

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No. 17449 of 2008 & connected cases

Date of Decision: November 29, 2010

Vijay Kumar and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE A.N. JINDAL

Present: Mr. Gopal Krishan Chatrath, Senior Advocate, with
Ms. Alka Chatrath, Advocate, and
Mr. G.P. Singh, Advocate,
for the petitioners.

Mr. Rameshwar Malik, Addl. AG, Haryana,
With Ms. Mamta Singhal Talwar, Asstt. AG, Haryana,
Mr. Namit Kumar, Advocate,
Mr. R.K. Malik, Senior Advocate, with
Mr. Kohal Dev Sharma, Advocate,
Mr. Jagbir Malik, Advocate,
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

M.M. KUMAR, J.

1. This order shall dispose of a bunch of 10 petitions* involving common questions of law and facts. However, the facts have been referred from CWP No. 17449 of 2008.
2. The Guest Teachers working in the Haryana Education Department have filed the instant petition under Article 226 of the Constitution challenging

amendments made in the statutory rules vide impugned notifications dated 24.7.2008 (Annexures P-1 to P-4). Further challenge has been made to the issuance of Prospectus for holding State Teachers' Eligibility Test (for brevity, 'the Eligibility Test') as also advertisement dated 13.8.2009 (P-8), prescribing passing of the Eligibility Test as an essential condition for recruitment of teachers of all categories. Still further a prayer has been made for directing the official respondents to consider the petitioners for appointment against the posts which have been advertised vide advertisement dated 13.8.2009 without imposing the condition of having passed the Eligibility Test.

3. At the outset the contour of factual matrix may be noticed. In the Department of Education, Haryana, there are different set of Rules regarding recruitment of Teachers to Group-B and Group-C posts. These Rules are known as the Haryana Primary Education (Group-C) District Cadre Service Rules, 1994 (for brevity, 'the Service Rules of 1994'), which were amended by the Haryana Primary Education (Group-C) District Cadre Service Rules, 2003 (for brevity, 'the 2003 Rules'). These Rules govern the conditions of service of Primary Teachers such as Head Teacher and Junior Basic Trained Teacher. The conditions and qualifications concerning recruitment of Middle School Headmaster and Masters in various subjects such as Punjabi, Hindi, Sanskrit, Physical Training Instructors etc. are provided by the Haryana State Education School Cadre (Group-C) Service Rules, 1998 (for brevity, 'the Service Rules of 1998'). The Haryana State Education (School and Inspection Cadre) (Group B) Service Rules, 1998 (for brevity, 'School and Inspection Cadre Rules') also prescribe certain qualifications concerning appointment and conditions of service of persons recruited to the Group-B Service of Education Department such as Assistant Director (Academic)/Deputy District Education Officer/Sub

Divisional Education Officer, Principal/Senior Specialist, Block Education Officer and Headmaster of High School/Junior Specialist/ Programme Assistant. Other than this, the Rules called the Haryana State Education Lecturer (School Cadre) Service Rules, 1998 (for brevity, 'the School Lecturer Rules') relate to the qualifications and conditions of service of the School Lecturers.

4. The petitioners have claimed that they possess adequate and various qualifications viz. 10+2, JBT/D.Ed./ETT or B.A./B.Sc. and B.Ed. or M.A./M.Sc., M.Ed. etc. with more than 50% marks and fulfill the qualifications prescribed under the aforementioned statutory Rules for being appointed as Teachers. In para 2 of the petition a detailed chart has been prepared showing the educational qualifications possessed by the petitioners and particulars of the posts for which they are eligible.

5. The averments made in the petition show that more than 15000 vacancies of teachers exist in the State of Haryana. However, the teachers have not been appointed in full strength. In the year 2001, the State of Haryana transferred the primary schools to the Zila Parishads vide notification dated 30.3.2001, which was subsequently rescinded by another notification dated 10.8.2005. The State of Haryana also decided that the teachers appointed in the schools during the interregnum period by the Zila Parishads would be required to qualify a test. Their qualification for appointment was raised from 10+2 to B.A. Thus, it is alleged that an attempt was made to decrease the number of teachers recruited by the Zila Parishads.

6. In 2005, with a view to cope up with the scarcity of teachers, the State of Haryana decided to make appointments of Guest Teachers. On 17.12.2005, an advertisement was issued for appointment of Guest Teachers.

The power to make appointments of Guest Teachers was delegated to the District Education Officers, Block Education Officers and the Principals/Headmasters of the concerned institutions. A large number of Guest Teachers, who were trained and qualified, were employed. The petitioners were also appointed as Guest Teachers in December 2005.

