

AFR

Reserved- 06/02/2024

Delivered- 16/02/2024

2024:AHC:26366

Court No. - 36

(1) Case :- WRIT - A No. - 40447 of 2014

Petitioner :- Smt.Mala Yadav And 10 Others

Respondent :- State Of U.P.And 4 Others

Counsel for Petitioner :- Ajay Kumar Mishra,Abhishek Kumar Yadav,Ashok Khare,Chandan Sharma,Prabhakar Awasthi,V.K. Yadav

Counsel for Respondent :- C.S.C.,A.K.Yadav,Archana Singh,B.P. Singh,Vikram Bahadur Singh

with

(2) Case :- WRIT - A No. - 55061 of 2014

Petitioner :- Mamta And Another

Respondent :- State Of U.P. And 4 Ors

Counsel for Petitioner :- Siddharth Khare,Ashok Khare

Counsel for Respondent :- C.S.C.,A.K. Yadav

with

(3) Case :- WRIT - A No. - 39733 of 2017

Petitioner :- Bindu Yadav

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Shantanu Khare,Sr. Advocate

Counsel for Respondent :- C.S.C.,Bhanu Pratap Singh,Mohd Shere Ali

Hon'ble Saurabh Shyam Shamsbery,J.

1. Petitioners before this Court have passed Certificate in Nursery Training Examination-2013 (for short "Nursery Training Certificate") conducted by Examination Regulatory Authority, Uttar Pradesh (for short "Authority") and their respective certificates are part of record.

2. Petitioners have also passed Uttar Pradesh Teachers Eligibility Test, 2013 (for short "TET") and thereafter participated in counselling for appointment of Assistant Teachers

but they were not appointed purportedly on a ground that they have not possessed essential qualification in terms of notification/ advertisement dated 17.10.2013 i.e. they have not qualified 2 years BTC Course/2 years Urdu BTC Course or Special BTC Course and that “Nursery Training Certificate” would not be equivalent to said essential qualification. For reference, Vigyapti/ Advertisement for district Barabanki dated 17.10.2013 is mentioned below -:

“विज्ञप्ति

कार्यालय जिला बेसिक शिक्षा अधिकारी जनपद बाराबंकी
पत्रांक

दिनांक

जनपद बाराबंकी में उत्तर प्रदेश बेसिक शिक्षा परिषद् द्वारा संचालित परिषदीय प्राथमिक विद्यालयों में शासनादेश संख्या-3635/79-5-2013-14(10) दिनांक 25 सितम्बर 2013 एवं शासनादेश संख्या - 3774/79-5-2013-14(10)/10 दिनांक 15 अक्टूबर 2013 के अनुक्रम में सहायक अध्यापकों के रिक्त पदों के सापेक्ष द्विवर्षीय बी.टी.सी., द्विवर्षीय उर्दू बी.टी.सी. एवं विशिष्ट बी.टी.सी. प्रशिक्षण प्राप्त तथा उत्तर प्रदेश राज्य अथवा केन्द्र सरकार द्वारा आयोजित अध्यापक पात्रता परीक्षा उत्तीर्ण अभ्यर्थियों से कुल 100 रिक्त पदों पर नियुक्ति हेतु ऑनलाइन ई-आवेदन पत्र आमंत्रित किये जाते हैं। ऑनलाइन ई-आवेदन पत्र का प्रारूप आपरेशनल दिशा निर्देश एवं जनपदवार रिक्तियों का विवरण वेबसाइट <http://upbasiceduparishad.gov.in/> पर दिनांक 17.10.2013 से दिनांक 13.11.2013 की रात्रि 12 बजे तक उपलब्ध रहेगा। परिषदीय प्राथमिक विद्यालयों में सहायक अध्यापक के पदों पर चयन/नियुक्ति अध्यापक सेवा नियमावली 1981(अद्यतन तथा संशोधित) तथा विद्यालयों में अध्यापक तैनाती नियमावली 2008 (अद्यतन तथा संशोधित) के अनुसार की जायेगी। परिषदीय प्राथमिक विद्यालयों में सहायक अध्यापक पद पर इच्छुक अर्ह अभ्यर्थियों द्वारा सर्वप्रथम निर्दिष्ट वेबसाइट पर निर्धारित प्रक्रियानुसार रजिस्ट्रेशन कर वांछित प्रविष्टियों को पूर्ण करना होगा। रजिस्ट्रेशन के उपरान्त ई-चालान से किसी भी जनपद के किसी भी भारतीय स्टेट बैंक की शाखा में सचिव उ.प्र. बेसिक शिक्षा परिषद के नाम पर निर्धारित शुल्क जमा कर ई-चालान आई-डी/जर्नल (Journal) नम्बर प्राप्त करना होगा इसके अतिरिक्त अभ्यर्थी सभी बैंको के ATM Cum Debit cards/Credit Cards तथा SBI Internet Banking द्वारा भी आवेदन शुल्क का भुगतान कर सकते हैं। ई-चालान आई-डी/जर्नल (Journal) नम्बर प्राप्त करने के दो बैंकिंग कार्यदिवस के पश्चात पुनः निर्दिष्ट वेबसाइट पर बैंक द्वारा प्राप्त ई-चालान आई-डी/जर्नल (Journal) नम्बर से आवेदन पत्र को पूर्ण करना अनिवार्य होगा अभ्यर्थी द्वारा काउन्सिलिंग के समय

