

Soumen Paul vs Shrabani Nayek on 4 April, 2025

Author: Pamidighantam Sri Narasimha

Bench: Pamidighantam Sri Narasimha

2025 INSC 451

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. _____ OF 2025
ARISING OUT OF SLP (C) No. 12660 OF 2023
SOUMEN PAUL & ORS. ...APPELLANT(S)

VERSUS

SHRABANI NAYEK & ORS. ...RESPONDENT(S)

WITH
CIVIL APPEAL NO. _____ OF 2025
ARISING OUT OF SLP (C) No. _____ OF 2025
ARISING OUT OF DIARY NO. 25090/2023

WITH
CIVIL APPEAL NO. _____ OF 2025
ARISING OUT OF SLP (C) No. 25324 OF 2023

JUDGMENT

PAMIDIGHANTAM SRI NARASIMHA, J.

1. Leave Granted.

2. The issue involved in this case relates to the appointments to the post of assistant teachers in primary schools in the State of West Bengal. This post is governed by the West Bengal Primary School Teachers Recruitment Rules, 2016,¹ and the qualifications for appointment to the said post are prescribed in Rule 6 which is extracted below for ready reference:

“6. Qualifications.— (1) No person shall be appointed by the Council as a teacher unless he is a citizen of India and has completed the age of 18 years as on 1st day of January of the year of advertisement and has not completed the age of 40 years on the 1st day of January of the year of advertisement as specified in sub-rule (3).

(2) The candidate shall possess the minimum educational qualifications specified by the National Council for Teacher Education and the notification relating to eligibility

of candidates issued by the Ministry of Human Resource Development, Department of School Education and Literacy, Government of India (hereafter referred to as MHRD), from time to time, read with the relaxed qualifications issued by that Ministry from time to time and passed the TET.

(3) In the matter of appointment, priority shall be given to those eligible candidates who possess the minimum qualifications as specified by the National Council for Teacher Education and MHRD and thereafter, the eligible candidates with the relaxed qualification specified by the MHRD, may be considered and if candidates with relaxed qualifications are considered as teachers, such teachers under the relaxed qualification norms shall be appointed with an undertaking to acquire the minimum qualifications specified in the National Council for Teacher Education within a period of 2 years from the date of appointment.”

3. In this case, we are concerned with sub-rule (2) of Rule 6. This sub-rule was later amended by a notification dated 22.12.2020 in the following terms:

“(2) The candidate shall possess the minimum educational and training qualification as prescribed by the National Council for 1 Framed under the West Bengal Primary Education Act, 1973.

Teacher Education prevailing as on date of publication of recruitment notification.”

4. As is evident from the above, the minimum qualifications specified in Rule 6 of Recruitment Rules, 2016 will be those that are prescribed by the National Council for Teachers Education,² a body constituted under the National Council for Teacher Education Act, 1993³. In exercise of the power conferred by sub- section (1) of section 23 of the Right of Children to Free and Compulsory Education Act, 2009, by notification dated 23.08.2010⁴ the NCTE laid down the minimum qualification for a person to be appointed as a teacher for class I to class VIII. The qualifications were amended from time to time, and the qualifications that were prevailing at the time when the recruitment notification for appointment of assistant teachers (primary) in the State of West Bengal was issued, were those prescribed by NCTE in its notification dated 29.07.2011.⁵ The relevant portion of the said prescription is extracted hereinbelow for ready reference:

“1. Minimum Qualifications:-

(i) Classes I-V² Hereinafter referred to as the ‘NCTE’/‘council’.³ Hereinafter referred to as the “NCTE Act.

a) Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Elementary Education (by whatever name known) OR Senior Secondary (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002.

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

OR Graduation and two year Diploma in Elementary Education (by whatever name known).

AND

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

5. It is in the above-referred legal regime governing appointments to the post of assistant teachers that the appellants’ aspiration and endeavour to join the post advertised on 21.10.2022 comes up for our consideration. The relevant factual background is as follows.

6. As the mandatory minimum qualification for the post of Primary Teacher in the state is a Diploma in Elementary Education (D.El.Ed.), a two-year course conducted by the West Bengal Board of Primary Education, constituted under the West Bengal Primary Education Act, 1973, there is an issue as to whether this is the notification by which the posts were advertised or it is the notification dated 29.09.2022, about which we will shortly be clarifying. Hereinafter referred to as the ‘Board’.

Education Act, 1973, the appellants enrolled themselves for the 2020-2022 batch of D.El.Ed. It has always been the practice that a new batch would commence from the 01st July of a year and conclude by the second successive year, which in the present case would have been 30th June 2022.

7. The outbreak of the COVID-19 pandemic and problems with the constitution and functioning of the Board delayed the 2020- 2022 batch, leading to a situation where the normal and natural conclusion of the 2022 batch by 30th June seemed uncertain.

