointment of candidates of the selection process commenced in the year 2014, since the appellants were not challenging the said process. Thus, a quietus was sought to be put to the selection process of 2014.

16. In view of the postponement of the examination, in terms of order dated 12.10.2018, an interim order was passed provisionally permitting the candidates with M.Ed. to participate in the selection process, but the result was to be produced in a sealed cover to the Court, as and when the same was ready. It was clarified that this order was confined only to those persons who were parties/intervenors/impleaders and were before the Court on that date, as all of them were stated to have submitted the applications before the cut-off date of 14.7.2016. The latter aspect was clarified by an order dated 10.12.2018 that the cut-off date would be reckoned as 5.8.2016, since the same had been modified by the competent authority itself. Any other grievances regarding rejection of an application on account of the same not being in conformity with the eligibility criteria were opined not to form a part of the proceedings before this Court and would have to be assailed in separate proceedings.

17. In view of the affidavit filed by the UGC, it was considered appropriate to implead NCTE/respondent No. 5 in terms of the order dated 15.1.2020.

18. The ground level development which took place was that 6793 candidates were invited to appear for the written examination, which took place on 12.1.2019 for the post of Assistant Professor (Education) and the final answer key were published on 29.5.2019. The successful candidates were shortlisted for interviews, which were conducted from 18.2.2020 to 27.2.2020. The results were accordingly sought to be submitted in a sealed cover before this Court. The results were, however, not declared. The COVID-19 situation intervened and when the matter came up ultimately on 31.7.2020, it was deemed appropriate to hear the matter finally in view of the educational requirements and, thus, leave was granted and arguments proceeded. The occasion to peruse the results, thus, did not arise.

19. It would be relevant to turn to the affidavit of the UGC at this stage, which unequivocally stated that both M.A. (Education) and M.Ed. degrees are specified as master's level degrees. Per Clause 8 of the University Grants Commission (Minimum Standards of Instruction for the Grant of the Master's Degree through Formal Education) Regulations, 2003, an M.A. (Education) degree may be awarded only after a student successfully completes a minimum of two years after the first degree.

The affidavit also made a reference to Regulation 4.4.1 of the UGC Regulations, which required, inter alia, “Master’s Degree level in a relevant subject.” The advertisement and corrigendum issued by respondent No. 2 was, thus, not found to be in derogation of the UGC Regulations, but it was opined that the UGC does not determine the equivalence of degrees. It was also opined that M.A. (Education) is a regular programme, while M.Ed. is a professional programme. The concerned authority to go into such equivalence was the NCTE/respondent No. 5 and this is what eventually caused the impleadment of the NCTE.

20. On notice being issued, the NCTE filed a counter-affidavit. The difference in approach and curriculum of the two degrees is set out in para 13:

“13. It is submitted that the M.Ed programme is a specifically designed as a practitioner’s degree, for students who wish to acquire the knowledge, skills and experience necessary to work in a professional field. As a professional degree, the M.Ed. is intended for students who wish, upon graduation, to assume positions of leadership in a practical setting or positions requiring more advanced study than that available at the bachelor’s level (e.g., as an instructional technologist or as a district resource teacher). The M.Ed. is not a research degree in the sense that the student is not required to carry out and defend an independent research project. However, the M.Ed. programme is nevertheless research-based in that consideration of educationally relevant research constitutes a major focus of study and students are normally required to take a number of research-relevant courses (e.g., statistics courses) whereas MA Degree is mainly intended for students interested in conducting a research study or who wish, upon graduation, to assume a research position or to proceed to doctoral level studies. Accordingly, the M.A. programme is designed specifically as a research degree, with students required to carry out and complete an independent research project (Master’s Thesis). Completion of a master’s thesis is viewed as a pre-requisite for the pursuit of doctoral studies in most institutions.”

21. In view of what was stated, the conclusion was set out in para 14 of the counter affidavit to the effect that the M.Ed. is a master’s degree recognised by apex bodies like UGC and NCTE for appointment as an Assistant Professor in Education and persons with such a degree are also eligible for NET/SLET/JRF, while M.A. (Education) is also a master’s degree but is not a professional master’s degree and, therefore, a comparison of M.A. (Education) with M.Ed. is not tenable.