3

रजिस्ट्रेशन, ई-चालान रसीद तथा फोटो अपलोड करने के बाद भरे गये आवेदन का प्रिन्ट आउट प्रस्तुत करना भी आवश्यक होगा।

जिला बेसिक शिक्षा अधिकारी
जनपद बाराबंकी”

3. Essentially, case of the petitioners is that Nursery Training Certificate is equivalent to Diploma in Elementary Education (by whatsoever name known) in terms of notification dated 23.08.2010 issued by National Council for Teachers Education (fort short “NCTE”) as such it would be equivalent to BTC Course.

4. It is further case of the petitioners that after enforcement of Right of Children to Free and Compulsory Education Act, 2009 (for short “Act of 2009”) and thereafter enforcement of Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011 (for short “Rules of 2011”), and whereby subsequent to notification issued by NCTE (competent authority) which provided minimum qualification for appointment of Assistant Teacher in primary school and promotion of Assistant Teacher in State of UP have to be in terms of Notification dated 23.08.2010 and amended Notification dated 29.07.2011 issued by NCTE.

5. Sri Ashok Khare, Senior Advocate assisted by S/Sri Himanshu Singh, Prabhakar Awasthi and Ajay Kumar Mishra, learned counsel for the petitioners has vehemently referred and placed reliance upon notification dated 23.08.2010 issued by NCTE that minimum qualification for teachers of class I to V is Senior Secondary or its equivalent with at least 50% marks and two years Diploma in Elementary Education (by whatsoever name known) and that since the petitioners have Nursery Training Certificates which is equivalent to Diploma in Elementary Education though known by said terminology and is also

equivalent to Basic Training Certificate i.e. BTC, therefore, they possessed minimum eligibility.

6. Learned Senior Advocate also urged that minimum qualification prescribed in terms of aforesaid notification dated 23.08.2010 has not been completely followed by respondents and despite petitioners were duly eligible having minimum educational qualification were wrongly denied from their appointment despite they participated in counselling and they would have definitely in merit list if their result were declared.

7. In support of his submissions, learned Senior Advocate has placed reliance upon a judgment of Division Bench of this Court in **Special Appeal (D) No. 130 of 2014 (Harsh Kumar and another vs. State of U.P. and others)** passed on **05.02.2014** and relevant paragraphs thereof are mentioned below -:

“8. On 23 August 2010, the NCTE prescribed the minimum qualifications for a person to be eligible for appointment as a teacher for Classes I to VIII in a school referred to in Section 2 (n) of the Act of 2009 with effect from the date of notification. This notification was amended by the notification dated 29 July 2011. As per the amended notification, the minimum qualifications which have been prescribed for appointment of an Assistant Teacher for teaching students from Classes I to V are now as follows:

“(i) Classes I-V.

(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

Graduate 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.”

9. At this stage, it may also be necessary to note that the Parliament enacted the National Council for Teacher Education (Amendment) Act, 2011 to provide that the Act shall apply, inter-alia, to schools imparting pre-primary, primary, upper primary, secondary or senior secondary education and to colleges providing senior secondary or intermediate education and to teachers of such schools and colleges. Similarly, the expression 'school' was defined in Section 2(ka) to mean any recognised school imparting pre-primary, primary, upper primary, secondary or senior secondary education, or a college imparting senior secondary education. Section 12A was inserted into the principal legislation to empower the NCTE to determine the qualifications of persons to be recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognised by the Central Government or by a State Government or a local or other authority. The provisions of the Act and Regulations have been held to be binding

by a Full Bench of this Court in Shiv Kumar Sharma (supra). Prior to the enforcement of the amending Act, the Supreme Court had referred for consideration by a larger Bench of three Hon'ble Judges, an earlier view taken in Basic Education Board, U.P. Vs. Upendra Rai & Ors.² in which it had been held that the NCTE Act does not deal with ordinary educational institutions like primary schools, high schools, intermediate colleges or universities and would, consequently, not override the U.P. Basic Education Act and the Rules made thereunder. In view of the amending Act, a Bench of three learned Judges of the Supreme Court, while deciding the reference on the correctness of the view in Upendra Rai (supra), observed that during the pendency of the appeals, the Amending Act had rendered the issues for consideration referred to the larger Bench as academic. These developments have been taken due note of in a recent judgment of a Full Bench of this Court in Ram Surat Yadav & Ors. Vs. State of U.P. & Ors.³

