

CASE DETAILS

JAIVEER SINGH AND OTHERS

v.

THE STATE OF UTTARAKHAND AND OTHERS

(Civil Appeal No. 7871-7872 of 2023)

NOVEMBER 28, 2023

[B. R. GAVAI AND PRASHANT KUMAR MISHRA, JJ.]

HEADNOTES

Issue for consideration: Whether the High Court was justified in holding that 18 months Diploma in Elementary Education-D.El.Ed conducted by National Institute of Open Schooling-NIOS through Open and Distance Learning-ODL mode is equivalent to the 2 years regular Diploma in elementary education as required under the Notifications of National Council for Teacher Education-NCTE.

Right of Children to Free and Compulsory Education Act, 2009 – s. 23 – Qualifications for appointment and terms and conditions of service of teachers – Minimum qualifications for a person to be eligible for the appointment as teachers prescribed by National Council for Teacher Education-NCTE – Thereafter, issuance of Service Rules, 2012 and were amended time to time – Department of Higher Education-MHRD issued a letter directing that all the teachers in Government Schools must possess minimum qualifications as mandated and a last chance was given to all teachers to acquire the same till March 31, 2019 – Subsequently, NCTE issued a recognition order, thereby conducting Diploma in Elementary Education-D.El.Ed programme through Open and Distance Learning-ODL mode by National Institute of Open Schooling-NIOS which reduced the duration of diploma from 2 years to 18 months – Thereafter, an office order by NIOS directing its Regional Directors to implement D.El.Ed. course for training of Untrained In-service teachers – Subsequently, issuance of advertisement for posts of Assistant Teachers in Primary Schools – Minimum qualification for the post was 2 years Diploma in D.El.Ed.– In the meantime, order passed permitting the candidates who passed 18 months Diploma of NIOS to apply for the post of Assistant Teacher (primary) against the

vacancies issued – However, the said order was recalled – Writ petitions challenging the same – High Court held that the 18 months Diploma in D.El.Ed. conducted through the ODL mode in elementary education by the NIOS is a valid Diploma for applying to the post and that, in respect of the in-service teachers, who have undergone the 18 months D.El.Ed. programme cannot be discriminated by debarring them from their candidatures – Challenged to, by the candidates who are holding the 2 years diploma in elementary education:

Held: Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, it can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed – An authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules – However, instructions can be issued only to supplement the statutory rules but not to supplant it – NCTE recognition order was issued so as to give effect to the directives of MHRD so as to provide a one-time window to the teachers who were already working and who in terms of the 2017 Amendment Act were required to acquire the minimum qualifications prior to 01.04.2019 else would have faced dismissal from service – Said order, cannot be held to be a direction to the State to act in contravention of its 2012 Service Rules and the advertisements issued on the basis of such Service Rules – Finding of the High Court that the 18 months D.El. Ed. Diploma conducted by NIOS is equal to 2 years Diploma is erroneous – There is no notification to that effect issued by NCTE in supersession of its notifications providing minimum 2 years Diploma as a minimum qualification for appointment of teachers – NCTE, as an expert body, has a right to prescribe the minimum qualifications, and by the notifications, NCTE has done so – Thus, the impugned judgment and order passed by the High Court is quashed and set aside – Elementary Teachers Uttarakhand Government Elementary Education (Teacher) Service Rules, 2012. [Para 34-36, 41-43]

LIST OF CITATIONS AND OTHER REFERENCES

Sanjay Kumar Yadav and Others v. State of Bihar, CWJC No. 19842 of 2019; *Sri Raju Nama and Others v. The State of Tripura and Others*, WP(C)No. 87 of 2020 – disapproved.

Ram Sharan Maurya v. State of U.P., (2021) 5 SCC 401 – held inapplicable.

Employees' State Insurance Corporation v. Union of India and Others (2022) 11 SCC 392/ 2022 INSC 77; *State of Jammu and Kashmir and Others v. Ajay Dogra* (2011) 14 SCC 243 : [2011] 6 SCR 57; *Sureshkumar Lalitkumar Patel and Others v. State of Gujarat and Others* 2023 SCC OnLine SC 167; *S. Satyapal Reddy and Others v. Govt. of A.P. and Others* (1994) 4 SCC 391 : [1994] 3 SCR 934; *Devender Bhaskar and Others v. State of Haryana and Others* 2021 SCC OnLine SC 1116 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES
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CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.7871-7872 of 2023.

From the Judgment and Order dated 29.09.2022 in WPSS No.207 of 2021 and dated 14.09.2022 in WPSS No.350 of 2021 of the High Court of Uttarakhand at Nainital.

With

Civil Appeal No. 7873 of 2023.

Appearances:

Jatinder Kumar Sethi, D.A.G., U. K. Uniyal, Sr.Adv., Mrs. D. Bharathi Reddy, Nishant Sharma, Dinesh K. Garg, Abhishek Garg, Dhananjay Garg, Ishaan Tiwari, Ms. Ishita Bist, R.P. Bansal, Chanakya Gupta, Advs. for the Appellants.