8. The appellants were concerned that they may lose the opportunity to apply and participate in the recruitment process that was to commence with the issuance of a notification in October 2022. With this apprehension and anxiety about the fact that many of them could cross the age bar if they did not participate in the upcoming recruitment process, they approached the Calcutta High Court by filing writ petition(s) under Article 226, in which they prayed as under:

"a. Leave dispensing with Rule 26 of the Rules of High Court Calcutta relating to Applications under Article 226 of the Constitution of India.

b. A Writ in the nature of Mandamus commanding the respondents and each one of them particularly the respondent nos. 2, 3 and 4 to immediately complete the D.El.Ed. course within the stipulated time.

c. A Writ in the nature of Mandamus commanding the respondents authorities and each one of them to immediately complete the Part-I Examination and declare the

results. d. A Writ in the nature of mandamus commanding the respondents authorities to immediately start Part- II Examination and declare results of Part II Examination and further provide the Petitioners with D.El.Ed. Certificates.

e. A Writ in the nature of mandamus commanding the Respondents authorities and each one of them particularly the respondent nos. 2, 3 and 4 to issue Petitioners with the TET-2014 Pass Certificates.

f. A Writ in the nature of Mandamus commanding the Respondents authorities and each one of them particularly the respondent nos. 2, 3 and 4 not to initiate any selection process till such time the petitioners get their D.El.Ed. final results and certificates of 2020-2022 batch.

g. A writ in the nature of Certiorari directing the respondents, to certify and transmit the entire records relating to the case so that conscionable justice may be administered to petitioners. h. Rule NISI in terms of prayers (a), (b), (c), (d), (e), (f) and (g). i. An order directing the respondents authorities, particularly the respondent nos. 2, 3 and 4 not to start any selection Process till such time the results and D.El.Ed. certificates of 2020-2022 batch and TET 2014 certificates are given to the petitioners. j. An order directing the respondents authorities particularly the respondent nos. 2, 3 and 4 to issue them TET 2014 Pass Certificates.

k. Ad-interim order in terms of prayer (i) and (j).” (emphasis supplied)

9. In the meanwhile, to obviate the ineffective functioning of the Board, the Government constituted an ad-hoc committee, and the President of the Board took charge on 24.08.2022. Along with the President, the Deputy Secretary of the Board also took charge on 26.08.2022. After taking charge, the officers took stock of the situation and realised that the D.El.Ed. batch for the year 2020- 2022 was already delayed, and urgent action was required to be taken. It is evident from the records that Part II session of the 2022 batch ended on 30.06.2022, and the examination for that purpose (Part I-Theoretical) was conducted between 15.07.2022 and 18.08.2022, which was anyway far beyond 30th June 2022, i.e., the normal conclusion for any D.El.Ed. batch.

10. When the writ petition came up for hearing before the High Court on 21.09.2022, the learned counsel for the Board sought time for taking necessary instructions. When the learned single judge of the High Court again took up the writ petition a week thereafter, i.e., on 29.09.2022, the counsel appearing on behalf of the Board, having obtained instructions from the Government/Board, informed the Court that the results of the appellants in D.El.Ed. would be declared that very day, i.e., 29.09.2022, and the digital mark sheets would be sent to the different institutions. The High Court was also informed that the candidates, like the appellants, who were TET qualified and who were pursuing D.El.Ed. course for the Session 2020-22 and had already qualified in Part-I examination will be given an opportunity to participate in the recruitment process to be initiated by the Board under advertisement dated 21.10.2022. In view of the statement made on behalf of the Board and without any further consideration, the writ petition was allowed and disposed of with the

following directions:

“In this matter I am told by the learned advocate for the West Bengal Board of Primary Education that today i.e. on 29.09.2022 the result of D.El.Ed. Part - I will be declared and the digital marksheet will be sent to different institutes. All the persons who were undergoing that course will get the digital marksheet tomorrow i.e. 30.09.2022. It has further been stated on instruction by Mr. Saikat Banerjee, learned advocate for the West Bengal Board of Primary Education that "TET qualified candidates who are undergoing D.El.Ed. raining (Session 2020- 2022) and qualified in D.El.Ed. Part-I (Session 2020-2022) examination will be given opportunity to apply in the recruitment process to be initiated by the Board.

He has also submitted that this opportunity will be given to all the persons who are undergoing D.El.Ed. course of the Session 2020-2022.

Therefore, I find that the grievance of the petitioners is redressed by this stand taken by the Board which is beneficial to all.

Therefore, the writ application is disposed of as allowed. The instruction given to Mr. Banerjee via e-mail by the Secretary of the West Bengal Board of Primary Education is kept on record.”

11. On 29.09.2022, the date on which the learned single Judge allowed the writ petition, the Board issued a notification⁸ indicating that the result of the D.El.Ed. Part-I examination held in the month of July for the Session 2020-22 is published, and in terms of the said notification, the candidates were allowed to avail post-publication review or scrutiny of their performance within the prescribed time. The publication of the result was also intimated to the various institutions and the students were permitted to receive the digital marksheets. The exercise was intended to enable the appellants/candidates to participate in the recruitment process. On the same day, i.e. on 29.09.2022, yet another notification⁹ was issued indicating that the Board is going to recruit TET-qualified candidates for appointment to the posts of assistant teachers in the vacancies that may be indicated.