10. Thus, the point to be noted is that after the enforcement of the Act of 2009 and the issuance of the notification of 23 August 2010, the qualifications which have been prescribed for appointment of primary teachers must necessarily be those that are stipulated in the notification dated 23 August 2010, as amended by the notification dated 27 August 2011.

11. Undoubtedly, the Rules of 1981 do prescribe the essential qualification for appointment of Assistant Teachers in Junior Basic Schools where education is imparted from Classes I to V. The relevant qualifications which are prescribed in Rule 8 are as follows:

“(ii) Assistant Master and Assistant Mistress of Junior Basic School

A Bachelor's Degree from a University established by law in India or a Degree recognised by the Government as equivalent thereto together with the training qualification consisting of a Basic Teacher's Certificate, Vishist Basic Teachers Certificate (B.T.C.) two years BTC Urdu Special Training Course, Hindustani Teacher's Certificate, Junior

Teacher's Certificate, Certificate of Teaching or any other training training course recognised by the Government as equivalent there:

Provided that the essential qualification for a candidate who has passed the required training course shall be the same which was prescribed for admission to the said training course.”

12. The qualifications, which have been prescribed by the NCTE in the notification dated 29 July 2011 include Senior Secondary with at least 50% marks together with a 2-year Diploma in Education (Special Education). Once, these qualifications have been prescribed by the NCTE, this would necessarily be binding and it is not open to the State Government to exclude (from the zone of eligibility) the persons who are otherwise qualified in terms of the notification dated 23 August 2010 as amended on 29 July 2011.

13. In this view of the matter, we are of the opinion that the learned Single Judge was in error in coming to the conclusion that since the recruitment was in pursuance of a special drive, the Government was justified in confining the eligibility qualifications only to those who held the BTC qualifications for the reason that such candidates could not be adjusted earlier for want of TET qualification. The passing of the TET was introduced as a mandatory requirement by the notification dated 23 August 2010 issued by the NCTE. Persons who did not fulfill the eligibility conditions prescribed in the notification dated 23 August 2010, as amended on 29 July 2011, were not qualified for consideration for appointment as primary school teachers. Hence, there was no occasion for the State to contend or for that matter the learned Single Judge to accept the submission that in order to adjust such BTC qualified candidates, the present advertisement had been issued. The learned Single Judge held that the appellants could not claim equivalence with those candidates who possess BTC qualification. This, in our view, begs the question because once the Diploma in Education (Special Education) is held to be a qualification which is recognised for appointment of Assistant Teachers

for teaching Classes I to V, it would be impermissible for the State Government to exclude them from being considered for appointment. In a special drive or otherwise, it is not open to the State Government to exclude one class of teachers who fulfill the qualifications for eligibility prescribed by the NCTE. Any such action would be impermissible for the simple reason that the exclusive power to prescribe eligibility qualifications for such teachers is vested in the NCTE. Once the NCTE has spoken on the subject, as it has through its notification, those qualifications must govern the eligibility requirement. Jurisdiction and power of the NCTE to do so is now settled beyond any doubt, as noted by the Supreme Court.

14. In the circumstances, the special appeals would have to be allowed and are, accordingly, allowed. The impugned judgment and order of the learned Single Judge dated 14 November 2013 is set aside. A mandamus would, accordingly, issue directing the State to permit the appellants and such other persons who claim to be holding the qualifications which are within the purview of the notification issued by the NCTE on 23 August 2010, as amended on 29 July 2011, to apply for the post of Assistant Teachers for Classes I to V which was the subject matter of the advertisement in question.

15. Since the Court is informed that the process of counseling is still to commence, we direct the State Government to act in accordance with the aforesaid direction in processing and completing the selection process.

16. We clarify that the issue as to whether the appellants hold the qualifications strictly in accordance with the notification issued by the NCTE has not been decided by us since that is a matter of verification by the authority concerned.”

[emphasis supplied]

8. Learned Senior Advocate also submitted that above referred mandamus was not honoured and despite petitioners' case was

squarely covered with above referred judgment in Harsh Kumar (supra), still they were not selected.

