HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

WRIT - A No. - 11920 of 2026

Abhishek Pathak And 44 Others

.....Petitioner(s)

Versus

Union Of India Ministry Of Edu. New Delhi Thru. Secy. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Abhishek Singh, Anuj Kumar Gupta
Counsel for Respondent(s)	:	A.S.G.I., Abhineet Jaiswal, Anagh Misra, Ran Vijay Singh

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Court No. - 6

HON'BLE PANKAJ BHATIA, J.

1. Heard learned counsel for the petitioner and Shri Abhineet Jaiswal, learned counsel for the respondents.

2. Present petition has been filed by group of petitioners alleging that despite the petitioners having the qualification for appearance as recognized by the NCTE, they are not being permitted to participate for the selection process in terms of Advertisement No.5/2026.

3. The facts, in brief, are that in terms of the RTE Act, the teachers to be appointed were required to have a specified qualification as prescribed by the NCTE. By virtue of Section 23(2) of the RTE Act, it was provided that all the teachers appointed on 31.03.2015 who did not possess the prescribed minimum qualification shall acquire the qualification within a period of four years. For furtherance of the mandate of the said Section, the Government of India, Ministry of Human Resources prescribed that the persons who were in service would have to abide the qualifications or otherwise they would not be allowed to continue beyond 01.04.2019.

4. A decision was taken by the States and the Union Territories that all the in-service untrained teachers, whether in the government or private schools, would acquire the qualification through the NIOS Open and Distance Learning program. The guidelines were also made for acquiring of the said qualification. It is also argued that the NCTE by virtue of the Regulations had recognized NIOS for grant of Diploma in Elementary Education through ODL mode. The petitioners claimed that they had acquired the Diploma in

Elementary Education (D.El.Ed) through the ODL mode under the NIOS. It is stated that the respondents have issued an advertisement for appointment of Assistant Teachers being Advertisement No.5/2026, however, the D.El.Ed obtained by the petitioners through ODL from NIOS has not been recognized as an essential qualification for appearance.

5. It is argued that the said issue engaged the attention of the Supreme Court on more than one occasion. The Supreme Court had issued extensive guidelines in the case of ***Jaiveer Singh v. State of Uttarakhand : (2024) 15 SCC 227***. Subsequently, the Supreme Court in a similar matter arising before it in the case of ***Kousik Das and Ors. v. State of West Bengal & Ors. : (2025) 5 SCC 413*** reconsidered the entire issue. Relevant paragraphs are extracted herein below:

> "*43. As observed hereinbefore, it is clear that the judgment of this Court in Jaiveer Singh [Jaiveer Singh v. State of Uttarakhand, (2024) 15 SCC 227 : 2023 SCC OnLine SC 1584] unequivocally held that the entire scheme emanating from NCTE recognition order dated 22-9-2017 was for the purpose of providing a window to the in-service teachers inasmuch as unless they would have acquired requisite qualifications prior to 1-4-2019, they would not have continued to remain in service and would have faced dismissal from service. As such, any teacher who was in service as on 10-8-2017 and who acquired the qualification of DElEd by way of the 18 months' programme through NIOS prior to 1-4-2019 is a valid diploma-holder and on a par with any other teacher who has completed the 2 years' DElEd programme.*
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> *44. On this ground itself, we are of the considered view that the Division Bench [Pintu Mallick v. State of W.B., 2024 SCC OnLine Cal 12060] of the High Court erred in not interfering with the judgment and order [Sabir Sheikh v. State of W.B., 2024 SCC OnLine Cal 12046] of the learned Single Judge.*
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> *45. We, however, also have the benefit of the order dated 10-12-2024 [Vishwanath v. State of Uttarakhand, 2024 SCC OnLine SC 4937] passed by this Court. The same was not available to the Division Bench at the time of passing of the impugned judgment and order [Pintu Mallick v. State of W.B., 2024 SCC OnLine Cal 12060] .*
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> *46. By an order dated 10-12-2024 [Vishwanath v. State of Uttarakhand, 2024 SCC OnLine SC 4937] this Court disposed of a batch of review petitions and miscellaneous applications filed in connection with the judgment of this Court in Jaiveer Singh [Jaiveer Singh v. State of Uttarakhand, (2024) 15 SCC 227 : 2023 SCC OnLine SC 1584] . It would be relevant to refer to the order dated*