7. The Board of School Education, Haryana, Bhiwani, issued a prospectus on the basis of the decision of the State of Haryana to introduce an 'eligibility test' for school teachers etc. The trained and qualified teachers filed CWP No. 12599 of 2008 (Vijay Kumar and others v. State of Haryana and others) in this Court challenging the said prospectus and the action of the State of Haryana stipulating passing of Eligibility Test as an essential condition for recruitment to all categories of posts of teachers. It is claimed by the petitioners that after issuance of notice of motion by a Division Bench of this Court on 22.7.2008, the State of Haryana amended the statutory Rules by issuing separate notifications dated 24.7.2008 (Annexures P-1 to P-4). In Appendix 'B' of all the statutory Rules viz. the School and Inspection Rules, the School Lecturer Rules, the Service Rules of 1994 and the Service Rules of 1998, the qualification of "*Certificate of having qualified School Teacher's Eligibility Test (STET)*" has been inserted (Annexures P-1 to P-4). Another notification dated 27.7.2008 has also been issued to amend para 2 of the earlier notification dated 17.4.2008, which is to the effect that *the pass percentage for candidates belonging to General categories shall be 50% and for Scheduled Caste candidates 45%, for consideration for recruitment as teachers, by Haryana Staff Selection Commission, for Government Schools in Haryana*. It has further been stipulated that *the number of chances to appear and pass the test which, an eligible person can avail would be restricted to three in case of General*

Category candidates and four in case of Reserved Category candidates (Annexure P-5). On 25.7.2008, when the aforementioned writ petition came up for consideration, the Division Bench passed the following order:-

“ This writ petition has been filed with a prayer to quash action of respondent no. 5 to issue a prospectus to hold the State Teachers Eligibility Test (STET). It is contention of counsel for the petitioners that the above said test has been fixed without any provision existing for the same in the service rules, regulating the appointment to the posts of Masters, Teachers and Lecturers in Schools in the State of Haryana.

Notice of motion was issued in this case on July 22, 2008. In response to notice, short reply has been filed, wherein it has been stated that intention to amend the service rules was expressed by the State Government by issuing notification dated April 17, 2008. Thereafter, the above said prospectus was issued. Admittedly, amendment in the Rules have been effected and notified only on July 24, 2008. it is contention of counsel for the petitioners that once there was no provision in the rules to hold any eligibility test, it was not open for the respondents to issue any prospectus to conduct any test.

After hearing counsel for the parties, tentatively we were satisfied with the argument raised by counsel for the petitioners. We were going to restrain the respondents from conducting the testing question till the next date of hearing. At this stage, Advocate General Haryana, assisted by Shri Sanjeev Bansal,

Advocate, on getting instructions from Mr. Anurag Rastogi, Director, Secondary Education, Haryana, very fairly states that the respondents withdrew the prospectus in question, they will issue fresh prospectus, if need be. It is further stated that in case Government decides to hold the test, applications moved by all the candidates, in respect to the earlier prospectus issued, shall be considered valid and they need not apply afresh. Petitioners, if so advised, may apply again, in that event, fee already paid by them shall be adjusted. In view of the statement made, this writ petition has become infructuous and the same is disposed of accordingly. Petitioners, if so advised, may lay challenge to the notification now issued by the Government, effecting amendment in the service rules.”

8. Again a prospectus has been issued by the Board of School Education, Haryana, Bhiwani, in reference to notifications dated 17.4.2008 and 24.7.2008 issued by the State of Haryana. In the prospectus it has been specifically mentioned that passing of the Eligibility Test would be an essential condition for recruitment of all categories of teachers. The prospectus also contains the scheme of test, syllabus for Eligibility Test of different categories of teachers, schedule, and eligibility criteria etc. The last date of receipt of applications for Eligibility Tests was fixed as 19.9.2008. The Eligibility Tests for different category of teachers viz. Heads, Elementary Teachers, Lecturers and Masters/Mistresses were scheduled to be held on different dates between 4.10.2008 to 12.10.2008 (Annexure P-6).

9. It is also pertinent to mention here that the State of Haryana has been advertising various posts of teachers from time to time. According to the

petitioners one such advertisement was issued on 20.7.2006 (Annexure P-7). Some of the petitioners and other similarly situated persons were eligible for respective posts as per the qualifications prescribed in the said advertisement. However, the appointments could not be made because of litigation which had been going on in Hon'ble the High Court as also Hon'ble the Supreme Court. However, with the advent of passing of Eligibility Test as an essential condition, such persons including the petitioners have been rendered ineligible.

10. It is in the backdrop of above factual position that the petitioners filed CWP No. 17449 of 2008. However, after issuance of notice of motion and filing of reply by the respondents, in pursuance to a requisition sent by the Education Department, Haryana, the Haryana Staff Selection Commission (for brevity, 'the Commission') has issued a fresh advertisement No. 4/2009, dated 13.8.2009, inviting applications for filling up 9647 posts of JBT Teachers, 1276 posts of Science Masters, 237 posts of DPE Masters, 1037 posts of Math Masters, 372 posts of S.S. Masters, 20 posts of Music Masters and 4 posts of Home Science Mistresses. The last date of submission of application forms was 14.9.2009. In the said advertisement passing of Eligibility Test has been mentioned as an essential qualification for appointment to the said posts (Annexure P-8). In order to lay challenge to the said advertisement, the petitioners amended the writ petition.