V.K. Shukla, Ms. Meenakshi Arora, Salman Khurshid, Sr. Advs., Suryodaya Prakash Tiwari, Devendra Kumar Shukla, Ms. Shachi Pandey, Keshari Kumar Tiwari, Aditya Mishra, Ms. Nikita Anand, Suryodaya Prakash Tiwari, Ms. Shachi Pandey, Ashish Kumar Tiwari, Ms. Lubna Naaz, Ms. Tehsheena Z Hussain, Rajnish Kumar Jha, Ms. Manisha T. Karia, Ms. Nidhi Nagpal, Aditya Kesar, Aditya Kesar, Rohan Trivedi, Ms. Swapnil Baudh, Arun Kumar, Sarang Surendar Chowdhry, Shashank Surendar Chowdhry, Shivam Surendar Chowdhry, Rameshwar Prasad Goyal, Varinder Kumar Sharma, Shsntanu Sharma, Ms. Deeksha Gaur, Ms.

Parul Sharma, Fuzail Ahmad Ayyubi, Ibad Mushtaq, Ms. Akanksha Rai, Sumeer Sodhi, Dhruv Wadhwa, Ghanshyam Singh, Sonit Sinhmar, Rajnish Kumar Jha, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

B. R. GAVAL, J.

1. Leave granted.

2. These appeals challenge the common judgment and order dated 14th September 2022 passed by the High Court of Uttarakhand at Nainital in a bunch of writ petitions which were filed challenging the order dated 10th February 2021 issued by the Secretary, Department of Elementary Education, Uttarakhand, Dehradun vide which he recalled his earlier order dated 15th January 2021. The High Court, vide the impugned judgment and order, held that the 18 months Diploma in Elementary Education (for short, “D.El. Ed.”) conducted through the Open and Distance Learning (for short, ‘ODL’) mode in elementary education by the National Institute of Open Schooling (hereinafter referred to as ‘NIOS’) is a valid Diploma for applying against the regular posts of Assistant Teachers (Primary) in the State of Uttarakhand. The High Court therefore directed the State to consider the candidatures of the petitioners therein for the said post on the basis of the applications made by them pursuant to the advertisement issued by the Department of Elementary Education, Government of Uttarakhand, Dehradun.

3. Appeals arising out of SLP(C) Nos. 23583-84 of 2022 are filed by the candidates who are holding the 2 years diploma in elementary education whereas appeal arising out of SLP (C) No. 23943 of 2022 is filed by the State of Uttarakhand.

4. Facts in brief giving rise to the present appeals are as under:

4.1 On 27th August 2009, the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as “RTE Act”) was notified. Sub-section (1) of Section 23 of the RTE Act provided that any person possessing such minimum qualifications, as laid down by an academic authority, authorized by the Central Government, by notifications, shall be eligible for appointment as a teacher. Sub-section (2) thereof enables

the Central Government, if it deems necessary, by notification, to relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years. The first proviso to sub-section (2) thereof 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. The second proviso to sub-section (2) thereof, which was added by Act 24 of 2017, further provided that a teacher appointed or in position as on the 31st March 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017 (hereinafter referred to as “2017 Amendment Act”).

4.2 The Central Government, through Ministry of Human Resource Development, Department of School Education & Literacy (hereinafter referred to as “MHRD”), vide notification dated 31st March 2010 authorized the National Council for Teacher Education (for short, “NCTE”) as the academic authority for laying down the minimum qualifications for a person to be eligible for appointment as a teacher.

4.3 NCTE, vide notification dated 23rd August 2010, prescribed minimum qualifications for a person to be eligible for appointment as a teacher for Class I to VIII.

4.4 In the year 2012, Government of Uttarakhand promulgated Uttarakhand Government Elementary Education (Teacher) Service Rules 2012 (hereinafter referred to as “2012 Service Rules”) by invoking powers conferred under Section 58 of the Uttarakhand School Education Act, 2006. The 2012 Service Rules prescribed minimum eligibility criteria for appointment to the post of Assistant Teachers in Government Elementary Schools in the State of Uttarakhand. The 2012 Service Rules were amended from time to time.

4.5 On 12th November 2014, NCTE notified National Council for Teacher Education (Determination of Minimum Qualifications for Persons to be Recruited as Education Teachers and Physical Education Teachers in Pre-Primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations 2014 (hereinafter referred

to as “2014 Regulations”). The 2014 Regulations were in supersession of all earlier Regulations.

4.6 In view of the provisions of the second proviso to sub-section (2) of Section 23 of the RTE Act, MHRD 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 31st March 2019.

4.7 NCTE issued a recognition order dated 22nd September 2017, thereby 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 Aided and Unaided Private Schools. The said recognition order also reduced duration of diploma from 2 years to 18 months.

4.8 MHRD, vide its letter dated 11th October 2017, directed NIOS and the State Governments to sign a Memorandum of Understanding (for short, “MoU”) enclosed with that letter.

4.9 On 16th February 2018, NIOS issued an office order thereby directing its Regional Directors to implement D.El.Ed. course for training of Untrained In-service Elementary Teachers.

4.10 It appears that the High Court of Patna had passed a judgment on 21st January 2020 in the case of *Sanjay Kumar Yadav and Others v. State of Bihar*¹, holding that the Director, Primary Education, NCTE has illegally issued direction that the persons, who had obtained D.El.Ed. course for 18 months by NIOS, are not eligible for appointment on the post of teachers in Primary Schools. It held that the said direction of the Director, Primary Education, NCTE was issued on misrepresentation and misreading of the clarification issued by NCTE. A similar view was taken by the High Court of Tripura in its judgment dated 12-13th March 2020 in the case of *Sri Raju Nama and Others v. The State of Tripura and Others*².