22. The counter affidavit of NCTE annexed the minutes of a meeting constituted to re-examine the issue of equivalence of NCTE recognised M.Ed. programme of one-year duration with that of M.A. (Education), which met on 27th and 28th September, 2018. The members of the Committee were as under:

- i. Prof. Mohammed Miyan, Professor of Education and former Vice Chancellor, Maulana Azad National Urdu University, Hyderabad – Chair of the Committee.
- ii. Dr. Renu Batra, Additional Secretary, UGC, New Delhi – Member.

iii. Prof. Ramesh Ghanta, President, Indian Association of Teacher Education, Ex Professor of Maulana Azad National Urdu University, Hyderabad – Member.

(iv) Dr. S.K. Chauhan, Under Secretary, NCTE – Convenor.

The background of the meeting was the judgment of the High Court, which has been impugned before us. It would be useful to reproduce the relevant portion of the minutes as they reflect directly on the controversy and the same reads as under:

“1. It is historically a proven fact that B.Ed. and M.Ed.

programmes are professional in their nature and primarily aim at preparing the teachers for the school system and also teacher educators for teacher education institutions. These courses are run almost for the last one century without any dispute with regard to their nature and professionalism.

2. It is evident from the details of the curriculum framework for programmes, M.Ed. and M.A. (Education), the subjects and expected process of transaction is altogether different. The M.A. (Education) course is mostly designed only with a theoretical base without pedagogical orientation. Therefore, M.A. (Education) programme is primarily be considered as a disciplinary programme in education, whereas, B.Ed. and M.Ed. are professional programmes. Further, to clarify that M.A. (Education) is of 2-year duration course after first degree. Whereas B.Ed. is one year after first degree and M.Ed., under reference is one year programme. It means, to acquire M.Ed., degree one has to spend 2 years after first degree because for admission to M.Ed., B.Ed. is mandatory.

Therefore, from the point of view of duration and curricular inputs, M.Ed. qualify itself as a master's programme in education. M.Ed. is also recognized by UGC and NCTE, Apex bodies as masters' degree in teacher education and the difference is, M.Ed. is a professional degree whereas M.A. (Education) is a degree in the Discipline of Education.

3. Candidates with M.Ed. qualifications are also eligible for appearing NET/JRF examinations and eligible for the post of Assistant Professor in Education. In view of the above description, M.Ed. is a masters' programme.

4. A look at the curriculum followed by the universities, where M.A. (Education) programme is offered in comparison to M.Ed. programme offered by the same university, or by other universities in the country, it is observed that the focus in M.A. (Education) is on theoretical aspects of education leaving no place for pedagogy or school experience and community engagement. Whereas in the case of M.Ed., the curriculum offered in continuation of B.Ed.

course, the programme focus on the foundation courses at advanced level. Further, the course work is designed in addition to the above, pedagogical orientation/school and community engagement are

well integrated as such, one can construe on the basis of curricular inputs of these two courses. M.Ed. students are having an integral orientation to education, whereas M.A. (Education) students are grounded in theory alongwith allied aspects of education without professional orientation.

5. NCTE also makes M.Ed./M.A. (Education) with B.Ed. as eligible for the post of Assistant Professor (Education). Here, an M.A. has to have B.Ed. to be eligible because in B.Ed. one gets orientation in pedagogy and school experience.

It is, therefore, concluded that M.Ed. is a masters' degree recognized by Apex Bodies like UGC and NCTE for appointment as an Assistant Professor in Education and they are also eligible for NET/SLET/JRF. On the other hand, M.A. (Education) is also a masters' degree but not a professional masters' degree and therefore, comparison of M.A. (Education) with M.Ed. is not tenable. Therefore, wherever, B.A. (Education) or M.A. (Education) courses are offered, to teach the courses along with M.A. (Education), M.Ed. candidates are also eligible." The Case of the Appellants:

23. The contours of the submissions of the learned Senior Counsel for the appellants, Mr. P.S. Patwalia, rest in the following terms:

i. While emphasising on the question required to be determined in this case of eligibility to be appointed to the post of Assistant Professor (Education) on the strength of their M.Ed. degree, it was contended that neither the appellants nor similarly situated candidates nor statutory authorities, respondent Nos. 4 & 5, were impleaded as parties before the High Court.

