

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(S) No.7508 of 2013**

1. Kishore Kumar Yadav S/o Tripurari Yadav
R/o Village Mohanabak, Bindapathar, Jamtara
2. Sudip Kumar Maji S/o Sanat Kumar Maji
R/o village Kathijuriya, Jamtara
3. Kajal Kumar Maji S/o Shanti Pada Maji
R/o village Mathura, Jamtara
4. Tapas Kumar Chatterjee S/o Bipin Chatterjee
R/o Kundahit, Jamtara

.....

Petitioner

Versus

1. The State of Jharkhand through Chief Secretary,
Govt. of Jharkhand, Ranchi
2. Principal Secretary, HRD Dept., Ranchi
3. Director, Primary Education, HRD Dept. ,Ranchi
4. Deputy Commissioner, Jamtara
5. District Superintendent of Education, HRD Dept. , Jamtara

.....

Respondents

with

W.P.(S) No.5234 of 2014

Md. Amirul Islam S/o Md. Afthauddin Shaikh
R/o Village Mahajan Tola, Rajmahal, Sahibganj

.....

Petitioner

Versus

1. The State of Jharkhand through Chief Secretary,
Govt. of Jharkhand, Ranchi
2. Principal Secretary, HRD Dept., Ranchi
3. Director, Primary Education, HRD Dept. ,Ranchi
4. Deputy Commissioner, Sahibganj
5. District Superintendent of Education, HRD Dept. , Sahibganj

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Respondents

with

W.P.(C) No.302 of 2014

Sinku Prasad Keshri S/o Mahendra Prasad Keshri
R/o Near Check Post Powerganj, Lohardaga

.....

Petitioner

Versus

1. The State of Jharkhand through Principal Secretary,
HRD Dept., Govt. of Jharkhand, Ranchi
2. The Director, Primary Education, Government of Jharkhand, Ranchi

.....

Respondents

**CORAM: HON'BLE MR. JUSTICE VIRENDER SINGH, CHIEF JUSTICE
HON'BLE MR. JUSTICE APARESH KUMAR SINGH**

For the Petitioner : Mr. Manoj Tandon (W.P.S. No. 7508/2013)
For the Petitioner : Mr. Gautam Kr. Singh(W.P.S. No. 5234/2014)
For the Petitioner : Mr. Binod Singh (W.P.C. No. 302/2014)
For the Respondents : Mr. Ajit Kumar, Additional Advocate General

07/Dated: 13th January, 2015

Per Aparesk Kumar Singh, J.

1. Heard counsel for the parties.

2. Since common issues are involved in these writ petitions, therefore they are being heard together and decided by this common judgment. Essentially, petitioners herein lay a challenge to the vires of Rule 21 of the Jharkhand Primary Schools Teachers Recruitment Rules, 2012(hereinafter referred to as Rules of 2012). As a sequel to the said challenge, they also seek quashing of the advertisement issued by the respective District authorities in November, 2013 for appointment of Assistant Teachers in primary schools in the Districts of Jharkhand. Some of the advertisements issued by the District Superintendent of Education of Jamtara, Godda and Lohardaga are specifically under challenge. Petitioners have also sought a declaration that the qualification of Diploma in Primary Education is not recognized by the National Council for Teachers Education(hereinafter referred to as N.C.T.E.) and should not be treated as an essential eligibility qualification as prescribed under the impugned Rules. They also seek a declaration that candidates having B.Ed degree (one year course) should be considered for appointment as Elementary School Teachers provided they have passed the Teachers Eligibility Test(hereinafter referred to as T.E.T.).

3. Learned counsel for the petitioners in W.P.S. No. 7508 of 2013, W.P.S. No. 5234 of 2014 and W.P.C. No. 302 of 2014 submitted that the present petitioners despite having passed the Teachers Eligibility Test(T.E.T) and also possessing B.Ed degree, have been deprived even to apply and participate in the selection process under advertisement no. 1/2013-14 of appointment of elementary school teachers in the District of Jamtara, Sahibganj and Lohardaga respectively.

4. The challenge to the impugned Rules are based on the following grounds as canvassed by learned counsel for the petitioners; it is contended by Mr. Manoj Tandon, learned counsel for the petitioner in

W.P.S. No. 7508 of 2013 that the Rules of 2012 which are admittedly framed under proviso to Article 309 of the Constitution of India are not in conformity with the Central Legislation i.e Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the Act of 2009). By referring to Section 38 (m) of the Act of 2009, it is submitted that the State Government has already exercised its powers in framing the Jharkhand Right of Children to Free and Compulsory Education Rules, 2011, which lay down the provision for determining the eligibility qualification for Teachers to be appointed in Elementary Schools under Rule 14 as is prescribed by the Academic authority, authorized by the Central Government as per Section 23 of the Act of 2009. The Rules of 2012 framed under the proviso to Article 309 of the Constitution of India are not in conformity with the parent Act of 2009 and more over once the 2011 Rules have specifically been framed by the State Government under Section 38, the same could only have been replaced by the legislative enactment and not in the nature of exercise of power by the Governor of the State under proviso to Article 309 of the Constitution of India. In support of his aforesaid contention, learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in the case of **A.B. Krishna & others Vrs. State of Karnataka & others** reported in **(1998) 3 SCC 495** and submitted that the Rules framed by the President or Governor under proviso to Article 309 are only transitional till the legislative act is exercised by the appropriate legislature. Therefore, once the Rule of 2011 are in force, the impugned Rules of 2012 do not automatically displace the Rules framed under the Act of 2009. The impugned Rules have further been assailed on the ground that they are not in consonance with the eligibility qualification prescribed by the Academic authority, authorized by the Central Government i.e. N.C.T.E. Reliance has been placed upon the N.C.T.E guidelines