9. In present bunch of cases, an interim order was passed on 25.09.2024 that result of petitioners be declared and in case their aggregate was above the cut off merit, appointment letters be issued to them. The interim order was challenged by the State in Special Appeal (D) No. 356 of 2015. The Division Bench of this Court allowed the Special Appeal by a judgment dated 01.02.2019. Relevant part thereof is quoted below -:

“The Division Bench in the case of U.P. Basic Shiksha Parishad (supra) had clearly distinguished between NTT Diploma which is only eligible for pre-school teaching and maximum upto Class 1 and 2 and does not cover Junior Basic School in which education is imparted for Class 1 to 5. The said Teachers Certificate (Shishu Shiksha), which is equivalent to NTT and this diploma at best can be for teaching in preschools education and not for Junior Basic Schools, which is imparting education from Class 1 to 5.

In view of the above, the learned Single Judge erred in directing the respondents-appellants to declare the result of the petitioners-respondents and issue appointment letters on the basis of the judgment of Harsh Kumar (supra) and Uma Yadav (supra) as both the Division Benches had only held that the minimum prescribed qualification for appointment of Assistant Teachers shall be, as per the notification of NCTE dated 23.8.2010 as amended on 29.7.2011 and have no where dealt the issue in regard to the present Teachers Certificate (Shishu Shiksha) or Nursery Teachers Training (NTT). It was only in the case of U.P. Basic Shikha Parishad that the issue was dealt in depth and both the aforesaid Division Bench judgments were also taken note off.

Further, in view of the judgment of this Court in the case of Ashok Kumar Bajpai (supra), Hind Lamps Ltd.(supra) and State of U.P. and others (supra), we are of the view

that no final relief can be granted at the interim stage, unless and until the Court is satisfied that ultimately the petitioner is bound to succeed and fact situation warrants granting such a relief. In the present case, as one of the Division Bench had taken a view that diploma in NTT is not equivalent to BTC as such, the relief granted would amount to final relief and in the facts of the case the situation does not warrant for passing of such order at the interim stage.

Hence the order passed by the learned Single Judge dated 25.9.2014 is set aside, and the Special Appeal is allowed leaving it open for the learned Single Judge to decide the matter on its own merits after the exchange of affidavits and also considering the subsequent Division Bench Judgment in the case of U.P. Basic Shiksha Parishad (supra).”

[emphasis supplied]

10. Per contra, Ms. Archana Singh, learned counsel for the respondent, Sri Shivendra Singh Bhadauriya, learned counsel for the respondent no. 5 and Sri R.N. Pandey, Sri Shashi Prakash Singh, learned Additional Chief Standing Counsel, Sri Ashish Kumar Nagvanshi, Sri Ravi Prakash Srivastava, Ms. Shruti Malviya and Sri Survesh Srivastava, learned Standing Counsel for the State respondents have submitted that petitioners' act were not bonafide. In online form, it was declared that they have passed BTC course and filled imaginary maximum number and imaginary number they got, knowingly they have never passed BTC. Learned counsel for respondents have referred copy of forms submitted by petitioners online, being part of a supplementary counter affidavit filed on 24.05.2019 and they have submitted that petitioners have played fraud.

11. Learned counsel further urged that Nursery Training Certificate was only for nursery teachers i.e. for pre-school and

maximum upto Class I and II which could not be equivalent to teaching skill required for students of class I to V.

12. Learned counsel further placed reliance on a judgment passed by Division Bench of this Court in Uttar Pradesh Basic Shiksha Parishad vs. Sakshi Shukla and others (Special Appeal N. 915 of 2015, decided on 07.04.2016) wherein a subsequent notification dated 12th November, 2014 issued by NCTE was also consideration that whether Diploma in Nursery Teacher Education was one of minimum qualifications for Pre-school/nursery followed by first two years in a formal school and whether it was not included in minimum qualification for primary and upper primary (for class I to VIII). Relevant part of judgment is mentioned hereinafter -:

“N.C.T.E. was not at all a party before the learned Single Judge and the learned Single Judge on this bona fide belief that the issue raised is squarely covered by the law laid down in the case of Uma Yadav (supra), proceeded to allow the writ petition and in view of this, as we had no other option, we asked for assistance of N.C.T.E. before us and N.C.T.E. has come up with the specific stand that the course in question that has been pursued by petitioners-respondents from Dau Dayal Mahila P.G. College, Firozabad, which was recognised on 30th April, 2004, has been as per Appendix-4 of Regulation 2002 known as Norms and Standards for Nursery Teacher Education Programme (form of Application for recognition, the time limit of submission of application, Determination of Norms and Standards for Recognition of Teachers Education Programme and permission to start new course of training), Regulation 2002 and N.T.T. course is basically meant for children in the age group of 4-6 followed by first 2 years in a formal education i.e. of children in the age group of 6-8 years as mentioned in Appendix-4 of Regulations, 2002.