12. The intendment of these notifications is in the clarification and declaration that candidates like the appellants who were TET qualified and had undergone D.El.Ed. training and qualified for the Part-I examination can participate in the recruitment process. It was also indicated that the recruitment notification and application form will be made available on the website with effect from 21.10.2022. As it was contended by the respondents and accepted by the High Court that this notification dated 29.09.2022 itself is the recruitment notification, in order to contrast it with the subsequently issued actual recruitment notification dated 21.10.2022, we have reproduced both of them. Notification dated 29.09.2022 is as follows:

“NOTIFICATION for Recruitment of TET qualified trained candidates to the posts of Assistant Teacher in Govt. Aided/Govt. Sponsored/Junior Basic Primary Schools
This is to notify for all concerned that the West Bengal Board of Primary Education is

going to recruit TET qualified trained candidates of West Bengal seeking appointment to the posts of Assistant Teacher in Govt.Aided / Govt. Sponsored / Junior Basic Primary Schools against the State-wide position of vacancy to be declared later on.

The selection and appointment of the candidates shall be made strictly in terms of West Bengal Primary School Teachers Recruitment Rules, 2016 (amended upto date).

1. Vacancy and Reservation Criteria: ...

2. Scale of Pay: Basic Rs. 28,900/- plus DA as admissible plus HRA @12% of the basic plus MA as admissible.

3. Qualification: (a) No person shall be appointed by the concerned District Primary School Council / Primary School Council as an Assistant Teacher unless he/she is a citizen of India and has completed the age of 18 years as on 1st day of January of the year of advertisement (i.e. 01.01.2022) and has not completed the age of 40 years on the 1st day of January of the year of advertisement (i.e. 01.01.2022). Relaxation of age as per the existing rule of the State Govt. is admissible.

(b) The candidate shall possess the minimum educational and training qualifications as prescribed by the National Council for Teacher Education prevailing as on date of publication of recruitment notification.

AND TET qualified candidates who are undergoing D.El.Ed./D.Ed. (Special Education)/B.Ed Training (session-2020-2022) and who have qualified in D.El.Ed./D.Ed. (Special Education)/B.Ed. Training Par-I examination (session-2020-2022) will be given opportunity to participate in the recruitment process to be initiated by the Board.

AND

(c) Passed in the Teacher Eligibility Test (TET), conducted by the West Bengal Board of Primary Education, in accordance with the guidelines framed by the NCTE for the purpose. Relaxation: Candidates belonging to reserved categories viz candidates belonging to the Scheduled Castes (SC), Scheduled Tribes (ST), Other Backward Class (OBC-A and OBC-B), Exempted Categories (EC), Ex-Servicemen and for Physically Handicapped (PH) candidates, shall be allowed relaxation up to 5% in the qualifying marks.

AND ... Interview: After prima facie scrutiny of the duly filled application form submitted by the candidate having NCTE prescribed qualification and fulfilling the conditions as prescribed in West Bengal Primary School Teachers Recruitment Rules, 2016 (amended upto date) will be called for the Scrutiny/ Verification of the testimonials, Viva-voce / Interview and Aptitude Test. (The eligible candidates will be intimated of their respective venues, date and time of their Scrutiny/ Verification of the testimonials, Viva-Voce / Interview and Aptitude Test in due course). ...

5. The Recruitment Notification and the Application Form will be available in the websites:

www.wbbpe.org.<https://wbbprimaryeducation.org>. on or after 21.10. 2022.

6. The steps to be followed for online application (how to apply) will be available in the aforesaid websites.”

13. Following the above referred notification, the recruitment notification was in fact issued on 21.10.2022. The Board, in its submissions before the division bench, contrasted the previous notification dated 29.09.2022 with the recruitment notification dated 21.10.2022 and asserted that the latter alone is the recruitment notification. The recruitment notification dated 21.10.2022 is reproduced for ready reference:

“RECRUITMENT NOTIFICATION FOR VACANCY POSITION AND LAUNCHING OF APPLICATION PORTAL In continuation of our earlier Notification vide No. 1573/WBBPE/2022 dtd. 29.09.2022 it is hereby notified to all concerned that online applications for recruitment are invited from TET qualified trained candidates including the appearing candidates for the session 2020-2022 in D.El.Ed./ Special D. Ed./ B. Ed. Courses in compliance with the order of the Hon'ble High Court, Calcutta, against state-wide vacancies for appointment to the posts of Assistant Teacher in Govt. Aided/Govt. Sponsored/Junior Basic Primary Schools, against 11765* (eleven thousand seven hundred sixty five) number of vacancies.

* 86 (eighty six) number of vacancies will be deducted from the existing vacancies to comply with the order of the Hon'ble Justice Abhijit Gangopadhyay passed on 30.08.2022 in respect of WPA No. 5419 of 2022; order passed on 26.09.2022 in respect of WPA No. 21683 of 2022; and order passed on 28.09.2022 in respect of WPA No. 20795 of 2022.

