



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved On : 22.07.2022, 25.07.2022 & 28.07.2022

Delivered On : 23.08.2022

WPS No. 5051 of 2021

Namita Diwan, D/o Shri Chandan Singh Diwan, Aged About 27 Years, R/o Bijrapali, Bhurkoni, Tehsil- Pithora, Mahasamund (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Its Principal Secretary, Department of School Education, Mantralaya Mahanadi Bhawan, Atal Nagar Naya Raipur, District- Raipur (C.G.)
2. Director, Directorate of Public Instruction, Department of School Education, Indrawati Bhawan, Block - C, 1st Floor, Atal Nagar Naya Raipur, District- Raipur (C.G.)
3. Joint Director, Directorate of Public Instruction, Department of School Education, Indrawati Bhawan, Block - C, 1st Floor, Atal Nagar Naya Raipur, District- Raipur (C.G.)
4. Chhattisgarh Professional Examination Board, Through Its Secretary, Shailendra Nagar - Raipur, District- Raipur (C.G.)
5. Joint Director, Directorate of Public Instruction, Bastar Division (C.G.)

---- Respondents

WPS No. 2429 of 2022

Vikas Kumar, S/o Shri Jugal Singh, Aged About 33 Years, R/o Village Ghumanidand, Post Jatga, Tahsil Pondi Uprora, Thana Bango, District- Korba (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, School Education Department Ministry, Mahanadi Bhawan, P.O. and P.S. Rakhi, Nawa Raipur, District- Raipur (C.G.)
2. Director, Directorate of Public Instruction Raipur, District- Raipur (C.G.)
3. District Education Officer, Rajnandgaon, District- Rajnandgaon (C.G.)

---- Respondents

WPS No. 2696 of 2022

Pratima, S/o Late Shri Bharat Lal Verma, Aged About 31 Years, R/o Village and Post Anandgaon, Tahsil and Thana Berla, District- Bematara (C.G.)



---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, PO and PS Rakhi, Nawa Raipur, District- Raipur (C.G.)
2. Director, Directorate of Public Instruction Raipur, District- Raipur (C.G.)
3. District Education Officer, Raipur, District Raipur (C.G.)

---- Respondents

WPS No. 3582 of 2022

Keshaw Kumari, D/o Shri Tilakdas, Aged About 37 Years, R/o Village Salonikaka, Tahsil Bhatgaon, District- Balodabazar-Bhatapara (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, School Education Department Ministry, Mahanadi Bhawan, Post Office and Police Station Rakhi, Nawa Raipur, District- Raipur (C.G.)
2. Director, Directorate of Public Instruction Raipur, District – Raipur (C.G.)
3. District Education Officer, Balodabazar, District - Balodabazar (C.G.)

---- Respondents

WPS No. 3862 of 2022

Reetu Paikra, W/o Shri Vashudev Singh, Aged About 26 Years, R/o Village Sargaon, Post Salka, Tahsil and Thana Udaipur, District - Surguja (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, PO and PS Rakhi, Nawa Raipur, District – Raipur (C.G.)
2. Director, Directorate of Public Instruction Raipur, District- Raipur (C.G.)
3. District Education Officer, Raipur, District – Raipur (C.G.)

---- Respondents

WPS No. 3868 of 2022

Ajay Kumar, S/o Shri Laxman Ram, Aged About 32 Years, R/o Village Mungelidih, Post Gochhiya, Tahsil Sahaspur Lohara, Thana Kawardha, District- Kabirdham (C.G.)

---- Petitioner

Versus





1. State of Chhattisgarh, Through- The Secretary School Education Department Ministry, Mahanadi Bhawan, P.O. and PS Rakhi, Nawa Raipur, District- Raipur (C.G.)
2. Director, Directorate of Public Instruction Raipur, District- Raipur (C.G.)
3. District Education Officer Raipur, District- Raipur (C.G.)

---- Respondents

WPS No. 3884 of 2022

Meena Toppo, D/o Shri Babulal Toppo, Aged About 27 Years, R/o Village Khedaaama, Post Lailunga, Tahsil and Thana Lailunga, District – Raigarh (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, School Education Department Ministry, Mahanadi Bhawan, P.O. and P.S. Rakhi, Nawa Raipur, District – Raipur (C.G.)
2. Director, Directorate of Public Instruction Raipur, District- Raipur (C.G.)
3. District Education Officer Raipur, District- Raipur (C.G.)

---- Respondents

WPS No. 3888 of 2022

Satishwar Prasad, S/o Shri Sonsai Ram, Aged About 42 Years, R/o Village Bachwar, Post Bachwar (Shankargarh), Tehsil Shankargarh, District- Balrampur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through- The Secretary School Education Department Ministry, Mahanadi Bhawan, PO and P.S. Rakhi, Nawa Raipur, District- Raipur (C.G.)
2. Director, Directorate of Public Instruction Raipur, District- Raipur (C.G.)
3. District Education Officer Raipur, District- Raipur (C.G.)

---- Respondents

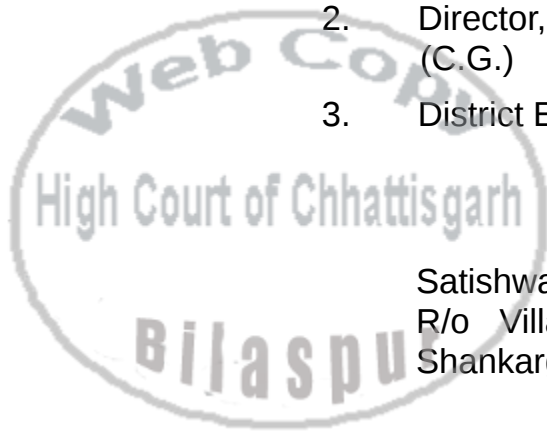
WPS No. 3900 of 2022

Buddheswar Prasad Patel, S/o Shri Shankar Lal Patel, Aged About 37 Years, R/o Village Sarra, Post Deosundra, Tahsil Pallari, District – Balodabazar-Bhathapara (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, PO and PS Rakhi, Nawa Raipur, District – Raipur (C.G.)





2. Director, Directorate of Public Instruction Raipur, District – Raipur (C.G.)
3. District Education Officer, Raipur, District – Raipur (C.G.)

---- Respondents

WPS No. 3901 of 2022

Anita Markam, D/o Shri Sukhi Ram Markam, Aged About 28 Years, R/o Village Dandbachhali, Post Tenganmada, Tahsil Belgahna, Thana Kota, District – Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, School Education Department Ministry, Mahanadi Bhawan, P.O. and P.S. Rakhi, Nawa Raipur, District – Raipur (C.G.)
2. Director, Directorate of Public Instruction Raipur, District – Raipur (C.G.)
3. District Education Officer Raipur, District – Raipur (C.G.)

---- Respondents

WPS No. 3904 of 2022

Sonsai Sahu, S/o Shri Ramat Lal Sahu, Aged About 35 Years, R/o Village Ganesh Khapri, Post Mahrum, Thana Deori Tahsil Dondi, Thana Deori, Tahsil Dondi Lohara, District- Balod (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, PO and PS Rakhi, Nawa Raipur, District- Raipur (C.G.)
2. Director, Directorate of Public Instruction Raipur, District- Raipur (C.G.)
3. District Education Officer, Raipur, District- Raipur (C.G.)

---- Respondents

WPS No. 3931 of 2022

Preetam Lal Padoti, S/o Late Shri Ramratan Padoti, Aged About 43 Years, R/o Village Patheshri, Post Tumdibod, Tahsil Dongargarh, District – Rajnandgaon (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, School Education Department Ministry, Mahanadi Bhawan, P.O. and P.S. Rakhi, Nawa Raipur, District – Raipur (C.G.)
2. Director, Directorate of Public Instruction Raipur, District – Raipur (C.G.)
3. District Education Officer Raipur, District – Raipur (C.G.)





---- Respondents

WPS No. 3933 of 2022

Manees Kumar Meshram, S/o Shri Gorelal Meshram, Aged About 34 Years, R/o Village and Post Kodikasa, Tahsil Ambagarh Chowki, District- Rajnandgaon (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, PO and PS Rakhi, Nawa Raipur, District- Raipur (C.G.)
2. Director, Directorate of Public Instruction Raipur, District- Raipur (C.G.)
3. District Education Officer, Raipur, District- Raipur (C.G.)

---- Respondents

WPS No. 3947 of 2022

Shailendra Kumar Verma, S/o Shri Aatma Ram, Aged About 37 Years, R/o Village Kurlu, Post Parpodi, Tahsil Saja, District – Bemetara (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, School Education Department Ministry, Mahanadi Bhawan, P.O. and P.S. Rakhi, Nawa Raipur, District – Raipur (C.G.)
2. Director, Directorate of Public Instruction Raipur, District – Raipur (C.G.)
3. District Education Officer Raipur, District – Raipur (C.G.)

---- Respondents

WPS No. 4027 of 2022

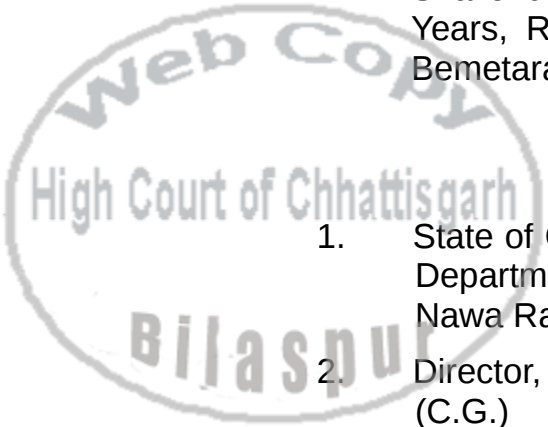
Jai Prakash Sahu, S/o Shri Kamlesh Sahu, Aged About 30 Years, R/o Ajad Chowk, Village and Post Kendri Block and Tahsil Abhanpur, District- Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, PO and PS Rakhi, Nawa Raipur, District- Raipur (C.G.)
2. Director, Directorate of Public Instruction Raipur, District- Raipur (C.G.)
3. District Education Officer Raipur, District- Raipur (C.G.)

---- Respondents





WPS No. 4183 of 2022

Shailesh Kumar Singh, S/o Shri Ramdeni Singh, Aged About 26 Years, R/o Village and Post Chandranagar, Tahsil Ramanujanj, District - Balrampur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, PO and PS Rakhi, Nawa Raipur, District- Raipur (C.G.)
2. Director, Directorate of Public Instruction Raipur, District- Raipur (C.G.)
3. District Education Officer, Raipur, District- Raipur (C.G.)

---- Respondents

WPS No. 4340 of 2022

Kundan Singh, S/o Shri Bisalik Ram, Aged About 29 Years, R/o Village Gahira-Nawagaon, Post Khertha Bazar, Tahsil Dondi Lohara, District- Balod (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary School Education Department Ministry, Mahanadi Bhawan, Post and Police Station Rakhi, Nawa Raipur, District- Raipur (C.G.)
2. Director, Directorate of Public Instruction Raipur, District- Raipur (C.G.)
3. District Education Officer, Raipur, District- Raipur (C.G.)

---- Respondents

WPS No. 4475 of 2022

Deepak Kumar Kumbhkar, S/o Shanker Lal, Aged About 39 Years, R/o Village- Kharora, Tah.-Tilda, P.S. Kharora, District- Raipur (C.G.)

---- Petitioner

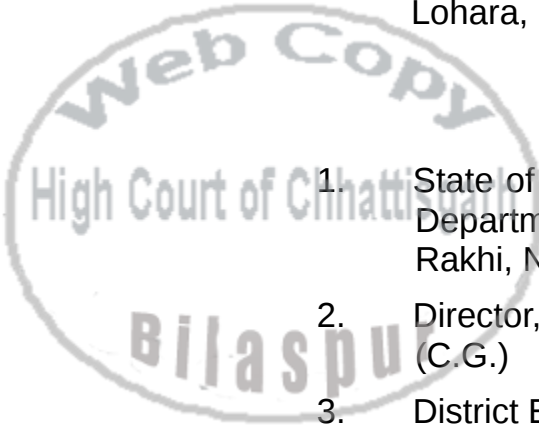
Versus

1. State of Chhattisgarh, Through The Secretary, Department of School Education, Mahanadi Bhawan Nawa - Raipur, Atal Nagar, District – Raipur (C.G.)
2. Director, Directorate of Public Instructions, Department of School Education, Govt. of C.G., Indravati Bhawan, Nawa Raipur, Atal Nagar, District – Raipur (C.G.)
3. District Education Officer Raipur, District – Raipur (C.G.)

---- Respondents

WPS No. 4636 of 2022

Tej Singh Paikra, S/o Raisingh Paikra, Aged About 36 Years,





Meel Para Bendarchuwa, Post Kodgar, Tahsil Pendra, District-Bilaspur, Now Gaurela-Pendra-Marwahi (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Its Principal Secretary, Department of School Education, Mantralaya Mahanadi Bhawan, Atal Nagar, Naya Raipur, District- Raipur (C.G.)
2. Director, Directorate of Public Instruction, Department of School Education, Indrawati Bhawan, Block-C, 1st Floor, Atal Nagar, Naya Raipur, District- Raipur (C.G.)
3. Joint Director, Directorate of Public Instructions, Department of School Education, Indrawati Bhawan, Block-C, 1st Floor, Atal Nagar, Naya Raipur, District- Raipur (C.G.)
4. Chhattisgarh Professional Examination Board, Through Its Secretary, Shailendra Nagar, Raipur, District- Raipur (C.G.)
5. District Education Officer, Raipur, District- Raipur (C.G.)

---- Respondents

WPS No. 4641 of 2022

Bhoj Pratap Singh, S/o Shankar Singh, Aged About 41 Years, R/o House No. 126, Ward No. 10, Nawaripara Shankargarh Pithampur, Pendra, District- Bilaspur, Now Gaurela- Pendra-, District – Gaurela-Pendra-Marwahi (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Its Principal Secretary, Department of School Education, Mantralaya Mahanadi Bhawan, Atal Nagar, Naya Raipur, District – Raipur (C.G.)
2. Director, Directorate of Public Instruction, Department of School Education, Indrawati Bhawan, Block- C, 1st Floor Atal Nagar, Naya Raipur, District – Raipur (C.G.)
3. Joint Director, Directorate of Public Instructions, Department of School Education, Indrawati Bhawan Block- C, 1st Floor, Atal Nagar, Naya Raipur, District – Raipur (C.G.)
4. Chhattisgarh Professional Examination Board, Through Its Secretary, Shailendra Nagar, Raipur, District- Raipur (C.G.)
5. District Education Officer Raipur, District- Raipur (C.G.)

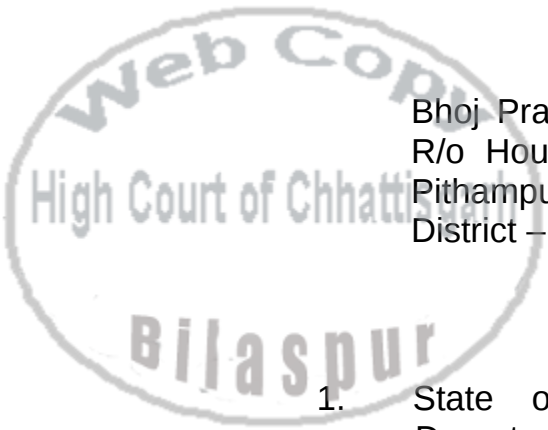
---- Respondents

WPS No. 5460 of 2021

Purnima, D/o Vishnu Dayal, Aged About 27 Years, R/o Maa Sharda Residency, Mopka, District- Bilaspur (C.G.)

---- Petitioner

Versus





1. State of Chhattisgarh, Through The Secretary, Department of Education Mantralaya, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, District- Raipur (C.G.)
2. Director Directorate, Public Instructions, Indrawati Bhawan, Nawa Raipur, Atal Nagar, District- Raipur (C.G.)
3. District Education Officer Kabirdham, District- Kabirdham (C.G.)

---- Respondents

WPS No. 4594 of 2022

Abhishek Kumar Nirmalkar, S/o Ramkumar Nirmalkar, Aged About 36 Years, R/o Pathak Para, Takhatpur Ward No. 6, Police Station Takhatpur, District- Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Nawa Raipur, District – Raipur (C.G.)
2. The Director, Directorate of Public Instructions, Atal Nagar, New Raipur (C.G.)
3. The District Education Officer Raipur, District- Raipur (C.G.)

---- Respondents

WPS No. 4691 of 2022

Reena Dehare, W/o Shri Bhagyesh Kumar Sahu, Aged About 39 Years, R/o M.I.G.- 69 Kabir Nagar Tatibandh, Police Station Tatibandh, District- Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, School Education Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur (C.G.)
2. The Director, Public Education Directorate Raipur, District- Raipur (C.G.)
3. The District Education Officer Raipur, District- Raipur (C.G.)

---- Respondents

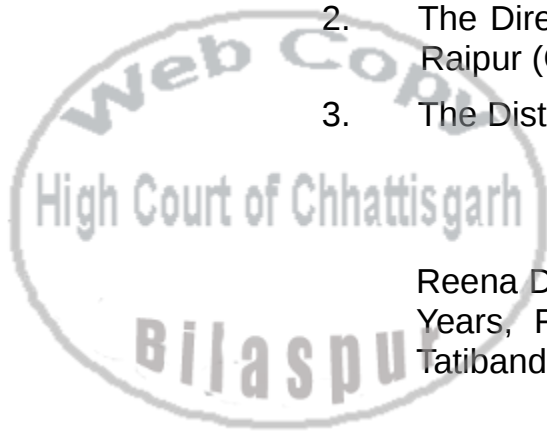
WPS No. 4683 of 2022

Satish Kumar Sahu, S/o Baijnath Sahu, Aged About 34 Years, R/o Village -Kosla, Block Pamgarh, District- Janjgri-Champa (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Nawa Raipur, District- Raipur (C.G.)





2. The Director, Directorate of Public Instructions, Atal Nagar, New Raipur, District- Raipur (C.G.)
3. The District Education Officer, Raipur, District Raipur (C.G.)

---- Respondents

WPS No. 4602 of 2022

Sukhdev Prasad Lahre, S/o Narad Lal Lahre, Aged About 37 Years, R/o Village - Lohrakot, Block - Jaijaipur, District - Janjgir - Champa (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Nawa Raipur (C.G.)
2. The Director, Directorate of Public Instructions, Atal Nagar, New Raipur (C.G.)
3. The District Education Officer Raipur, District-Raipur (C.G.)

---- Respondents

WPS No. 4597 of 2022

Onkar Prasad Sahu, S/o Harishchandra Sahu, Aged About 43 Years, R/o Utai, Post Utai, Block Drug, District- Durg (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, School Education Department, Mahanadi Bhawan, Mantrala, Nawa Raipur (C.G.)
2. The Director, Directorate of Public Instructions, Atal Nagar, New Raipur (C.G.)
3. The District Education Officer, Raipur, District- Raipur (C.G.)

---- Respondents

AND

WPS No. 4606 of 2022

Rekhlal, S/o Ramnarayan, Aged About 35 Years, Resident of Morid, Post - Dundera, Block Patan, District- Durg (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, School Education Department, Mahanadi Bhawan, Mantralaya, Nawa Raipur (C.G.)
2. The Director, Directorate of Public Instructions, Atal Nagar, New Raipur (C.G.)
3. The District Education Officer, Raipur, District- Raipur (C.G.)

---- Respondents



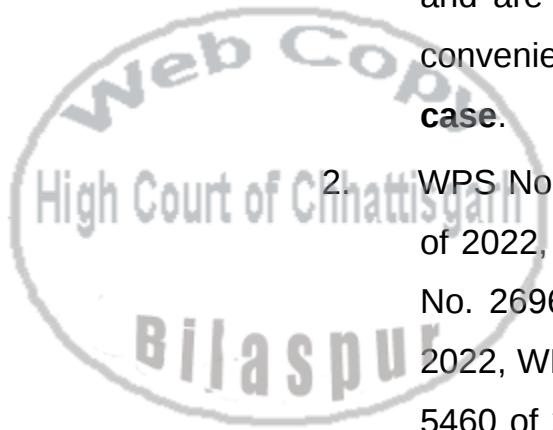


For Petitioners	: Mr. Mateen Siddiqui, Mr. Ghanshyam Kashyap, Mr. C. Jayant K. Rao, Mr. Faisal Akhtar, Mr. Harish Khuntiya, Mr. Anchal Kumar Matre, Mr. Purnendra Khichariya, Advocates.
For State	: Mr. Amrito Das, Additional A.G., Mr. Sandeep Dubey, Dy. A.G. & Mr. Sunita Jain, Govt. Advocate. & Mr. Ravi Bhagat, Dy. Govt. Advocate.
C.G. Examination Board	: Dr. Sourabh Kumar Pandey & Mr. Anadi Sharma, Advocates.

Hon'ble Shri Justice Narendra Kumar Vyas

C.A.V. ORDER

1. As a common question of law and facts are involved in all the aforesaid bunch of Writ Petitions, they are heard analogously and are being disposed of by this common order. For sake of convenience **WPS No. 5051 of 2021** is being treated as **lead case**.
2. WPS No. 5051 of 2021, WPS No. 3884 of 2022, WPS No. 3868 of 2022, WPS No. 3900 of 2022, WPS No. 4027 of 2022, WPS No. 2696 of 2022, WPS No. 3582 of 2022, WPS No. 3901 of 2022, WPS No. 2429 of 2022, WPS No. 3862 of 2022, WPS No. 5460 of 2021, WPS No. 3931 of 2022, WPS No. 4183 of 2022, WPS No. 3888 of 2022, WPS No. 3933 of 2022, WPS No. 3904 of 2022, WPS No. 3947 of 2022 & WPS No. 4340 of 2022 were **reserved for orders on 22.07.2022**. WPS No. 4475 of 2022, WPS No. 4636 of 2022 & WPS No. 4641 of 2022 were **reserved for orders on 25.07.2022**. WPS No. 4594 of 2022, WPS No. 4691 of 2022, WPS No. 4683 of 2022, WPS No. 4602 of 2022, WPS No. 4597 of 2022 & WPS No. 4606 of 2022 were **reserved for orders on 28.07.2022**.
3. The petitioners have filed the present petitions against the impugned order (Annexure-P/1) by which the candidature of the petitioners through direct recruitment for the post of Assistant Teacher/Teacher has been rejected on the count that the petitioners have secured less than 50% marks in Higher Secondary or in the Graduation as the case may be.





4. The facts reflected from the record are that respondent No. 2 has issued an advertisement for appointment on the post of Assistant Teacher (E Cadre), Assistant Teacher (T Cadre), State Cadre, Division Cadre & District Cadre posts. The advertisement was issued for Lecturer, Teacher, Assistant Teacher, Assistant Teacher (Science), Assistant Teacher (Laboratory), Assistant Teacher (English), Assistant Teacher (English Medium Arts Group), Assistant Teacher (English Medium Science Group). Clause (1) of the advertisement provides eligibility criteria for direct recruitment. The minimum qualification for various posts has been prescribed in the advertisement which are as under:-

“2. न्यूनतम शैक्षणिक अर्हतायें:- अभ्यर्थी के पास सेवा के लिये निम्नानुसार न्यूनतम शैक्षणिक अर्हताएँ होना आवश्यक है:-

(एक) सहायक शिक्षक

(क) न्यूनतम 50% अंको के साथ उच्चतर माध्यमिक (अथवा इसके समकक्ष) तथा प्रारंभिक शिक्षाशास्त्र (चाहे उसे किसी भी नाम से जाना जाता हो) में द्विवर्षीय डिप्लोमा

अथवा

न्यूनतम 45% अंको के साथ उच्चतर माध्यमिक (अथवा इसके समकक्ष) एवं प्रारंभिक शिक्षाशास्त्र (चाहे उसे किसी भी नाम से जाना जाता हो) में द्विवर्षीय डिप्लोमा जो राष्ट्रीय अध्यापक शिक्षा परिषद (मान्यता, मानदण्ड और क्रियाविधि) विनियम, 2002 के अनुसार प्राप्त किया गया हो।

अथवा

न्यूनतम 50% अंको के साथ उच्चतर माध्यमिक (अथवा इसके समकक्ष) एवं प्रारंभिक शिक्षाशास्त्र (बी.एल.एड.) में चार वर्षीय स्नातक

अथवा

न्यूनतम 50% अंको के साथ उच्चतर माध्यमिक (अथवा इसके समकक्ष) तथा प्रारंभिक शिक्षाशास्त्र (विशेष शिक्षाशास्त्र) में द्विवर्षीय डिप्लोमा

अथवा

स्नातक तथा प्रारंभिक शिक्षाशास्त्र (चाहे उसे किसी भी नाम से जाना जाता हो) में द्विवर्षीय डिप्लोमा

अथवा

न्यूनतम 50% अंको के साथ स्नातक तथा बी.एड. अर्हता (राष्ट्रीय अध्यापक शिक्षा परिषद से मान्यता प्राप्त संस्थान से स्नातक) भी कक्षा 1 से 5 तक पढ़ाने के लिये अध्यापक के रूप में पात्र होंगे परन्तु यह कि उसे नियुक्ति के पश्चात राष्ट्रीय अध्यापक शिक्षा परिषद द्वारा मान्यता प्राप्त प्राथमिक शिक्षाशास्त्र में 6 महीने के एक विशेष कार्यक्रम पूरा करना होगा।

तथा

(ख) राष्ट्रीय अध्यापक शिक्षा परिषद द्वारा इस प्रयोजन के लिये





जारी किये गये मार्गदर्शी सिद्धांतों के अनुसार समुचित सरकार द्वारा आयोजित अध्यापक पात्रता परीक्षा (टी.ई.टी.) में उत्तीर्ण।

टीप:- 1. उच्चतर माध्यमिक अथवा समकक्ष परीक्षा विज्ञान विषय के साथ उपरोक्त मापदण्ड में उत्तीर्ण होना आवश्यक होगा। कृषि संकाय के साथ उच्चतर माध्यमिक परीक्षा उत्तीर्ण करने पर उसे विज्ञान संकाय में मान्य किया जायेगा। व्यवसायिक शिक्षा से उच्चतर माध्यमिक परीक्षा उत्तीर्ण अभ्यर्थी को पात्रता नहीं होगी।

2. सहायक शिक्षक अंग्रेजी माध्यम के पदों हेतु अथ्यर्थी को अंग्रेजी माध्यम से उच्चतर माध्यमिक (अथवा इसके समकक्ष) परीक्षा उत्तीर्ण होना आवश्यक होगा तथा शेष मापदण्ड उक्त बिंदु 2.(एक) सहायक शिक्षक हेतु निर्धारित अनुसार होना आवश्यक है।

3. सामान्य प्रशासन विभाग के परिपत्र क्रमांक एफ 13-55/2012/20-तीन रायपुर दिनांक 10.01.2013 के द्वारा विशेष पिछड़ी जनजातियों को डी.एड. एवं टी.ई.टी. से नियुक्ति के समय छूट रहेगी।

4. सहायक शिक्षक के पद हेतु कक्षा पहली से पांचवी तक अध्यापन हेतु टी.ई.टी. उत्तीर्ण होना आवश्यक है।”

5. Learned counsel for the petitioners would submit that the petitioners are having qualification like Higher Secondary, Certificate of Teacher Eligibility Test (TET), B.Ed., D.Ed. and other qualifications as prescribed in the advertisement, therefore, they have participated in the selection examination and cleared the examination. Accordingly, they were called for verification of records. After verification of the records, their claim for appointment has been rejected on the count that the petitioners have secured less than 50% marks either in the Higher Secondary or Graduation Examination, which are required for appointment on the post of Assistant Teacher, Teacher as the case may be.

6. Learned counsel for the petitioners would submit that since the petitioners belong to ST category, therefore, as per advertisement and recruitment rules namely Chhattisgarh School Education Services (Education and Administrative Cadre) Recruitment and Promotion Rules, 2019, they are entitled to get relaxation from the minimum percentage of 50%. Learned counsel for the petitioners would refer to clause 5 of the advertisement, which reads as under:-

“5. पदों हेतु आरक्षण :-

(1) सेवा में भर्ती के समय, छत्तीसगढ़ लोक सेवा (अनुसूचित





जातियों, अनुसूचित जनजातियों और अन्य पिछड़े वर्गों के लिए आरक्षण) अधिनियम, 1994 (क्र. 21 सन् 1994) के उपबंध तथा उक्त अधिनियम के अधीन, शासन के सामान्य प्रशासन विभाग द्वारा समय-समय पर जारी निर्देश लागू होंगे।

(2) छत्तीसगढ़ सिविल सेवा (महिलाओं की नियुक्ति के लिए विशेष उपबंध) नियम, 1997 के उपबंध के अनुसार महिला अभ्यर्थियों के लिये 30 प्रतिशत पद आरक्षित रखे जायेंगे। यह आरक्षण, समस्तर और प्रभागवार होगा। नियम के उपबंध के अध्याधीन रहते हुए, नियुक्तियों में विधवा अथवा तलाकशुदा महिला अभ्यर्थियों को अधिमान दिया जायेगा।

(3) उपरोक्त के अतिरिक्त, दिव्यांगजन/भूतपूर्व सैनिक के लिये पदों को, शासन द्वारा समय-समय पर बनाये गये अधिनियम/नियम/जारी आदेश/निर्देश के अनुसार आरक्षित रखा जायेगा। दिव्यांगजन अधिकार अधिनियम, 2016 (2016 का सं. 49) के प्रावधानों के अन्तर्गत राज्य में लागू प्रतिशत के अनुसार, पदों का आरक्षण, 7 प्रतिशत रहेगा।”

7. Learned counsels for the petitioners would further submit that as per Section 29 of the Right of Children to Free and Compulsory Education Act, 2009 (for shot “the Act, 2009”), there will be an academic authority who will lying down the curriculum and evaluation procedure under sub-section 1 and as per Rule 23 of the Right of Children to Free and Compulsory Education Rules, 2010 (for shot “the Rules, 2010”), the State Council of Educational Research & Training, Raipur (SCERT) has been designated as an academic authority for the State of Chhattisgarh to carry out various responsibilities such as formulation of curriculum, preparation of textbooks, teachers’ handbooks and teacher training. It advises the Government on policy matter relating to school education.

8. Learned counsels for the petitioners would submit that the State Council of Education Research & Training, Raipur has issued guidelines for eligibility criteria to admission in B.Ed. Course in which, it has been categorically mentioned that minimum 50% marks is required in graduation/post-graduation examination to admission in B.Ed. Course and 5% relaxation granted to the SC/ST/OBC/PH candidates of State of Chhattisgarh. It has also been contended that the Government of Chhattisgarh had conducted Teacher Eligibility Test in the year 2011, 2012, 2016, & 2019 as per “Chhattisgarh Teacher Eligibility Test guidelines”





the said Guidelines was framed as per the Guidelines of National Council of Teacher Education, in which, it has been categorically mentioned that relaxation upto 5% in the qualification marks shall be allowed to the candidates belonging to reserved categories.

9. It has been further contended that as per the guidelines of National Council for Teacher Education (NCTE), State Council of Education Research & Training, Raipur & Chhattisgarh B.Ed. Admission Rules, 2006, the reserved category candidates who have minimum 45% marks in graduation and also have B.Ed. degree are eligible for appointment to the post of Assistant Teacher and the petitioners belong to the Schedule Tribe category, therefore, they are eligible to get relaxation of 5% from the minimum qualifying marks in the Higher Secondary or Graduation Course. Since they have cleared TET, B.Ed./D.Ed. and other professional qualification, which is required for appointment of Assistant Teacher/Teacher, therefore, the rejection of candidature of petitioners on the count that the petitioners are having less than 50% marks, is arbitrary, illegal and contrary to the guidelines of NCTE & guidelines/circular of State of Chhattisgarh. It has been further contended that as per the Rule 8(II) of Chhattisgarh School Education Services (Education and Administrative Cadre) Recruitment and Promotion Rules, 2019, the prescribed qualification will be as per the provisions of Right to Free and Compulsory Education Act, 2009. It has also been contended that the National Council for Teaching Education is academic authority under Right to Free and Compulsory Education Act, 2009, which has granted relaxation up to 5% of qualifying marks vide notification dated 29.07.2011 for various reserved categories, therefore, the State cannot make a rule contrary to the NCTE rules/guidelines and would submit that the impugned order by which, their candidature for appointment has been rejected, be kindly set aside and the State be directed to issue appointment order in





favour of the petitioners.

10. The petitioners to substantiate their submissions have referred to the judgment rendered by Hon'ble the Supreme Court in case of **State of Uttar Pradesh Vs. Shiv Kumar Pathak & others**¹, as well as **Vikas Sankhala & others Vs. Vikas Kumar Agarwal & others**², and referred paragraph 32, 45 & 46 of **Vikas Sankhala (Supra)**, which are extracted below:-

"32. Coming to notification dated July 29, 2011 which was issued by the NCTE in exercise of its power under Section 23(1) of the RTE Act, amending its earlier notification dated August 23, 2010, the High Court proceeded to discuss as to whether relaxation upto 5% in qualifying marks contained therein was relatable to TET. This question had arisen for consideration because of the reason that writ petitioners belonging to general category had argued that vide said notification dated July 29, 2011 paragraph 3 of the principal notification dated August 23, 2010 was substituted and the context of the said paragraph 3 was totally different. After juxtaposing unamended paragraph 3 and amended paragraph 3, the High Court pointed out that paragraph 3 of the notification dated August 23, 2010 dealt exclusively with the aspect of NCTE recognised six months special programme in elementary education by way of training of persons with qualifications mentioned therein after appointment. Thus, there was neither any comprehension nor any provision for reservation or relaxation of marks. Only academic qualifications with minimum percentage of marks was referred to. Therefore, concession of 5% in the qualifying marks pertained to the percentage of marks in the qualifying examination of Senior Secondary/graduation etc. and had no nexus with the pass marks in the TET.

45. We find merit in the contention of the appellants and do not agree with the respondents that the provision for relaxation upto 5% in qualifying marks at all relates to TET. In the first instance, it is to be noted that insofar as qualifying marks for TET are concerned, they are prescribed in para 9 of the guidelines dated February 11, 2011. There is no amendment to the said para. Amendment is incorporated in para 3 of the

1 (2018) 12 SCC 595

2 (2017) 1 SCC 350





principal notification dated February 11, 2011 which we have already reproduced above. Original para 3 gives the rationale for including TET as a minimum qualification. Though, it is not understood as to why that para is substituted by the aforesaid amended para vide notification dated July 29, 2011. Be that as it may, a reading of amended para 3 clearly brings out that it incorporates two aspects. First aspect touches upon the training to be undergone by a person and this training can be undergone by those persons who have certain specified marks in graduation and D.Ed. (Special Education) or B.Ed. (Special Education). Training is for 6 months duration i.e. 6 months special programme in elementary education. Insofar as persons having graduation and B.Ed. qualification are concerned, minimum marks in the graduation or B.Ed. are also prescribed. It is stipulated that graduation should be with at least 50% marks and B.Ed. qualification with at least 45% marks. However, those who have done D.Ed. (Special Education) or B.Ed. (Special Education), no minimum marks in obtaining those qualifications are prescribed. What follows is that person who is graduate with B.Ed. qualification, he/she should have minimum 50% marks in graduation and 45% marks in B.Ed. qualification. It is in this context second aspect of the amended provision in sub-para (ii) of para 3 mentions about 'Reservation Policy' and allows relaxation upto 5% in qualifying marks. This relaxation is, therefore, clearly relatable to marks in graduation and B.Ed. qualification, meaning thereby insofar as reserved category candidates such as SC/ST/OBC/PH are concerned, they will be treated as qualified to undergo the training in case they pass graduation with minimum 45% marks and B.Ed. qualification with minimum 40% marks. We are clear in mind that this relaxation of 5% does not relate to TET at all. Had it been so, this notification dated July 29, 2011 would have amended para 9 and, particularly, sub-para (a) of para 9 which deals with concessions to reserved category candidates that has not happened and is left intact.

46. We may mention that High Court in the impugned judgment has also read the said amended para 3 in the same manner we have interpreted. We affirm the view of the High Court on this specific aspect. We would like to reproduce the following discussion from the judgment of the High Court wherein additional reasons for arriving





at this particular conclusion are given:

“...This view is fortified by the letter No. F.No.61-1/2011/NCTE/N&S dated 1.4.2011 of the NCTE addressed, amongst others, to all Secretaries and Commissioners of the State Governments/UTs clarifying that following the issuance of the notification dated 23.8.2010, it had received representations from the State Government and other stakeholders that in respect of SCs/STs etc. relaxation upto 5% in the qualifying marks should be allowed, since such relaxation is permissible by the NCTE for admission in various teacher education courses. Referring to the minimum marks in the notification dated 23.8.2010, in senior secondary (or its equivalent) or in B.A./B.Sc., it was elucidated that following its meeting held on 16.3.2011 it was decided that relaxation upto 5% in such qualifying marks would be available to SCs/STs etc., in accordance with the extant policy of the State Government /UTs and other school managements. There is no reference of such relaxation to pass marks in the TET. This accommodation of the NCTE, by way of concession of 5% marks qua the academic qualifications, is also evident from the provisions of the National Council for Teacher Education (Recognition Norms & Procedure) Regulations, 2009 (hereinafter referred to as '2009 Regulations') and the norms and standards for various education courses as specified in the Appendices thereto and referred to in the course of arguments on its behalf. The explanation of the NCTE with regard to the nature of the relaxation granted under the caption “reservation policy” traceable to paragraph 3 of the principal notification dated 23.8.2010 with reference amongst others to the 2009 Regulations cannot be ignored or discarded.”

11. Learned Additional Advocate General for the State would submit that under Section 23 of the Act, 2009, the NCTE has laid down the minimum eligibility qualification vide notification dated 23.08.2010. Para 1(i) of the said notification laid down the minimum qualification prescribed for appointment of a candidate to teach Classes I to V. Clause 1 (ii) prescribed the minimum qualification for appointment of a candidate to teach Class VI to VIII. The said notification was subsequently amended vide notification dated 29.07.2011 prescribing the minimum





qualification for teaching Class I to V as was provided under Clause 1(i) and for Classes VI to VII under Clause 1(ii). The said notification was further partially modified vide notification dated 13.11.2019, whereby Clause 1(ii) was amended. The relevant provision of the notification dated 23.08.2010 is extracted below:-

“1. न्यूनतम योग्यता –

(i) कक्षा I-V

(क) न्यूनतम 50% अंको के साथ उच्चतर माध्यमिक (या इसके समकक्ष) एवं प्रारंभिक शिक्षा शास्त्र में द्विवर्षीय डिप्लोमा (जिस नाम से भी जाना जाता हो)

या

न्यूनतम 45% अंको के साथ उच्चतर माध्यमिक (या इसके समकक्ष) एवं प्रारंभिक शिक्षा शास्त्र में द्विवर्षीय डिप्लोमा (जिस नाम से भी जाना जाता हो), जो राष्ट्रीय अध्यापक शिक्षा परिषद् (मान्यता, मानक और क्रियाविधि) विनियम, 2002 के अनुसार प्राप्त किया गया हो।

या

न्यूनतम 50% अंको के साथ उच्चतर माध्यमिक (या इसके समकक्ष) एवं 4 वर्षीय प्रारंभिक शिक्षा शास्त्र स्नातक (बी.एल.एड)

या

न्यूनतम 50% अंको के साथ उच्चतर माध्यमिक (या इसके समकक्ष) एवं शिक्षा शास्त्र में द्विवर्षीय डिप्लोमा (विशेष शिक्षा)

और

(ख) राष्ट्रीय अध्यापक शिक्षा परिषद् द्वारा निरूपित मार्गदर्शी सिद्धान्तों के अधीन उपयुक्त सरकारों द्वारा आयोजित [अध्यापक पात्रता परीक्षा (टी.ई.टी.) में उत्तीर्ण]।

(ii) कक्षा VI-VII

(क) बी.ए./बी.एस.सी. और प्रारंभिक शिक्षा शास्त्र में द्विवर्षीय डिप्लोमा (जिस नाम से भी जाना जाता हो)

या

न्यूनतम 50% अंको के साथ बी.ए./बी.एस.सी. एवं शिक्षा शास्त्र में एक वर्षीय स्नातक (बी.एड.)

या

न्यूनतम 45% अंको के साथ बी.ए./बी.एस.सी. एवं शिक्षा शास्त्र में एकवर्षीय स्नातक (बी.एड) जो इस संबंध में समय-समय पर जारी राष्ट्रीय अध्यापक शिक्षा परिषद् (मान्यता, मानक और क्रियाविधि) विनियम के अनुसार प्राप्त किया गया हो

या

न्यूनतम 50% अंको के साथ उच्चतर माध्यमिक (या इसके समकक्ष) एवं 4 वर्षीय प्रारंभिक शिक्षा शास्त्र स्नातक (बी.एल.एड.)

या

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

या

न्यूनतम 50% अंको के साथ बी.ए./बी.एस.सी. एवं एकवर्षीय बी.एड. (विशेष शिक्षा)

और





(ख) राष्ट्रीय अध्यापक शिक्षा परिषद् द्वारा निरूपित मार्गदर्शी सिद्धान्तों के अधीन उपयुक्त सरकारों द्वारा आयोजित [अध्यापक पात्रता परीक्षा (टी.ई.टी.) में उत्तीर्ण]।”

12. He would further submit that the State of Chhattisgarh in its exercise of power under Article 309 of the Constitution of India, has framed the Chhattisgarh School Education Service (Educational & Administrative Cadre) Recruitment & Promotion Rules, 2019, prescribing the minimum qualification for appointment of an Assistant Teacher, Teacher and Lecturer. Under the Rules, the minimum qualification has been prescribed in Annexure-A attached with the Recruitment Rules, 2019. Relevant clause of Annexure-I of the Rules, 2019 is reproduced below:-

(i) Assistant Teacher

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Elementary Education (by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations, 2002.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor of Elementary Education (B.EL.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education)

OR

Graduation and two year Diploma in Elementary (by whatever name known)

OR

Graduation with at least 50% marks and B.Ed. Qualification (Graduation from the institution recognized from NCTE), shall also be eligible for appointment as teacher for classes 1 to 5, Provided he/she undergoes, after appointment, a NCTE recognized 6 months special programme in Elementary Education.





And

(b) Passed the Teacher Eligibility Test (TET), to be conducted by the appropriate Government, in accordance with the guidelines framed by the NCTE for this purpose.

(ii) Teacher

(a) Graduation and 2 Year Diploma in Elementary Education (by what ever name known)

OR

Graduation with at least 50% marks and 1 Year Bachelor in Education (B.Ed.)

OR

Graduation with at least 45% marks and 1-year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition, Norms and Procedure) Regulations issued from time to time in this regard.

OR

Higher Secondary or its equivalent with at least 50% marks and 4 years B.A./B.Sc.Ed. Or B.A.Ed./B.Sc.Ed.

OR

Graduation with at least 50% marks and 1 year B.Ed. (Special Graduation)

OR

(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.

13. He would further submit that the petitioners are claiming relaxation of 5% relaxation which was provided as per the notification dated 29.07.2011 and as per Clause 3 (ii) though Para III of the notification dated 29.07.2011 is pertaining to the amendment made in para 3 of the principle notification dated 23.08.2010. He would further submit that Para 3 of the notification dated 23.08.2010 dealt with training to be undergone and does not pertain to the minimum qualifications required for appointment to the post of Assistant Teacher.
14. He would submit that from bare perusal of the said notification, it is quite vivid that relaxation upto 5% in the qualifying marks was allowed to the candidates belonging to the reserved category for taking admission in B.Ed./D.Ed. course and does not relate to





grant of relaxation of 5% for securing employment with the State as the appointment governs by the Rules, 2009. He would further submit that the petitioners are trying to mix both the relaxation and even the petitioners cannot claim relaxation of 5% as a matter of right. Since it is a policy decision to be taken by the appointing authority or the appropriate government, would pray for dismissal for the writ petitions. In support of this contention, he would refer to the judgment rendered by Hon'ble the Supreme Court in **State of U.P. Vs. Vikash Kumar Singh**³, wherein it has been held as Paragraph 7.1 as under:-

“7.1 The learned Single Judge thereafter while quashing and setting aside the eligibility lists dated 18.03.2019 and 10.05.2019 has issued the writ of mandamus commanding or directing the competent authority to grant relaxation in qualifying service, which as such was permissible under Rule 4 of the Relaxation Rules, 2006. The word used in the Rule 4 of Relaxation Rules, 2006 is “MAY”. Therefore, the relaxation may be at the discretion of the competent authority. The relaxation cannot be prayed as a matter of right. If a conscious decision is taken not to grant the relaxation, merely because Rule permits relaxation, no writ of mandamus can be issued directing the competent authority to grant relaxation in qualifying service. Therefore, the High Court has committed a grave error in issuing the writ of mandamus commanding the competent authority to grant relaxation in the qualifying service. Consequently, the High Court has also erred in quashing and setting aside the eligibility lists dated 18.03.2019 and 10.05.2019, which as such were prepared absolutely in consonance with the Rules, 1990 and Rules, 2006. The impugned judgments and orders passed by the learned Single Judge as well as the Division Bench of the High Court are not sustainable in law.”

15. He would further submit that the amendment as provided by way of notification dated 13.11.2019, is applicable to those incumbent who have already taken admission to the Bachelor of Education of Bachelor of Elementary Education or equivalent course prior to 29th July, 2011 and this notification is deemed to have come into force on 29th July, 2011. From the records, it is

3 (2022) 1 SCC 347





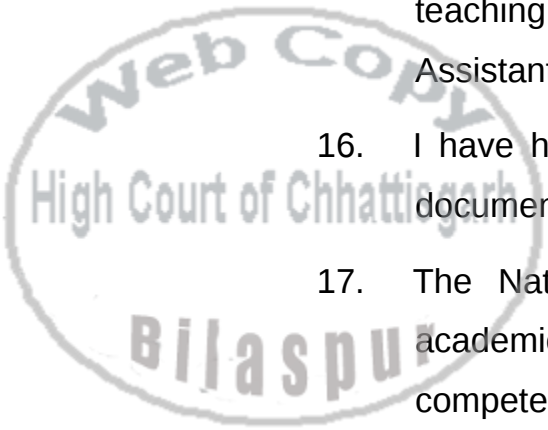
quite vivid that the petitioners who have applied for appointment to the post of teacher have not taken admission to the Bachelor of Education or Bachelor of Elementary Education or equivalent prior to 29th July, 2011, therefore, while considering their case for appointment on the post of teacher after giving relaxation from minimum percentage of marks in graduation cannot be considered. It is pertinent to mention here that the petitioners in WPS Nos. 2429/2022, 2696/2022, 3582/2022, 3862/2022, 3884/2022, 3904/2022, 3900/2022, 3888/2022, 3868/2022, 3901/2022, 3933/2022, 3931/2022, 3947/2022, 4183/2022, 4027/2022 & 4340/2022 have completed their B.Ed./D.Ed. after 2011 which varied from period between 2012 to 2019. He would further submit that this relaxation for appointment of teacher of teaching Classes VI to VIII has been provided and not for Assistant Teachers.

16. I have heard learned counsel for the parties and perused the documents placed on record with utmost satisfaction.

17. The National Council for Teacher Education, which is the academic authority as per Section 29 of the Act, 2009, who is competent to lay down the minimum qualifications which a person needs to possess to make him eligible for appointment as a teacher, has issued a notification dated 23.08.2010 laying down such minimum qualifications, wherein, apart from the other educational qualifications prescribed in the said notification, the candidate should also secure qualifying marks in TET. The relevant portion of the notification reads as under:-

“(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.”

18. In furtherance of the notification dated 23.08.2010, the State of Chhattisgarh has issued guidelines titled as Chhattisgarh Teacher Eligibility Examination Direction, 2011. According to clause 2(v), the minimum pass percentage of TET is 50%. The direction further provides for 10% of relaxation to the





SC/ST/OBC candidates. The relevant clause of the direction reads as under:-

“(v) राज्य सेवा परीक्षा के प्रचलित नियमानुसार अनुसूचित जाति, अनुसूचित जनजाति, अन्य पिछड़ा वर्ग के अभ्यर्थियों को 10% की छूट देते हुए इस परीक्षा में पात्रता हेतु 50% न्यूनतम अंक लाना आवश्यक होगा।”

19. From bare perusal for the aforesaid direction, it is evident that the authorities have conveyed its decision to grant relaxation in minimum pass marks in TET to reserved category candidates, the relaxation is 10%. Thus, even if the reserved category candidates secured only 40% marks in TET, they were still treated as a qualified candidate and were allowed to appear in the recruitment process.

20. Hon'ble the Supreme Court while examining the correctness of granting relaxation in TET to SC/ST/OBC has observed in paragraphs No. 19, 38 & 47 in **Vikas Sankhala (Supra)**, which read as under :

“19.We may point out at the outset that insofar as issue of concession/relaxation in TET is concerned, it has three facets, viz.:

(i) whether relaxation in passing marks for TET was validly given by the State Government in its letter dated March 23, 2011 and all such candidates belonging to the reserved categories can be treated as having passed TET on obtaining marks as per relaxed standards?

(ii) whether no relaxation of any nature could be given by the State Government and, therefore, it was incumbent upon the persons belonging to reserved categories as well to secure 60% marks in TET to treat them as qualifying the said TET? OR

(iii) relaxation to the extent of 5% was permissible, as provided by NCTE vide its amendment Notification dated July 29, 2011 and, therefore, those who secure 55% or above could be treated as successful in TET?”

38. The history of events, right upto the decision of the High Court, gives a clear glimpse of the questions of law that need to be determined by this





Court. At this juncture, we would like to formulate these issues, as under:

38.1 (i) Whether policy of the State as reflected in its letter dated March 23, 2011 deciding to give relaxation ranging from 10% to 20% in TET marks to different reserved categories as mentioned therein is valid in law?

38.2 (ii) Whether NCTE notification dated July 29, 2011, which amends paragraph 3 of its earlier guidelines/notification dated February 11, 2011, provides 5% relaxation to the reserved category for passing TET? If so, whether it would be applicable to the reserved categories in the State of Rajasthan as well?

38.3 (iii) Whether reserved category candidates, who secured better than general category candidates in recruitment examination, can be denied migration to general seats on the basis that they had availed relaxation in TET?

47. Thus, our answer to Question No. 2 is that insofar as NCTE is concerned, it has not provided any provision for relaxation in TET examination for reserved category candidates but has left it to the State Governments to do the needful in this behalf, as per para 9 of guidelines dated February 11, 2011 which remains unaltered."



21. From bare perusal of notifications of 2010 & 2011, it is quite vivid that the relaxation of 10% in qualifying marks was not given for recruitment process, but was granted for passing of TET examination. Thus, the passing of TET and appointment as per Rules, 2019 for appointment on the post of Assistant Teacher/Teacher are completely different and the petitioners cannot club both these things and claimed relaxation. It is quite vivid that so far as relaxation of passing TET is concerned, it was open to the State Government to give relaxation in favour of reserved category as per the policy framed by them from time to time with change in socio economic condition.
22. Learned counsel for the petitioners further submit that when the petitioners were found eligible to pursue B.Ed., they cannot be



held ineligible to be considered for appointment by granting relaxation. I am not persuaded by this submission as granting of relaxation in essential qualification will dilute the standard of education.

23. Hon'ble the Supreme Court in **State of U.P. Vs. Anand Kumar Yadav**⁴ has held at paragraph 24 as under:-

"24. To make the right to education meaningful, a qualified teacher undoubtedly has significant role. In this regard we may quote with approval the following observations dealing with the importance of a trained teacher in the Full Bench judgment of the High Court in Shiv Kumar Sharma(supra):

"55.The training of a child, that is an integral part of child development, is essential for his grooming, as a human mind, without proper training is like a horse without a bridle difficult to ride. Children in their cradle of life with the help of teachers can mould their lives for higher ambitions in their manhood. To assess and mould children with these ideals is the job of a skilled teacher and the art of such skill is pedagogy. Teachers have to serve the larger interest of the society as they are building the future. Henry Brooks Adams said, "A teacher affects eternity; he can never tell where his influence stops" and more appropriately Christa McAuliffe said " I touch the future. I teach". This requires the possession of virtues like sacrifice and honour which in turn brings respect to the status of a teacher and infuses confidence in the pupil.

56. Many children are victims of apathy and wrongly motivated parental treatment. Their emotional and skilful assessment, and proper treatment, has to be handled within the clinic of an elementary school where the sole physician is none else than a trained teacher. A candidate possessing a mere educational or a training qualification without any genuine attribute may not necessarily be a good teacher.

57. It is in this background that one may remember those who have contributed to this skilful art of pedagogy. In the modern world





the great philosopher and Educationist Rousseau, followed by the Swiss Predecessor of his German Pupils, Pestalozzi, are worth remembering. They were followed by the famous Germans Herbart and Froebel. The English with Lancaster and Bell followed suit and in the modern world it would be improper to forget the great contributions of Maria Montessori.

58. We do not wish to pile up names but this is only to emphasize that a great scientific contribution has been made to this skilful art of pedagogy. If one goes through the works of these great people, one can understand that child development and teaching children is no easy task and cannot be confined with the acquisition of a couple of degrees as a supplement to the complete attribute required of a teacher. The narrow meaning of qualification therefore that was being pressed into service by Sri Rahul Agrawal cannot be countenanced in view of the vast ocean of understanding that is required of a skilful teacher.

59. In the instant case the skill of the teacher should be lined with such ingredients that it kindles the spark of a child and balances a group of mentally uneven children. The duty of a good teacher is to bring the student into contact with the learning of fruitful elements that ensue an enduring significance in life, affirmative information of all modes of intellectual, systematical and practical activity that play a major part in the building of human mind and spirit. Their interplay is the exercise that has to be undertaken by a teacher. This exercise, particularly, in a class room of infants should be underlined with methods that are elastic enough to fit the varying needs of different types of children. The cultivation of mental training and discipline is the prime object of good teaching. We celebrate 5th of September each year as Teachers' Day to commemorate the birth of our late President Dr. S. Radhakrishnan. He defined the good qualities of a teacher as follows:

A good teacher must know how to arouse the interest of the pupil in the field of study for which he is responsible, he must himself be a





master in the field and be in touch with the latest developments in his subject, he must himself be a fellow traveler in the exciting pursuit of knowledge

...

61. Describing the role model of teachers, our Former President of India Dr. A.P.J. Abdul Kalam, narrated his experience in his teachers' day speech on 5th September, 2003 and said that a school must have the best of teachers who have the ability to teach, love teaching and build moral qualities.

62. These are the challenges of teaching which have been referred to in the guidelines dated 11th February, 2011. It is in order to ensure that the candidate is possessed of such attributes. The guidelines further provide that a candidate will be presumed to have succeeded in the test if he scores 60% or more. Some concessions have been given for reduction in the said percentage in the case of scheduled caste, scheduled tribes, and other backward classes as well as differently abled persons.

63. The reason for this is that the art of teaching is designed to educate a child. Education is not mere acquisition of qualifications but is an overall development of a child to ensure growth and development. It is the awakening of the inner self and faculty of the child to the ways of the world. The teacher therefore should be possessed such qualities that he satisfies the curiosity of a child that enables him not only to read but to distinguish what is worth reading. The job of a teacher is not to fill the time-table with dull unintelligible tasks. This violates common sense and creativity brutally. Teaching and training cannot be effected in the absence of knowledge about the mind which is to receive them.

64. It is the systematic and purposeful construction of a personality, so that it leaves an everlasting effect on the mind. The job of a teacher is to get across the confidence in a pupil, that there were good reasons for everything the teacher did. He has to be transparent and he cannot leave a pupil to guess that there are any hidden answers. A





good teacher would like the pupil to lead the way. The teacher would follow and let the pupil know that his efforts would be recognised. This confidence would help the child to develop a strength in himself to cope up with his own world by observing and solving problems. The art of teaching should not be confined only to oral transmissions because what one hears one can forget. However, what one sees, one remembers but what one does he understands. This is what should teaching be comprised of. The teacher should therefore be in a position to infuse into a child such attributes that he or she acquires the ability to assume responsibility for himself/herself. A psychological independence that enables him/her to decide at the same time and differentiate right from wrong. This capacity of a child which lies concealed in him has to be discovered in a way that the child finds this world an interesting place to live in. For this good teaching may be 1/4th preparation and 3/4th performance.



65. A teacher is like a professional as said by Danny Hillis, "A layman knows he has to kick it; and an amateur knows where to kick it; a professional knows how hard." This quality should be possessed professionally by a teacher as the object of teaching a child is to enable him to get alone without a teacher.

66. The skill of such a performance has to be assessed because teaching is a great art to educate youth to enable him to find out and discover his own peculiar aptitudes or create where none exists. A teacher has to create inclinations in the child which may serve as substitutes. The level of inspiration that has to be infused in a child should be such that he is able to make a mark in life as a complete human being. One should remember that "millions see the apple fall, but Newton was the one to ask why?" The job of a teacher at the primary level is to generate this element of curiosity in a child.

67. For this teachers have to be attributed with qualities that they are able to handle the weak and the nervous, the mediocre and intelligent with measured skill. This expertise is a onerous task and is a substantial part of



pedagogy. To teach a child to become self sufficient is the art which has to be developed with caution so as not to destroy the fragile confidence by using harsh methods. The teacher eligibility test appears to be designed for this purpose.

68. It is to be remembered that teachers are to impart education to those souls who are between the period of innocence of childhood and the folly of youth. It is this aspect of pedagogy to educate a child to lead life that attains importance.

69. The art of dealing with children also involves knowing what not to say, and on the other hand patiently answering the unpredictable questions of an inquisitive child. A teacher should not give answers to children to remember only, but he should be able to give them problems to solve. It is then that the potentiality of the human race is better put to use "because a child is not a vase to be filled but a fire to be lit." (Francois Rabelais) . A Chinese Proverb goes a long way to say "give a man a fish and you feed him for a day. Teach a man to fish and you feed him for a lifetime." Teaching is infusing of ideas instead of stuffing the brain with facts. William Arthur Ward a famous educationist said that The mediocre teacher tells, a Good teacher explains, a Superior teacher demonstrates but the great teacher inspires."

70. Children come from different backgrounds often being victimised by unwise and wrongly motivated parental treatment. The teacher has to be more careful for he is enjoined with the duty of child development. This therefore is the background-in which the teachers role attains immense significance. It is for such reasons that the Union and the State appear to have come up with the necessity of a teacher eligibility test.

71. The importance of teaching and a teacher's selection should be to find out whether a candidate fulfils and is possessed of such attributes, that is capable of bringing out the best to ensure child development. "The art of teaching is the art of assisting discovery (Mark Van Doran)". This





compulsory attribute is therefore to be assessed by the State while judging the capability of a teacher and which therefore is an essential qualification and not only a minimum qualification. The essential nature of this test therefore leaves no room for doubt that mere possession of educational qualification and a teachers training course is not sufficient to assess the capacity of a teacher.

72. Sir Winston Churchill while assessing the role of a teacher observed that the Head Masters of elementary schools have powers at their disposal with which even Prime Ministers have never been vested with. The reason is that the school master has to reckon not only with his pupils human tendency to run, but also with the unwisdom of parents in their early dealings with early tendency; elimination of wrong doing, not by plainly repressive methods is also one of the arts that has to be possessed by a skilful teacher.

73. All this goes to fulfil the objectives with which Article 45 of the Constitution of India was incorporated under the United Nations declaration which says that mankind owes to the child the best it has to give. An infant who does not know how to express himself, enters in an elementary school where he has to be taught his initial alphas and betas. The pronunciation, sentence-forming, elementary grammar and understanding of his first alphabets have to be installed in his mind with expertise. It is for this reason that the curriculum of the TET includes proficiency in the language of the medium of instruction, an optional language for a better understanding with the student, mathematics to assess the investigative strength of the mind and finally environmental studies to gauge the overall awareness of human life and nature. This has to be coupled with moral education and discipline and this entire combination in one performance is the skill of a teacher. He has to handle the weak and the nervous, the mediocre and intelligent, with an adequate measured skill for which a basic attribute with intelligence is required to be possessed by a teacher. A teacher cannot employ methods like knocking of a child because such





methods do not always turn a timid boy into a courageous one nor does it turn a spoilt brat into an angel. Nonetheless it is useful to remember Bishop Fulton J Sheen who said "Every child should have an occasional pat on the back, as long as it is applied low enough and hard enough". For teachers and guardians the proverb "Give a child enough rope, and you will trip" is also a cautionary note. The acquisition of such expertise is what is desired to be assessed and that is what the teacher eligibility test is designed for. It is only to assess these qualities that would qualify a teacher for being appointed as such and therefore the teacher eligibility test is not a mere eligibility criteria but a qualification as prescribed in addition to the academic and training qualifications.

74. It would be apt to quote Charles Dickens in his famous book "Hard Times" where the quality of a teacher has been expressed from another angle as follows:

"What I want is facts. Teach these boys and girls nothing but facts. Facts alone are wanted in life. Plant nothing else, and root out everything else."

75. The role of teaching is therefore of a mediator of learning, a parent substitute, a controller of students' behaviour, an agent of social change and finally a judge of achievement. The teacher who enters a school imparting elementary education has to act like a group leader who can remove the hindrances of doubts in the mind of an infant and generate creative development. Above all he has to in still in the mind of a youngster all virtues of courage and honesty as this part of education is a vital portion of child development. It is in the early years that the importance of education has to be preached so as to achieve what a former U.S. President Garfield said "Next in importance to freedom and justice is education without which the other two cannot be entertained."

24. Hon'ble the Supreme Court in **V. Lavanya & others Vs. State of Tamil Nadu represented by its Principal Secretary & others**⁵, has examined the power of the State Government to relax 5%

⁵ (2017) 1 SCC 322





marks for reserved category candidates in the State Teacher Eligibility Test and has held that it is as per the policy of the NCTE. From the above-stated position of law, it is quite vivid that Hon'ble the Supreme Court has upheld the relaxation for TET only and not for appointment on the post of Teacher.

25. The judgment cited by the petitioners in **Shiv Kumar Pathak (Supra)** will not come in rescue for the petitioners as in the said judgment, Hon'ble the Supreme Court has held at paragraph 17 as under:-

“17. There is no manner of doubt that the NCTE, acting as an ‘academic authority’ under Section 23 of the RTE Act, under the Notification dated 31st March, 2010 issued by the Central Government as well as under Sections 12 and 12A of the NCTE Act, was competent to issue Notifications dated 23rd August, 2010 and 11th February, 2011. The State Government was under obligation to act as per the said notifications and not to give effect to any contrary rule. However, since NCTE itself has taken the stand that notification dated 11th February, 2011 with regard to the weightage to be given to the marks obtained in TET is not mandatory which is also a possible interpretation, the view of the High Court in quashing the 15th Amendment to the 1981 Rules has to be interfered with. Accordingly, while we uphold the view that qualifications prescribed by the NCTE are binding, requirement of weightage to TET marks is not a mandatory requirement.”

26. Thus, the qualification prescribed by NCTE is binding and requirement of weightage to TET mark is not requirement for appointment. From bare perusal of Rules, 2019, it is quite vivid that the qualification prescribed in the Rules of 2019 are at par with the qualification prescribed by NCTE and even this judgment does not deal with the relaxation with minimum qualifying marks in the board examination or graduation which is essential qualification for appointment. The petitioners are trying to mix up the relaxation granted for TET with minimum percentage required under the rules. Both the things cannot be treated as one and the same as the recruitment rules governs





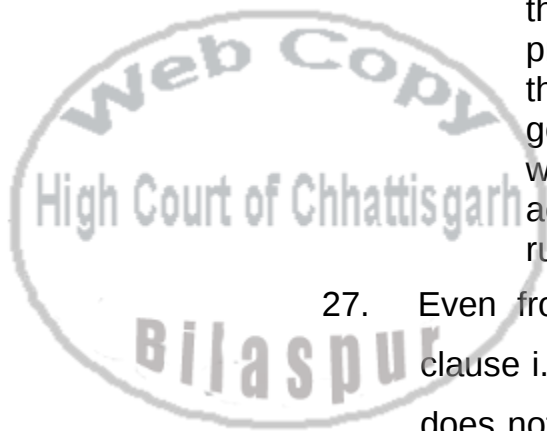
the field of recruitment which has been framed under Article 309 of the Constitution of India and is binding force. Hon'ble the Supreme Court in **A.K. Bhatnagar & others Vs. Union of India & others**⁶, has examined the effect of rules made under Article 309 of the Constitution of India that it has binding effect. Hon'ble the Supreme Court has held at paragraph 13 as under:-

“13. On more than one occasion this Court has indicated to the Union and the State Governments that once they frame rules, their action in respect of matters covered by rules should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect. Acting in a manner contrary to the rules does create problem and dislocation. Very often government themselves get trapped on account of their own mistakes or actions in excess of what is provided in the rules. We take serious view of these lapses and hope and trust that the government both at the Centre and in the States would take note of this position and refrain from acting in a manner not contemplated by their own rules. There shall be no order as to costs.”

27. Even from bare perusal of the advertisement, the relaxation clause i.e. clause (v) of the advertisement, it is quite vivid that it does not provide any relaxation with regard to qualifying marks, therefore, it is crystal clear that unless a candidate secured minimum prescribed marks he or she is not eligible to be considered for appointment of Assistant Teacher/ Teacher. It is also not disputed that the person who is to be appointed teacher should have atleast the minimum qualifying marks in the examination prescribed so that the standard of education is not compromised and the State Government in its wisdom has framed the rule prescribing the qualifying minimum for appointment which is not subject to challenge before this Court, therefore, the writ petitions claiming benefit of relaxations deserve to be dismissed.

28. Before parting with this case, it would be pertinent to mention here that by restricting minimum qualifying marks to the tune of

6 (1991) 1 SCC 544





50% without any relaxation, is with an object of appointing persons with good academic record as teacher, which cannot said to be arbitrary even in absence of any challenge or questioning validity of the rules, therefore, the petitioners are not entitled to get any relaxation as reserved category candidates.

29. Accordingly, all the writ petitions are liable to be and are hereby dismissed. No order as to cost.
30. The interim order passed earlier by this Court, if any, stands vacated.

Sd/-
(Narendra Kumar Vyas)
Judge