N.T.T. course is not recognized under Appendix I or II of N.C.T.E. Recognition (Norms and Procedure) Regulation 2009 as Appendix-I of Regulation 2009 is only meant for Early Childhood Education Programme leading to Diploma in Early Childhood Education (D.E.C.Ed.). Early Childhood Education (E.C.E.) includes Class I and II of the Primary Education and same is of crucial importance from the point of view and perspective of the development of child's language, intelligence and personality. Elementary Teacher Education Programme aims at preparing teachers for elementary stage of education i.e. Classes I to VI/VIII and in Recognition (Norms and Procedure) Regulation 2009, Appendix-I has subsumed Pre-School Teacher Education Programme (P.T.T.) and Nursery Teacher Training Programme (N.T.T.) both i.e. Appendix-3 and 4 of Recognition (Norms and Procedure) Regulation 2002 and said nomenclature has been changed to Diploma in Early Childhood Education (D.E.C.Ed.) as Appendix-1 and N.T.T. course of 2 years duration in Dau Dayal P.G. Mahila College was granted Recognition under appendix-4 of the Regulation 2002 and not at all under the Regulations of 2009.

N.T.T. Course as mentioned in the Government Order dated 30.06.2010 is not at all recognized under the Appendix-1 or 2 of the Regulations 2009 and N.T.T. Course is recognized as per Appendix-4 of the Regulation 2002. Petitioners-opposite party have completed two years course of Nursery Teacher Training from Dau Dayal Mahila (P.G.) College, Firozabad, after they have applied for pursuing said Course pursuant to Government Order dated 30.06.2010, wherein categorical mention has been made that in reference of Nursery Teacher Training, Nursery School means where children upto the age of 6 years and below Class I are being imparted instructions. Petitioners-opposite party right from day one knew fully well the nature of course that was pursued by them and the said course/training was designed to impart instructions child below six years of age and to classes below 1st standard. Basic Shiksha Parishad in the State of U.P. does not accord recognition to any Nursery School to run additionally Class 1 and 2. There are three category of institutions (1)

Nursery School (ii) Junior Basic School (iii) Senior Basic School. Petitioners-opposite parties can be at the best appointed in Nursery School but they cannot be appointed in Junior Basic School/Senior Basic School.

Once such is the specific stand of N.C.T.E., then we cannot arrive to a conclusion that petitioners-opposite parties, who have proceeded to pursue N.T.T. course from Dau Dayal Mahila P.G. College Firozabad that has received recognition on 13th April, 2004 as per Appendix-4 of Regulation, 2002, can be said to be equipped with the facilities of imparting instructions qua teachers eligible to teach Class I to V.

Once N.T.T. Course as per the petitioners-opposite parties is designed for children in the age group of 4-6 followed by first 2 years in the formal school i.e. of children in the age group of 6-8 years, then the said course in question cannot be carried forward even to the students of Class III to V as it would be going beyond the N.T.T. course that has been designed.

Much emphasis has been laid on the fact that petitioner-opposite parties have cleared Teacher Eligibility Test meant for class 1 to 5 and in view of this, there exclusion in selection on its face value is arbitrary.

We may at this juncture, refer to a Full Bench judgement of our Court in the case of Shiv Kumar Sharma vs. State of U.P. 2013 (6) ADJ 310, wherein view has been taken that teacher eligibility test is an essential qualification that has to be possessed by every candidate who seeks appointment as a teacher of elementary education in Class 1 to 5 as per the notification dated 23.08.2010. Academic Authorities are empowered to fix minimum qualification which is inclusive of Teacher Eligibility Test, and Teacher Eligibility Test has to be passed in addition to the educational/training qualification. Merely because one has undertaken Teacher Eligibility Test, does not mean that he/she fulfils educational/training qualification also.

Consequently, in the facts of the case, the Basic Shiksha Parishad is right at the point of time when it submits that

learned Single Judge has erred in giving directions by blindly following the judgement in the case of Uma Yadav (supra) and Harsh Kumar (supra) and in view of this, Special Appeal is allowed. Judgement of learned Single Judge is set aside. Petitioner-opposite parties have received training N.T.T. from an institution entitled to impart training for childhood in the age group of 4-6 followed by two years in formal school, are not eligible to teach class 1 to 5, in Institutions run and managed by Basic Shiksha Parishad.”