contained in notification dated 23.08.2010, which lay down the minimum qualification for a person to be eligible for appointment as a Teacher in Class I to Class VIII in a school referred to in clause (n) of Section 2 of the Act of 2009. It is also their submission that the Rules of 2012 are wholly unnecessary in the matter of recruitment of the Teachers of the Elementary School as the N.C.T.E has already laid down the guidelines. The contention of the petitioners also are to the extent that the State is not right in making the recruitment of such Teachers of Elementary Schools without holding a competitive recruitment exercise. The method of preparation of merit list as prescribed under Rule 21 therefore has been called in question. Alternatively, it is also their case that the T.E.T, which has been held after framing of the impugned Rules should have been made the sole basis for recruitment of Teachers to the Elementary Schools. Learned counsel for the petitioners has relied upon a judgment of the learned Division Bench of this Court in the case of **Anjuman Taraqqi-e-Urdu Jharkhand & Ors. Vrs. The State of Jharkhand & others** reported in **2011(4) 387** which had quashed the recruitment exercise earlier initiated under advertisement no. 27 of 2011 for appointment of about 18,000 Primary Teachers in Elementary schools run by the State Government. Learned counsel has also relied upon a judgment of the Hon'ble Supreme Court rendered in the case of **Society for Unaided Private Schools of Rajasthan Vrs. Union of India & another** reported in **2012(6) SCC 1** where the validity of Act of 2009 has been upheld.

5. These grounds have further been supplemented by Mr. Binod Singh, learned counsel for the petitioner in W.P.C. No. 302 of 2014 by referring to the N.C.T.E guidelines dated 29.7.2011 which have also added Graduation plus two years Diploma in Elementary Education as a qualification for being eligible for recruitment as a Teacher in

Elementary Schools. By specifically referring to the alternative eligibility qualifications prescribed under the N.C.T.E. Guidelines, which also include Graduation plus two years Diploma in Elementary Education, it is submitted that the impugned Rule 21, in an arbitrary manner seeks to limit the parameters for preparation of merit list of such Teachers only to the marks obtained in Matriculation, Intermediate and Diploma in Primary Education plus a graded distribution of points on the basis of marks obtained in the T.E.T. as a yardstick for such appointment, completely ignoring the additional eligibility qualification of Graduation plus two years Diploma in Elementary Education prescribed by the N.C.T.E guidelines of 29.7.2011. Therefore, according to the learned counsel for the petitioner, Rule 21 is discriminatory and restricts the effective zone of consideration only up to the qualification of intermediate, though a Graduate candidate may have better marks and suitability for such appointment. Therefore, Rule 21 should be declared null and void as being contrary to the N.C.T.E guidelines prescribed by the Academic authority notified by the Central Government under the mandate of Act of 2009. The said rule should be held to be repugnant to the Central legislation in view of Article 254 of the Constitution of India. Learned counsel has also tried to emphasize that the impugned Rule in its operation is violative of Article 14 and 16 of the Constitution of India and discriminatory as such for the aforesaid reasons. Learned counsel for the petitioner has placed reliance upon a judgment rendered in the case of ***State of Gujrat & others Vrs. S.D. Munshaw & others*** reported in ***(1983) 2 SCC 33***. He has also relied upon a judgment rendered in the case of ***Raj Pal Sharma & others State of Haryana & others*** reported in ***1985(Supp) SCC 72*** in support of his submission that the impugned Rules are violative of Article 14 of the Constitution of India as they tend to lay down

arbitrary and discriminatory classification by leaving candidates who are otherwise eligible under the N.C.T.E guidelines being a Graduate with two years Diploma course. On the same point reliance has been placed on a Constitution Bench Judgment of the Hon'ble Supreme Court in the case of ***The State of Jammu & Kashmir Vrs. Triloki Nath Khosa & others*** reported in ***AIR 1974 SC 1*** and in the case of ***Ex.- Capt. A.S. Parmar & others Vrs. State of Haryana & others*** reported in ***1984 LAB I.C. 1015***. Learned counsel has also referred to a judgment rendered by the Allahabad High Court rendered in ***Writ -A no.72433 of 2011*** in the case of ***Govind Kumar Dixit & others Vrs. State of U.P. & others.***

6. Learned counsel appearing in W.P.S. No. 5234 of 2014 in his submission has made reference to the revised N.C.T.E guidelines of 29.7.2011 whereunder appointment could also be made of B.Ed Trained candidates provided that he or she undergoes N.C.T.E recognized 6 months special programme in Elementary Education. Therefore, the impugned Rules denying the consideration of the B.Ed qualification is contrary to the N.C.T.E guidelines. Learned counsel has also questioned the selection process undertaken in respective Districts on the ground that it may lead to some meritorious candidate being left out in concerned District while less meritorious candidate being appointed in other Districts where there are lesser number of interested candidates participating. Therefore, according to him the exercise should have been held at the State Level and candidate should have been granted right to exercise option/preference for the District which could have been more fair and equitable considering the fact that there are large number of vacancies in such schools approximately 18,000