ii. Respondent No. 4, on being impleaded, had clearly opined that M.Ed. degree is indeed as master's degree in education, but that they did not determine the equivalence of degrees, power for which vests with respondent No. 5. iii. Respondent No. 5, on the basis of a four-member Committee constituted to re-examine the issue of equivalence of NCTE recognised M.Ed. programme with that of M.A. (Education) found that: (a) from the point of view of duration and curricular inputs, M.Ed. is a master's programme in education as recognised by respondent Nos. 4 & 5, (b) M.Ed. is a professional degree, whereas an M.A. (Education) is an academic degree, i.e., it is a degree in the discipline of education; and (c) Candidates with an M.Ed. degree are eligible for appointment to the post of Assistant Professor (Education) and can teach B.A. (Education) and M.A. (Education) courses.

iv. The candidates possessing M.Ed. qualification are eligible for appointment and whether M.A. (Education) and M.Ed. are equivalent is irrelevant for this case. v. The UGC/respondent No. 4 had issued a public notice stating that equivalence of degrees is decided by the employing organisation and in the present case, respondent No. 2 being the employing organisation, sought the opinion of the expert panel, and thereafter took a decision, which was impugned in the writ petition, permitting M.Ed. degree as an eligible qualification for appointment. Thus, the correctness of such a

decision, based on the view of experts, ought not to be questioned or gone into in judicial review. vi. Several institutions across different States are considering persons with an M.Ed. degree for such appointments. vii. The judgment in the Dr. Prit Singh⁵ case is clearly distinguishable on the facts as in that case a separate degree supra in education was required. The controversy related to qualifications prescribed for the post of Principal of a recognised college of education. The qualifications were as under:

Before Amendment	After Amendment
(a) A consistently good academic record with first or high second class (55% marks/grade B in the seven point scale) Master's Degree in any subject and also a degree in education of an Indian University or equivalent degree of foreign	A good academic record with at least first or high second class (grade B in the seven point scale) at Master's Degree in Education and not necessarily also at Master's Degree in the relevant subject (relaxable work of very high

University (relaxable if a candidate standard or University approved has to his credit research work of teacher before January 27, 1976).

very high standard) and

(b) An M. Phil degree or a (b) No change.

recognised degree beyond the Master's level or published work indicating the capacity of a candidate for independent research work: Provided that if a candidate possessing the qualifications as at

(b) is not available or not considered suitable, the college on the recommendation of the Selection Committee may appoint a person possessing the qualification as at (a).

It may be noted that initially, the appointment of the appellant therein was negated as he did not have the requisite qualifications, but subsequently the norms were amended and his appointment was accepted by the Vice- Chancellor. However, it was found that the relevant norms as applicable at the time of selection provided for a dual requirement, i.e., a Master's Degree in any subject and "also a degree in education of an Indian University or equivalent degree of foreign University". The academic record of the appellant therein, i.e., the selected person was also not one to talk home about. It is these factors which weighed with the High Court and it is this fundamental issue of dual qualification which resulted in the opinion of this Court while quashing the appointment.

viii. The distinguishing feature of Dr. Prit Singh⁶ case was noticed by this Court in Dr. Ram Sevak Singh v. Dr. U.P. Singh & Ors.⁷ where there was no such requirement of a dual qualification.

ix. The candidates with either an M.Ed. or an M.A. (Education) qualification had to take a common test for the purposes of supra (1999) 2 SCC 189 obtaining the NET certificate and the successful candidates are not distinguished on the basis of their degree. Since the passing of NET or equivalent is mandatory, all candidates who have passed NET are eligible for appointment.

x. The judicial review has no place to determine the ambit and equivalence of qualification and, thus, even assuming that an M.Ed. degree is not equivalent to M.A. (Education) degree, that is something to be left to the experts and the employing authority. In this behalf, the observations in Zahoor Ahmad Rather & Ors. v. Sheikh Imtiyaz Ahmad & Ors. 8 were relied upon by the appellants to the following effect:

“26. We are in respectful agreement with the interpretation which has been placed on the judgment in Jyoti K.K. (2010) 15 SCC 596 in the subsequent decision in Anita (2015) 2 SCC 170. The decision in Jyoti K.K. (supra) turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily pre-supposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy.

The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit (2019) 2 SCC 404 of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The decision in Jyoti K.K. (supra) turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench of the High Court was justified in reversing the judgment of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision of the Division Bench.