[emphasis supplied]

13. Learned Senior Advocate for petitioners has responded to above submission that U.P. Basic Shiksha Parishad (supra) was in regard to private institutions. He has referred documents annexed with supplementary affidavit and referred following paragraphs of it -:

“(a) Although as mentioned above, the training holders of C.T. (Nursery) have always been appointed in the Nursery Schools as well as in Primary Schools run by the Board and accordingly, it was specifically clarified by the then Secretary of the Board on 04.01.1986. Similarly, through other circulars of the Board Issued on 12.3.2002, 4.3.2003, 17.3.2004, 4.1.2007 and 12.6.2008 by the respective Secretaries posted time to time along with Directorate, S.C.E.R.T., U.P., Lucknow and also by the State Govt. through government order dated 09.01.2009. The copies of the initial Rules of 1981 enforced on 03.01.1981 and the Rules of 1981 after incorporation of the 19th Amendment dated 30.05.2014 shall be placed at the time of arguments. However, the copies of the said circulars of Board dt: 4-1-1986 12.3.2002, 4.3.2003, 17.3.2004, 4.1.2007 and 12.6.2008 and the government order dated 09.01.2009 are being jointly annexed herewith as Annexure no.3 to this Affidavit.

(b) It is also respectfully submitted that through the said government order dated 09.01.2009, the teachers having C.T. training qualification had also been made eligible for

their promotion as L.T. Grade teacher after having attained experience of 5 years (as C.T. grade has become Dying Cadre) in the Intermediate colleges.

(c) It is also respectfully submitted that an advertisement made by the Basic Shiksha Adhikari, Allahabad on 11.10.2002 mentioning C.T. training qualification as an eligibility qualification and thereafter, appointments of respective candidates were also made. Similarly, the appointment of C.T. training holders was also made in District Shahjahanpur and Allahabad on the instructions of the Secretary, Board. The copies of the advertisement dated 11.10.2002, the instruction of the Secretary, Board dated 11.11.2002 and the appointment order issued pursuant thereto on 29.11.2002 are being jointly annexed herewith and marked as Annexure no.4 to this Affidavit.

(d) The Right of Education was made fundamental right to the children at the age of 6 to 14 years under Article 21-A of the Constitution of India and for enforcement thereof, the R.T.E. Act, 2009 (Act no.35 of 2009) was made, which was enforced on 26.08.2009; and in view thereof, the T.E.T./C.T.E.T. was prescribed as a minimum qualification and the Diploma in Elementary Education (D.El.Ed.)(by whatever name known) as an eligibility qualification for the appointment as a teacher from Class-I to V by the N.C.T.E. through their notifications dated 23.08.2010 and 29.07.2011, which have also been accepted by the State Government through U.P.R.T.E. Rules, 2011 enforced on 27.07.2011. In the said Act, Rules or notifications of the N.C.T.E., it has nowhere been stated that C.T. training holders are not eligible for appointment. As such, in view thereof, even after enforcement of the R.T.E. Act, 2009, the appointments of C.T. training holders have been made in different districts on different dates by the respective Basic Shiksha Adhikaris of the State. The copies of the direction issued by the Secretary, Board dated 31.07.2009, appointment letter dated 14.09.2009 issued by the Basic Shiksha Adhikari, Mirzapur and the another appointment letter dated 25.11.2009 issued by the Basic Shiksha Adhikari, Varanasi are being jointly annexed herewith and marked as Annexure no.5 to this Affidavit.”

14. Heard learned counsel for parties and perused the record.

15. The issue before this Court for consideration is that whether “Nursery Training Certificate” is equivalent to “Diploma in Elementary Education” (by whatsoever name known) (as mentioned in NCTE notification dated 23.08.2010 as amended on 29.07.2011) and subsequent notification dated 12.09.2014 and whether it is also equivalent to “Basic Teachers Training Certificate” for purpose of minimum qualification for post of Assistant Teacher in primary school (class I to V) run by Basic Education Board?

16. The crux of argument of petitioners is that once NCTE, the appropriate Authority under National Council for Teachers Education (Amendment) Act, 2011, by a notification has provided minimum qualification in terms of Act of 2009, the same will govern irrespective of any minimum qualification prescribed for appointment on post of Assistant Teacher by of any State.

17. In order to substantiate argument, learned Senior Advocate has referred various provisions of above referred Act, Rules and Circulars which do not require to elaborate since they have been considered by Division Bench of this Court in Harsh Kumar (supra), a judgment relied upon by petitioner.

18. Relevant part of Harsh Kumar (supra) has already been quoted in earlier part of this judgment and for disposal of this judgment, a general mandamus issued in Harsh Kumar (supra) is repeated hereinafter -:

“14. In the circumstances, the special appeals would have to be allowed and are, accordingly, allowed. The impugned judgment and order of the learned Single Judge

dated 14 November 2013 is set aside. A mandamus would, accordingly, issue directing the State to permit the appellants and such other persons who claim to be holding the qualifications which are within the purview of the notification issued by the NCTE on 23 August 2010, as amended on 29 July 2011, to apply for the post of Assistant Teachers for Classes I to V which was the subject matter of the advertisement in question.