11. The primary grievance of the petitioners is that the action of the official respondents in prescribing the condition of passing of Eligibility Test is in contravention of the qualifications prescribed under the Regulations framed by the National Council for Teachers Education (for brevity, 'NCTE'), which has been constituted and established under the National Council for Teachers Education Act, 1993 (for brevity, 'the 1993 Act'). Referring to Section 12 of

the 1993 Act it has been emphasised that NCTE has been established for ensuring planned and coordinated development of teacher education and for determination and maintenance of standards for teacher education. Section 12 further contemplates functions of the NCTE and clothed it with the power to lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognised institutions. NCTE also lays down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof and the method of selection of candidates, duration of the course, course contents and mode of curriculum. It has also the power to prescribe minimum qualifications for a person to be employed as a teacher under clause (d) of Section 12 of the Act. According to the petitioners, the NCTE is like an Apex Body, inasmuch as, without its recognition in terms of Section 14 of the 1993 Act, no institution could even start any new course or training in teacher's education.

12. It has further been highlighted that under clause (d)(i) of Sub-section (2) of Section 32 read with Section 12(d) of the 1993 Act, the NCTE has framed Regulations, namely, the National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (for brevity, 'the 2001 Regulations'), which came into operation w.e.f. 4.9.2001. The 2001 Regulations are applicable for recruitment of teachers in all formal schools established, run or aided or recognized by the Central or State Governments and other authorities for imparting education at elementary (primary and upper primary/middle school), secondary and senior secondary stages. Regulation 3 provides for qualifications for recruitment of teachers in educational institutions as given in First and

Second Schedule appended to the Regulations. It has further been stated that the qualifications prescribed in the First Schedule apply for recruitment of teachers for teaching school subjects, whereas the qualifications prescribed in the Second Schedule apply for recruitment of teachers for Physical Education. However, for recruitment of teachers for co-curricular activities such as work experience, art education etc., existing qualifications as prescribed by the concerned Government would apply. For promotion of teachers from one level to the next level of teaching, minimum qualifications as given in the Schedules for the concerned level would be required.

13. Based upon the qualifications prescribed in the 2001 Regulations, it has been asserted that for appointment of Elementary Teachers the requisite qualification is Senior Secondary School Certificate or Intermediate or its equivalent and Diploma or Certificate in Basic Teachers' Training of a duration of not less than two years or Bachelor of Elementary Education (B.El.Ed.). For appointment to the post of Upper Primary Teacher (Middle School Section) the qualification prescribed is Senior Secondary Certificate or Intermediate or its equivalent and Diploma or Certificate in Elementary Teachers Training of a duration of not less than two years or Bachelor Elementary Education (B.El.Ed.). For appointment to the post of Secondary/High School Teacher, the qualification is Graduate with Bachelor of Education (B.Ed.) or its equivalent or Four Years integrated B.Sc., B.Ed. or an equivalent course. Similarly, for appointment to Senior Secondary/Intermediate Teacher, the qualification is Master's Degree in the relevant subject with Bachelor of Education (B.Ed.) or its equivalent or Two Years' integrated M.Sc. B.Ed. course or an equivalent. For recruitment of teachers of Physical Education Institutions, for Elementary Teacher, the qualification is Senior Secondary School Certificate or

Intermediate or its equivalent and Certificate in Physical Education (C.P.Ed.) of a duration of not less than two years or its equivalent. For appointment in Secondary/High School, the qualification is Graduate with Bachelor of Physical Education (B.P.Ed.) or its equivalent and for appointment in Senior Secondary (Physical Education as an elective subject), the qualification is M.P.E./M.P.Ed. (2 years duration).

14. The 2001 Regulations were amended vide National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) (Amendment) Regulations, 2003 (for brevity, ‘the 2003 Regulations’) and the following minimum academic and professional qualifications have been contemplated in the Schedule to these Regulations:-

“Qualifications for recruitment of teachers in educational institutions mentioned in Section 2 of the Regulations.