27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The state as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in Jyoti K.K. (supra) must be understood in the context of a specific statutory rule under which the holding of a higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in Jyoti K.K. (supra) turned.” The Case of Contesting Respondent No.3:

24. Learned Senior Counsel, Ms. Meenakshi Arora, put forth that:

i. There have been judicial pronouncements of various High Courts to the effect that M.A. (Education) and M.Ed. are different courses. An earlier observation of the Allahabad High Court in Writ-A No.65853/2015 decided on 14.3.2016 was referred to where Section 27 of the Uttar Pradesh State Universities Act, 1973 was discussed. This required each faculty to comprise such subjects of teaching as may be prescribed. The Section emphasised how each faculty is a different cadre in itself and there cannot be an interchange of any faculty member from one faculty to another. Also, teaching staff of 'Education' under the Faculty of Arts are not entitled to impart education to students perusing B.Ed. and M.Ed., nor can they set papers or moderate courses for the two. ii. Respondent No. 5 took a stand before the Gujarat High Court in Special Civil Application No. 2425/2016 that M.A. (Education) and M.Ed. are two different programmes and contrary to the advice of respondent No. 4 herein, equivalence of degrees is not within its competence.

iii. The Ministry of Human Resource Development, Government of India through its Under Secretary (NCTE) in an RTI reply stated that M.A. (Education) is a post graduate degree to teach at the college level whereas M.Ed. is only a professional degree for teaching in schools.

iv. The advertisement No. 47 of 2016 was in respect of 100 seats in Education (Arts Faculty) and in these vacancies, there were no seats for B.Ed. (Teacher Training Faculty). Further, in terms of Section 22 of the UGC Act, the post graduate degree for B.A. is M.A. and for B.Ed. is M.Ed., since both degrees are distinct, the appellants are not qualified for the post in question. v. Respondent No. 4 vide a notification issued in 2014 specified that B.A. and M.A. come under Arts/Humanities/Social Science categories, whereas B.Ed. and M.Ed. come under teacher training categories.

vi. Respondent No. 4 in its affidavit stated that no students shall be eligible for award of master's degree unless they have completed two years after their first degree. M.A. is a two years master's programme whereas M.Ed. is a one-year teacher training programme (as it then was). Therefore, advertisement No. 47 of 2016 was for two years master's degree only. vii. M.A. (Education) is an academic degree whereas M.Ed. is only a professional degree. The Degrees are different and belong to two different streams of discipline in education and their apex bodies are also different. Para 3.0 of Chapter 39 of the UGC Recommended Syllabus of Education was relied upon in this behalf, which reads as under:

“Education as an Academic Discipline” and education as preparation of teachers and other professionals for service in the field are two distinct streams of course in education. The M.A. (Education) is a Master of Arts in Education and M.Ed. is Master of Education and both are not equivalent. M.A. (Education) is purely Academic whereas M.Ed. is professional and their apex bodies are different. These

two courses are different and being streams of discipline of education, they cannot be taken at par.” The distinction has also been recognised in Dr. M.S. Mudhol & Anr. v. S.D. Halegkar & Ors.,⁹ The relevant portion of which reads as under:

“4. The contention of the respondents that M.Ed. (sic M.A.) 2nd Division was equivalent to M.A. (sic M.Ed.) 2nd Division is obviously fallacious. The former is the academic qualification while the latter a professional qualification. Secondly, the course of the former is whole-time spread over no less than two years while the course of the latter is part-time and is spread over one year. In any case, the statutory rule with regard to the essential qualifications is very clear inasmuch as it requires both academic Masters’ degree and the teaching degree, the latter being not the substitute for the former. What is further, while laying down the qualifications with regard to the academic degree viz. the Masters’ degree, the rule insists upon 2nd Division for such degree. It does not insist upon a 2nd Division degree in teaching. A pass degree is sufficient in its eyes. It would, therefore, amount to distorting the requisite qualifications under the rules, to attempt to substitute the teaching qualification for the academic qualification and exchanging the divisions of the two.....” viii. The expert opinion dated 15.5.2014 was obtained from Professors of Rajarshi Tandon Open University, Allahabad and Allahabad University in pursuance of advertisement No. 46 of (1993) 3 SCC 591 2014. Candidates with M.Ed. degree were found not entitled to participate in the selection process. The qualifications in the 2014 and the 2016 advertisements are the same. The expert panel constituted for purposes of advertisement No. 47 of 2016, which is in question, gave their opinion without basing it on any data and without comparing the syllabus of both the courses.

View which we Seek to Adopt:

25. We have analysed the records and considered the submissions of the learned counsels for the parties.

26. We must, at the inception, express our reservation about the manner in which the writ petition was filed and a decision was taken in the impugned order of the High Court without even calling upon the relevant authorities, i.e., the UGC and the NCTE to put forth their stand.