15. Since the Court is informed that the process of counseling is still to commence, we direct the State Government to act in accordance with the aforesaid direction in processing and completing the selection process.

16. We clarify that the issue as to whether the appellants hold the qualifications strictly in accordance with the notification issued by the NCTE has not been decided by us since that is a matter of verification by the authority concerned.”

19. The above mandamus was that the essential qualification given in Notification dated 23.08.2010 as amended by Notification dated 27.08.2011 be applied in selection process in question subject to verification whether candidate possesses qualification in terms of notification, therefore, there was no occasion for Division Bench to consider whether “Nursery Training Certificate” would be a minimum qualification equivalent to BTC Course?

20. The above issue was later on considered by another Division Bench of this Court in Uttar Pradesh Basic Shiksha Parishad (supra) wherein Harsh Kumar (supra) as well as a subsequent notification dated 12.11.2014 issued by NCTE was also considered. As well as stand of NCTE was also heard.

21. The Division Bench in Uttar Pradesh Basic Shiksha Parishad (supra) has thereafter arrived to a considered opinion that -:

“i. “Nursery Training Programme” as mentioned in the Government Order dated 30.06.2010 is not at all recognized under Appendix I or II of NCTE (Recognitions Norms and Procedure) Regulations, 2009. N.T.T. Course is recognized as per Appendix-4 of Regulations, 2009 meant for early childhood education.

ii. Early Childhood Education (ECE) is for pre-school and class I and II of primary education only.

iii. Elementary Training Education Programme aims of preparing teachers for elementary stage of education i.e. class I to VI/VII.

iv. Basic Shiksha Parishad of State of U.P. does not accord recognition to any nursery school to run additionally class I and II. There are three categories of institutions (i) Nursery School (ii) Junior Basic School (iii) Senior Basic School. Petitioners-opposite parties can be at the best appointed in Nursery School but they cannot be appointed in Junior Basic School/Senior Basic School.

v. Once N.T.T. Course as per the petitioners-opposite parties is designed for children in the age group of 4-6 followed by first 2 years in the formal school i.e. of children in the age group of 6-8 years, then the said course in question cannot be carried forward even to the students of Class III to V as it would be going beyond the N.T.T. course that has been designed.”

22. The above reference makes a clear difference in nursery school and Junior basic school and their respective requirement of teachers in terms of their minimum education. The certificate in question is “Certificate Teacher (Shishu-Shiksha) Examination-2013. The subject of course are शिक्षा सिद्धांत तथा शिक्षालय संगठन, बाल अध्ययन, विशेष पाठन विधि ज्ञानोपकरण, विशेष पाठन विधि विषय and for

reference, a certificate and result of one petitioner is scanned hereinafter -:

क्रमांक ..13507003

परीक्षा नियामक प्राधिकारी उत्तर प्रदेश

अनुक्रमांक ...03.....

शिक्षा विभाग
उत्तर प्रदेश

टीचर्स सर्टीफिकेट (शिशु-शिक्षा) परीक्षा 2013
(केवल महिलाओं के लिये)
(बैच 2007)

प्रमाणित किया जाता है कि सस्थागत/आर्थिक परीक्षार्थिनी

कुमारी/श्रीमती बेबी रानी

आत्मजा श्री सालिक राम

राजकीय शिशु-प्रशिक्षण महिला महाविद्यालय, इलाहाबाद

संस्था/परीक्षा-केन्द्र से सन 2013 की टीचर्स सर्टीफिकेट (शिशु-शिक्षा) परीक्षा
(दो वर्षीय पाठ्यक्रम) में उत्तीर्ण हुई।

इनका लिखित तथा क्रियात्मक परीक्षाओं का परीक्षाफल निम्नांकित है:-

1. लिखित द्वितीय श्रेणी

2. कक्षा शिक्षण प्रथम श्रेणी

3. क्रियात्मक समाज कार्य तथा बालचर-कार्य उत्तीर्ण श्रेणी

इलाहाबाद
दिनांक 26 APR 2013

Self Attested

(श्रीमती नीना श्रीवास्तव)
सचिव
परीक्षा नियामक प्राधिकारी उत्तर प्रदेश, इलाहाबाद

कार्यालय, परीक्षा नियामक प्राधिकारी, उ० प्र०, इलाहाबाद
अंक-पत्र
सी०टी० (शिशु शिक्षा) - परीक्षा वर्ष 2013

प्रशिक्षण विद्यालय का नाम राजकीय शिशु प्रशिक्षण महिला महाविद्यालय, इलाहाबाद
 नाम : बेबी रानी पुत्र/पुत्री : सालिक राम
 अनुक्रमांक : 03 द्वारा सी० टी० (शिशु शिक्षा) परीक्षा, 2013 में प्राप्त किये गये अंकों का विवरण ।