Level		Minimum Academic and Professional Qualifications	
i.	Pre-School/ Nursery (For children in the age group of 4-6 years)	i.	Secondary School (Class Ten) Certificate or its equivalent; and
		ii.	Diploma/Certificate in Pre-School teacher education programme of a duration of not less than one year.
ii.	Pre-School/ Nursery followed by first two years in a formal school (for children in the age group of 4-6 and 6-8 years)	i.	Secondary School (Class Twelve) Certificate or Intermediate or its equivalent with at least 45% marks; and
		ii.	Diploma/Certificate in Nursery teacher education programme of duration of not less than two years.
iii.	Elementary a. Primary	i.	Senior Secondary School Certificate or Intermediate or its equivalent; and

		ii	Diploma or Certificate in basic teachers' training or a duration of not less than two years. OR
			Bachelor of Elementary Education (B.El.Ed.)
	b. Upper Primary (Middle School Section)	i.	Senior Secondary Certificate or Intermediate or its equivalent; and
		ii	Diploma or Certificate in elementary teachers training of a duration of not less than two years. OR
			Bachelor of Elementary Education (B.El.Ed.) OR
			Graduate with Bachelor of Education (B.Ed.) or its equivalent.
iv.	Secondary/High School		Graduate with Bachelor of Education (B.Ed.) or its equivalent OR
			Four years' integrated B.Sc., B.Ed. or an equivalent course.
v.	Senior Secondary/ PUC / Intermediate		Master's Degree in the relevant subject with Bachelor of Education (B.Ed.) or its equivalent. OR
			Two Years' integrated M.Sc. Ed. course or an equivalent course."

15. Obviously, the NCTE has not prescribed passing of Eligibility Test for being appointed as a teacher in Primary, Secondary or Senior Secondary School category. It has been claimed that due to amendment made in the Statutory Rules by impugned notifications dated 24.7.2008 (P-1 to P-4), prescribing for Eligibility Test, about 1.50 lac candidates have been rendered as ineligible for being considered and appointed as teachers, who are otherwise

eligible as per the Regulations framed by the NCTE. Besides this, the petitioners have also referred to the provisions of the Constitution and various judgments of Hon'ble the Supreme Court, which shall be dealt with by us in the succeeding paras.

16. In the written statement filed on behalf of official respondent Nos. 1 to 5 preliminary submissions have been made asserting that every year on an average there is a requirement for recruitment of 5000 to 8000 teachers for the schools run by the State of Haryana. There are lacs of degree holders who are passing out from various institutions all over the country with the qualifications of J.B.T. and B.Ed. The quality of degree holders passing out from such institutions differs drastically. It has been averred that passing of the Eligibility Test is aimed at recruitment of only good quality teachers. It has also been pointed out that so far three Eligibility Tests have been held in July 2008, July 2009 and December 2009 and nearly 50,000/- candidates have passed such test. It has been highlighted that a similar controversy cropped up before Hon'ble the Supreme Court in the case of **Basic Education Board U.P. v. Upendra Rai, (2008) 3 SCC 432** and their Lordships' have upheld the right of the State Government in determining the eligibility condition for recruitment of teachers for various educational institutions after categorically examining the jurisdiction of NCTE on the subject. It has been submitted that the 2001 Regulations as amended by 2003 Regulations, framed by the NCTE only prescribe minimum academic and professional qualifications for teachers to be recruited in different educational institutions. Those Regulations do not preclude the right of the State Government to prescribe additional qualifications of eligibility criteria for selecting good quality teachers out of lacs of applicants

who might come forward to seek employment. Moreover, the basic qualifications prescribed by the NCTE have not been changed or altered. It has, thus, been emphasised that the basic objective of prescribing passing of Eligibility Test as an essential condition is only to select best talent available. It has been denied that any candidate has been debarred rather the State Government is striving to recruit better quality teachers for Government Schools of the State of Haryana. The State of Haryana is making every effort to fill up vacant posts by recruiting best teachers to meet out the exigency. It has also been pointed out that against the available 17,000 vacancies of teachers, nearly 50,000 STET pass candidates are available for which requisitions are pending with the Haryana Public Service Commission/Haryana Staff Selection Commission.

17. In the replication filed by the petitioners again the provisions of the 2001 Regulations have been reiterated and it has been submitted that once the NCTE has prescribed the minimum qualifications for a person to be appointed as a teacher at various levels of School education, a person who possess such qualification would be eligible to be employed as a teacher and nobody has the power to declare such a person ineligible. It has been emphasised that by virtue of the 1993 Act there is uniform training in Teachers' education, therefore, there is no need for prescribing passing of eligibility test. All the persons who possess the minimum required qualifications are eligible to compete. Reference has also been made to Regulation 4 of the 2001 Regulations, which contemplates that all the States should bring amendment in their recruitment rules in terms of the 2001 Regulations. Regulation 4 of the 2001 Regulations reads thus:

Regulation-4 of the 2001 Regulations.

“Existing Recruitment Rules may be modified within a period of 3 years so as to bring them in conformity with the qualifications prescribed in Schedule. In the meanwhile, teachers appointed as per existing Recruitment qualifications, subsequent to the issue of these Regulations will be required to acquire the qualifications as prescribed in the Schedule.”

18. It has further been controverted by the petitioners that the judgment of Hon’ble the Supreme Court in Upendra Rai’s case (supra) is not applicable to the facts of the present case. According to them the Regulations framed by the NCTE were never brought to the notice of Hon’ble the Supreme Court in the said case. In para 23 of the replication it has been highlighted on the basis of information received under the Right to Information Act, 2005, that only 5% candidates have been able to pass the Eligibility Test on their own and the remaining were granted grace marks enabling them to pass the Eligibility Test.