The first authority is undisputedly the one to determine and specify the nomenclature of degrees, while the second is the authority of teacher education. Whatever has been the earlier position, as is sought to be relied upon, of the Gujarat High Court, the same is no more in doubt. A decision based in the absence of concerned authorities is likely to and has caused confusion.

27. We are also of the view that affected candidates, or at least some of them in a representative capacity, were bound to be heard and no decision could have been taken behind the back of these candidates.

28. We are, thus, of the view that it is only before this Court that the complete contours of the controversy have emerged and the stand of all the relevant parties have been sought to be examined.

29. The stand put forth before us by the UGC/respondent No. 4 is unequivocal in its terms that M.Ed. degree is indeed a master's degree in Education in terms of the notification issued by it under the UGC Act in terms of Section 22. In that sense, the matter is put to rest in terms of recognition of M.Ed. as a post-graduate degree by the competent authority.

30. The question of equivalence, as submitted by respondent No.4/UGC was to be left to the NCTE. It is in view thereof that NCTE was added as a party (respondent No. 5) and has, once again, put forth its position quite unequivocally. The NCTE has drawn a distinction between the two degrees to the extent that while M.A. (Education) is a degree in the discipline of Education, the M.Ed. degree is a practitioner's degree. Reference has also been made to a Committee constituted in pursuance of the impugned judgment, which is an expert committee. In view of the recognition of the M.Ed. programme of one-year duration, in order to acquire an M.Ed. degree, one has to spend two years after the first degree because for an M.Ed. degree, a B.Ed. degree is mandatory. It is in these circumstances a conclusion was reached that, from the point of view of duration and curricular inputs, M.Ed. qualifies itself as a master's programme in Education and is even recognised by the UGC and NCTE as such. In a sense this puts to rest one of the controversies raised by respondent No. 3, i.e., initially M.Ed. was a one-year programme, and only subsequently converted into a two-years programme in 2015, as this very issue has been examined by an expert committee of the NCTE, and the NCTE concluded in favour of the appellants. There is also a categorical statement in the last paragraph of the counter affidavit of the NCTE to the effect that the M.Ed. is a master's degree recognised by apex bodies like the UGC and NCTE for appointment as Assistant Professor in Education and they are also eligible for the NET/SLET/JRF.

31. We may also notice another important aspect, i.e., the employer ultimately being the best judge of who should be appointed. The choice was of respondent No. 2. who sought the assistance of an expert committee in view of the representation of some of the appellants. The eminence of the expert committee is apparent from its composition. That committee, after examination, opined in favour of the stand taken by the appellants, and respondent No. 2 as employer decided to concur with the same and accepted the committee's opinion. It is really not for the appellants or the contesting respondent to contend how and in what manner a degree should be obtained, which would make them eligible for appointment by respondent No. 2.

32. We hasten to add that it is not our view that an employer like respondent No. 2 can do as they please - they are guided and bound by the terms of the UGC Act and the regulations thereunder, but then here, there is no doubt about the M.Ed. degree being a post graduate degree, in view of not only what the UGC stated before us, but having promulgated the relevant Regulations as far back as 2010 as amended from time to time. The issue of equivalence has been rightly considered by the NCTE and while recognising some distinct aspects of two the degrees, it has clearly stated that for the job of Assistant Professors (Education), both are eligible.

33. We may notice that it is not as if a person with an M.Ed. degree is eligible for all the posts which were advertised for Science, Arts and others. Their eligibility has been found only for the post of Assistant Professor (Education), which is directly relatable to the subject to be taught. We do not think the fact that both M.Ed. and M.A. (Education) degree-holders have to take a common test for the purposes of NET is conclusive, but it is one of the factors to be considered, and once the expert body being the NCTE, inter alia, has taken that aspect into consideration apart from other factors to opine equivalence for the purpose of appointment to the post of Assistant Professor in Education, it would not be appropriate to take a contra view.

34. We say so in view of the fact that matters of education must be left to educationists, of course subject to being governed by the relevant statutes and regulations. It is not the function of this Court to sit as an expert body over the decision of the experts, especially when the experts are all eminent people as apparent from the names as set out. This aspect has received judicial imprimatur even earlier and it is not that we are saying something new. We may refer to the pronouncement in *Zahoor Ahmad Rather & Ors.*¹⁰ in this behalf which has dealt with the dual aspects: (a) it is for the employer to consider what functionality of qualification and content of course of studies would lead to the acquisition of an eligible qualification; and (b) such matters must be left to educationists.