7. Learned Additional Advocate General, Mr. Ajit Kumar appearing on behalf of the State has upheld the legislative competence of the

State framing the impugned Rules of 2012. It is his contention that the Hon'ble Governor of the State of Jharkhand has framed the Rules in exercise of the power conferred under proviso to Article 309 of the Constitution of India for the purposes of the recruitment of Teachers to the Elementary Schools. According to learned counsel for the State laying down eligibility criteria / qualification for recruitment to the Civil post under the State Government is within the domain of policy decision which is not a subject of judicial review unless inconsistent with the Constitution and the laws or arbitrary or irrational. On the aforesaid issue, reliance has been placed upon the judgment rendered by the Hon'ble Supreme Court in the case of ***Mangej Singh & others Vrs. Union of India & others*** reported in **1998(9) SCC 471**, in the case of ***P.U.Joshi & others Vrs. Accountant General, Ahmedabad & others*** reported in **2003(2) SCC 632**; in the case of ***Federation of Railway Officers Association & others Vrs. Union of India*** reported in **2003(4) SCC 289** and in the case of ***Sanjay Kumar Manjul Vrs. Chairman, UPSC & others*** reported in **2006(8) SCC 42**. Learned A.A.G has further buttressed his submission by referring to the N.C.T.E guidelines and the impugned Rules to drive home the point that the impugned Rules are fully in conformity with the N.C.T.E guidelines framed by the Academic authority as notified under the Act of 2009. It is their categorical contention that for recruitment of Teachers to Elementary School, more particularly to Class 1 to 5, which is being undertaken, the statutory authority has consciously laid down the qualification as per the N.C.T.E guidelines, which is in the domain of experts opinion with which the High Court or the Supreme Court under exercise of jurisdiction under Article 226/ 32 would not ordinarily interfere to prescribe a particular qualification for a particular post. The impugned Rules lay down a qualification for the post which are clearly in tune with the guidelines of the N.C.T.E and

are in conformity with the parent Act of 2009. According to the Respondents, the 2012 Rules provide for in built competitive methodology for preparation of the merit list of eligible candidates based upon the marks fetched by them under Matriculation, Intermediate and Diploma in Primary Education with a graded distribution of points based upon marks obtained by a candidate in T.E.T. The impugned Rules lay down a fair and uniform yardstick of judging the merit of the candidates and therefore cannot be assailed on the ground of arbitrariness or discrimination. Specific averments have been made in the counter affidavit filed by the respondents in W.P.C. No. 302 of 2014 that the Teachers Training Certificate of B.Ed. were valid for appointment of Teachers for Class 1 to 5 only up to 1.1.2012 as per the N.C.T.E notification dated 29.7.2011 but thereafter even the N.C.T.E guidelines do not prescribe such eligible qualification for appointment of a Teacher in Elementary School. The impugned Rules of 2012 have been framed and brought into effect by notification dated 5.9.2012 which govern the recruitment exercise as being conducted through the impugned advertisement in the respective Districts of the State of Jharkhand by the Respondents. Therefore, the contention of the petitioners that the impugned rules are lacking in legislative competence or tend to replace the 2011 Rules is wholly untenable in law. It is also submitted that the contention of the petitioners that the impugned Rules is contrary to the N.C.T.E guidelines is also not borne out from the records as all such eligibility qualification are already prescribed in Rule 4 of the impugned Rules as are laid down under the N.C.T.E guidelines including the qualification of Graduate plus two years Diploma Course. It is submitted that the petitioners have thrown a wholly misconceived challenge to the recruitment exercise which is being conducted for appointment of Teachers in Class I to V through out the State where

large number of vacancies totaling approximately 18,000 is existing. Therefore, according to the Respondents the instant writ petitions deserve to be dismissed.

8. We have heard the respective counsel for the parties at length and given anxious consideration to the rival submission directed towards the validity of Rule 21 of the 2012 Rules. The Right of Children to Free and Compulsory Education Act, 2009 was framed by the Parliament after insertion of Article 21(A) in the Constitution by the 86th amendment which provide for free and compulsory education for all children in the age of 6 to 14 as Fundamental Right in such a manner as the State may, by law, determine. The broader object of the act is to provide full time elementary education of satisfactory and equitable quality to every child as guaranteed right in formal school which satisfies certain essential norms and standards. It casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education. The Act of 2009 therefore prescribed duties and responsibilities of the appropriate Governments, local authorities, parents, schools and teachers in providing free and compulsory education. The validity of the act was questioned before the Hon'ble Supreme Court in the case of ***Society for Unaided Private Schools of Rajasthan Vrs. Union of India & another (supra)***. The Hon'ble Supreme Court, while upholding the validity of the Act however held that Section 12(1)(c) and 18(3) infringes the fundamental freedom guaranteed to unaided minority school under Article 30(1). Applying the principle of severability, the said RTE Act of 2009 was held not to apply to such school . By a subsequent Constitution Bench judgment of the Hon'ble Supreme Court in the case of ***Pramati Educational & Cultural Trust & others Vrs. Union of India & another*** reported in **(2014) 8 SCC 1** the Hon'ble Supreme Court has further held that the Act of

2009 does not apply to aided or unaided minority school as covered under Clause 1 of the Article 30 of the Constitution of India and is ultra vires to that extent. The issue at hand however is unrelated to the minority school and the recruitment exercise is being conducted for appointment of Teachers in Government Elementary schools particularly for Class I to V in the State of Jharkhand.