10-12-2024 [Vishwanath v. State of Uttarakhand, 2024 SCC OnLine SC 4937] in full, which is as follows : (Vishwanath case [Vishwanath v. State of Uttarakhand, 2024 SCC OnLine SC 4937] , SCC OnLine SC paras 1-5)

> *"1. The grievance sought to be raised on behalf of the review petitioners and some of the applicants before this Court is that though they were in employment and covered by the recognition order dated 22-9-2017, they believe that the judgment and order of this Court dated 28-11-2023 [Jaiveer Singh v. State of Uttarakhand, (2024) 15 SCC 227 : 2023 SCC OnLine SC 1584] (hereinafter "judgment under review") would come in their way if they want to make better their prospects by applying either in other institutions or for promotional avenues.*
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> *2. We have already clarified in the judgment under review that the one-time scheme was provided solely to safeguard the interests of those teachers who were employed as on 10-8-2017. We are, therefore, not inclined to entertain the present review petitions as well as miscellaneous applications.*
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> *3. However, to avoid any confusion, we again clarify that the 18 months diploma obtained by such persons, who were in employment as on 10-8-2017 and who have completed the diploma course of 18 months, would be treated as valid diploma-holders for the purpose of applying in other institutions or for promotional avenues.*
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> *4. Needless to state that the clarification will be effective from the date of pronouncement of the judgment under review.*
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> *5. With the aforesaid clarification, the review petition(s) as well as all miscellaneous applications, including all the pending applications, are disposed of."*
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> *(emphasis supplied)*

47. It can thus be seen that this Court observed that it had already clarified in the judgment of Jaiveer Singh [Jaiveer Singh v. State of Uttarakhand, (2024) 15 SCC 227 : 2023 SCC OnLine SC 1584] that the one-time scheme was provided solely to safeguard the interests of those teachers who were employed as on 10-8-2017. It can further be seen that to avoid any confusion, this Court in the review petition again clarified that such of the teachers who acquired the 18 months' DElEd through NIOS and who were in employment as on 10-8-2017 would be treated as a valid diploma-holder for the purpose of applying in other institutions or for promotional avenues. It was further made clear that the

clarification issued by this Court on 10-12-2024 [Vishwanath v. State of Uttarakhand, 2024 SCC OnLine SC 4937] would be effective from the date of pronouncement of the judgment of this Court in Jaiveer Singh [Jaiveer Singh v. State of Uttarakhand, (2024) 15 SCC 227 : 2023 SCC OnLine SC 1584] i.e. 28-11-2023.

48. Not only that but this Court on 5-3-2025 by a judgment in Vishwanath v. State of Uttarakhand [Vishwanath v. State of Uttarakhand, (2025) 6 SCC 808 : 2025 SCC OnLine SC 679] faced with a similar fact situation, once again held that such of the teachers who were in employment as on 10-8-2017 and who had undertaken the 18 months' DElEd through NIOS would be treated as valid diploma-holders for the purposes of applying to other institutions or for promotional avenues.

49. It is, therefore, clear that in light of the judgment of this Court in Jaiveer Singh [Jaiveer Singh v. State of Uttarakhand, (2024) 15 SCC 227 : 2023 SCC OnLine SC 1584] so also the order dated 10-12-2024 in Vishwanath [Vishwanath v. State of Uttarakhand, 2024 SCC OnLine SC 4937] , the impugned judgment and order [Pintu Mallick v. State of W.B., 2024 SCC OnLine Cal 12060] of the High Court is not sustainable.

50. We, therefore, pass the following order:

(i) The appeal is allowed.