35. We have also gone through the judgment in the *Dr. Prit Singh*¹¹ case. The impugned order of the High Court has almost been predicated entirely on this judgment, as if there was no issue alive to be dealt with, even though the distinction was recognised in a subsequent judgment of the *Dr. Ram Sevak Singh*¹² case. It is trite to say that often, a proposition of law as laid down in a case is as good as the facts of the case. The *Dr. Prit Singh*¹³ case was concerned with the dual requirements in the relevant advertisement, i.e., a post graduate degree in any subject and a supra supra supra degree in Education. There is no such dual qualification laid here. Not only that, the recruitment was for the post of a Principal and that too the case was concerned with a person with qualifications of not much eminence in terms of the marks obtained. There was an endeavour to help out the candidate by even amending the norms and, thus, the Court rightly came to the conclusion that the same was not appropriate. We are dealing with different norms for the concerned advertisement, a requirement of having a degree in the relevant subject, in this case being 'Education', and for eligible persons to have the requisite marks. We, thus, fail to understand how the judgment in the *Dr. Prit Singh*¹⁴ case can be considered a binding precedent in the factual contours of the present case, more so in view of the observations made in the *Dr. Ram Sevak Singh*¹⁵ case, clearly setting out as to what was the actual basis of the opinion in the *Dr. Prit Singh*¹⁶ case.

36. We may note that, sometimes, without looking into the real ratio decidendi, a judgment is followed as a precedent. This is what appears to have happened in the impugned order. There are even some other supra supra supra judgments of the High Courts, which in turn were then sought to be relied upon to canvas a proposition that there is a widespread acceptance of M.Ed. not being equivalent to M.A. (Education). That they are two different degrees is obvious; this is even recognised by the NCTE while emphasising the subtle distinction between the two degrees as one being a master's degree but not a professional degree, while the other being a professional degree. If the two degrees are identical, there is no question of equivalence. The issue of equivalence only arises when there are two different degrees and what is to be decided whether for certain purposes

they can be treated as equivalent. This is exactly what has happened as a result of the respective expert committees set up by respondent Nos. 2 &

5. The employer, i.e., respondent No. 2, had accepted the recommendation of the expert committee. The UGC has also taken a stand that insofar as the two degrees are concerned, both are post graduate degrees, and the equivalence authority being respondent No.5 has also opined on the basis of an expert committee, that the two can be treated as equivalent for the post of Assistant Professor in Education. Thus, it is neither for the contesting party, i.e., respondent No.3, nor for this Court to sit as a court of appeal over the decision of the experts. We may also note that respondent No.3 has in fact been selected in the 2014 selection process as per the final list released on 22.5.2018.

37. We are, thus, of the view that the impugned judgment is not sustainable and has to be set aside, and the challenge to the corrigendum dated 11.7.2016 is repelled. The result having already been computed and awaiting declaration should now be declared forthwith so that persons looking for employment, as per the requisite eligibility criteria, can be employed, and so that the students have the benefit of education from the persons so employed.

38. The appeal is accordingly allowed, leaving the parties to bear their own costs.

.....J. [Sanjay Kishan Kaul]J. [Aniruddha Bose]
.....J. [Krishna Murari] New Delhi.

October 12, 2020.

IN THE SUPREME COURT OF INDIA
CIVILAPPELLATE JURISDICTION

SUSHIL KUMAR PANDEY & ORS.

...Appellants

Versus

THE STATE OF UTTAR PRADESH & ORS

...Respondents

ORDER

SANJAY KISHAN KAUL, J.

1. This appeal, arising out of the order dated 14.5.2018 passed in Writ-A No. 61 of 2015, seeks to assail the recruitment process concerning Advertisement No. 46 of 2014, which in the appeal, being Civil Appeal No. 2850/2020, we have decided today, was given up by the counsel for the appellants. We are not inclined to open the whole selection process of 2014, which already stands completed and had a different advertisement. We have, thus, confined our judgment to the selection process of 2016.

2. In consequence of the aforesaid, this appeal is dismissed.

.....J. [Sanjay Kishan Kaul]J. [Aniruddha Bose]
.....J. [Krishna Murari] New Delhi.

October 12, 2020.