

Court No. - 4

Case :- SERVICE SINGLE No. - 6571 of 2021

Petitioner :- Shubham Kumar Shukla & Ors.

Respondent :- State Of U.P.Thru.Addl.Chief Secy. Basic Education & Ors.

Counsel for Petitioner :- Sameer Kalia,Rajat Rajan Singh

Counsel for Respondent :- C.S.C.,Om Prakash Mani Tripathi

Hon'ble Rajan Roy,J.

Heard Shri Sameer Kalia, learned counsel for the petitioners, Shri P. K. Singh, learned counsel for the State and Shri. O.P.M. Tripathi, learned counsel for the National Council for Teacher Education (hereinafter referred as 'N.C.T.E.').

As per Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009, a person in order to be eligible for appointment as a teacher in a Basic School (in this case class VI to VIII) should possess such minimum qualifications as laid down by an Academic Authority authorised by the Central Government by Notification. As per Notification of the Central Government dated 31st March, 2010, published in the Gazette of 5th April, 2010, N.C.T.E. has been notified as the Academic Authority and authorised to lay down the minimum qualifications for a person to be eligible for appointment as a Teacher. N.C.T.E. has framed regulations in this regard which have been notified on 23.08.2010 (as amended from time to time), according to which one of the qualifications for appointment as Teacher for class VI to VIII is 'Graduation and Two Year Diploma in Elementary Education (by whatever name it is known)'.

Shri Kalia has invited the Court's attention to an order of the Government of India, Ministry of Education dated 16/12/2020 issued after pronouncement of the Patna High Court judgment in the case of ***Sanjay Kumar Yadav and Ors. vs. State of Bihar and Ors., Civil Writ Jurisdiction Case No. 19842 of 2019***, which is addressed to the Chairperson, N.C.T.E. and has been issued in the context of candidates of Uttarakhand State, wherein, N.C.T.E. has been requested with reference to the decision of the Patna High Court aforesaid to issue a **clarification** to all states and Union Territories that those candidates who have completed their D.El.Ed. course through O.D.L. mode conducted by NIOS may be given an opportunity to apply **for fresh recruitment** at par with the other D.El.Ed. candidates subject to adherence to all the other criteria and qualification requirements such as passing of TET etc. as per the N.C.T.E. notification dated 23.08.2010 (as amended from

time to time) and any other as mandated by the State. As per the contention of Shri Kalia the said order had been issued under Section 29 of the N.C.T.E. Act, 1993. The order further goes on to state that the clarification mentioned therein would avoid unnecessary future reference/ court cases on this issue.

Consequent to the aforesaid N.C.T.E. issued an order dated 06/01/2021 to the Chief Secretaries of all States/ Union Territory Governments on the same lines as directed by the Government of India vide its order dated 16/12/2020 **clarifying** and requesting all the States and Union Territory Governments to consider all those candidates who have completed the D.El.Ed. course through ODL mode conducted by N.I.O.S. and may be given opportunity **to apply for fresh recruitment** at par with the other D.El.Ed. candidates subject to adherence to all other criteria.

Shri. O.P.M. Tripathi, learned counsel for the N.C.T.E. makes a statement before the Court on the basis of instructions that D.El.Ed. qualification acquired through Open Distant Learning (ODL) conducted by NIOS is at par with Two-year D.El.Ed. course for appointment as Assistant Teacher in Primary Schools such as the one in respect to which advertisement has been issued by the State.

Petitioners herein claim to have acquired the qualification of D.El.Ed. through ODL mode conducted by NIOS, therefore, they claim to be eligible for applying for the post of Assistant Teacher which has been advertised by the State of U.P. on 01/03/2021 in view of the order of the Government of India dated 16/12/2020 and the consequential order of the N.C.T.E. dated 06/01/2021, but they are not able to apply because of the format of the application form uploaded by the State Government on the concerned website which refers to D.El.Ed. (previous known as 'BTC'). They say that the last date for applying online in pursuance to the said advertisement is tomorrow i.e. 17th March 2021.