The recruitment of the candidates will be made in accordance with the West Bengal Primary School Teachers Recruitment Rules, 2016 as amended upto date notified vide No: 605- SE/EE/P)1OM-6/09/PT.VIII dated 22.12.2020. Candidates shall apply for the posts against the State-wide vacancies as stated above. Preference for district shall be taken at the time of application (subject to availability of appropriate medium & category wise vacancies).

Application Fees: Payment of online application fees of Rs. 150/- for General candidates. Rs. 100/- for OBC-A and OBC-B candidates and Rs. 50/- for SC, ST, PH candidates. The application form for appointment will be available at online portal for submission from 16:00 Hrs. (IST) onwards of 21.10.2022 till 24:00 Hrs. (IST) on 14.11.2022 at the following websites: www.wbbpe.org <https://wbbprimaryeducation.org> and click on the link: 'Application for Recruitment-2022.’

14. It is clear from the above-referred notification dated 21.10.2022 that; i) it invites online applications for recruitment to the posts of assistant teachers. ii) It also specifies that TET-

qualified trained candidates, “including the appearing candidates for the session 2020-22 in D. El. Ed./ Special D. Ed./ B. Ed. Courses,” will be eligible to participate. iii) It mentions that there are 11,765 vacancies and further notifies, iv) that the recruitment shall take place under the Recruitment Rules, 2016. With this analysis, there cannot be any doubt about 21.10.2022 being the recruitment notification. This controversy must end here.

15. The appellants applied as per the recruitment notification dated 21.10.2022, obtained their course completion certificates on 29.11.2022, and the final results for Part II of the examination were also declared on 30.12.2022. Interviews commenced in December 2022, and the process was moving towards completion. At this stage, questioning the legality of the order passed by the single Judge, the private respondents, who pre-possessed D.El.Ed. qualification, as on the date of recruitment notification dated 29.09.2022 filed Writ Appeal(s) before the division bench of the High Court contending that the appellants are ineligible and their candidature must be rejected. Their primary contention was that the appellants did not possess the minimum qualification as of the date of recruitment notification and that the Board could not have relaxed the recruitment rules permitting the appellants to participate in the recruitment process.

16. The division bench of the High Court, by its order dated 27.02.2023, asked the Board to file an affidavit indicating the circumstances in which the recruitment process was initiated as well as the steps taken by the Board in conducting the 2020-2022 D.El.Ed. course. In compliance with the High Court’s order, the Board filed an affidavit, the relevant portion of the affidavit is as follows:

"4. Before I proceed to deal with the different paragraphs of the 'said application', I consider it necessary to plead as follows:

A) The core controversy in the present lis is as to whether the West Bengal Board of Primary Education [hereafter WBBPE] by permitting candidates {who were yet to clear their Part II examination conducted by WBBPE} to participate in the 2022 recruitment process committed any illegality. B) Notification dated 29/07/2011 [Page 84 of the 'said application'] issued by NCTE, considered by the answering respondents to be relevant is inter alia extracted infra:

1. Minimum Qualifications:-

(i) Classes I-V

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

Procedure), Regulations 2002.

OR Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor of Elementary Education (B.El.Ed.) OR Senior Secondary (or its equivalent) with at least 50% marks and 2 year Diploma in Education (Special Education) OR Graduation and two year Diploma in Elementary Education (by whatever name known) C) The aforesaid notification dated 29/07/2011 lays down the minimum qualifications for a person to be eligible for appointment as a teacher. The notification never stipulates any date of eligibility. In other words, on and from which date such eligibility is to be counted and/or assessed is not specified in the notification. It can be the first day of January of the year of recruitment; it can be on the date of recruitment notification or it can be the date on which the candidate is evaluated. At the cost of prolixity it is stated that no fixed date of considering the eligibility is evident from the aforesaid notification of NCTE. D) An intending candidate upon clearing his 10+2 Board Examination is eligible for being admitted in D.El.Ed course. Since the +2 Board Exam results are normally published within 15th June of each calendar year, the two year D.El.Ed course has its session from 1st July to 30th June for the two successive years thereafter. The examining body in West Bengal for such D.El.Ed course is WBBPE. The present ad hoc committee of WBBPE headed by the President of the Board took charge on 24/08/2022. This deponent took charge as the Deputy Secretary of WBBPE on 26/08/2022. The office bearers of WBBPE noticed that for the session 2020-2022, the Part I examination was held by WBBPE after the Part II session ended on 30/06/2022, between 15/07/2022 and 18/08/2022. WBBPE published the results of Part I D.El.Ed course vide notification no. 233/ WBBPE/D.El. Ed./2022 dated 29.09.2022. A copy of such notification is annexed hereto and marked with the letter 'R-1'. E) WBBPE immediately thereafter in November, 2022 conducted the Part II examination for the 2020-2022 session; results whereof were published vide notification no. 325/WBBPE/D.EL.Ed./ 2022 dated 30/12/2022. A copy of such notification is annexed hereto and marked with the letter 'R-2'.

F) At Page 73 of the 'said application' is a notification dated 29/09/2022 issued by WBBPE. Clause 5 of such notification reads thus: "The Recruitment Notification and the Application Form will be available in the websites: www.wbbpe.org <https://wbbprimaryeducation.org> on or after 21.10.2022." G) In view of the above, the notification dated 29/09/2022 cannot at all be termed as the 2022 recruitment notification. It is rather an introduction to the recruitment notification which was published 21/10/2022. A recruitment notification must contain the number of vacancies which are intended to be filled up by the examining/ recommending body. The notification appearing at Page 73 of the 'said application' do not contain the number of vacancies.

H) Rule 8(3) Table A of the West Bengal Primary School Teachers Recruitment Rules, 2016 is extracted infra:

Table A Sl. Item for evaluation Maximum No. Marks Bengal Board of Secondary Education or its equivalent.

West Bengal Council of Higher
Secondary Education or its
equivalent.

I) Vide memo no. 2235/ WBBPE/2022 dated 21/12/2022, the Board notified that it is going to conduct the first phase of interview/viva voce and aptitude test centrally under its direct supervision and monitoring. A copy of such notification without its enclosure is annexed hereto and marked with the letter 'R-3' J) The concluding paragraph of the said notification reads thus:

"In order to dissipate any confusion/ambiguity, the examining/recommending body, being the Board makes it abundantly clear that the State Wide Merit List, for the 2022 Recruitment process will only be published after assessing/evaluating every benchmark contained in the recruitment rules."

K) Thus the Board at present is only conducting the viva voce or interview and the aptitude test of the applicant/candidates for the 2022 recruitment process. It is yet to allot marks for the remaining six benchmarks, which includes marks for training. In other words, the time to allot marks for D.El.Ed. (Training qualification) is yet to arrive. Marks for Madhyamik and Higher Secondary cannot be given at this juncture in view of pendency of the Maitra Committee's report which is to be submitted before this Hon'ble Court in WPA 23585/2022 [Saikat Nandi & Ors. Vs. State of West Bengal & Ors.]."

17. Finally, by the order impugned before us, the division bench of the High Court allowed the appeal and set aside the order of the single Judge. The solitary factor that impressed the High Court is simply that, as Rule 6(2) of the Recruitment Rules 2016, as amended on 22.12.2020, unambiguously specified the eligibility qualification required as on the date of advertisement, candidates must possess the eligibility qualifications as of the date of the advertisement, i.e., 29.09.2022. Firstly, the High Court treated the date of notification dated 29.09.2022, instead of recruitment notification dated 21.10.2022, as the recruitment notification and secondly, it construed the rule to have prescribed a cut-off date for qualification. In this view of the matter, the division bench proceeded to set aside the latter part of clause (3b) of the notification dated 29.09.2022 enabling candidates like the appellants to participate in the selection process, virtually holding all the appellants ineligible for even participating in the selection process. The relevant portion of the High Court order is as under:

"...Having heard the parties and considering the materials placed, this Court is of the clear view that the Board cannot travel beyond its own Recruitment Rules. Apropos the above discussion, the 2016 Recruitment Rules as amended by the Notification dated 22nd December, 2020 (supra) unambiguously specifies the eligibility qualification required as on the date of the advertisement. The nature of such

qualification is also specified by the NCTE Notification dated 23rd August, 2010. This Court further notices that the law is settled on the point, which stands also discussed above, that the eligibility qualifications must be possessed by any candidate on the date of the Recruitment Notification. It is undisputed that the private Respondents in MAT 1725 of 2022 and MAT 1837 of 2022 acquired the minimum eligibility condition of D.El.Ed on 29th November, 2022, i.e. much after the publication of the Recruitment Notification on 29th September, 2022. In view of such position the Board could not have created room for the Private Respondents/the Writ Petitioners to apply without possessing the eligibility qualification as on the date of the advertisement.

This Court also finds the argument of the Board in its affidavit (supra) that the Notification dated the 29th of September, 2022 is not the Recruitment Notification inasmuch as it did not contain the number of vacancies to be filled up, to be fallacious.

This Court finds the argument of the Board to be equally fallacious that the Notification dated 29th September, 2022 was a preparatory exercise to the actual Recruitment Notification dated 21st October, 2022 which carried the number of vacancies to be filled up.

The above arguments of the Board are self-defeating inasmuch as this Court finds that the Board always intended to act upon the Notification dated 29th September, 2022 which carried the eligibility for the writ petitioners who were not D.El.Ed qualified to apply. The argument of the Board cannot be also sustained since, even as on 21st October, 2022 described by the Board as the proper Recruitment Notification, the writ petitioners were not D.El.Ed qualified candidates.

Accordingly, the appeals succeed.

The Orders impugned of the Hon'ble Single Bench stand set aside.”

18. Challenging the judgment and order passed by the division bench, appellants filed the present civil appeals. We heard Mr. P. S. Patwalia, Mr. Rauf Rahim, Ms. Meenakshi Arora, Ld. Sr. Counsels for the appellant(s). We also heard Mr. Jaideep Gupta, assisted by Mr. Kunal Chatterjee for the Board and Mr. Subir Sanyal, Mr. Biswajit Deb, Ld. Sr. Counsels for the respondent(s), Mr. Gopal Sankarnarayanan, Ld. Sr. Counsel assisted by other Ld. counsels appeared for NIOS (distance education) candidates who have pursued the D.El.Ed. degree through open/distance learning and have filed intervention applications before this Court seeking directions that they may also be allowed to participate in the recruitment process at par with the other D.El.Ed. degree holder candidates. We may mention at this very stage that we have informed all the learned counsels appearing for the persons who have filed impleadment petitions that we will not be entertaining these applications, but would allow them to withdraw and avail such remedies as may be available to them.

19. Re: Interpretation of Rule 6(2) of the West Bengal School Teachers Recruitment Rules, 2016: NCTE is the statutory regulator for teacher education.¹⁰ In exercise of its powers under Section 32 of the NCTE Act, it makes regulations specifying norms, standards and guidelines, inter alia prescribing minimum qualifications and 10 National Council for Teacher Education Act, 1993 “An Act to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and co-ordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system [including qualifications of school teachers] and for matters connected therewith”. one such exercise is the prescription of minimum qualifications for teachers under notification dated 29.07.2011. The West Bengal School Teachers Recruitment Rules, 2016, by itself does not prescribe the minimum educational qualifications for teachers. Instead, through Rule 6 of the Recruitment Rules 2016 it incorporates the minimum qualifications as prescribed by NCTE from time to time. Rule 6(2) of the Recruitment Rules 2016 is intended to incorporate NCTE qualification that is relevant as on the date of recruitment, and as such, the provision had to be worded flexibly to accommodate changes that may be brought about by the NCTE from time to time. In order to ensure a seamless adaptation of amendments, modifications, or variations prescribed by NCTE from time to time, the Rule adopts the standard legislative device of simply incorporating and referring to the minimum qualifications as prescribed by NCTE. Further, to ensure that the latest prescription of NCTE should be made applicable for any recruitment, the rule also provides that the qualifications prescribed by NCTE, “prevailing as on the date of publication of recruitment notification,” must be possessed by the candidate.

20. The intendment of Rule 6(2) of the Recruitment Rules 2016 is only to declare that the qualifications as prescribed by NCTE and that are prevailing on the date of publication of the recruitment notification should be possessed by the candidate. The purpose and object of the rule is not at all to declare a cut-off date for obtaining the qualifications. We are in complete agreement with the clear stand taken by the Board in its affidavit filed before the division bench of the High Court, in which the Board clarified the position as under:

“C) The aforesaid notification dated 29/07/2011 lays down the minimum qualifications for a person to be eligible for appointment as a teacher. The notification never stipulates any date of eligibility. In other words, on and from which date such eligibility is to be counted and/or assessed is not specified in the notification. It can be the first day of January of the year of recruitment; it can be on the date of recruitment notification or it can be the date on which the candidate is evaluated. At the cost of prolixity it is stated that no fixed date of considering the eligibility is evident from the aforesaid notification of NCTE.”

21. Having considered the matter in detail, we are of the opinion that the High Court committed a mistake in interpreting and construing Rule 6(2) as a provision prescribing some kind of a cut- off date by which time the minimum educational qualifications must be possessed. This reasoning is contrary to the text of the rule, it is also contrary to the clear and unambiguous stand of the Board. The interpretation of Rule 6(2) adopted by the division bench is incorrect and the judgment on this issue is hereby set aside.

22. Re: The principle as regards the date by which the candidates for selection must possess the qualifications, as per the precedents of this Court. We must also deal with the argument of Mr. Subir Sanyal, learned Sr. Counsel appearing on behalf of the respondent that, as per the principles of law laid down by this Court that if the recruitment rule or the notification does not provide a date by which the minimum qualifications must be possessed, the relevant date shall be the last date for receipt of the applications. He relied on the judgment of this Court in *Bhupinderpal Singh v. State of Punjab*¹¹ formulating certain principles for determining the date by which candidates must possess eligible qualifications.

23. The issue regarding the date by which candidates for selection must possess the minimum qualifications prescribed for recruitment is no more res-integra. Apart from the decision of this Court in *Bhupinderpal Singh* (supra) referred to by Mr. Sanyal, there are many other precedents, which were referred to and considered in a later decision of this Court in *Rakesh Kumar* 11 (2000) 5 SCC 262.

*Sharma v. State (NCT of Delhi)*¹². The relevant portion of the order is as follows;

“11. There can be no dispute to the settled legal proposition that the selection process commences on the date when applications are invited. Any person eligible on the last date of submission of the application has a right to be considered against the said vacancy provided he fulfils the requisite qualification.

12. In *U.P. Public Service Commission v. Alpana* 13, this Court, after considering a large number of its earlier judgments, held that eligibility conditions should be examined as on the last date for receipt of applications by the Commission. That too was a case where the result of a candidate was declared subsequent to the last date of submission of the applications. This Court held that as the result does not relate back to the date of examination and eligibility of the candidate is to be considered on the last date of submission of applications, therefore, a candidate, whose result has not been declared up to the last date of submission of applications, would not be eligible.

13. A three-Judge Bench of this Court in *M.V. Nair v. Union of India* 14 held as under

“9. ... It is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date.”

14. In *Harpal Kaur Chahal v. Director, Punjab Instructions*,¹⁵ this Court held:

“2. ... It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the applications. Such of those candidates, who possessed of all the qualifications as on that date, alone are eligible to apply for and to be considered for recruitment according to the rules.”

15. This Court in *Rekha Chaturvedi v. University of Rajasthan* 16 held:

“10. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of 12 (2013) 11 SCC 58 13 (1994) 2 SCC 723.

14 (1993) 2 SCC 429.

15 1995 Supp (4) SCC 706.

16 1993 Supp (3) SCC 168.

selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence viz. even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. ... Reference in this connection may also be made to two recent decisions of this Court in *A.P. Public Service Commission v. B. Sarat Chandra* 17 and *Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi* 18.”

16. In *Ashok Kumar Sharma v. Chander Shekher* 19, the majority view was as under:

“15. The fact is that the appellants did pass the examination and were fully qualified for being selected prior to the date of interview. By allowing the appellants to sit for the interview and by their selection on the basis of their comparative merits, the recruiting authority was able to get the best talents available. It was certainly in the public interest that the interview was made as broad based as was possible on the basis of qualification. The reasoning of the learned Single Judge was thus based on sound principle with reference to comparatively superior merits. It was in the public interest that better candidates who were fully qualified on the dates of selection were not rejected, notwithstanding that the results of the examination in which they had appeared had been delayed for no fault of theirs. The appellants were fully qualified on the dates of the interview and taking into account the generally followed principle of Rule 37 in the State of Jammu & Kashmir, we are of

17 (1990) 2 SCC 669.

18 (1990) 3 SCC 655.

19 1993 Supp (2) SCC 611.

opinion that the technical view adopted by the learned Judges of the Division Bench was incorrect....” However, the opinion of R.M. Sahai, J. had been that these 33 persons could not have been allowed to appear for the interview as they did not possess the requisite eligibility/qualification on the last date of submission of applications.

17. A three-Judge Bench of this Court in *Ashok Kumar Sharma v. Chander Shekhar* 20 reconsidered and explained the judgment of *Ashok Kumar Sharma* (1993) observing:

“6. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment.” The Court in *Ashok Kumar Sharma* (1997) 4 SCC 18 further explained that the majority view in *Ashok Kumar Sharma* (1993) was not correct, rather the dissenting view by R.M. Sahai, J. was correct as the Court held as under:

“6. ... The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the recruiting authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High 20 (1997) 4 SCC 18.

Court) was right in holding that the 33 respondents could not have been allowed to appear for the interview.” (emphasis supplied)

24. The law on the subject was also considered by the recent Constitution Bench decision of this Court in the case of *Tej Prakash Pathak v. Rajasthan High Court*.²¹ Delivering the judgment of the Court, Justice Manoj Misra (one of us) succinctly explained the legal position as follows:

14. In various judicial pronouncements, the law governing recruitment to public services has been colloquially termed as “the rules of the game”. The “game” is the process of selection and appointment. Courts have consistently frowned upon tinkering with the rules of the game once the recruitment process commences. This has crystallised into an oft-quoted legal phrase that “the rules of the game must not be changed midway, or after the game has been played”. Broadly speaking these rules fall in two categories. One which prescribes the eligibility criteria (i.e. essential qualifications) of the candidates seeking employment;

and the other which stipulates the method and manner of making the selection from amongst the eligible candidates.

15. Cut-off date with reference to which eligibility has to be determined is the date appointed by the relevant service rules; where no such cut-off date is provided in the rules, then it will be the date appointed in the advertisement inviting applications; and if there is no such date appointed, then eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received. 22

25. Re: Application of the interpretation and these precedents to the facts of the present case. We have already held that Rule 6(2) of the Recruitment Rules, 2016 does not prescribe a date by which 21 (2025) 2 SCC 1.

22 Placing reliance on *Shankar K. Mandal v. State of Bihar*, (2003) 9 SCC 519. minimum qualifications must be possessed. We have also upheld the stand of the Board in this regard. It is in this context that we must now consider the legality and validity of the recruitment notification dated 21.10.2022. The need for a close scrutiny of the recruitment notification is also to ensure that it is in consonance with the law laid down by this Court.

26. Even as per the decisions of this Court in *Bhupinderpal Singh* (supra), the candidate seeking public employment must satisfy his eligibility requirements in terms of the date appointed by the relevant service rules and, “if there is no cut-off date appointed by the rules then such date as may be appointed for the purpose of advertisement calling for applications”. Further, if there is no such date appointed then eligibility criteria shall be with reference to the last date appointed by which the applications have to be received.

