

GAHC010060072023



2024:GAU-AS:8852

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1615/2023

BANJIT CHUTIA AND 9 ORS
C/O- PREMADHAR CHUTIA, VILL AND P.O. CHAMARAJAN, P.S. DHEMAJI,
DIST.- DHEMAJI, PIN- 787026

2: RAMKRISHNA DHAMALA
S/O- RISHINATH DHAMALA
VILL- LAMABORGORAH
P.O. CHIMEN MUKH
P.S. SILAPATHAR
DIST.- DHEMAJI
787059

3: BHANITA TALUKDAR
D/O- KANU RAM TALUKDAR
VILL AND P.O. KALAG
P.S. NALBARI
DIST.- NALBARI
781351

4: FAIZUR ALI
S/O- MESER ALI
VILL- HATISHALA PAM
P.O. BHURIYA BHITHA
P.S. CHHAYGAON
DIST.- KAMRUP
781136

5: AMIT CHOUBEY
S/O- AKHILESH CHOUBEY
VILL AND P.O. NAHARKATIA
P.S. NAHARKATIA
DIST.- DIBRUGARH
786610

6: NIKUMONI LASKAR
D/O- BABUL CH LASKAR
VILL AND P.O. NIZ NARI KALI
P.S. KAMPUR
DIST.- NAGAON
782426

7: MOUSUMI DEV
D/O- DHARANI DEV
SONARI
WARD NO.3
P.O. AND P.S. SONARI
DIST.- CHARAEDO
785690

8: DIPANWITA CHAKRABORTY
D/O- SWAPAN KUMAR CHAKRABORTY
R.K. MISSION ROAD
W/NO.-16
P.O. BIDYAPRA
P.S. DHUBRI
DIST.- DHUBRI
783324

9: SHANKU BHOWMICK
S/O- DIPA BHOWMICK
VILL- BHUYAN KHAT
P.O. BARHAT
DIST.- CHARAIDEO
785693

10: ARUNIMA KAKATI
D/O- JADU KAKATI
VILL- GONDHMOW
P.S. SUALKUCHI
DIST.- KAMRUP (R)
78110

VERSUS

THE STATE OF ASSAM AND 2 ORS
TO BE REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM,
EDUCATION ELEMENTARY DEPTT., DISPUR, GHY-06, ASSAM

2: THE DIRECTOR OF ELEMENTARY EDUCATION
ASSAM
KAHILIPARA
GHY-1

3:THE NATIONAL COUNCIL FOR TEACHER EDUCATION
EASTERN REGIONAL OFFICE BHUBANESWAR
ORISSA
TO BE REP. BY REGIONAL DIRECTOR
EASTERN REGIONAL COMMITTEE
NCTE

4:THE CENTRAL BOARD OF SECONDARY EDUCATION (CBSE)
NEW DELHI REPRESENTED BY ITS CHAIRPERSON

Advocate for the Petitioner : MR A R BHUYAN, MR N A MAZARBHUIYA,MR N Z
CHOUDHURY

Advocate for the Respondent : SC, ELEM. EDU, SC, CBSE (R-4),SC, N C T E

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 05.01.2024

Date of Judgment: 06.09.2024

Judgment & order(CAV)

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Heard Mr. A. R. Bhuiyan, learned counsel for the petitioners. Also heard Mr. Devajit Saikia, learned Advocate General, Assam, assisted by Mr. P. K. Borah, and Mr. A. Phukan, learned standing counsels, Elementary Education Department, appearing on behalf of respondents No. 1 & 2; Mr. I. Alom, learned standing counsel, NCTE, appearing on behalf of respondent No. 3; and Mrs. R. Borah, learned standing counsel, CBSE, appearing on behalf of respondent No. 4.

2. The petitioners, herein, who are Assam TET qualified candidates, have instituted the present proceeding, assailing the Notice, dated 16.02.2023, by which the eligibility conditions for recruitment under Clause No. 4 in the Advertisement No. 255733/10, dated 11.02.2023, herein, denoted as

Advertisement-A, as well as in the Advertisement No. 255733/15, dated 11.02.2023, herein, denoted as Advertisement-B; were partially modified in respect of the candidates having Central TET qualification and permitting them to apply against the post so advertised by matching the medium of instruction of school, either, with their Language-I paper or Language-II paper.