19. Another issue which has been raised in the replication filed by the petitioners is that the guest teachers were earlier granted relaxation from qualifying the Eligibility Test. However, the said relaxation has been disallowed by this Court rendering 15000 working teachers ineligible to compete for the posts they had applied for. It has been apprehended that such guest teachers would lose their jobs when selection of teachers on regular basis would be completed.

20. The petitioners have also filed additional information by filing C.M. No. 8139 of 2010, placing on record the statistics with regard to STET Examinations and vacancy position of teachers as on 3.3.2010 (Annexures P-10 & P-11). They have also placed on record a copy of the Gazette notification dated 27.8.2009, issued by the Ministry of Law and Justice, Government of

India, whereby the Right of Children to Free and Compulsory Education Act, 2009 (for brevity, 'the 2009 Act') has been notified. It is pertinent to mention that the 2009 Act has been legislated with an object that the children of the age group of 6 to 14 years get free and compulsory education and it came into force w.e.f. 1.4.2010. Section 23 of the 2009 Act prescribes the qualification for appointment and terms and conditions of service of teachers and reads thus:-

“23. Qualifications for appointment and terms and conditions of service of teachers. – (1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section 91) are not available in sufficient numbers, the Central government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.

(3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be

prescribed.”

21. In para 13 of the said application it has also been stated that the State Government in recognition of the services rendered by the Guest Teachers issued a letter dated 3.7.2009 granting them exemption from passing the Eligibility Test. The said letter was challenged before this Court in CWP No. 4562 of 2009 and other connected petitions. A Division Bench of this Court allowed the writ petitions and set aside the order granting exemption to the Guest Teachers from passing the Eligibility Test, vide order dated 6.4.2010. The Guest Teachers then filed Civil Appeal No. 9247 of 2010 (Gurpal Singh v. State of Haryana). Hon’ble the Supreme Court considering the fact that in pursuance of advertisement dated 18.6.2009 the selection process has already commenced and the Guest Teachers, who were not parties before the Division Bench of the High Court, have also applied for selection, has granted liberty to them to participate in the selection process but their final result would not be declared till further orders of the Court, vide order dated 15.6.2010.

22. Mr. Gopal Krishan Chatrath, learned Senior counsel for the petitioners has vehemently argued that the qualification of passing the ‘eligibility test’ would not be applicable on the Guest Teachers because they were recruited in December 2005 whereas the qualification has been added by way of amending statutory Service Rules of 1998, School and Inspector Cadre Rules, School Lecturer Rules and the Service Rules of 1994 and the 2000 Rules. According to the learned counsel in the advertisement for regular recruitment such a qualification cannot be incorporated to non-suit the Guest faculty. Referring to another facet of his argument, Mr. Chatrath has submitted that the petitioners were recruited as Guest teachers when Constitution (Eighty

Sixth) Amendment Act, 2002, was notified and by way of amendment Articles 21-A and 51A(k) were added.

23. Mr. Chatrath has made another submission that by virtue of amendment those candidates who have possessed the training certificates and degrees as per the norms and standards fixed by the NCTE, which is a primary body established under the 1993 Act, have been rendered ineligible. According to the learned counsel, NCTE has framed 2001 Regulations in discharge of its function under Section 12(d) and in exercise of its power under Section 32(2) (d)(i) of the 1993 Act. The 2001 Regulations have been made effective from 4.9.2001 as amended in 2005. It has been maintained that by Regulation 4 a direction has been issued to all the States to amend their recruitment rules and bring them in conformity with the 2001 Regulations framed by the NCTE.

24. Challenging the competence of the Haryana Legislature to frame any law with regard to prescription of qualifications for appointment to various teaching posts or incorporating additional qualifications by way of amendment, Mr. Chatrath has argued that the Constitution provides for distribution of legislative powers to make laws on subjects. In that regard he has referred to VIIth Schedule, List-I i.e. Union List, List-II i.e. State List and List-III i.e. Concurrent List and has placed reliance on Article 254 of the Constitution to argue that the amendment made by the Haryana Legislature is inconsistent with the law made by the Parliament in conformity of 1993 Act and the 2001 Regulations framed thereunder and, therefore, the argument is that the Haryana law must give way to the Central legislation which laid down the minimum standards of educational qualification for appointment of a teacher. According to the learned counsel, the 1993 Act was enacted by the Parliament with a view to achieve planned and coordinated development of teachers' education and for

maintenance of its standards uniformly throughout the country. He has made elaborate reference to Section 12(d) which postulates that the function of the NCTE is to lay down guidelines in respect of minimum qualifications for persons to be employed as teacher in schools or in recognised institutions. Highlighting the power of the NCTE to make regulations under Section 32(2) (d)(i), learned counsel stated that such regulations made provide for making qualification for a person to be employed as teacher under clause (d) of Section 12. What arrears to have been argued is that once the Parliament has framed the 1993 Act and the 2001 Regulations with regard to minimum qualifications of a person to be employed as teacher in school or in a recognised institution then the State Legislature has no power. Therefore, the Haryana Act cannot by amendment made in the year 2005 could incorporate the 'eligibility test' by amending various statutory rules for various types of teachers. According to the learned counsel the field is occupied already and in that regard he has placed reliance on paras 16 to 18, 23 and 27 of the judgment of Hon'ble the Supreme Court rendered in the case of **Gujarat University v. Shri Krishna**, AIR 1963 SC 703; paras 23, 24 and 25 of **Osmania University Teachers Association v. State of Andhra Pradesh**, AIR 1987 SC 2034; paras 23 and 30 of the judgment rendered in the case of **Jaya Gokul Education Trust v. Diocese of Kanjirapally**, AIR 2000 SC 1614; and para 16 of the judgment in the case of **R.N. Gupta v. State of Haryana**, 2001 (1) SCT 417.

25. Elaborating his argument further learned counsel has submitted that Hon'ble the Supreme Court has laid down specifically that the State Legislature cannot prescribe higher qualification than the one prescribed by the Parliament by enacting an Act. Therefore, the law made by the Parliament, which is a

superior body as per our Constitutional Scheme, must be upheld and the law framed by the State Legislature on the same subject must be declared void to the extent of repugnancy. Therefore, the stand of the respondent State that prescription of minimum qualification by the NCTE does not create any bar for the State to prescribe any higher qualification is already settled and answered by Hon'ble the Supreme Court. In that regard, he has placed reliance on various judgments, namely, **State of Tamil Nadu v. Adhiyaman Education Research Institute, 1995 (3) SLR 752 (paras 35, 36); Tika Ramji v. State of U.P., 1956 SCR 393 (paras 35 and 36); Thirumurga Kirupananda Vartyar Thavathiru Sundara Swaminggal Medical Education and Charitable Trust v. State of Tamil Nadu, (1996) 3 SCC 15 (paras 20, 23 to 27 & 34) and S.P. Stewart v. B.K. Roy Chowdhury, AIR 1939 Cal. 628. Placing reliance on the judgment of Hon'ble the Supreme Court rendered in the case of **Deep Chand v. State of U.P., AIR 1959 SC 648**, learned counsel has pointed out that there are three principles which have to be kept in view for judging repugnancy between two statutes, which are as follows:-**

- “(1) Whether there is direct conflict between the two provisions:
- (2) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature; and
- (3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field.”

26. Learned counsel made a reference to similar observations made in the case of **State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya, (2006) 9 SCC 1**. Mr. Chatrath, learned counsel has then argued that the judgment of Hon'ble the Supreme Court in **Upendra Rai's case**

(**supra**) on which reliance has been placed by the respondent State, is merely a sub-silentio and per incurium in view of the law laid down in the cases of **State of U.P. v. Jeet S. Bisht, (2007) 6 SCC 586; Divisional Controller, KSRTC v. Madadeva Shetty, (2003) 7 SCC 197; and State of Haryana v. Ranbir @ Rana, (2006) 5 SCC 167.**

27. Highlighting the facts of the present case, learned counsel has argued that 'eligibility test' was conducted in the year 2008 and twice in the year 2009. The State of Haryana could not find adequate number of candidates and took a decision to moderate result after giving grace marks in case the result was below 50%. As a consequence to declare a candidate successful in the 'eligibility test', he was granted grace marks even upto 69.5% marks. According to the learned counsel such is an unauthorised act of fraud whereas the candidates like the petitioners who have been working as Guest teacher for more than four years have been rendered absolutely in-eligible. Mr. Chatrath has given data to elaborate his submission.

28. The other learned counsel for the petitioners adopted the arguments advanced by Mr. Chatrath.

29. Mr. Rameshwar Malik, learned Additional Advocate General, Haryana, has however, argued that the contentions raised by the learned counsel for the petitioners are no longer *res integra*. In support of his submission learned counsel has placed primary reliance on the judgment of Hon'ble the Supreme Court rendered in the case of **Upendra Rai (supra)**. Learned counsel has placed reliance on paras 17, 18 and 19 and argued that a specific argument similar to the one raised by the learned counsel for the petitioners that the 1993 Act override the Act of the State on account of Article 254 of the Constitution read with Entry 25 of List-III of VIIth Schedule was rejected. Placing reliance

on para 19 of the judgment, learned counsel has submitted that the 1993 Act was enacted to regulate the teachers in any system and the Teachers Training Institutes in the country and it only deals with teachers training institutes and has got nothing to do with ordinary schools like Primary Schools, High Schools, Intermediate School and the Universities. Mr. Malik states that qualification for appointment as teacher as per the view of Hon'ble the Supreme Court in the ordinary educational institutions like Primary Schools cannot be prescribed under the 1993 Act. He has also referred to other paras where Section 20(d) and Section 32 have been specifically dealt with and all arguments of the nature advanced by the learned counsel for the petitioners have been rejected.

30. Mr. Malik has submitted that in any case the Parliament in order to achieve the minimum standards have laid down minimum qualification but there is no bar that the State Legislature cannot lay down any superior qualification. He has placed reliance on a Division Bench judgment of this Court rendered in the case of **Ajay Malik v. Panjab University, 1992 (2) SLR 507**; a Single Bench judgment rendered in the case of **Anand Kumar v. State of Haryana, 2009 (2) SLR 524** and a judgment of Hon'ble the Supreme Court in the case of **State of Tamil Nadu v. S.V. Bratheep, (2004) 4 SCC 513**.

31. Having heard learned counsel at a considerable length, perusing the paper book and record of the case with their able assistance we would first like to extract the identical amendment made by the State of Haryana on 24.7.2008, vide notifications Annexures P-1 to P-4 in various statutory Rules. For example in School and Inspection Cadre Rules, for appointment to the posts under those rules certificate of having qualified the 'eligibility test' has been made mandatory. Accordingly, in Appendix 'B' of the School and Inspection Cadre

Rules, the following amendment has been incorporated:

“(i) against serial number 2, under column 3, for entry (iv), the following entries shall be substituted, namely:-

“(iv) Matric with Hindi/Sanskrit;

(v) Certificate of having qualified School Teacher’s Eligibility Test (STET)”

(ii) against serial number 4, under column 3, for entry (iv), the following entries shall be substituted, namely:-

“(iv) Matric with Hindi/Sanskrit;

(v) Certificate of having qualified School Teacher’s Eligibility Test (STET).”

32. By virtue of aforesaid amendment incorporated on 24.7.2008, the teachers at various level covered by the Rules in Annexures P-1 to P-4 are required to pass the ‘eligibility test’ of the State of Haryana. In similar circumstances, the question has been debated before Hon’ble the Supreme Court in **Upendra Rai’s case (supra)**. In that case, the qualification of Diploma in Education (DEd) used to be regarded as equivalent to Basic Teacher’s Certificate (BTC). According to the statutory rules known as ‘U.P. Basic Education (Teachers) Service Rules, 1981, the training qualification required was BTC etc. or any other training course recognised by the Government as equivalent thereto. However, the writ petitioner therein only had DEd which was no longer considered equivalent to BTC by virtue of Government circular dated 11.8.1987. Accordingly, he did not fulfil the qualification as per the advertisement issued on 28.4.1999, which was made subject matter of challenge before Allahabad High Court. A learned Single

Judge dismissed the petition but his view was reversed by a Division Bench holding that DEd qualification has to be regarded as equivalent. On an appeal to Hon'ble the Supreme Court it was held that the grant of equivalence and/or revocation of equivalence is an administrative decision which is in the sole discretion of the authority concerned. In the course of arguments, the writ petitioner therein had submitted that he answered all the requisite qualifications laid down in the 1993 Act and, therefore, the 1993 Act would override the U.P. Rules of 1981, in view of the fact that 'education' is covered by Entry 25 of List-III of VIIIth Schedule, which is Concurrent List and on account of repugnancy Article 254 of the Constitution would prevail. Therefore the 1993 Act read with 2001 Regulations must prevail. The aforesaid argument was rejected by their Lordships' in para 19 of the judgment which reads thus:-

19. A perusal of the NCTE Act shows that this Act was made to regulate the teachers training system and the teachers training institutes in the country. It may be mentioned that there are two types of educational institutions - (1) ordinary educational institutions like primary schools, high schools, intermediate colleges and universities and (2) teachers' training institutes. The NCTE Act only deals with the second category of institutions viz. teachers' training institutes. It has nothing to do with the ordinary educational institutions referred to above. Hence, the qualification for appointment as teacher in the ordinary educational institutions like the primary school, cannot be prescribed under the NCTE Act, and the essential qualifications are prescribed by the local Acts and Rules in each State. In U.P. the essential qualification for appointment as a primary school teacher in a Junior Basic School is

prescribed by Rule 8 of the U.P. Basic Education (Teachers) Service Rules, 1981 which have been framed under the U.P. Basic Education Act, 1972. A person who does not have the qualification mentioned in Rule 8 of the aforesaid Rules cannot validly be appointed as an Assistant Master or Assistant Mistress in a Junior Basic School.”

33. Some other arguments raised on the basis of Section 12(d) also fail to find favour with their Lordships’ of Hon’ble the Supreme Court and the same were rejected in paras 22 and 23, which reads thus:-

“22. It may be mentioned that the word "institution" is defined in Section 2(e) of the NCTE Act to mean an institution which offers courses or training in teacher education. Thus, the NCTE Act does not deal with the ordinary educational institutions like primary schools, high schools, intermediate college or university. The word "institution" as defined in Section 2(2) only means teachers' training institute and not the ordinary educational institutions. Hence, it is only the teachers' training institutions which have to seek grant of recognition or continuation of recognition from the Regional Committee. The ordinary educational institutions do not have to seek any such recognition or continuation under the NCTE Act. In fact, the NCTE Act does not relate to the ordinary educational institution at all. We, therefore, fail to understand how it can be said that the NCTE Act overrides the UP Basic Education Act and Rules made thereunder. In fact, the two Acts operate in altogether two different fields. The NCTE Act deals with the teachers' training institutions while the UP Basic Education Act deals with the ordinary

primary schools in U.P. and not any teachers' training institute. The argument of learned Counsel for the respondent is thus wholly misconceived.

23. The impugned judgment also proceeds with the same fallacy. The Division Bench, in our opinion, wrongly relied upon Article 254 of the Constitution. Article 254, as stated above, has no application in this case at all because the two Acts operate in two different fields. In our opinion, the Division Bench, therefore, wrongly held that the respondent (the appellant before the Division Bench) had the requisite qualification for being appointed as an Assistant Master in a junior basic school.”

34. On account of the view taken by Hon’ble the Supreme Court in the aforesaid judgment answering some of the basic issues raised by Mr. Chatrath. The necessity to deal with various arguments has been obviated. Had it not been so we might have undertaken a detailed exercise with regard to various submissions made by Mr. Chatrath.

35. To be fair to the learned counsel we take notice of the argument raised by Mr. Chatrath when he urged that the State cannot prescribe higher qualification than the one prescribed by the Parliamentary Act or by Rules/Regulations. In that regard he had placed reliance on various judgments like **Adhiyaman Education Research Institute (supra)** and **Thirumurga Kirupananda Vartyar Thavathiru Sundara Swaminggal Medical Education and Charitable Trust (supra)** and other similar judgments. However, we are unable to accept the submission because all those cases have emerged out of order passed while rejecting recognition/affiliation of Medical/Engineering colleges because they did not fulfil the minimum prescribed standards laid down

by various bodies like Medical Council/Dental Council. It was in that context that their Lordships' of Hon'ble the Supreme Court had observed that higher norms than the minimum cannot be laid down. Those cases are entirely distinguishable and would not be attracted to the controversy raised in the present case. Moreover, the controversy itself has been answered by their Lordships' in **Upendra Rai's case (supra)** by referring to the same very provisions of the 1993 Act and the 2001 Regulations. We are also not impressed with the argument that Guest teachers who have been working since 2002 are required to be treated differently than those who have applied for the first time. When Guest teachers were recruited they were fully made aware that their appointments were for a specified period and it was no substitute for regular recruitment. If the rules have been changed by the time regular recruitment are made then the Guest teachers cannot complain urging that amendment is retrospective. There is no retrospectivity involved. We are also not impressed with the argument that adequate number of teachers have not been recruited on account of high standards of the eligibility test. It is for the State Government to frame its policy a fortiori which flows from the observations made in **Upendra Rai's case (supra)**. The Court cannot re-write the policy of the State unless it is found to be against the mandate of the Constitution. Therefore, we do not find any merit in those submissions made by Mr. Chatrath.

36. As a sequel to the above discussion these petitions fail and the amendment made in the statutory rules vide notifications dated 24.7.2008 (P-1 to P-4) are upheld.

A photocopy of this order be placed on the files of connected cases.

(M.M. KUMAR)
JUDGE

November 29, 2010
Pkapoor

(A.N. JINDAL)
JUDGE

*

<u>Sr. No.</u>	<u>Case No.</u>	<u>Parties Name</u>
1.	17449 of 2008	VIJAY KUMAR AND OTHERS v. STATE OF HARYANA AND OTHERS
2.	19556 of 2008	VIJENDER KUMAR AND OTHERS v. STATE OF HARYANA AND OTHERS
3.	1737 of 2009	MANJU v. STATE OF HARYANA AND OTHERS
4.	12671 of 2009	RAJESH KUMAR v. STATE OF HARYANA AND OTHERS
5.	12818 of 2009	SHASHI KALA v. STATE OF HARYANA AND OTHERS
6.	12865 of 2009	USHA YADAV v. STATE OF HARYANA AND OTHERS
7.	13055 of 2009	SATENDER SINGH v. STATE OF HARYANA AND OTHERS
8.	13998 of 2009	OM PARKASH v. STATE OF HARYANA AND OTHERS
9.	18966 of 2009	BIRENDER SINGH v. STATE OF HARYANA AND OTHERS
10.	8001 of 2010	SANDEEP KUMAR AND OTHERS v. STATE OF HARYANA AND OTHERS

(M.M. KUMAR)
JUDGE

(A.N. JINDAL)

November 29, 2010

JUDGE

P Kapoor