9. Considering the Scope of the challenge to the impugned Rules of 2012 in the light of provision made in the Act of 2009, the relevant provision of Section 23 which lay down qualification for appointment and terms and conditions of service of Teachers and Section 38 which provides for powers of appropriate Government to make Rules for carrying out the provisions of the Act in the matters prescribed therein are apposite to be referred to here under. As per Section 23 any person possessing such minimum qualifications, as laid down by an academic authority, authorized by the Central Government, by notification, shall be eligible for appointment as a teacher. Reliance has been placed by the petitioners on the rule making powers under Rule 38, more specifically clause (m) thereof, which prescribe for enacting rules with regard to the salary and allowances payable to, and terms and conditions of the Teachers as indicated under Rule 23(3). The Central Government has by notification authorized the N.C.T.E as an Academic authority to lay down the minimum qualification for a person to be eligible for appointment as a Teacher. Such guidelines were notified on 23.8.2010 and subsequently again on 29.7.2011, both of which notifications are on record in the instant writ petitions. The minimum qualification for a person to be eligible to be appointed as a Teacher in Class I to V have been prescribed under both notifications. For the purposes of the present controversy, the minimum qualification laid down under the notification of 29.7.2011 are being noticed herein below as they have added one more

eligibility qualification of Graduation plus two years Diploma in Elementary Education to other minimum qualification laid down under the N.C.T.E guidelines of 23.8.2010 in relation to the criteria laid down for preparation of the merit list under impugned Rule 21 of 2012 Rules which according to the petitioners are in teeth of the NCTE guidelines

“Relevant portion of notification dated 29.7.2011:- F. No.61-1/2011/NCTE(N&S)- In exercise of the powers conferred by sub-section(10 of the Section 23 of Right of Children to Free and Compulsory Education Act, 2009(35 of 2009) and in pursuance of the Notification No. S.O.750(E), dated 31st March, 2010 issued by the Department of School Education and Literacy , Ministry of Human Resource Development, Government of India, the National Council for Teacher Education(NCTE) hereby makes the following amendments to the Notification No. 215 dated 25th August, 2010 published in the Gazette of India, Extraordinary, Part-III, Section-4, vide F. No. 661-1/2011-NCTE(N&S), dated the 23rd August, 2010, laying down the minimum qualification for a person to be eligible for appointment as a teacher(hereby referred to as the Principal Notification), namely:-

(I) For sub-para(i) of para 1 of the Principal Notification, the following shall be substituted , namely:-

(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 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”.

10. Rule 4 and Rule 21 of the Rules of 2012 are also being reproduced herein below:-

“4. शिक्षक पात्रता परीक्षा में शामिल होने के लिए न्यूनतम अहर्ताएँ निम्नवत् होंगी :

(क) भारत का नागरिक हो,

(ख) शैक्षणिक एवं प्रशैक्षणिक योग्यताएँ :

(i) प्राथमिक कक्षा के शिक्षकों की नियुक्ति हेतु—

(अ) न्यूनतम 50 प्रतिशत अंकों के साथ उच्चतर माध्यमिक अथवा इसके समकक्ष तथा प्रारंभिक शिक्षा में द्विवर्षीय डिप्लोमा (चाहे उसे कोई भी नाम दिया गया हो)

अथवा

न्यूनतम 45 प्रतिशत अंकों के साथ उच्चतर माध्यमिक अथवा इसके समकक्ष एवं

प्रारंभिक शिक्षा शास्त्र में द्विवर्षीय डिप्लोमा (चाहे जिस किसी नाम से जाना जाता हो), जो राष्ट्रीय अध्यापक शिक्षा परिषद् (मान्यता, मानदण्ड और क्रियाविधि) विनियम, 2002 के अनुसार प्राप्त गया हो।

अथवा

न्यूनतम 50 प्रतिशत अंकों के साथ उच्चतर माध्यमिक अथवा इसके समकक्ष तथा 4 वर्षीय प्रारंभिक शिक्षा शास्त्र में स्नातक (बी.एल.एड.)

अथवा

न्यूनतम 50 प्रतिशत अंकों के साथ उच्चतर माध्यमिक अथवा इसके समकक्ष तथा शिक्षा शास्त्र (विशेष शिक्षा) में द्विवर्षीय डिप्लोमा

अथवा

स्नातक तथा प्रारंभिक शिक्षा में द्विवर्षीय डिप्लोमा (चाहे जिस किसी नाम से जाना जाता हो)

एवं

(ब) राष्ट्रीय अध्यापक शिक्षा परिषद् द्वारा निरूपित मार्गदर्शी सिद्धान्तों के अधीन झारखण्ड सरकार द्वारा कक्षा 1 से कक्षा 5 के लिये आयोजित अध्यापक पात्रता परीक्षा (टी.ई.टी.) में उत्तीर्ण

(ii) उच्च प्राथमिक कक्षा के शिक्षकों की नियुक्ति हेतु-

(अ) स्नातक अथवा इसके समकक्ष और प्रारंभिक शिक्षा में द्विवर्षीय डिप्लोमा (चाहे जिस किसी नाम से जाना जाता हो)

अथवा

न्यूनतम 50 प्रतिशत अंकों के साथ स्नातक (अथवा इसके समकक्ष) एवं शिक्षा शास्त्र में एक वर्षीय स्नातक (बी.एड.)