3. The petitioners, herein, in response to a Notification, dated 14.09.2021, had participated in the TET examination so conducted by the Government of Assam in the Education Department. The petitioners, on qualifying the said examination, were issued with their respective certificates, dated 28.01.2022. Accordingly, all the petitioners, herein, are the Assam TET qualified candidates.

4. The Director, Elementary Education Department, Assam, vide Advertisement-A, had invited applications from Assam TET qualified candidates/Central TET qualified candidates for filling up of 3887 vacancies of Assistant Teacher of LP Schools, and vide Advertisement-B, had invited applications from Assam TET qualified candidates/Central TET qualified candidates for filling up of 1443 vacancies of Assistant Teacher and Science Teacher of UP Schools; under the Directorate.

5. In terms of the conditions for recruitment as spelt-out in Clause No. 4 in both the Advertisements i.e. Advertisement-A and Advertisement-B; it was mandated that in the Language-I paper of both Assam TET and Central TET, the candidates shall match the medium of instruction of the school wherein the candidates wishes to apply. An example was also given in the said Advertisements in this connection to the effect that if a candidate wishes to apply in an Assamese medium school, the candidate must have Assamese as

Language-I in the Assam TET/Central TET.

6. Pursuant to the issuance of the said Advertisements; the impugned Notice, dated 16.02.2023, came to be so issued and therein, the condition of clause No. 4 of the recruitment, came to be modified in respect of the candidates qualifying in the Central TET to the extent that the Central TET qualified candidates were permitted to match the medium of instruction of the school wherein such candidates wishes to apply, either, basing on Language-I paper, or, Language-II paper.

7. The petitioners being aggrieved with the said liberty granted to the Central TET qualified candidates, have approached this Court by way of filing this writ petition, presenting a challenge to the Notice, dated 16.02.2023.

8. Mr. Bhuiyan, learned counsel for the petitioners, by taking this Court through the Advertisement issued on 14.09.2021, inviting applications from eligible candidates to appear in the Teachers Eligibility Test(TET) for Lower Primary and Upper Primary Level in the State of Assam, more particularly, by referring to the structure and content of the Teachers Eligibility Test (TET) 2021 Examination, has contended that a candidate appearing in the Teachers Eligibility Test(TET) Examination is only eligible to choose the Language subject against the Language-I paper from amongst 8(eight) Languages so prescribed. The learned counsel has further contended that for Language-II paper, no selection of Language subject is available to the candidate concerned, inasmuch as, the Language-II paper only consists of the English paper.

9. Mr. Bhuiyan, learned counsel for the petitioners, by referring to the CTET-December 2022 Information Bulletin, has submitted that a candidate appearing for the Central TET Examination, is permitted to choose the Language of his/her choice against both the Language-I paper and Language-II paper therein. The learned counsel has further submitted that the candidate concerned is to choose his/her respective Languages for the said 2(two) Language papers from a bouquet of 20(twenty) Languages. The only restriction being that the same Language, cannot be opted for both the Language papers.

10. Mr. Bhuiyan, learned counsel, has also submitted that Language-II paper in the Central TET examination, is primarily to understand the elements of the Language, Communication and Comprehension abilities whereas for Language-I paper; the proficiency related to the medium of instruction, is so examined. Accordingly, the learned counsel has submitted that the purport behind the examination of a candidate both in Assam TET and Central TET against Language-I paper, is to examine the proficiency related to the medium of instruction with regard to the Language so chosen by the candidate. Accordingly, it is submitted that the prescription as made in the Advertisement-A and Advertisement-B, both, dated 11.02.2023, mandating that a candidate can choose a school with a medium of instruction matching the Language so opted for by the candidate against the Language-I paper in both the Assam TET and Central TET examinations.