प्रश्न पत्र लिखित परीक्षा	पूर्णांक	उत्तीर्णांक	प्राप्तांक	परीक्षाफल
प्रथम शिशा सिद्धान्त तथा शिक्षालय संगठन	100	30	54	श्रेणी : द्वितीय
द्वितीय बाल अध्ययन	100	30	42	
तृतीय विशेष पाठन विधि	100	30	60	
चतुर्थ विशेष पाठन विधि निषय	100	30	54	
योग	400	136	210	
वार्षिक कार्य में प्रदान किये गये अंक				
प्रधानाचार्य द्वारा	100	40	85	श्रेणी : प्रथम
शिक्षण सामग्री पुस्तिका	50	20	30	
कला तथा शिल्प	50	20	35	
गौरविक	50	20	28	
सामूहिक कार्य कलाप, कक्षा, प्रबन्ध, तथा समूह में उपकरणों का प्रस्तुतीकरण	100	40	68	
योग	350	140	246	
क्रियात्मक समाज कार्य तथा बाल्य कार्य का परीक्षाफल				परीक्षाफल : उत्तीर्ण

पाठनकर्ता के हस्ताक्षर
 जॉयकर्ता के हस्ताक्षर
 सम्पूर्ण परीक्षाफल : उत्तीर्ण

• टिप्पणी
 1. लिखित विषय के प्रत्येक प्रश्नपत्र में 30 प्रतिशत तथा प्राप्तांकों के योग में 34 प्रतिशत उत्तीर्णांक है जिस प्रश्नपत्र परीक्षार्थिनी अनुत्तीर्ण है वह गोले से घिरा हुआ है।
 2. परिवर्तित नियमानुसार अनुत्तीर्ण परीक्षार्थिनी को लिखित विषय के () प्रश्नपत्रों में परीक्षा देनी होगी (यदि चाहे) किन्तु उत्तीर्ण होने पर ऐसे परीक्षार्थिनी को लिखित में केवल उत्तीर्ण घोषित किया जायेगा अन्यथा लिखित में श्रेणी प्राप्त करने हेतु वह सभी प्रश्नपत्रों में परीक्षा दे सक्ती है (यदि वह नियमानुसार आगामी वर्ष परीक्षा में सम्मिलित होने का अधिकारिणी है।)

Self attested
Baby Rani
 रजिस्ट्रार
 परीक्षा नियामक प्राधिकारी
 उ० प्र० इलाहाबाद 26/4/13

23. Petitioners have not brought on record details of study material/syllabus of referred examination in order to show that it would sufficient upto class-V also, whereas the Basic Teacher Certificate course has extensive study material much more than C.T. (Shishu Shiksha). For reference same is mentioned below :-

First Year
Education and principles of teaching
Psychological basis of child Development
Teaching subject: Hindi, Environmental studies, Social

Studies, Mathematics, Sanskrit/Urdu, English
Cognitive Aspects: Moral Education, Physical Education and Music, Art
Psycho Motor Aspect: Class Teaching, Curriculum Analysis
Second Year
Emerging Trends of Elementary: Education and Education Evaluation, School Management, Community Education and Health education
Teaching Methods, work experience and Relevant Practical work: Hindi, Environmental Education, Science, Social Studies, Mathematic, SUPW, Sanskrit/Urdu, English
Cognitive Aspects: Physical education and music
Psycho motor aspect: class room teaching, school experience (internship) Community work and Action research, Analysis of Curriculum and text book

24. This Court has undertaken above exercise as Harsh Kumar (supra) has also granted liberty to verify whether course of a candidate would be same in terms of notification issued by NCTE, otherwise, U.P. Basic Shiksha Parishad (supra) is completely against the petitioners.

25. A bare consideration of standards of course material of Certificate Training (Shishu Shiksha) and Basic Teacher Certificate are sufficient to observe that course material of Basic Training Certificate is proposed for purpose of teaching upto Class-V, whereas course material of CT (Shishu Shiksha) would be limited to pre-school i.e. up to class-II only.

26. In view of aforesaid observations, not only U.P. Basic Shiksha Parishad (supra) is against the petitioners but above consideration of course material of CT (Shishu Shiksha) is not

22

equivalent to course material of minimum qualification i.e. B.T.C. for appointment of Assistant Teachers.

27. Therefore, all writ petitions being sans-merit are **dismissed**.

28. Interim orders are vacated and its legal consequence shall follow.

Order Date :- February 16, 2024

N. Sinha

[Saurabh Shyam Shamsbery, J.]