1 CWJC No. 19842 of 2019

2 WP(C) No. 87 of 2020

4.11 On 29th December 2020, the State of Uttarakhand has issued District-Wise Advertisements for the post of Assistant Teachers in Primary Schools. The said Advertisements were issued in accordance with the 2012 Service Rules (as amended from time to time).

4.12 In the meantime, NCTE issued a letter dated 6th January 2021 to the Chief Secretaries of all the States and Union Territories mentioning therein that NCTE decided to accept the verdict of the High Court of Patna in the case of *Sanjay Kumar Yadav* (supra) and requested to consider all those candidates who have completed D.El.Ed. course of NIOS through ODL mode. It further requested that they may be given an opportunity to apply for fresh recruitment at par with other D.El.Ed. candidates subject to adherence to all other criteria and qualification requirements.

4.13 In pursuance of the said letter of NCTE, the Secretary, Government of Uttarakhand issued a letter dated 15th January 2021 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 Teacher (Primary) against vacancies issued through District-Wise Advertisements. However, shortly thereafter, realizing that, in the 2012 Service Rules (as amended from time to time), the 18 months D.El.Ed. Diploma through ODL mode from NIOS was not recognized as a minimum qualification for eligibility, it issued a communication dated 10th February 2021 withdrawing its earlier letter dated 15th January 2021.

4.14 The aforesaid letter dated 10th February 2021 came to be challenged in a bunch of writ petitions before the High Court. Vide order dated 3rd March 2021, the High Court directed that the impugned letter dated 10th February 2021 be kept in abeyance till next date of hearing. The said order was modified by the High Court on 1st September 2021 allowing the selection process to continue subject to final outcome of writ petitions.

4.15 Vide the impugned judgment and order, the High Court held that 18 months D.El.Ed. Training Diploma conducted through the ODL mode in elementary education by NIOS cannot be said to be a lower or inferior qualification as compared with the 2 years D.El.Ed. programme. It held that, in respect of the in-service teachers, who have undergone the 18 months D.El.Ed. programme conducted by NIOS through ODL mode, the State Government cannot discriminate by debarring them from offering their

candidatures for the post of Assistant Teachers (Primary) in the State of Uttarakhand. As such, it quashed and set aside the letter dated 10th February 2021 issued by the Government of Uttarakhand. Being aggrieved thereby, the present appeals.

5. We have heard Mr. Jatinder Kumar Sethi, Deputy Advocate General appearing on behalf of the State of Uttarakhand, Mr. U.K. Uniyal, learned Senior Counsel appearing on behalf of the appellants in appeals arising out of SLP(C) Nos. 23583-84 of 2022, and Ms. Meenakshi Arora, Mr. V.K. Shukla and Mr. Salman Khurshid, learned Senior Counsel appearing on behalf of the candidates who have completed 18 months diploma in elementary education. We have also heard Mr. Sumeer Sodhi, learned counsel appearing on behalf of the interveners supporting the judgment of the High Court and Ms. Manisha T. Karia, learned counsel appearing on behalf of NCTE.

6. Mr. Uniyal, on behalf of the appellants, has submitted that the 2014 Regulations clearly provide that the 2 years Diploma in Elementary Education was an essential qualification for appointment of teachers for Class I to VIII. It is further submitted that under Clause 4 of the 2014 Regulations, power is granted to NCTE to relax some of the provisions of the Regulations for such time period and subject to such conditions and limitations as it may consider necessary. It further provides that no relaxation would be granted under the Regulations with regard to minimum qualifications for appointment of teachers for Level 3 (Class I to VIII) as specified in the First Schedule. It is further submitted that NCTE recognition order dated 22nd September 2017 for conducting D.El.Ed. programme by NIOS through ODL mode through the SWAYAM portal of the MHRD was only for the in-service Untrained Teachers at elementary level working in Government, Government Aided and Unaided Private Schools appointed on or before 10th August 2017. It is submitted that this is clear from the communication of NCTE dated 6th September 2019. It is further submitted that the said communication itself would clarify that insofar as minimum qualifications for appointment of teachers is concerned, it will be necessary to possess a 2 years Diploma in Elementary Education.

7. Mr. Sethi, on behalf of the State, specifically submitted that a qualification of 2 years Diploma in Elementary Education was specifically prescribed by NCTE in exercise of its powers under Section 23 read with

Section 2(j) of the RTE Act. It is submitted that the State has accordingly duly framed 2012 Service Rules in conformity with the prescribed statutory qualifications. By an executive instruction dated 6th January 2021, NCTE cannot direct the State Government to amend or override a statutory regulation. Reliance in this respect is placed on the judgment of this Court in the case of *Employees' State Insurance Corporation v. Union of India and Others*³.

8. Mr. Sethi further submitted that neither the Statutory Rules nor the Advertisement prescribing minimum qualification of 2 years Diploma in Elementary Education were challenged by any of the appellants. The original writ petitioners only sought a mandamus to permit them to be also considered for appointment *de-hors* the stipulations in the advertisement. It is submitted that such a mandamus could not have been issued which is contrary to the minimum qualifications prescribed under the Statutory Rules and the Advertisement. Reliance in this respect is placed on the judgment of this Court in the case of *State of Jammu and Kashmir and Others v. Ajay Dogra*⁴.