(ii) The judgment and order dated 29-2-2024 [Sabir Sheikh v. State of W.B., 2024 SCC OnLine Cal 12046] passed by the learned Single Judge of the High Court is quashed and set aside.

(iii) The judgment and order dated 24-7-2024 [Pintu Mallick v. State of W.B., 2024 SCC OnLine Cal 12060] passed by the Division Bench of the High Court is quashed and set aside.

(iv) The writ petition being WPA No. 16118 of 2023 is dismissed.

(v) We clarify that such of the teachers who were in employment as on 10-8-2017 and who completed the 18 months' DElEd (ODL) programme through NIOS before 1-4-2019 shall be considered as valid diploma-holders for the purpose of applying in other institutions and/or for promotional avenues.

(vi) We direct the respondent authorities to consider the candidature of such of the appellants who were in-service as on 10-8-2017 and that who, on verification, are found to satisfy the eligibility criteria shall be appointed within a period of three months from today."

6. My attention is also drawn to the judgment of the Supreme Court in the case of ***Vishwanath v. State of Uttarakhand & Ors. : Transfer Petition (C) No.42-43 of 2025*** wherein the Supreme Court had clarified the phrase 'other institutions' referred to in the earlier order of the Supreme Court dated 10th December 2024 in the case of ***Vishwanath and Others v. State of Uttarakhand & Ors***. The relevant paragraphs are being reproduced herein below:

> *"14. This Court had further clarified vide paragraphs 3 and 4 of the order dated 10th December 2024 passed in R.P.(C) Diary No. 4961 of 2024 titled as "Viswanath and Others v. The State of Uttarakhand and Others", as under:*
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> > *3. However, to avoid any confusion, we again clarify that the 18 months diploma obtained by such persons, who were in employment as on 10.08.2017 and who have completed the diploma course of 18 months, would be treated as valid diploma holders for the purpose of applying in other institutions or for promotional avenues.*
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> > *4. Needless to state that the clarification will be effective from the date of pronouncement of the judgment under review.*
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> *20. No doubt that, this Court has upheld the 2012 Rules framed by the State Government, vide the judgment dated 28th November 2023. However, at the same time, this Court had clarified that such of the teachers, who were already in employment as on 10th August 2017, would be entitled to the benefit of One Time Scheme provided by the Government of India. This Court had held that such of the teachers who have completed the diploma course of 18 months would be treated as valid diploma holders for the purpose of applying in other institutions or for promotional avenues.*
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> *21. Indisputably, the 'other institutions' would also include the schools run by the State Governments."*

7. In view of the categorical pronouncement of the Supreme Court on the issue in question, the matter requires consideration.

8. Learned counsel for the respondents would be entitled to file a counter affidavit within four weeks.

9. Rejoinder affidavit shall be filed within two weeks thereafter.

10. All the issues as may be raised by the respondents would be considered by this Court after the exchange of pleadings.

11. Considering the fact that the qualification held by the petitioners has found favour with the Supreme Court and the same is applicable to all the States and the Institutions as clarified by the Supreme Court, as an interim measure, the petitioners who are holding the D.El.Ed. - ODL from NIOS would be entitled to appear in furtherance of Advertisement No.5/2026.

12. It is informed that the last date for filling the application is already over, however, the window for correction of the applications is still open till 7th November, as such, it is also directed that respondent no.3 would issue necessary directives through the advertisement on the site enabling and providing that all the persons who are in-service teachers and passed D.El.Ed - ODL from NIOS would be entitled to apply. If required, the dates may be extended by respondent no.3 suitably.

13. It is clarified that the relief granted is not confined to the present petitioners only and respondent no.3 would be under obligation to advertise so that all the persons who are similarly situated and possess the requisite qualification as directed above, can apply in terms of the Advertisement No.5/26.

14. List after six weeks.

(Pankaj Bhatia,J.)

November 5, 2026
nishant

Digitally signed by :-
NISHANT MOHAN
High Court of Judicature at Allahabad,
Lucknow Bench