27. The recruitment advertisement dated 21.10.2022, issued in continuation of the previous notification dated 29.09.2022 invited applications from TET qualified candidates, “including the appearing candidates for the session 2020 in D.El.Ed./Special D. Ed./ B. Ed. Courses in compliance with the order of the Hon'ble High Court of Calcutta against state-wise vacancies for appointments”. A recruitment notification occupies an important position in the recruitment process and this is for the reasons that the candidates participating in the selection process must be informed of the rules and regulations that would apply for considering the eligibility of the participants. It is an important principle of transparency, intended to prevent illegality and arbitrariness in executive action. As indicated hereinabove, the advertisement itself specified that candidates such as the appellants will

be entitled to apply and their candidature will be considered.

28. An important feature of this case is that the appellants were aggrieved by the inordinate delay in the conduct and completion of the D.El.Ed. course for the session 2020-22, which was to be concluded by 30.06.2022. They invoked the jurisdiction of the High Court with a prayer for immediate declaration of their results in D.El.Ed., or in alternative, to direct the State Government not to initiate the recruitment process pending declaration of their results. The writ petition was filed by them at the earliest occasion, i.e. on 22.08.2022, i.e. without any delay. The learned single Judge of the High Court did not take up the writ petition on merits. Had the learned Judge dealt with the writ petition on merits, one of the reliefs, as prayed by the appellants could have been granted i.e., either that the results would have been directed to be declared immediately or that the recruitments would have been postponed. Instead, the learned single Judge disposed of the writ petition on the basis of the submission made on behalf of the Board proposing an equitable solution for resolution of the disputes. On the basis of the submission of the Board, the High Court permitted candidates such as the appellants to be given an opportunity to participate in the recruitment process. The learned single Judge of the High Court was not compromising on the standard prescribed for appointment. It is nobody's case that unqualified persons will be appointed. The direction of the learned Single Judge enabled candidates such as the appellant who were at the verge of completing the course to participate in the selection process, and they would have been appointed only upon attaining the prescribed qualifications.

29. The appellants who applied as per the recruitment notification dated 21.10.2022 obtained their course completion certificates by 29.11.2022 and their final results were declared on 30.12.2022. The interviews commenced in December 2022, and when the process was to be taken to its logical end, the division bench passed the impugned order, setting aside the direction of the learned Single Judge by interpreting the 6(2) of the Recruitment Rules 2016 as if it prescribes a cut-off date for eligibility.

30. The facts of this case reveal a rather extraordinary situation where the Board and also the High Court (Single Judge) sought to resolve the problem that had arisen due to late conduct of the 2020-22 of D.El.Ed. examination immediately after the Covid-19 pandemic. We are of the opinion that there is no illegality and arbitrariness in the actual recruitment notification dated 21.10.2022 and that the recruitment process commenced under the relevant rules and also as per the directions of the single Judge of the High Court disposing of the writ petition. It is important to note that the recruitment notification dated 21.10.2022 was not challenged by anyone.

31. The principles laid down by this Court in Bhupinderpal Singh (supra) and the subsequent decisions as referred to in Rakesh Kumar Sharma (supra) and also that of the Constitution Bench in Tej Prakash (supra) hold that the qualifications must be possessed as per those prescribed in the rules or the notification and in the absence of both, by reference to the last date appointed for receiving the applications. The recruitment notification dated 21.10.2022 indicated that the appellants' will be given an opportunity, and that intendment must inure to their benefit. Under similar circumstances in Bhupinderpal Singh (supra), this Court exercised its power and jurisdiction under Article 142 of the Constitution to validate and legitimise the recruitment process. The relevant

portion of the judgment in Bhupinderpal Singh (supra) is as follows:

“13. (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice be done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice.” (emphasis supplied)

32. Apart from our reasoning that the recruitment notification dated 21.10.2022 is legal and valid also, we have no hesitation in exercising our power and jurisdiction under Article 142 of the Constitution to do complete justice for the parties.

33. In view of the above, we allow the appeals and set aside the judgment of the division bench in M.A.T. No. 1725 of 2022 dated 11.04.2023 and we direct that the recruitment process which commenced in the notification dated 21.10.2022 must proceed further and the Board must take immediate steps for concluding the recruitment process as expeditiously as possible.

34. Our consideration was confined to examine the legality and validity of the judgment and order passed by the division bench of the High Court. All applications for impleadment are dismissed as withdrawn. The applicants are permitted to avail such remedies as are available to them in law. If remedies are invoked, their prayers will be considered and disposed of by the respective courts or tribunals on their own merits.

35. Pending applications, including the applications for intervention/impleadment, are disposed of accordingly.

.....J. [PAMIDIGHANTAM SRI NARASIMHA]J.
[MANOJ MISRA] NEW DELHI;

APRIL 04, 2025.