9. Mr. Sethi further submitted that once an advertisement was issued and the selection process was set in motion on the basis of 2012 Service Rules and the Advertisement prescribing minimum qualifications, a mandamus could not have been issued to change the essential stipulations. Reliance in this respect is placed on the judgment of this Court in the case of *Sureshkumar Lalitkumar Patel and Others v. State of Gujarat and Others*⁵.

10. Mr. Sethi further submitted that the High Court erred in doing the exercise of equalizing 18 months Diploma with 2 years Diploma. It is submitted that such an exercise was beyond the scope of the powers of judicial review of the High Court under Article 226 of the Constitution of India.

11. Per contra, Ms. Arora, on behalf of the candidates who have completed 18 months diploma in elementary education, submitted that once the State Government had issued a communication dated 15th January

3 (2022) 11 SCC 392/2022 INSC 77

4 (2011) 14 SCC 243/2011 INSC 281

5 2023 SCC OnLine SC 167/2023 INSC 145

2021 permitting the candidates who have obtained Diploma of 18 months duration through ODL mode from NIOS to participate in the selection process, it was not permissible for the State to withdraw the same vide communication dated 10th February 2021. It is submitted that the decision of the State Government taken in letter dated 10th February 2021 is patently arbitrary. It is submitted that once the 18 months Diploma through ODL mode by NIOS was recognized by NCTE which is a competent authority, the State could not have discriminated amongst the candidates who were having Diploma through a regular 2 years course or 18 months course through ODL mode. It is submitted that the said would amount to creating an artificial discrimination amongst the Diploma Holders when both of them are duly recognized by NCTE. It is submitted that once the candidates have possessed a Diploma duly recognized by NCTE, they are eligible to participate in the selection process.

12. Mr. Khurshid, on behalf of the candidates who have completed 18 months diploma in elementary education, submitted that the court will have to apply the principle of purposive interpretation. He submitted that making a special provision for 18 months Diploma through ODL mode by NIOS was for the purpose of providing a qualification to the Untrained Teachers who were already working. Once they have acquired that qualification, all the parties become equal and it is not permissible to discriminate between the candidates who have completed 18 months diploma and the candidates who have acquired 2 years Diploma. It is submitted that the court will have to invoke the principle of implied equivalence. It is submitted that otherwise the very purpose would be frustrated.

13. Mr. Shukla, on behalf of the candidates who have completed 18 months diploma in elementary education, submitted that NCTE is a competent authority having the final word in the matter. It is submitted that once NCTE, vide its communication dated 6th January 2021 had decided to accept the verdict of the High Court of Patna in the case of *Sanjay Kumar Yadav* (supra) and directed the candidates who have completed D.El.Ed. course of NIOS through ODL mode to apply for fresh recruitment, the State could not have acted contrary to the same.

14. Ms. Karia, on behalf of NCTE, submitted that the High Court has rightly allowed the writ petitions. It is submitted that the recognition order

dated 22nd September 2017 was issued by NCTE in exercise of its powers under Section 14(3)(a) and 15(3)(a) of the National Council for Teacher Education Act, 1993 (hereinafter referred to as “NCTE Act”) and Clause 7(6) of the NCTE (Recognition Norms and Procedure) Regulations, 2014 for D.El.Ed. programme vide which it granted recognition for the course of 18 months including 6 months internship, for the teachers appointed on or before 10th August 2017. She submitted that the said order was issued as per the direction of the Central Government received under Section 29 of the NCTE Act which was binding upon NCTE. She submitted that the order was issued to enable acquisition of minimum qualification and training of around 11 lakhs in-service Untrained Teachers by 31st March 2019 all over India so as to implement 2017 Amendment Act. Reliance in this respect is placed on the judgment of this Court in the case of *Ram Sharan Maurya v. State of U.P.*⁶.

15. In support of her proposition, Ms. Karia submitted that NCTE was entitled to provide for the qualifications for appointment of teachers and once it had issued the recognition order dated 22nd September 2017 providing for D.El.Ed. programme to be conducted by NIOS through ODL mode, the diplomas granted were at par with the candidates who had undergone 2 years course. It is therefore submitted that the impugned judgment and order warrants no interference.

16. For considering the rival submissions, it will be relevant to refer to Section 23 of the RTE Act, which reads thus:

“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

6 (2021) 5 SCC 401/2020 INSC 646

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:

[Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017.]

(3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed.”

17. It could thus be seen from sub-section (1) of Section 23 of the RTE Act that a person, to be eligible for appointment as a teacher, must possess such minimum qualifications, as laid down by an academic authority, authorised by the Central Government. Sub-section (2) thereof permits the Central Government to relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification. This can be done 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. However, the first proviso to sub-section (2) thereof provides 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.

18. Through 2017 Amendment Act, a second proviso was added to sub-section (2) of Section 23 of the RTE Act with retrospective effect from 1st April 2015. It provides that every teacher appointed or in position as on 31st March 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the 2017 Amendment Act.