11. In view of the purport of the Language-II paper in the Central TET examinations and it only pertaining to testing the elements of knowledge of the candidate with regard to the elements of knowledge, communication and comprehension abilities in contrast to the Language-I paper, wherein, it is the

proficiency of the candidate with regard to the Language so chosen by him/her, is so examined; Mr. Bhuiyan, learned counsel for the petitioners, has contended that the respondent authorities could not have permitted the Central TET qualified candidates, an option, to apply against a particular school medium of which matches the Language-II paper chosen by them in the Central TET examination.

12. Mr. Bhuiyan, learned counsel for the petitioners, by interpreting the provisions as brought into force, vide the Notice, dated 16.02.2023, has contended that the Central TET qualified candidates have been given an additional advantage in choosing two different schools having two different medium of instructions, inasmuch as, they have now been permitted to chose the school, they wish to apply, either, based on the Languages as opted by them against their two Language papers so available in the Central TET examination, undergone by them.

13. Mr. Bhuiyan, learned counsel, in the above premises; has submitted that both on account of the purport of incorporation of the Language-II paper in the Central TET examination and also the additional advantage now being granted to the Central TET qualified candidates, in being permitted to submit their applications in respect of two different schools having different medium of instructions; the impugned Notice, dated 16.02.2023, is required to be interfered with by this Court and the process of recruitment involved, to be directed to be so carried-out, strictly, in consonance with the provisions of Clause 4 of the conditions of the recruitment, as stipulated in the Advertisements, both, dated 11.02.2023.

14. Per contra, Mr. Saikia, learned Advocate General, Assam, appearing for

State respondents No. 1 & 2; at the outset, has submitted that the petitioners, herein, have instituted the present proceeding on a misapprehension of the purport of the Notice, dated 16.02.2023.

15. Mr. Saikia, learned Advocate General, Assam, by referring to the affidavit so filed in the matter by the Director, Elementary Education Department, Assam, has submitted that a perusal of the syllabus for the Central TET examination, more particularly, pertaining to the Language-I paper and Language-II paper, therein; would go to reveal that there is no difference in the approach with regard to the said Language papers i.e. Language-I paper and Language-II paper.

16. Mr. Saikia, learned Advocate General, Assam, has further submitted that the prescription in Clause 4 of the conditions of the recruitment of the Advertisements, in question; was so incorporated to ensure that the candidate choosing a school with a particular medium of instruction, has the basic knowledge for effective communication in the said Language, inasmuch as, the students studying in such primary sections to which recruitment is being made; better understands their mother tongue and not other languages. As such, a teacher for the purpose of interacting with the children of the primary sections as well as for explaining to them, the study materials involved; must have effective communication skills in the mother tongue of the children studying in the said school. Accordingly, the State Government had formulated the provisions of Clause 4 of the Advertisements, in question, and the same was so done keeping the interest and development of the children studying in such primary schools of the State.

17. Mr. Saikia, learned Advocate General, Assam, has also submitted that

the petitioners, herein, in the writ petition, had not demonstrated the prejudice they stand to face on account of the liberty granted to the Central TET qualified candidates to either opt for the medium of instruction of the school they wish to apply basing on the language opted by them, either, in Language-I paper, or, in Language-II paper.

18. Mr. Saikia, learned Advocate General, Assam, has categorically submitted that a Central TET qualified candidate as well as a Assam TET qualified candidate would be permitted to only opt for a school with a particular medium of instruction by submitting only one application. The learned Advocate General, Assam, has further clarified that the Central TET qualified candidates cannot submit two different applications choosing two different medium of schools basing on the languages as opted by them in both their Language-I paper and Language-II paper in the Central TET examination.

19. In the above premises, Mr. Saikia, learned Advocate General, Assam, has contended that the instant writ petition has been so filed by the petitioners on a misapprehension and the same does not merit a consideration of this Court and the same may be dismissed at the threshold.

20. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

21. The projection made in the present proceeding is that by issuing the impugned Notice, dated 16.02.2023; an added advantage for recruitment has been so conferred upon the Central TET qualified candidates to the prejudice of the Assam TET qualified candidates. This Court, at the outset, would like to

note that the manner of prescription with regard to the eligibility conditions as well as the manner of recruitment, is in the exclusive domain of the executive and this Court in exercise of its power of judicial review, can interfere in prescriptions made with regard to the recruitment, only, in the event; it is shown that such prescription is in violation of the provisions of Articles 14 and 16 of the Constitution of India.

22. A perusal of the Advertisements i.e. Advertisement-A and Advertisement-B, both dated 11.02.2023, would reveal that therein, under the conditions of recruitment in Clause 4; the following prescription was so made by the respondent authorities, which being of relevance, is extracted hereinbelow:

“Conditions of Recruitment:

.....
4. The Language-I of the both ATET and CTET candidates shall match the medium of instruction of the school, wherein the candidate wishes to apply. As for example, if a candidate wishes to apply in an Assamese Medium School, the candidate must have Assamese as Language-I in the ATET/CTET.”

23. The purport of the said prescription, as contended by Mr. Saikia, learned Advocate General, Assam, in support of his submissions is that, a candidate who wishes to apply in a particular medium of school; must have the knowledge of the language taught in the said school as his/her language in the Language-I paper, either, in the Assam TET examination, or, Central TET examination. In other words, the medium of instruction in the school chosen by such candidate, must match the language chosen by the candidates against his/her Language-I paper. An Assam TET qualified candidate has got no choice with regard to the language, he/she has to appear in Language-II paper, inasmuch as, the same is fixed as the English language. However, an Assam TET qualified candidate is permitted to choose a language of his/her choice

against the Language-I paper from amongst, 8(eight) languages so prescribed. It is to be noted that the prescription of 8(eight) languages correlate to the medium of instruction in various schools in the State of Assam. On the other hand, a Central TET qualified candidate has the option of choosing a language of his/her choice from amongst 20(twenty) languages, so offered, however, with a restriction that the language, so chosen; should not be the same for Language-I paper and Language-II paper.

24. On an application being submitted; the candidates are evaluated and placed in a select list basing on their merit, district-wise, against the schools offering a particular medium of instruction, as chosen by them. In other words, a candidate opting for a school with a particular medium of instruction on the same matching with the language chosen by him in Language-I paper of, either, Assam TET examination, or, Central TET examination; is placed in the district so chosen by him/her against the vacancies available in that particular medium of school existing in that district, on merits. Accordingly, going by the Advertisements, in question, *per se*, no prejudice is caused to any of the candidates, either, having Assam TET qualification, or, Central TET qualification.

25. The petitioners, herein, also do not have any grievance insofar as the prescription as mentioned in Clause 4 of both the Advertisements i.e. Advertisement-A and Advertisement-B, dated 11.02.2023, is concerned.

26. However, a grievance has arisen in the matter on publication of the Notice, dated 16.02.2023, and an apprehension has also arisen that the Assam TET qualified candidates on account of the prescription so made therein, would now be prejudiced inasmuch as, it is contemplated that the

Central TET qualified candidates in view of the modified provisions of Clause 4 of the conditions of recruitment as stipulated in the said Advertisements; would now be given an added advantage.

27. The petitioners, in the present proceeding, have contended that the choice being offered to the Central TET qualified candidates based on the language as chosen by them in the Language-II paper of the said Central TET examination; would not be permissible, inasmuch as, there is a difference in the process of evaluation with regard to the Language-I paper and in the Language-II paper of the Central TET examination.

28. It is contention of the petitioners that while for the Language-I paper in the Central TET examination; the same mandates the evaluation of the proficiency of the candidate choosing a particular language while for the language chosen against the Language-II paper; there is no evaluation of the proficiency but the same is only limited to the elements of the language, knowledge, communication and comprehension abilities. Given the difference in the method of evaluation of both Language-I paper and Language-II paper in the Central TET examination; the petitioners have projected that both the papers cannot be placed at the same level.