अथवा

न्यूनतम 45 प्रतिशत अंकों के साथ स्नातक (अथवा इसके समकक्ष) एवं शिक्षा शास्त्र में एक वर्षीय स्नातक (बी.एड.) जो इस संबंध में समय-समय पर जारी किये गये राष्ट्रीय अध्यापक शिक्षा परिषद् (मान्यता, मानदण्ड तथा क्रियाविधि) विनियमों, के अनुसार प्राप्त किया गया हो

अथवा

न्यूनतम 50 प्रतिशत अंकों के साथ उच्चतर माध्यमिक (अथवा इसके समकक्ष) एवं 4 वर्षीय प्रारंभिक शिक्षा शास्त्र में स्नातक (बी.एल.एड.)

अथवा

न्यूनतम 50 प्रतिशत अंकों के साथ उच्चतर माध्यमिक (या इसके समकक्ष) एवं 4 वर्षीय बी.ए./बी.एस.सी.एड. या बी.ए.एड./बी.एस.सी.एड.

अथवा

न्यूनतम 50 प्रतिशत अंकों के साथ स्नातक (अथवा इसके समकक्ष) तथा एक वर्षीय बी.एड. (विशेष शिक्षा)

एवं

(ब) राष्ट्रीय अध्यापक शिक्षा परिषद् द्वारा निरूपित मार्गदर्शी सिद्धान्तों के अधीन झारखण्ड सरकार द्वारा कक्षा 6 से कक्षा 8 के लिये आयोजित अध्यापक पात्रता परीक्षा (टी0ई0टी0) में उत्तीर्ण

(ग) अनुसूचित जाति/जनजाति, पिछड़ा वर्ग एवं विकलांग कोटि के अभ्यर्थियों को नियम 4(ख) (i) (अ) एवं 4(ख) (ii) (अ) में अंकित न्यूनतम प्राप्तांक में 5 प्रतिशत की छूट दी जायेगी।

(घ) ऐसे अभ्यर्थी जिनकी प्रशिक्षण चर्चा पूरी हो गयी हो और शिक्षक प्रशिक्षण परीक्षा का आयोजन हो गया हो भी शिक्षक अहर्ता जाँच परीक्षा में सम्मिलित हो सकेंगे। परन्तु उनकी अंतिम रूप से उत्तीर्णता शिक्षक प्रशिक्षण परीक्षा के परिणाम पर निर्भर करेगा।"

"21. रिक्त पदों पर शिक्षको/ अनुदेशकों की नियुक्ति हेतु निम्नलिखित प्रक्रिया के अनुसार जिला स्तर पर मेधा सूची तैयार की जायेगी-

क. इन्टर प्रशिक्षित शिक्षकों की नियुक्ति हेतु मेधा सूची का निर्माण-

(I) इन्टर प्रशिक्षित शिक्षकों की नियुक्ति हेतु कोटिवार मेधा सूची अभ्यर्थी के कुल मेधा अंक के आधार पर जिला शिक्षा स्थापना समिति द्वारा तैयार की जायेगी।

(II) कुल मेधा अंक अभ्यर्थियों के शैक्षणिक मेधा अंक एवं शिक्षक पात्रता परीक्षा के मेधा का योगफल होगा, जिसकी गणना निम्नवत की जायेगी—

(अ) शैक्षणिक मेधा अंक के निर्धारण हेतु अभ्यर्थी के मैट्रिक परीक्षा, इन्टरमीडिएट परीक्षा एवं शिक्षक प्रशिक्षण परीक्षा के प्राप्तांक के प्रतिशत को जोड़ने के उपरांत प्राप्त योगफल को तीन से भाग देने पर प्राप्त प्रतिशत अभ्यर्थी का शैक्षणिक मेधा अंक होगा। किन्तु, इस गणना में अतिरिक्त विषय के प्राप्तांक को नहीं सम्मिलित किया जायेगा।

(ब) शिक्षक पात्रता परीक्षा के प्राप्तांक के आधार पर अभ्यर्थी के शिक्षक पात्रता परीक्षा मेधा अंक का निर्धारण निम्नरूपेण किया जायेगा—

i 90 % एवं इससे उपर	— 10 अंक
ii 80 % एवं इससे उपर किन्तु 90 % से कम	— 06 अंक
iii 70 % एवं इससे उपर किन्तु 80 % से कम	— 04 अंक
iv 52 % एवं इससे उपर किन्तु 70 % से कम	— 02 अंक

ख. स्नातक प्रशिक्षित शिक्षकों की नियुक्ति हेतु मेधा सूची का निर्माण—

(I) अभ्यर्थियों के कुल मेधा अंक के आधार पर विषयवार एवं कोटिवार मेधा सूची जिला शिक्षा स्थापना द्वारा तैयार की जायेगी।

(II) कुल मेधा अंक अभ्यर्थियों के शैक्षणिक मेधा अंक एवं शिक्षक पात्रता परीक्षा के मेधा अंक का योगफल होगा, जिसकी गणना निम्नवत की जायेगी—

(अ) मैट्रिक परीक्षा, इन्टरमीडिएट परीक्षा, स्नातक परीक्षा एवं शिक्षक प्रशिक्षण परीक्षा के प्राप्तांक के प्रतिशत के योग को चार से भाग देने पर प्राप्त प्रतिशत अभ्यर्थी का शैक्षणिक मेधा अंक होगा। स्नातक प्रतिष्ठा या समकक्ष योग्यताधारी के मामलों में सहायक विषयों एवं प्रतिष्ठा या समकक्ष योग्यता के विषयों के प्राप्तांकों का समेकित प्रतिशत उनके स्नातक परीक्षा का प्राप्तांक प्रतिशत होगा। किन्तु प्राप्तांक प्रतिशत की गणना में अतिरिक्त विषय के प्राप्तांक को नहीं जोड़ा जायेगा।

(ब) शिक्षक पात्रता परीक्षा के प्राप्तांक के आधार पर अभ्यर्थी के मेधा अंक का निर्धारण निम्नरूपेण किया जायेगा—

i 90 % एवं इससे उपर	— 10 अंक
ii 80 % एवं इससे उपर किन्तु 90 % से कम	— 06 अंक
iii 70 % एवं इससे उपर किन्तु 80 % से कम	— 04 अंक
iv 52 % एवं इससे उपर किन्तु 70 % से कम	— 02 अंक”

11. As per Rule 21ka(II) of the 2012 Rules, for preparation of the merit list the marks obtained in Matriculation, Intermediate and Diploma in Primary Education is to be added and thereafter divided by 3. After calculation of such marks, points earned on the basis of percentage of marks obtained in T.E.T. are to be added in the manner shown herein in above. For example, a person who has scored 180 marks by adding the marks obtained in Matriculation, Intermediate and Diploma in Primary Education, upon such division would be

fetching 60 marks. If such candidate has obtained more than 90% in T.E.T, 10 points would be added to 60 marks as aforesaid so as to reach to the cumulative total of 70 marks obtained by such candidate while preparing the merit list. Therefore, for a preparation of merit list, the marks obtained in different educational examination starting from Matriculation, Intermediate and Diploma in Primary Education in the academic career of the candidate plus the point obtained on the percentage of marks in T.E.T. is to be added. The impugned Rule 21 tested on that yardstick and methodology cannot be said to be arbitrary in any manner. It rather lays down a uniform criteria applicable to all the eligible candidates for appointment as a Teacher in Elementary school based upon his performance in his educational career plus competitive T.E.T as has been required under the Act of 2009 and the N.C.T.E guidelines. A person who has a qualification of Graduation with Diploma in Primary Education is not ousted from participating in the recruitment exercise but for the purposes of preparation of merit list marks obtained only up to Intermediate level in the manner prescribed under the impugned Rules are to be reckoned with. Therefore, the contention of the petitioner that the impugned Rules are not in conformity with the N.C.T.E guidelines while laying down the minimum eligibility qualification is not correct. The contention of the petitioners that impugned Rule makes a classification which is discriminatory is therefore not correct as would appear from the discussion made herein above also in respect of the laying down a teachers training qualification of Diploma in Primary Education which has a definite rationale for recruitment of Teachers for Primary schools Class-I to IV. The aforesaid eligibility criteria for preparation of the merit list cannot be said to suffer from vice of discrimination and the judgments relied upon by learned counsel for the petitioner in W.P.C. No. 302 of 2013 on that point is therefore

misplaced. Learned counsel for the State is right in basing his submissions by relying upon the judgments rendered by the Hon'ble Supreme Court in the cases of ***Mangej Singh & others Vrs. Union of India & others*** (supra) ***P.U.Joshi & others Vrs. Accountant General, Ahmedabad & others*** (supra), ***Federation of Railway Officers Association & others Vrs. Union of India*** (supra) and ***Sanjay Kumar Manjul Vrs. Chairman, UPSC & others*** (supra) on the proposition that laying down of eligibility criteria / qualification for recruitment to a Civil Post under the State Government is within the domain of policy decision and can be subject of judicial review only if it is inconsistent with the Constitution or the laws or arbitrary or irrational.

12. Rule 14 of the 2011 Rules only lay down that the notified authority of the Central Government would prescribe the eligibility qualification of a candidate for appointment as a Teacher. Such eligibility qualification has been laid down by the academic authority i.e. N.C.T.E as per the guidelines dated 23.8.2010 and 29.7.2011 which have been incorporated in 2012 Rules. The contention of the petitioner that the 2012 Rules intend to displace the field which is occupied by the 2011 Rules is untenable in law. The 2011 Rules have also been framed in exercise of power conferred under Rule 38 of 2009 Rules read with proviso to Article 309 of the Constitution of India. The impugned Rules have also been framed under proviso to Article 309 of Constitution of India laying down the minimum eligibility qualification as prescribed by the N.C.T.E in line with the Act of 2009 and 2011 Rules. The 2012 Rules, though specifically does not make reference to the rule making power of the State Government under the Act of 2009 but the provisions framed there under coupled with aims and objectives of the Rules clearly show that they are in furtherance of the provisions of Act of 2009 in order to provide for

recruitment of Teachers to Primary School in the State of Jharkhand. The definition clause at Rule 2 clearly speaks of N.C.T.E. as the authority which prescribes the eligibility criteria of T.E.T and also recognition of Teachers Training Institute by N.C.T.E. Rule 3 provides for T.E.T which is a requirement under the N.C.T.E guidelines under the Act of 2009 as well. Rule 4, which prescribed the educational and eligibility qualification for appointment of Teachers in Primary Schools are also in consonance with the N.C.T.E. Guidelines. Therefore, the contention of the petitioners that the State Government has framed the instant Rule during the subsistence of the 2011 Rules in a field occupied by it does not stand to reason. Mere non mentioning of provision of law or wrong mentioning of it would not render the exercise of power by the rule making authority as illegal or non-est in the eye of law. Such source of power can be traced to the legislative enactment which is Act of 2009 and the Rules framed thereunder. In this regard the judgment of the Hon'ble Supreme Court in the case of **High Court of Gujarat & another Vrs. Gujarat Kishran Mazdoor Panchayat & others** reported in **(2003) 4 SCC 712** and in the case of **Mohd. Shahabuddin Vrs. State of Bihar & others** reported in **(2010) 4 SCC 653** reiterate the settled legal position. The relevant para 53 of the judgment rendered in the case of **High Court of Gujarat & another(supra)** is being reproduced herein below:-

“ Para 53- It is further trite that non mentioning or wrong mentioning of a provision of law would not invalidate an order if a source therefore can be found out either under general law or a statute law”.

The relevant para 207 and 208 of the judgment rendered in the case of **Mohd. Shahabuddin (supra)** are also being reproduced herein below:-

Para 207- In N. Mani v. Sangeetha Theatre, a three-Judge Bench of this Court succinctly observed as follows: (SCC p. 280, para 9)

“9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself

does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.”

Para 208- It is a well-established law that when an authority passes an order which is within its competence, it cannot fail merely because it purports to be made under a wrong provision if it can be shown to be within its power under any other provision or rule, and the validity of such impugned order must be judged on a consideration of its substance and not its form. The principle is that we must ascribe the act of a public servant to an actual existing authority under which it would have validity rather than to one under which it would be void. In such cases, this Court will always rely upon Section 114 Illustration (e) of the Evidence Act to draw a statutory presumption that the official acts are regularly performed and if satisfied that the action in question is traceable to a statutory power, the courts will uphold such State action. (Reference in this regard may be made to the decisions of this Court in *P. Balakotaiah v. Union of India*; *Lekhraj Sathramdas Lalvani v. Custodian-cum-Managing Officer*; *Peerless General Finance and Investment Co. Ltd. v. RBI and BSE Brokers' Forum v. SEBI*”.

In view of the discussion made herein above the judgment relied upon by learned counsel for the petitioners in the case of ***A.B.Krishna & others Vrs. State of Karnataka & others*** (supra) is inapplicable to the facts of the case in hand.

13. The challenge to the impugned rules on the ground that it does not include the qualification of Graduation plus B.Ed degree as a yardstick for preparation of merit list of eligible candidates for such appointment, does not stand the test of legal scrutiny. The instant Rules have been framed primarily for recruitment of Teachers for Primary School and are designed to give incentives to Teachers who are specially trained to teach in Primary school. For teaching in the primary school therefore one must know the child psychology and development of child at a tender age. The candidate who are trained in B.Ed degree are not necessarily equipped to teach the student of Primary schools and understand the psychology of the child of a tender age. The issue had cropped up earlier in the case of ***Yogesh Kumar & others Vrs. Govt. of NCT, Delhi & others*** reported in ***2003(3) SCC 548***. The recruitment rules for the post of Assistant Teacher in Primary school of Municipal Corporation prescribed the Teachers Training Certificate as an essential qualification for the post. The contention of the candidates who had B.Ed degree for being

eligible for recruitment to such post of Teachers in Primary schools on the ground that it was higher qualification than the T.T.C was negatived by the Hon'ble Supreme Court. The opinion of the Hon'ble Supreme Court contained at Para 5 and 8 on the aforesaid subject are being reproduced herein below:-

“Para 5. The Division Bench of the Delhi High Court in the impugned judgment has dealt with the above two arguments in great detail. In our considered opinion, it has rightly come to the conclusion that BEd qualification, although a well-recognised qualification in the field of teaching and education being not prescribed in the advertisement, only some of the BEd candidates who took a chance to apply for the post cannot be given entry in the field of selection. We also find that the High Court rightly came to the conclusion that teacher training imparted to teachers for BEd course equips them for teaching higher classes. A specialized training given to teachers for teaching small children at primary level cannot be compared with training given for awarding BEd degree. Merely because primary teachers can also earn promotion to the post of teachers to teach higher classes and for which BEd is the prescribed qualification, it cannot be held that BEd is a higher qualification than TTC. Looking to the different nature of TTC qualification, the High Court rightly held that it is not comparable with BEd degree qualification and the latter cannot be treated as higher qualification to the former.

Para 8. This last argument advanced also does not impress us at all. Recruitment to public services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the rules allows entry to ineligible persons and deprives many others who could have competed for the post. Merely because in the past some deviation and departure was made in considering the BEd candidates and we are told that was so done because of the paucity of TTC candidates, we cannot allow a patent illegality to continue. The recruitment authorities were well aware that candidates with qualification of TTC and BEd are available yet they chose to restrict entry for appointment only to TTC-pass candidates. It is open to the recruiting authorities to evolve a policy of recruitment and to decide the source from which the recruitment is to be made. So far as BEd qualification is concerned, in the connected appeals (CAs Nos. 1726-28 of 2001) arising from Kerala which are heard with this appeal, we have already taken the view that BEd qualification cannot be treated as a qualification higher than TTC because the nature of the training imparted for grant of certificate and for degree is totally different and between them there is no parity whatsoever. It is projected before us that presently more candidates available for recruitment to primary school are from BEd category and very few from TTC category. Whether for the aforesaid reasons, BEd qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but we cannot consider BEd candidates for the present vacancies advertised as eligible. In our view, the Division Bench of the Delhi High Court was fully justified in coming to the conclusion that BEd candidates were rightly excluded by the authorities from selection and appointment as primary teachers. We make it clear that we are not called upon to express any opinion on any BEd

candidates appointed as primary teachers pursuant to advertisements in the past and our decision is confined only to the advertisement which was under challenge before the High Court and in this appeal”.

14. In the case of of ***Dilip Kumar Ghosh & others Vrs. Chairman & others*** reported in ***(2005) 7 SCC 567*** once again the recruitment rules under which appointment of Primary school teachers were to be made laying down the qualification of Junior Basic Training / Primary Teachers Training Certificate and denying marks against the B.Ed degree held by the appellant candidate, as they were not holder of JBT/ PTTC was in question. The Hon'ble Supreme Court while dealing with the Rules of recruitment in question therein held that the syllabus and course of Primary Teachers Training Institute concentrate on child's environment, growth, development, child psychology, child philosophy etc. where as curriculum for higher course such as B.Ed of generic nature does not contain subjects like child psychology. Therefore, it was categorically held that the B.Ed degree holders were rightly denied marks against the training qualification as they were not holder of JBT/PTTC. The Hon'ble Supreme Court also considered the earlier judgment rendered in the case of ***P.M.Latha & another Vrs. State of Kerala & others*** reported in ***(2003) 3 SCC 541*** and also the case of ***Yogesh Kumar & others Vrs. Govt. of NCT, Delhi & others(supra)***. The opinion of the Hon'ble Supreme Court at para 13 are also being reproduced herein below as the issue involved herein are exactly covered by principle laid down in the said judgments.

“Para13. What emerges from the above interpretation of the Rules, curriculum, syllabus for appointment of teachers in primary schools are these:

“(i) In the case of the junior basic training and primary teachers training certificate the emphasis is on the development of the child. The primary education is up to IVth standard. Thereafter there is middle education and then the secondary and higher secondary education. But in the primary school one has to study the psychology and development of child at a tender age. The person who is trained in BEd degree may not necessarily be equipped to teach a student of primary class because he is not equipped to understand the psychology of a child at that

early stage.

(ii) This is only peculiar to the curriculum of the junior basic training course and primary teachers training certificate course. Therefore, looking to the curriculum one can appreciate the distinction between the two courses and the same policy is reflected in the Rules framed by the State in exercise of its statutory power.

(iii) To accept a proposition that a candidate who holds a BEd degree, that is, higher degree cannot be deprived appointment to the post of primary school teacher would negate the aims and objects of the Rules for the purpose for which it is framed.

(iv) These Rules were framed primarily for recruitment of the teachers for primary schools and in that context the Rules were designed to give credit to the candidates who are specifically trained to teach in primary schools. The idea behind the framing of these Rules was that the junior basic training and primary teachers training certificate trained teachers should be appointed so that they can impart proper education to the child of tender age who requires an expert and tending hand.

(v) There is prohibition contained in Rule 6(d) that no extra credit shall be given for higher qualification."

15. In a recent judgment passed on 24.9.2014 rendered by the Hon'ble Supreme Court in the case of **State of Punjab & others Vrs. Anita and others** in Civil Appeals No.7983-7986 of 2009 , same view has been reiterated while also relying upon the judgment rendered in the case of **P.M. Latha & another(supra)** and **Yogesh Kumar & others (supra)**.

16. It can therefore be safely concluded that the impugned Rules neither is beyond the legislative competence of the Respondent- State nor is in contravention of the Act of 2009 and it does not displace the field said to be occupied by the 2011 Rules. The impugned Rules in fact are in conformity with the N.C.T.E guidelines which lay down the minimum eligibility qualification for appointment as Primary Teacher in Elementary School. The recruiting body having the exclusive domain to prescribe the qualification for such appointment of a Teacher to a Primary School cannot be said to have committed any illegality or discrimination in prescribing the Teachers training qualification as Diploma in Primary Education (by whatever name called) for appointment to such post by excluding the B.Ed qualification for such appointment. The rationale of laying down the specific Teachers training qualification for appointment of teachers to Primary classes

have been clearly enunciated in the judgment of the Hon'ble Supreme Court in the case of ***P.M. Latha & another(supra)*** and ***Dilip Kumar Ghosh & others Vrs. Chairman & others*** and further relied upon in the case of ***State of Punjab & others Vrs. Anita & others(supra)***. The respondents have in their counter affidavit in W.P.S. 7508 of 2013 also made categorical statements that N.C.T.E vide letter No. 62-1/2004 clarified that the Teachers Training obtained from IGNOU and certificate of D.P.E are valid qualification for appointment of Primary Teachers. Therefore, the contention of the petitioner that Diploma in Primary Education is not a valid qualification for such appointment is also untenable in facts and in law. The judgment relied upon by learned counsel for the petitioners therefore do not come to their aid, more so in view of the categorical pronouncement of the Hon'ble Supreme Court up holding the validity of the recruitment rules laying down the Primary Teachers Training Qualification as appropriate for appointment of a Teacher in Primary School in contradistinction to the qualification of B.Ed. The challenge to the validity of the Rules on the aforesaid ground therefore necessarily have to fail in view of the detailed reasons and the discussion made herein above as also in view of the judgments on the issue rendered by the Hon'ble Supreme Court relied herein above.

17. The writ petitions being devoid of merit are therefore dismissed.

(Virender Singh, C.J.)

(Aparesh Kumar Singh, J.)