19. It can further be seen that in exercise of powers conferred under sub-section (1) of Section 23 of the RTE Act, the Central Government authorised NCTE as an academic authority to lay down the minimum qualifications for a person to be eligible for appointment as a teacher. Accordingly, NCTE issued a notification on 23rd August 2010 prescribing the minimum qualifications. The said notification came to be amended by notification dated 29th July 2011. Undisputedly, the said notification was issued by NCTE in exercise of its powers under sub-section (1) of Section 23 of the RTE Act.

20. The Government of Uttarakhand, vide notification dated 28th August 2012, notified the 2012 Service Rules. The minimum qualifications provided under the 2012 Service Rules was 2 years Diploma in Elementary Education (D.El.Ed.) known as B.T.C. in Uttarakhand from the concerned District Institute of Education and Training/District Resource Centre. The said 2012 Service Rules were amended in the year 2014. However, insofar as the requirement of 2 years D.El.Ed. course is concerned, it remained the same.

21. NCTE, in exercise of powers conferred under Clause (dd) of sub-section (2) of Section 32 read with Section 12A of the NCTE Act, notified 2014 Regulations providing for minimum qualifications. Insofar as Class I to VIII are concerned, the minimum qualifications as provided in the earlier notifications remained the same.

22. As discussed hereinabove, the second proviso to sub-section (2) of Section 23 of the RTE Act was inserted by 2017 Amendment Act, however, with retrospective effect from 1st April 2015. As such, the teachers, who were appointed or in position as on 31st March 2015, were required to acquire the requisite qualifications within a period of 4 years from 1st April 2015. The communication dated 3rd August 2017 addressed by the Additional Secretary, MHRD will clarify the position, which reads thus:

“This is regarding training of untrained in-service elementary teachers in the Govt./Govt. Aided/Unaided-Private Schools. It is apprised that the Amendment to the Section 23 (2) of the RTE Act to extend the period for such training to 31st March, 2019 has been passed by the Parliament.

2. Further, it is reiterated that this will be the last chance to acquire the requisite minimum professional qualifications. Any teacher in the

aforementioned schools, who does not have the minimum qualifications mandated under the RTE Act, 2009, would not be allowed to continue in-service beyond 1st April, 2019, and procedure for dismissal shall be initiated against such teachers.”

23. It is thus clear that all such teachers working in either Government/ Government Aided/Unaided Private Schools, were required to acquire the minimum qualifications by 31st March 2019 or they would face dismissal from service. It appears that it was decided by the Central Government to provide a window for all such teachers. A perusal of the said communication would reveal that various directions were issued so that lakhs of teachers, who were untrained, get the requisite qualifications prior to 1st April 2019. The communication addressed by the Director, Elementary Education, Uttarakhand dated 8th September 2017 to the Chief Education Officer and District Education Officer, Uttarakhand would further clarify this position.

24. It appears that, in furtherance of the directions issued by MHRD, NCTE issued recognition order on 22nd September 2017. It will be relevant to refer to the Preamble of the said recognition order, which reads thus:

“WHEREAS, the matter of recognition of the Project Proposal of National Institute of Open Schooling (NIOS) Noida for D.El.Ed. (ODL) programme through SWAYAM Portal of MHRD for training of in-service untrained teachers was considered by NRC and NRC over served as follows –

AND WHEREAS, the NCTE has received directions under Section 29 of the NCTE Act, 1993 from the Ministry of Human Resource Development vide their letters no. 11-15/2017-EE-10 dated 21.08.2017 and 04.09.2017. The project proposal for recognition of Diploma in Elementary Education (D.El.Ed.) programme through ODL mode has been submitted by National Institute of Open Schooling (NIOS) to NCTE Headquarter). The proposal is for conducting on line D.El. Ed. programme through the SWAYAM portal of the Ministry of HRD for the in- service untrained teachers at elementary level working in Government/ Government aided and unaided private schools in the country.

AND WHEREAS, the said project proposal has been considered by an expert committee constituted by NCTE vide order 131 dated 19-09-

2017. The Committee considered the project and found that the NIOS is adequately prepared to conduct the programme and the curriculum proposed therein meets the requirement of the D.El.Ed. (ODL)

AND WHEREAS, In view of above mentioned directions of the Ministry of Human Resource Development under Section-29 of the NCTE Act, 1993 and after considering the recommendation of the Expert Committee, Chairperson NCTE in exercise of his powers under clause 12 of the NCTE (Recognition Norms and Procedure) Regulations, 2014 -granted relaxation vide NCTE Hqrs letter no. NCTE-Regul011/66/2017-US (Regulation)- HQ dated 21-09-2017 & letter dated 22.09.2017 to the following provisions in the NCTE Regulations-2014 for ensuring that the directives of the MHRD for implementing the amendment to the RTE Act, 2009 are duly fulfilled.”

25. It is thus clear that the said recognition order was issued so that the directives of MHRD for implementing the 2017 Amendment Act were duly fulfilled. It appears that since the time-gap between the directions issued by MHRD and 31st March 2019 was only about 18 months, the period of course was reduced from 2 years to 18 months. This position would be clarified from the said recognition order itself, which reads thus:

“II. Any provision related to the duration of the Programme so as to reduce it to 18 months instead of 2 years and the requirement of 6 months internship to be subsumed within the duration of 18 months”

26. The letter dated 11th October 2017 addressed by the Additional Secretary, MHRD to the Secretaries to the State Governments would further clarify this position. Around 12,91,880 in-service elementary teachers had registered and made payment on the NIOS portal as on 30th September 2017. It is also clear from the said communication that the said course was exclusively made for ensuring that only in-service elementary teachers are registered for D.El.Ed. course.

27. It is further to be noted that a communication was addressed by the Additional Chief Secretary, Education Department, Government of Bihar seeking clarification with regard to appointment of Primary Teachers possessing D.El.Ed. (ODL) qualification from NIOS. It will be relevant to refer to the reply of NCTE dated 6th September 2019, which reads thus:

“I am directed to refer to your letter dated 29-08-2019 on the subject noted above and to say that your representation regarding appointment of primary teachers qualified with D.El.Ed. (ODL) from NIOS has been examined. The primary notifications are those dated 23-08-2010 and 29-07-2011 (determination of minimum qualifications for appointment of teachers, Appendix-9 and the order dated 22-09-2017 issued from NRC, NCTE to NIOS granting recognition to D.El.Ed. (ODL) Programme. The following points are inferred from the above notifications (copies enclosed).

- I. As per the NCTE Notification dated 23-08-2010 and 29-07-2011 one of the minimum qualification for appointment of teachers for class I-V and VI- VIII is two year Diploma in Elementary Education (emphasis added).
 - II. As per the NRC NCTE order dated 22-09-2017 the D.El.Ed. (ODL) programme of NIOS is only for those un-trained in-service teachers in Govt./Govt. aided/private unaided schools appointed on or before 10-08-2017. The duration of this programme is 18 months (emphasis added).
2. Hence for the fresh appointment of teachers for primary and upper ‘primary level, the notification dated 23-08-2010 and 29-07-2011 need to be strictly adhered to TET is also a mandatory requirement.”

28. It can thus clearly be seen that as on 6th September 2019, it is also the view of the NCTE that the minimum qualifications for appointment of teachers for Class I to VIII is a 2 years Diploma in Elementary Education. It further clarifies that NCTE recognition order dated 22nd September 2017 was only for those untrained in-service teachers in Government/Government Aided/Unaided Private Schools, who were appointed on or before 10th August 2017. It further clarifies that for fresh appointment of teachers for Primary and Upper Primary level, NCTE notifications dated 23rd August 2010 and 29th July 2011 need to be strictly adhered to. It is further to be noted that whereas notifications dated 23rd August 2010 and 29th July 2011 specifically refer to powers conferred under sub-section (1) of Section 23 of the RTE Act, NCTE recognition order dated 22nd September 2017 refers only to the directives issued by MHRD under Section 29 of the NCTE Act.

29. It is thus clear that the entire scheme was for the purpose of providing a window to the in-service teachers inasmuch as unless they would have acquired requisite qualifications prior to 1st April 2019, they could not have continued to remain in service and would have faced dismissal from service. As such, we find that the High Court has erred in holding that the 18 months Diploma conducted by NIOS through ODL mode is equivalent to 2 years Diploma as provided in the notifications of NCTE dated 23rd August 2010 and 29th July 2011.

30. In the impugned judgment and order, the High Court has relied on the judgments of the High Court of Patna in the case of *Sanjay Kumar Yadav* (supra) and High Court of Tripura in the case of *Sri Raju Nama* (supra). It is to be noted that, in the judgment of the High Court of Patna, though a reference has been made to the communication addressed by NCTE to the Additional Chief Secretary, Bihar, it brushed aside the said communication on the ground that it is nowhere mentioned that the said course cannot be treated at par with the 2 years training course. In the absence of a specific order of NCTE granting equivalence to the 18 months course with the 2 years course, in our view, the High Court has totally erred in finding that since the said communication does not mention non-equivalence, it would be deemed to be equivalent.

31. We find that the High Court of Patna has totally erred in not giving effect to the stand of NCTE. As a matter of fact, we fail to understand as to why NCTE did not challenge the said order when its specific stand that the said 18 months course was only for in-service candidates and not applicable to fresh ones was rejected by the High Court. We also fail to understand as to why *vide* communication dated 6th January 2021, NCTE decided to accept the said judgment of the High Court of Patna.

32. Insofar as the High Court of Tripura is concerned, it again relies on the judgment of the High Court of Patna in the case of *Sanjay Kumar Yadav* (supra). We therefore find that the views taken by both the High Court of Patna and the High Court of Tripura were not correct in law.

33. We further find that the 2012 Service Rules as framed by the State of Uttarakhand were framed on the basis of notifications issued by NCTE on 23rd August 2010 and 29th July 2011. These 2012 Service Rules were amended from time to time and as existing on the date of advertisement, they

specifically provide for a 2 years D.El.Ed. course known as B.T.C. training in the State of Uttarakhand as a minimum qualification. It also provided that a person to be eligible to apply for the said post must have completed 2 years D.El.Ed. course from NIOS and qualified Teacher Eligibility Test (TET) or who has completed 2 years D.El.Ed. course from any other Institute recognized by NCTE and qualified TET. The advertisements issued by various District Education Officers also provided the same qualifications. It can thus be seen that acquiring of 2 years Diploma in Elementary Education was a minimum qualification as prescribed under the statutory Rules. It will be apposite to refer to the following observations of this Court in the case of *Employees' State Insurance Corporation* (supra), wherein this Court has referred to its earlier judgments including that of a Constitution Bench:

“15. A Constitution Bench in *Sant Ram Sharma v. State of Rajasthan* [*Sant Ram Sharma v. State of Rajasthan*, AIR 1967 SC 1910 : (1968) 1 SCR 111] considered the applicability of the letters issued by the Government of India detailing the administrative practice for promotions, against the Indian Police Service (Regulation of Seniority) Rules, 1954. The Constitution Bench held that : (AIR p. 1914, para 7)

“7. We proceed to consider the next contention of Mr N.C. Chatterjee that in the absence of any statutory rules governing promotions to selection grade posts the Government cannot issue administrative instructions and such administrative instructions cannot impose any restrictions not found in the Rules already framed. We are unable to accept this argument as correct. It is true that there is no specific provision in the Rules laying down the principle of promotion of junior or senior grade officers to selection grade posts. But that does not mean that till statutory rules are framed in this behalf the Government cannot issue administrative instructions regarding the principle to be followed in promotions of the officers concerned to selection grade posts. *It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.*”

(emphasis supplied)

16. In *Union of India v. Ashok Kumar Aggarwal* [*Union of India v. Ashok Kumar Aggarwal*, (2013) 16 SCC 147 : (2014) 3 SCC (L&S) 405] a two-Judge Bench of this Court speaking in the context of service regulations governing a departmental enquiry reiterated that an office order or office memorandum cannot contravene statutory rules. B.S. Chauhan, J. noted the position in law in the following terms : (SCC p. 172, para 59)

“59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide Union of India v. Majji Jangamayya [Union of India v. Majji Jangamayya, (1977) 1 SCC 606 : 1977 SCC (L&S) 191] , P.D. Aggarwal v. State of U.P. [P.D. Aggarwal v. State of U.P., (1987) 3 SCC 622 : 1987 SCC (L&S) 310] , Paluru Ramkrishnaiah v. Union of India [Paluru Ramkrishnaiah v. Union of India, (1989) 2 SCC 541 : 1989 SCC (L&S) 375] , C. Rangaswamaiah v. Karnataka Lokayukta [C. Rangaswamaiah v. Karnataka Lokayukta, (1998) 6 SCC 66 : 1998 SCC (L&S) 1448] and Joint Action Committee of Air Line Pilots’ Assn. of India v. DG of Civil Aviation [Joint Action Committee of Air Line Pilots’ Assn. of India v. DG of Civil Aviation, (2011) 5 SCC 435] .)”

(emphasis supplied)

17. In *P.D. Aggarwal v. State of U.P.* [*P.D. Aggarwal v. State of U.P.*, (1987) 3 SCC 622 : 1987 SCC (L&S) 310] a two-Judge Bench of this Court declined to grant primacy to an office memorandum issued by the Government of Uttar Pradesh which purportedly amended the method of recruitment of Assistant Civil Engineers in the U.P. Public Service Commission without amending the relevant regulations. The Court held : (SCC p. 640, para 20)

“20. The office memorandum dated 7-12-1961 which purports to amend the United Provinces Service of Engineers (Buildings and Roads Branch) Class II Rules, 1936 in our opinion cannot

override, amend or supersede statutory rules. This memorandum is nothing but an administrative order or instruction and as such it cannot amend or supersede the statutory rules by adding something therein as has been observed by this Court in Sant Ram Sharma v. State of Rajasthan [Sant Ram Sharma v. State of Rajasthan, AIR 1967 SC 1910 : (1968) 1 SCR 111] . Moreover the benefits that have been conferred on the temporary Assistant Engineers who have become members of the service after being selected by the Public Service Commission in accordance with the service rules are entitled to have their seniority reckoned in accordance with the provisions of Rule 23 as it was then, from the date of their becoming member of the service, and this cannot be taken away by giving retrospective effect to the Rules of 1969 and 1971 as it is arbitrary, irrational and not reasonable.”

(emphasis supplied)”

34. It can thus be seen that it is a trite law that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, it can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed. It is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it.

35. As already discussed hereinabove, NCTE recognition order dated 22nd September 2017 was issued so as to give effect to the directives of MHRD dated 8th September 2017 so as to provide a one-time window to the teachers who were already working and who in terms of the 2017 Amendment Act were required to acquire the minimum qualifications prior to 1st April 2019. The said order, in any case, cannot be held to be a direction to the State of Uttarakhand to act in contravention of its 2012 Service Rules and the advertisements issued on the basis of such Service Rules.

36. We further find that the finding of the High Court that the 18 months D.El.Ed. Diploma (ODL) course in Elementary Education conducted by NIOS is equal to 2 years Diploma is erroneous. There is no notification to that effect issued by NCTE in supersession of its notifications dated 23rd

August 2010 and 29th July 2011, wherein it provided minimum 2 years Diploma as a minimum qualification for appointment of teachers. At the cost of repetition, we clarify that the notifications dated 23rd August 2010 and 29th July 2011 of NCTE, were issued in exercise of its powers conferred under Section 23(1) of the RTE Act whereas recognition order dated 22nd September 2017 order was passed in pursuance of the directions issued by MHRD under Section 29 of the NCTE Act.

37. Assuming for a moment that the 18 months D.El.Ed. Diploma by NIOS through ODL mode is equivalent to the 2 years Diploma in Elementary Education recognized under the notifications of NCTE dated 23rd August 2010 and 29th July 2011, the next question that has to be answered is, can the State be prohibited from prescribing the minimum qualifications which is higher than that. A similar question arose for consideration in the case of *S. Satyapal Reddy and Others v. Govt. of A.P. and Others*⁷, wherein this Court observed thus:

“7.The Governor has been given power under proviso to Article 309 of the Constitution, subject to any law made by the State Legislature, to make rules regulating the recruitment which includes prescription of qualifications for appointment to an office or post under the State. Since the Transport Department under the Act is constituted by the State Government and the officers appointed to those posts belong to the State service, while appointing its own officers, the State Government as a necessary adjunct is entitled to prescribe qualifications for recruitment or conditions of service. **But while so prescribing, the State Government may accept the qualifications or prescribe higher qualification but in no case prescribe any qualification less than the qualifications prescribed by the Central Government under sub-section (4) of Section 213 of the Act.....”**

[emphasis supplied]

38. We therefore find that the High Court has erred in directing the State Government to consider the candidates who did not qualify as per the 2012 Service Rules and as per the advertisement based on the Service Rules, particularly when the 2012 Service Rules and the advertisements were not

7 (1994) 4 SCC 391/1994 INSC 196

under challenge. The High Court, in our view, could not have issued such a mandamus contrary to such Service Rules.

39. That leaves us with the question as to whether the High Court was justified in holding that the 18 months Diploma conducted by NIOS through ODL mode is said to be equivalent to the 2 years Diploma as required under the notifications of NCTE dated 23rd August 2010 and 29th July 2011.

40. It will be relevant to refer to the observations of this Court in the case of *Devender Bhaskar and Others v. State of Haryana and Others*⁸, which read thus:

“21. In *Mohammad Shujat Ali v. Union of India*, (1975) 3 SCC 76 it was held that the question regarding equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications. It was further held that where the decision of the Government is based on the recommendation of an expert body, then the Court, uninformed of relevant data and unaided by technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government unless it is based on extraneous or irrelevant considerations or actuated *mala fides* or is irrational and perverse or manifestly wrong.

22. In *J. Ranga Swamy v. Government of Andhra Pradesh*, (1990) 1 SCC 288 this Court held that it is not for the court to consider the relevance of qualification prescribed for various posts.

23. In *State of Rajasthan v. Lata Arun*, (2002) 6 SCC 252 this Court held that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It was held thus:

“13. From the ratio of the decisions noted above, it is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It is not for courts to decide whether a particular educational qualification should

or should not be accepted as equivalent to the qualification prescribed by the authority.”

24. In *Guru Nanak Dev University v. Sanjay Kumar Katwal*, (2009) 1 SCC 610 this Court has reiterated that equivalence is a technical academic matter. It cannot be implied or assumed. Any decision of the academic body of the university relating to equivalence should be by a specific order or resolution, duly published. Dealing specifically with whether a distance education course was equivalent to the degree of MA (English) of the appellant university therein, the Court held that no material had been produced before it to show that the distance education course had been recognized as such.

25. In *Zahoor Ahmad Rather v. Sheikh Imtiyaz Ahmad* (2019) 2 SCC 404, it was held that the State, as an employer, is entitled to prescribe qualifications as a condition of eligibility, after taking into consideration the nature of the job, the aptitude required for efficient discharge of duties, functionality of various qualifications, course content leading up to the acquisition of various qualifications, etc. Judicial review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the prescribed qualifications with any other given qualification. Equivalence of qualification is a matter for the State, as recruiting authority, to determine.

26. Having regard to the above, in our view, the High Court has erred in holding that the diploma/degree in Art and Craft given by the Kurukshetra University is equivalent to two-year Diploma in Art and Craft examination conducted by the Haryana Industrial Training Department or diploma in Art and Craft conducted by Director, Industrial Training and Vocational Education, Haryana.”

41. In view of what has been held by this Court hereinabove, we find that the High Court erred in holding that 18 months Diploma conducted by NIOS through ODL mode is equivalent to the 2 years regular Diploma, particularly so, when there was no material placed on record to even remotely hold that such a qualification was recommended by the Expert Body NCTE. On the contrary, the communication dated 6th September 2019 of NCTE, the directives of MHRD so also the recognition order dated 22nd September 2017 clearly go on to show that the 18 months Diploma was provided as a one

time window to the in-service teachers to acquire the minimum qualifications between the 2017 Amendment Act and the outer limit of 1st April 2019. In our considered view, the High Court has totally erred in holding that the 2 years Diploma is equivalent to 18 months Diploma.

42. That leaves us with the reliance placed by the learned counsel for NCTE on the judgment of this Court in the case of *Ram Sharan Maurya* (supra). There can be no doubt that NCTE, as an expert body, has a right to prescribe the minimum qualifications. In the present case itself, by notifications dated 23rd August 2010 and 29th July 2011, NCTE has done so. As already discussed hereinabove, recognition order dated 22nd September 2017 only provides a window for in-service teachers to complete their course prior to 1st April 2019. As such, the said judgment does not apply to the present case.

43. In the result, we pass the following order:

- (i) The appeals are allowed;
- (ii) The impugned judgment and order dated 14th September 2022 passed by the High Court of Uttarakhand at Nainital is quashed and set aside; and
- (iii) The writ petitions filed by the original writ petitioners are dismissed.

44. Pending application(s), if any, shall stand disposed of in the above terms.