Shri P.K. Singh, Addl. C.S.C. submits that the advertisement dated 01/03/2021 has been issued as per Rule 19 of Uttar Pradesh Recognised Basic Schools (Junior High School) (Open Recruitment and Conditions of Service of Teachers) (VIIth Amendment) by which the said rules of 1978 have been amended. According to Rule 4 of the VIIth Amendment Rules 2019 Two Year Diploma in Elementary education (by whatever name it is called) is prescribed, meaning thereby it does not prescribe D.El.Ed. by ODL mode conducted by NIOS. Till date the N.C.T.E. has not issued any notification permitting D.El.Ed. by ODL mode and no amendment has been made in Rule 4 of

the VIIth Amendment Rules 2019, however, on being confronted with the clarificatory order of the Govt. of India dated 16/12/2020 which is referable to Section 29 of the N.C.T.E. Act 1993 and the clarificatory order of the N.C.T.E. dated 06/01/2021 which is consequential to the directions of the Govt. of India, learned Standing Counsel did not have any answer.

Moreover, Section 23(1) refers to minimum qualification being laid down by an Academic Authority i.e. N.C.T.E. At least at this stage the orders dated 16/12/2020 of the Govt. of India and the order of N.C.T.E. dated 06/01/2021 is binding upon the State Govt. and is referable to section 23 of the Act 2009, but it seems that these clarificatory order which clarify the qualifications prescribed in the Regulations of 2010 (as amended from time to time) orders were not taken into consideration while issuing the advertisement dated 01/03/2021 on account of which candidates such as the petitioners who have acquired the qualification of D.El.Ed. through ODL mode conducted by NIOS would be deprived of their opportunity to apply for employment as assistant Teacher in a fresh recruitment as advertised on 01/03/2021.

Sri Kalia contends that the order dated 06/01/2021 issued by the N.C.T.E. clarifies the qualification already prescribed by it in the regulations to the effect D.El.Ed. Online mode conducted by N.I.O.S. is at par with the D.El.Ed. through regular mode, therefore, contention of the learned Addl. C.S.C. that regulations have not been amended is misconceived.

In view of section 23 of the Act 2009 which is a Central Government Act minimum qualification for appointment as Assistant Teacher in Basic School would be such as laid down by the Academic Authority which in this case is N.C.T.E. The clarification in question is with respect to the minimum qualification prescribed by it and it is not a case of any additional qualification prescribed by the State.

Prima Facie the Govt. of India and N.C.T.E. have held the said qualification to be at par with the Two Year D.El.Ed. course. It is accordingly provided that the petitioners shall be permitted to apply online in pursuance to advertisement dated 01/03/2021 and participate in the selection/examination.

As regards the contention of the learned counsel for the Petitioners with regard to the format for application mentioned hereinabove, petitioners shall click and choose the qualification mentioned as "D.El.Ed. (previous known as BTC)" in the online form and their application(s) shall not be rejected on this

ground.

The petitioners and other similarly situated candidates shall be considered accordingly, however, their consideration shall abide by further orders/ result of this Writ Petition.

The benefit of this Interim Order shall not only be available to the Petitioners herein, but, it shall be available to all others who have acquired qualification of D.El.Ed. through ODL mode conducted by NIOS as there is no reason *prima facie* to deprive these candidates a Right to equal opportunity for Public Employment in view of the aforesaid orders of the Govt. of India and N.C.T.E. nor to make them rush to Court.

Let Counter Affidavit be filed within 3 weeks. Rejoinder Affidavit, if any , within 1 week thereafter.

List this case on **27/04/21**.

Shri P.K. Singh Addl. C.S.C. shall inform the State Govt. about this order for compliance.

(Rajan Roy, J.)

Order Date :- 16.3.2021
A.Nigam