29. On an examination of the said contention raised by the petitioners in the matter and also understanding the purport of the incorporation of the provisions existing in Clause 4 of the conditions of recruitment in the Advertisements, in question; this Court finds that the incorporation of the said provision is to ensure that the teacher so selected for the school, in question, has the knowledge of the language of the children studying in that particular school and is also able to interact with them in such language. Further, the

teacher is also required to comprehend the queries raised by the children in their mother tongue and be able to explain such queries back in the same language.

30. The purport of the incorporation of a provision like Clause 4 in the said Advertisements, having been understood in the above manner; this Court finds that in the Central TET examination, in both Language-I paper and Language-II paper; the said aspect is evaluated and a candidate clearing such Central TET examination, is to be held to have the requisite knowledge of the language so chosen by him/her in Language-I paper and Language-II paper as well as the ability to interact with the children studying in primary sections and also comprehend the queries so raised by the children and answer the same in the language they understand well.

31. In view of the above conclusions; the contention of the petitioners that the standard of evaluation of Language-I paper and Language-II paper in the Central TET examination being different, the said two Language papers cannot be placed at the same level insofar as the recruitment in pursuance of the Advertisements, both, dated 11.02.2023, is concerned; cannot be accepted by this Court.

32. The above conclusion having been reached; this Court would now examine the contention of Mr. Bhuiyan, learned counsel for the petitioners that vide the Notice, dated 16.02.2023; a Central TET qualified candidate is now permitted to submit two different applications choosing two different schools with different medium of instructions basing on the languages so chosen by such candidate in his/her Language-I paper and Language-II paper.

33. The provisions of Clause 4 as it originally existed in the Advertisements, dated 11.02.2023, has been extracted hereinabove. The modified provisions of Clause 4 of the conditions of the recruitment, coming into force, vide the Notice, dated 16.02.2023, being relevant, is extracted hereinbelow, for ready reference:

“The Language-I or Language-II of the CTET qualified candidates shall match the medium of instruction of the school, wherein the candidate wishes to apply.”

34. A perusal of the said modified provision of Clause 4 insofar as it concerns the Central TET qualified candidate, goes to indicate that a Central TET qualified candidate shall be permitted to match the medium of instruction of the school wherein he/she wishes to apply basing on the language chosen by him/her, either, in Language-I paper, or, Language-II paper and not both papers.

35. If any further doubt remains in this connection; the same is laid to rest by the provisions of clause 15 of the said Advertisements, both, dated 11.02.2023, which mandates that a candidate can apply only against one post against one particular Assam TET/Central TET Roll No..

36. When the provisions of Clause 15 is understood along with the submissions of Mr. Saikia, learned Advocate General, Assam, that a Central TET qualified candidate can only submit one application but is permitted to choose his/her medium of instruction, either, based on Language-I paper or Language-II paper; it is clear that the Central TET qualified candidate in view of the modified provisions of Clause 4 as brought into force vide the Notice, dated 16.02.2023; has not been given any added advantage.

37. It is to be noted that after the applications are submitted; the candidates are so placed in the merit list basing on the marks so scored by them in the examinations concerned and the fact that the candidate has an Assam TET qualification, or, a Central TET qualification, loses its significance and it is the cumulative marks scored by such candidate that would determine his/her placement on merits in the select list concerned.

38. Further dilating on the said issue; it is to be noticed that a Central TET qualified candidate opting for a school with a particular medium of instruction basing on his/her Language-II paper and an Assam TET qualified candidate also opting for the same medium of instruction and the Assam TET qualified candidate having scored more marks in the examination so conducted than the Central TET qualified candidate; it is the Assam TET qualified candidate who would be appointed and not the Central TET qualified candidate.

39. In view of the above conclusions; this Court is of the considered view that on issuance of the Notice, dated 16.02.2023; neither, any added advantage was so conferred upon the Central TET qualified candidate, nor, any prejudice was so caused to the interests of the Assam TET qualified candidate. Accordingly, the contentions as made by the petitioners, herein, have to be held to be so made on a misapprehension of the purport for issuance of the said Notice, dated 16.02.2023.

40. In view of the above; the instant writ petition is held to be devoid of any merit and the same accordingly stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant