



**AFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

Order reserved on: 29.02.2024

Order delivered on: 02.04.2024

**WPS No. 3541 of 2023**

Bhuneshwar Sahu S/o Shri Tarachand Sahu Aged About 33 Years R/o - Village And Post - Fingeshwar, Ward No. - 13, Block - Fingeshwar, Tahsil - Rajim, District : Gariyabandh, Chhattisgarh

**---- Petitioner**

**Versus**

1. Union Of India Through The Principal Secretary, Ministry Of Human Resource Development (M.H.R.D.), Department Of Education & Literacy Government Of India, Shastri Bhawan, New Delhi.
2. National Council Of Teacher Education (N.C.T.E.) Through Its Secretary/ Chairman, G-7, Sector-10, Dwarka Landmark, Near Metro Station, New Delhi.
3. State Of Chhattisgarh Through The Secretary, Department Of School Education, Mahanadi Bhawan, Mantralaya, New Raipur, District : Raipur, Chhattisgarh
4. The Director, Directorate Of Public Instruction, Indrawati Bhawan, Mantralaya, New Raipur, District : Raipur, Chhattisgarh
5. State Council Of Educational Research And Training, Shanker Nagar, Raipur, District : Raipur, Chhattisgarh
6. Chhattisgarh Professional Examination Board (C.G. Vyapam), Vyapam Bhawan, North Block, Sector - 19, Atal Nagar, Raipur, Chhattisgarh.

**---- Respondents**

**WPS No. 5788 of 2023**

Vikas Kaushik S/o Ramfal Kaushik Aged About 28 Years Resident Of Ward No. 15, Mahavir Showk Beltara, District



Bilaspur, Chhattisgarh

1. Bhupendra Kumar Patel S/o Dolamani Patel Aged About 28 Years Resident Of Village Nawagarh, Tahsil Saraipali, District Mahasamund, Chhattisgarh
2. Bodhanram S/o Nandlal Aged About 37 Years Resident Of Ward No. 10, Lalpur, Municipal Corporation Khairagarh, District Khairagarh- Chhuikhadan- Gandai, Chhattisgarh
3. Rishabh Kumar Gupta S/o Balkishan Gupta Aged About 28 Years R/o Village Chhatan, Post Mungeli, District Mungeli, Chhattisgarh
4. Amil Kumar Chouhan S/o Agal Ram Chouhan Aged About 40 Years Resident Of Village Pujeripali, Block Baramkela, District Sarangarh-Bilaigarh, Chhattisgarh
5. Satish Kumar Nishad S/o P.R. Nishad Aged About 34 Years Resident Of Street 25, Dashhara Maidan, Shantinagar, Supela, Bhilai, District Durg, Chhattisgarh
6. Shashi Priya Verma D/o Balendra Singh Verma Aged About 35 Years Resident Of House No. 215, Vidhan Sabha Road, Village Tore, Tahsil Raipur, District Raipur, Chhattisgarh
7. Dinesh Kumar Yadav S/o Kashiram Yadav Aged About 29 Years Resident Of House No. 154, Ward No. 06, Village Mohtara, Post Nawagarh, District Bemetara, Chhattisgarh
8. Vishal Chaturvedi S/o Ramakant Chaturvedi Aged About 29 Years Resident Of Ware House Road, Ward No. 17, Bilaspur, District Bilaspur, Chhattisgarh
9. Tulasram Koshaley S/o Bhikhuram Koshaley Aged About 31 Years Resident Of Satnamipara, Bijatarai, Post Sarangpur, District Mungeli, Chhattisgarh
10. Purshottam Kumar Kaushik S/o Ramlal Kaushik Aged About 30 Years Resident Of P.W.D. Office, Koni, District Bilaspur, Chhattisgarh
11. Dipika Sahu W/o Ramnarayan Sahu Aged About 33 Years Resident Of Mahamaya Chowk, Village Bardwar, District





Bilaspur, Chhattisgarh

---- **Petitioners**

**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Education, Mahanadi Bhawan, Mantralaya, Atal Nagar, New Raipur, District Raipur (C.G.)
2. Director, Directorate Of Chhattisgarh Public Instruction Indravati Bhawan, Raipur, Chhattisgarh
3. Chhattisgarh Professional Examination Board Through Controller Sector 19, North Block Atal Nagar New Raipur (C.G.)
4. National Council Of Teacher Education Sector-10 Dwarka Near Metro Station New Delhi

---- **Respondents**

**And**

**WPS No. 7344 of 2023**

Omprakash Sahu S/o Shri Uday Ram Sahu Aged About 26 Years R/o Radhika Vihar Phase-I, Bilaspur, District-Bilaspur (C.G.)

---- **Petitioner**

**Versus**

1. Union Of India Through The Principal Secretary, Ministry Of Human Resource Development (M.H.R.D.), Department Of Education And Literacy Government Of India, Shastri Bhawan, New Delhi
2. National Council Of Teacher Education (N.C.T.E.) Through Its Secretary/ Chairman, G-7, Sector-10, Dwarka Landmark, Near Metro Station, New Delhi
3. State Of Chhattisgarh Through The Secretary, Department Of School Education, Mahanadi Bhawan, Mantralaya, New Raipur, District Raipur (C.G.)
4. The Director Directorate Of Public Instruction, Indrawati Bhawan, Mantralaya, New Raipur, District Raipur (C.G.)





5. State Council Of Educational Research And Training  
Shanker Nagar, Raipur, District Raipur (C.G.)
6. Chhattisgarh Professional Examination Board (C.G.  
Vyapam) Vyapam Bhawan, North Block, Sector-19, Atal  
Nagar, Raipur (C.G.)

**---- Respondents**

(Cause-title taken from Case Information System)

Ms. Meenakshi Arora, learned Senior Advocate assisted by Mr.Ishan Verma, Mr.Mandeep Kalra, Ms.Suvangana Agrawal, Mr.Rishabh Lekhi, Ms.Chitrangada Singh, Ms.Radhika Janan, Mr.Chandratanay Chaube and Mr.Aditya Kumar Mishra, Advocates for the Petitioners in WPS Nos.3541/2023 & 7244/2023.

Mr.Anurag Dayal Shrivastava, Mr.Ajay Shrivastava and Mr.G.P.Mathur, learned counsel for the petitioners in WPS No.5788/2023.

Mr.Tushar Dhar Diwan, learned counsel holding the brief of Mr.Ramakant Mishra, learned Deputy Solicitor General and Mr.Sumit Singh, Advocates for the respondent-Union of India.

Mr.Y.S.Thakur, learned Additional Advocate General for respondent-State.

Mr.Bhaskar Payashi, learned counsel for the respondent-NCET.

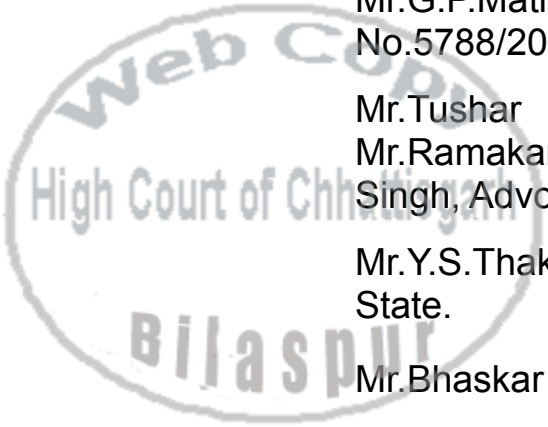
Mr.Avinash Singh, Ms.Akansha Singh and Mr.Yogendra Pandey, learned counsel for the respondent-VYAPAM.

Mr.Ravindra Shrivastava & Mr.Rajeev Shrivastava, learned Senior Advocates assisted by Ms.Naushina Ali, Mr.Ajay Kumrani, Mr.Topilal Bareth, Ms Ankita Gourha, Mr.Vijay Chawla, Ms. Sanya Shukla, Mr.Aniket Singh Das, Ms.Devangana Singh, Mr.Leeshan Sharma and Ms.Krati Dubey, learned counsel for the interveners-Arvind Kumar and others in WPS No.5788/2023.

Mr.Sushobhit Singh, learned counsel for the interveners-Shyam Lal and others in WPS No.5788/2023.

Mr.Govind Dewangan, learned counsel for the interveners-Rohit Verma and others in WPS No.5788/2023.

Mr.Ghanshyam Kashyap, learned counsel for the interveners-Harish Chourasiya in WPS No.5788/2023.





Mr.R.K.Verma, learned counsel for the interveners-Nirajkant Verma and others in WPS No.5788/2023.

Ms.Ayushi Agrawal, learned counsel holding the brief of Mr.C.J.K.Rao, Advocate for the interveners-Kalyan Singh and others in WPS No.5788/2023.

Mr.Prateek Sharma, learned counsel for the intervener-Richa Mishra in WPS No.5788/2023.

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**Hon'ble Shri Ramesh Sinha, Chief Justice**

**Hon'ble Shri Arvind Kumar Verma, Judge**

**C.A.V. Order**

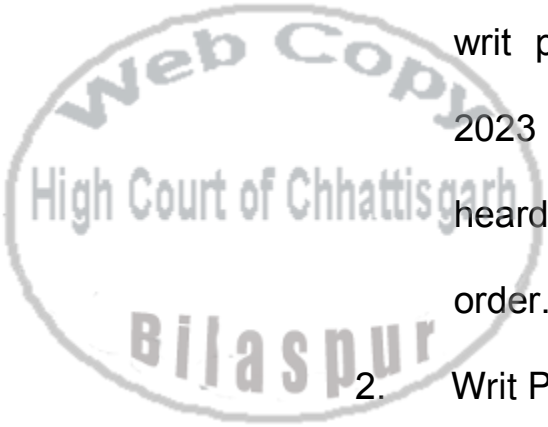
**Per Ramesh Sinha, Chief Justice**

1. Since the identical facts and law are involved in these three writ petitions i.e. WP (S) Nos. 3541 of 2023, 5788 of 2023 and 7344 of 2023 all these cases have been heard jointly and are being disposed off by this common order.

2. Writ Petition Nos.3541 of 2023 and 7344 of 2023 have been filed by the petitioners with the following prayers:

*“10.1 That, this Hon'ble Court may kindly be pleased to struck down the impugned notification dated 04.05.2023 issued by the Under Secretary, School Education Department State of Chhattisgarh (Annexure P/1) for being arbitrary, illegal, ultra virus and unconstitutional;*

*10.2 That this Hon'ble Court may kindly be pleased to struck down the impugned Annexure-I of the Scheduled - III of the Chhattisgarh School Education Services (Education Administrative Cadre) Recruitment and Promotion Rules, 2019 (ANNEXURE P/1) for being arbitrary, illegal, ultra*





*virus and unconstitutional;*

*10.3 That, this Hon'ble Court may kindly be pleased to set aside/quashed the advertisement dated 04.05.2023 to the extent it allows the candidates possessing qualification B.Ed. holders have been declared eligible for the post of primary level teachers (I-V) to participate in it in pursuant to the impugned notification dated 04.05.2023;*

*10.4 That, this Hon'ble Court may kindly be pleased to struck down the impugned notification dated 28.06.2018 issued by the NCTE (Annexure P/3) for being arbitrary, illegal, ultra virus and unconstitutional;*

*10.5 That, this Hon'ble Court may kindly be pleased to call the entire record of minutes and proceedings leading to passing of the impugned notification dated 28.06.2018;*

*10.6 That, this Hon'ble Court may kindly be pleased to allow the instant petition and allow the only the D.El.Ed. Diploma Holder candidates to be eligible for the post of the Assistant Teacher as was prevalent prior of passing of the impugned notification dated 28.06.2018;*

*10.7 That, this Hon'ble Court may kindly be pleased to direct the respondent to not to treat B.Ed. candidates as eligible for the post of primary level teacher in the advertisement dated 04.05.2023;*

*10.8 That, any other relief/order which may deem fit and just in the facts and circumstances of the case including award of the costs of the petition may be given.”*

3. Writ Petition No.3541 of 2023 has been filed by the petitioner with the following prayers:-







*“10.1 That, this Hon’ble Court may kindly be pleased to struck down the impugned notification dated 04.05.2023 issued by the Under Secretary, School Education Department State of Chhattisgarh (Annexure P/1) for being arbitrary, illegal, ultra virus and unconstitutional;*

*10.2 That, this Hon’ble may kindly be pleased to struck down the impugned Annexure-I of the scheduled-III of the chhattisgarh School Education Services (Education Administrative Cadre) Recruitment and Promotion Rules. 2019 (Annexure P/1) for being arbitrary, illegal, ultra virus and unconstitutional;*

*10.3 That, this Hon’ble Court may kindly be pleased to set aside/quashed the advertisement dated 04.05.2023 to the extent it allows the candidates possessing qualification B.Ed. Holders have been declared eligible for the post of primary level teachers (I-V) to participate in it in pursuant to the impugned notification dated 04.05.2023;*

*10.4 That, this Hon’ble Court may kindly be pleased to struck down the impugned notification dated 28.06.2018 issued by the NCTE (Annexure P/3) for being arbitrary, illegal, ultra virus and unconstitutional;*

*10.5 That, this Hon’ble Court may kindly be pleased to call the entire record of minutes and proceedings leading to passing of the impugned notification 28.06.2018;*

*10.6 That, this Hon’ble Court may kindly be pleased to allow the instant petition and allow the*





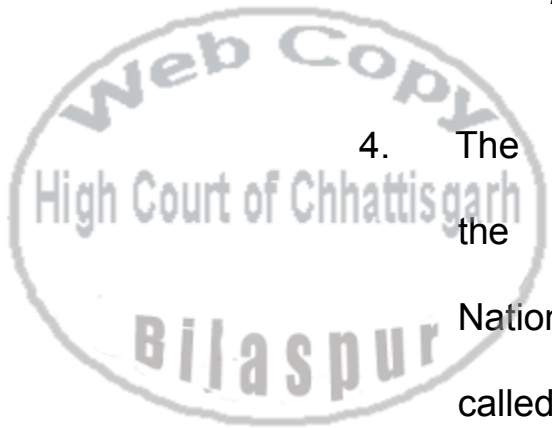
*only the D.El.Ed. Diploma Holder candidates to be eligible for the post of Assistant Teacher as was prevalent prior of passing of the impugned notification dated 28.06.2018;*

*10.7 That, this Hon'ble Court may kindly be pleased to direct the respondent to not to treat B.Ed. candidates as eligible for the post of primary level teacher in the advertisement dated 04.05.2023;*

*10.8 That, any other relief/order which may deem fit and just in the facts and circumstances of the case including award of the costs of the petition may be given.”*

**CHALLENGE IN THE PETITIONS:**

4. The basic challenge in the present writ petitions is the notification dated 28.06.2018, issued by the National Council for Teacher Education (hereinafter called as 'NCTE'), in exercise of the power as provided under Section 23(1) of the Right to Education Act 2009. This notification prescribed B.Ed. Degree holders eligible for appointment to the post of primary school teachers (Class I to V). Apart from this substantive challenge, the other consequential challenge are also made by the petitioners with regard to the provision as enumerated under “Chhattisgarh School Education Services (Educational



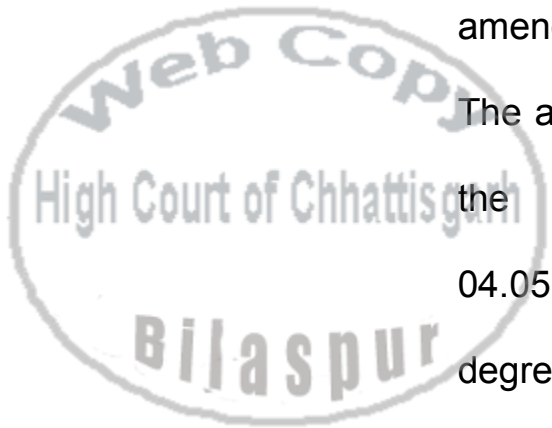




and Administrative Cadre) Recruitment and Promotion Rules 2019 (hereinafter called as “Rules 2019”) by which “B.Ed. Degree” has been included as qualification for appointment to the post of ‘Assistant Teacher’ under the State Government. The said provision which is under challenge prescribes under Annexure - I (i) of Schedule-III appended to Section 8 of the said Recruitment Rules 2019. The said entry of Annexure –I (i) has been further amended/substituted vide notification dated 04.05.2023.

The another consequential challenge is also made by the petitioners which the advertisement dated 04.05.2023 by which the candidates holding the degree of ‘B.Ed.’ have been allowed to participate in the selection process for appointment to the post of ‘Assistant Teacher’ in the primary school (for class I to V). So the challenge in these writ petitions are summarized as under :

(i) Notification dated 28.06.2018 issued by the National Council of Teacher Education by the power vested to it under Section 23 (1) of Right to Education Act 2009.



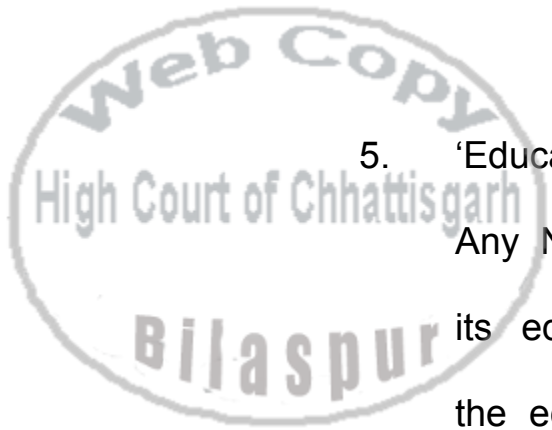


(ii) The provision as enumerated under Annexure-I (i) of Schedule-III appended to Rule 8 of the Rules 2019 to the extent of inclusion of 'B.Ed' qualification as permissible qualification for appointment to the post of Assistant Teacher.

(iii) The advertisement dated 04.05.2023 to the extent by which the candidates having the qualification of 'B.Ed' degree have been allowed to participate in the process of selection for the post of 'Assistant Teacher'.

**FACTUAL BACKGROUND:**

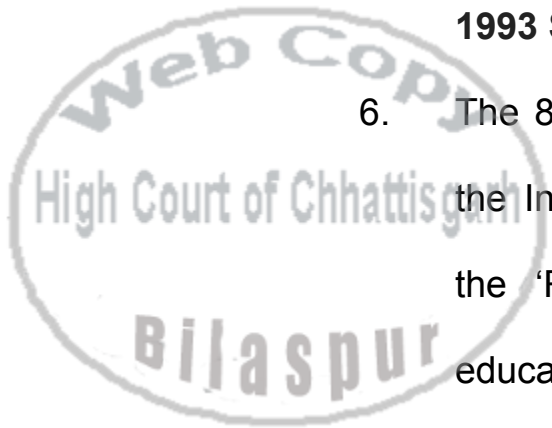
5. 'Education is the life line of every civilized society'. Any Nation's future is dependent upon the quality of its educational system. Considering the importance of the education at the time of framing of Constitution of India the Right to Education was added as a Directive Principle under Article 45, which mandated the State to make efforts to offer all children free and compulsory education upto the age of 14. This was to be done within the first ten years of the Constitution's coming into effect. The directive's of Article 45 covers all levels of education upto and including the age of 14 and is not just limited to elementary school. The Constitution of India was amended





to make education a concurrent issue that falls under both Central and State jurisdiction (42nd Amendment of the Indian Constitution). The Right to Education was recognized as a fundamental right that followed the Right to Life under Article 21 of the Indian Constitution, according to the Supreme Court's decision in the matter of ***Mohini Jain v. State of Karnataka, AIR 1992 SC 1858*** and ***Unni Krishnan, J.P. and others v. State of Andhra Pradesh and others, AIR 1993 SC 2178***.

6. The 86<sup>th</sup> amendment also brought a significant change to the Indian Constitution. The amendment revolved around the 'Right to Education' with a special emphasis on educating the younger generations. In order to achieve this the Parliament has added Article 21A to the already existing Article 21. Article 21A states that "*The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine*". Apart from this addition, there was also a change in Article 45 of the Directive Principles of State and Article 51 of the Fundamental Duties.





7. The Right of Children to Free and Compulsory Education (RTE) Act, 2009 (hereinafter called as “RTE Act 2009”, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards. The Statement of Objects and Reasons for promulgating the RTE Act 2009 speaks its importance.

8. To achieve such goal the RTE Act 2009 has been designed and various provisions have been incorporated. Section 23 of the RTE Act 2009 deals with the requisite qualification of teacher which states as under:-

**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 (1) 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.

[Provided further that every teacher appointed or in position as on the 31st March, 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017.]

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

9. As per the provision of Section 23 (1) the 'Academic Authority' as authorized by the Central Government is competent authority to prescribe such qualification as required for appointment of teachers. The Central Government has authorized the 'National Council for Teacher Education (NCTE)' to lay down such qualification. By exercising such power the NCTE has initially laid down the qualification for appointment of





Teachers vide notification dated 23.08.2010. The said qualification as prescribed under notification dated 23.08.2010 has been amended vide notification dated 28.06.2018 and qualification of 'B.Ed' has been included as permissible/eligible qualification for the post of teacher appointment for elementary education i.e. for teaching of class - I to V. The said notification reads as under:-

NATIONAL COUNCIL FOR TEACHER EDUCATION  
NOTIFICATION

New Delhi, the 28th June, 2018

F. No. NCTE-Regl 012/16/2018.— In exercise of the powers conferred by sub-section (1) of Section 23 of Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009) and in pursuance of notification number S.O. 750(E), dated the 31st March, 2010 issued by the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, the National Council for Teacher Education (NCTE) hereby makes the following further amendments to the notification number F.N. 61-03/20/2010/NCTE/(N&S), dated the 23rd August, 2010, published in the Gazette of India, Extraordinary, Part III, Section 4, dated the 25th August, 2010, hereinafter referred to as the said notification namely:—

(1) In the said notification, in para 1 in sub-para (i), in clause (a) after the words and brackets "Graduation and two year Diploma in Elementary







Education (by whatever name known), the following shall be inserted, namely:-

OR

“Graduation with at least 50 % marks and Bachelor of Education (B.Ed.)”

2. In the said notification in para 3, for sub-para(a), the following sub-para shall be substituted namely:-

“(a) who has acquired the qualification of Bachelor of Education from any NCTE recognized institution shall be considered for appointment as a teacher in classes I to V provided the person so appointed as a teacher shall mandatorily undergo a six month Bridge Course in Elementary Education recognized by the NCTE, within two years of such appointment as primary teacher”.

SANJAY AWASTHI, Member  
Secy.[ADVT.-III/4/Exty./121/18-19]

10. This notification by which qualification of ‘B.Ed’ has been included as permissible/eligible qualification with the earlier qualification of ‘D.El.Ed’ germinates the controversy regarding the essential qualification for the post of teacher of elementary classes (Class I to IV).

**Proceeding before the Rajasthan High Court:**

11. The said controversy reached at the Judicial forum i.e. to the High Court of Rajasthan in writ petition filed by one ‘*Devesh Sharma*’ along with other





candidates who were aggrieved by the action of the State of Rajasthan by which despite laying down the qualification of B.Ed as permissible qualification by the NCTE vide its notification dated 28.06.2018 the Board of Secondary Education, State of Rajasthan while issuing the advertisement dated 11.01.2021 for Rajasthan Teacher Eligibility Test (RTET Level-I) had excluded the said qualification of B.Ed. Devesh Sharma and others having B.Ed. qualification had approached to the High Court of Rajasthan challenging the action of the State by excluding the qualification of B.Ed. Simultaneously the inclusion of qualification of 'B.Ed' for appointment of teachers at primary level as was done by NCTE vide its notification dated 28.06.2018 had also been challenged by the candidates having the qualification of D.El.Ed. As such, in the Rajasthan High Court, two sets of Petitions were considered. In one group the *vires* of the notification dated 28.06.2018 issued by the NCTE, by which B.Ed. degree holders, subject to certain conditions, are made eligible for appointment to the post of primary school teacher grade-III (level-1) (classes-I



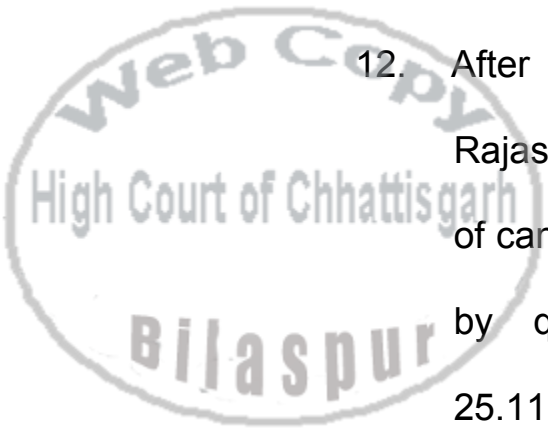


to V), along with other qualifications already prescribed under its notification dated 23.08.2010 as amended from time to time. The other set of petitioners were B.Ed. degree holders. They support the notification dated 28.06.2018 and have challenged the advertisement issued by the Board of Secondary Education, State of Rajasthan inviting applications for Rajasthan Eligibility Entrance Test ('REET', for short) (level-1) in which B.Ed. degree holders are excluded.

12. After the detailed consideration, the High Court of Rajasthan had allowed the writ petitions filed by the group of candidates challenging the notification dated 28.06.2018 by quashing the same vide its Judgment dated 25.11.2021.

**Proceeding before the Hon'ble Supreme Court:**

13. Being aggrieved by the said judgment, the appeal was filed by *Devesh Sharma* before the Hon'ble Supreme Court bearing Civil Appeal : SLP (C) No. 20743 of 2021. Before the Hon'ble Supreme Court apart from the Civil Appeal filed against the judgment of the Rajasthan High Court there were three writ petitions





bearing number (WP 137 of 2022 and WP 881 of 2022) also filed challenging the same notification dated 28.06.2018 issued by the NCTE. The similar challenge was made in writ petition : WP No . 355 of 2022 before the Hon'ble Supreme Court.

14. After the detailed discussion and by relying the earlier Judgments : **Unni Krshnan J.P (supra), Dilip Kumar Ghosh & others v. Chariman and others, (2005) 7 SCC 567, P. M. Latha v. State of Kerala, (2003) 3 SCC 541, Yogesh Kumar v. Government of NCT Delhi, (2003) 3 SC 548** the Hon'ble Supreme Court in **Devesh Sharma (supra)** has observed as under:-

“25. The academic authority, which is NCTE considered the appointment of trained and qualified teachers as an absolute necessity in primary schools. It is for this reason that the qualification which was prescribed for a teacher in primary school was a diploma in elementary education (D.El.Ed.), and not any other educational qualification, including B.Ed. Apart from this the teachers eligibility test or TET would further test the skills of a candidate to handle students at primary level.

It must be emphasised that the pedagogical approach required from a teacher at primary level is in some manners unique. These are the initial formative years where a student has just stepped inside a classroom, and therefore needs to be handled with care and sensitivity. A candidate who





has a diploma in elementary education (D.El.Ed.) is trained to handle students at this level, as he has undergone a pedagogical course specifically designed for this purpose.....

A person who has a B.Ed. qualification has been trained to impart teaching to secondary and higher secondary level of students. He is not expected to impart training to primary level students.....

It is therefore clear that a B.Ed. course is not designed for teaching at primary level.

Moreover, the inclusion of B.Ed. candidates for primary classes is in the teeth of several decisions of this Court, as this Court has consistently held that Diploma in elementary education (D.El.Ed.) and not B.Ed., is the proper qualification in Primary Schools.



x x x

27. B.Ed. is not a qualification for teachers at Primary level of schooling. The pedagogical skills and training required from a teacher at Primary level is not expected from a B.Ed. trained teacher. They are trained to teach classes at higher level, post primary, secondary and above. For Primary level i.e. class I to class V the training is D.El.Ed or what is known as diploma in elementary education. It is a D.El.Ed. training course which is designed and structured to impart skills in a teacher who is to teach Primary level of students.

Therefore, by implication the inclusion of B.Ed. as a qualification amounts to lowering down of the 'quality' of education at Primary level.



‘Quality’ of education which was such an important component of the entire elementary education movement in this country, which we have discussed in the preceding paragraphs of this order.

x x x

29. ....In this background, the inclusion of B.Ed. candidates for primary level classes is beyond our comprehension. We have seen so far that the need for ‘quality’ and meaningful primary education was emphasized by the legislature as well as by the academic authority all throughout. In primary education, any compromise on ‘quality’ of education would mean going against the very mandate of Article 21A and the Act. The value of Primary education can never be overstated.



.....The pedagogical skills of a teacher must be given a very high priority. But our priority seems to be different. It is not to impart ‘quality’ education, but to provide more job avenues to B.Ed. trained candidates, as this seems to be the only reason for their inclusion, in presence of overwhelming evidence that B.Ed. course is not a suitable course for primary classes.

x x x

33. Under these circumstances, we are unable to comprehend as to what was the pressing need to include B.Ed. candidates, who are admittedly not fully trained to take up Primary Classes. Consequently, the decision of the NCTE to include B.Ed. as a qualification for teachers in a primary school seems arbitrary, unreasonable and in fact has no nexus with the object sought to be





achieved by the Act i.e. Right to Education Act, which is to give to children not only free and compulsory but also 'quality' education.

34. In our considered opinion therefore NCTE was not justified in including B.Ed. as a qualification for appointment to the post of primary school teacher (Level-1), a qualification it had so far consciously kept out of the eligibility requirement. The Rajasthan High Court by way of the Impugned Judgment had rightly struck down the notification dated 28.06.2018.....”

The Hon'ble Supreme Court has further observed in concluding para as under:



“36. ....we must say that this decision is not correct as it is contrary to the purpose of the Act. In fact, it goes against the letter and spirit of the Fundamental Right enshrined in the Constitution under Article 21A. It is against the specific mandate of the Act, which calls for a free, compulsory and meaningful primary education to children. By including B.Ed. as a qualification for teachers for primary school, the Central Government has acted against the provisions of the Constitution and the laws. The only logic given by the Central Government to include B.Ed. as a qualification is that it is a 'higher qualification'. This we have already seen is not correct. Under these circumstances, we have no hesitation to say that the notification has rightly been quashed and the decision of the Division Bench of the Rajasthan High Court has to be upheld.”

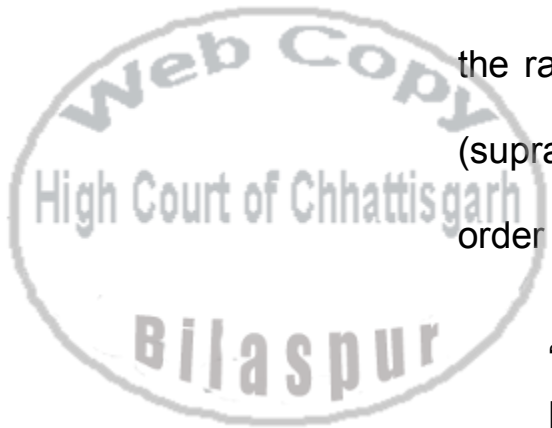


15. In view of such decision, the notification dated 28.06.2018 has been quashed and, as such, B.Ed. qualification has no longer remain as permissible/eligible qualification for appointment to the post of teachers for primary classes (Class-I to IV).

16. In another writ Petition : Writ Petition (S) (Civil) No. 661 of 2023 : **Bhagwan Krishna v. Union of India** : the similar challenge was made with respect to the same notification dated 23.06.2018 in which by applying the ratio as laid down in the case of **Devesh Sharma** (supra) the Hon'ble Supreme Court has observed vide order dated 28.08.2023 as under:-

“..... The present petition stands allowed in terms of prayer 'a' to the extent the same relates to the notification issued by the NCTE on 28.06.2018. Consequential advertisements and other subsequent steps taken in pursuance thereof shall also stand invalidated. The State of Bihar is not a party before this Court in this petition. As such, we make no comment as regards the notifications issued by the State of Bihar, the legality of which have been challenged in this writ petition. But this Court expects that the State of Bihar shall take into account the judgment of this Court delivered on 11.08.2023.”

17. The another development in the matter before Hon'ble Supreme Court was that the Applicant **Mr. Arnab**





**Ghosh** filed the Miscellaneous Application (MA Diary NO. 366321 / 2023 & 36769 of 2023) seeking the modification/clarification of the Judgment dated 11.08.2023 passed in **Devesh Sharma** (supra) to the extent that appointments to the post of Primary School Teachers shall be made as per the recruitment notifications issued prior thereto. Some of other Applicants had also moved the interim application for their impleadment. All the applications were considered and rejected vide order dated 22.09.2023 by observing as under:-

*“.....For all these reasons, I refuse to receive the present applications, as it does not disclose any reasonable cause for being entertained. Accordingly, it is ordered to be lodged under the provisions of Order XV Rule 5 of the Supreme Court Rules 2013.”*

18. The another attempt was made by the Applicant Arnab Ghosh by filing Miscellaneous Application (No 2206/2023 in D No 36321/2023) seeking modification/clarification of the order dated 11.08.2023 passed in **Devesh Sharma** (supra) to the extent that the recruitment process that has commenced prior to the judgment dated 11.08.2023 shall





not be interrupted and appointments shall continue to be made as per recruitment notifications for recruitment to the post of primary teachers issued prior to the Judgment dated 11.08.2023. The said application has been dismissed vide order dated 11.01.2024 by the Hon'ble Supreme Court.

**Proceeding Before High Court of Chhattisgarh:**

19. (i) The Writ Petition bearing : WP (S) No. 3541 of 2023 : Bhuvaneshwar Sahu v. Union of India and others was filed on 30.05.2023 i.e. prior to the decision of the Hon'ble Supreme Court passed in '**Devesh Sharma case (supra)**' raising his grievances against the said notification dated 23.06.2018 as well as notification dated 04.05.2023 issued by the State of Chhattisgarh by which Annexure-I (i) of Schedule-III appended to Rule 8 of the Rules 2019 has been amended and inclusion of 'B.Ed' qualification as permissible/eligible qualification for appointment to the post of Assistant Teacher remain alive. The another challenge at prayer clause 10.3 is the





advertisement dated 04.05.2023 issued by the State by permitting B.Ed. qualification as eligible qualification.

- (ii) The another writ petition being WP (S) No. 5788 of 2023 has been filed after judgment of **Devesh Sharma** (supra) with identical prayer. In this Petition interim order was passed vide order dated 21.08.2023 as under:

*“.....Considering arguments advanced by Learned Counsel for the parties and also considering the law laid down by the Apex Court on the issue in question passed in Civil Appeal No 5068 of 2023 (Devesh Sharma -vs- Union of India & others on 11-08-2023), the further recruitment process with regard to the candidates having B.Ed qualification for the post of Assistant Teacher shall be kept in abeyance with immediate effect and further no final decision would be taken by the respondents in respect of such candidates till the next date of hearing.”*

The said order was challenged before the Hon'ble Supreme Court in SLP (Civil) Dairy No. 35325/2023 in which vide order dated 29.08.2023 it has been modified as under:

*“.....Therefore to the said extent, we hereby stay the order dated 21.08.2023 passed by the High Court and clarify that the recruitment process, which was in progress prior to the date of the said*





*interim order passed by the High Court, shall continue and the appointments, if any, made there under will however remain subject to result of the consideration to be made by the High Court in W.P.S No. 5788 of 2023. The selected candidates shall be informed of the same by the Appointing Authority concerned.*

*In the meantime, notwithstanding the pendency of these petitions, the petitioners herein may also implead themselves before the High Court in the writ petition and if the High Court deems it fit to hear the parties and consider the writ petition on its own merits and in accordance with law, there shall be no impediment for the High Court to proceed on merits in the matter since these petitions are limited to the aspect of interim order.”*



(iii) In view of such order all the intervention applications were allowed vide order dated 28.11.2023 and all the intervenors have been allowed to argue in the matter.

**Submission of the Parties:**

**Petitioner's Submission:**

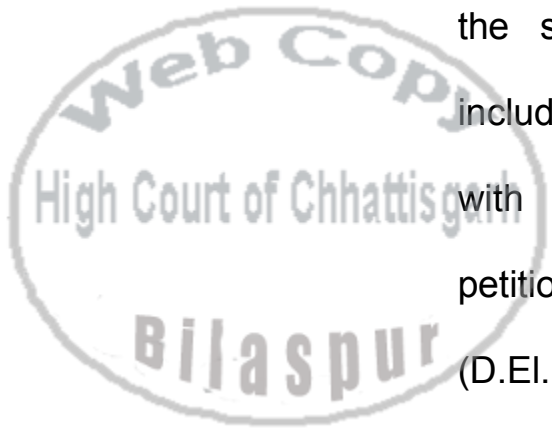
20. Commencing the argument in Writ Petition (S) No.3541 of 2023 Ms. Meenakshi Arora, learned Senior Advocate assisted by Mr.Ishan Verma, learned counsel for the petitioners, submits that in the present proceedings the petitioners are challenging the imposition of the minimum qualification criteria stipulated in the impugned notification





dated 28.06.2018 by the NCTE, which inadvertently favours candidates with higher qualifications such as B.Ed. The Original notification dated 23.08.2010 issued by the NCTE under Section 23(1) of the RTE Act 2009, explicitly limited eligibility for the appointment of school teachers for Class I to V to candidates with a 2-year Diploma in Elementary Education, excluding graduates with a Bachelor of Education (B.Ed.) Degree. However, the impugned notification dated 28.06.2018, published under the same legislative authority, expanded eligibility to include graduates with a B.Ed. Degree, alongside those with a 2-year Diploma in elementary Education. The petitioners possess a diploma in elementary education (D.El.Ed.) and is aggrieved by the impugned notification, as stated above.

21. Ms. Arora further submits that the High Court of Rajasthan, in its Order/Judgment dated 25.11.2021, in D.B. Civil Writ Petition No.1853/2021 titled **Rajendra Singh Chotiya & Anr. v. The National Council for Teachers Education & Ors.** set aside the impugned notification dated 28.06.2018, ruling that the said notification was deemed unlawful. It was observed as under:-





“49. We summarize our conclusions as thus: (i) The impugned notification dated 28.06.2018 is unlawful because:- a) It is under the direction of the Central Government, which power the Central Government under Sub-section (1) of Section 23 of the RTE Act did not have; and b) It is not in exercise of power of the Central Government under Sub-section (2) of Section 23 of RTE Act relaxing the eligibility criteria prescribed by the NCTE, nor there has been any exercise for ascertaining existence of the conditions precedent for exercising such power.

...

(iv) The State Government could not have ignored the notification of NCTE dated 28.06.2018 while issuing advertisement for REET. However, when we have declared that this notification is illegal and are in the process of setting aside, the issue becomes one of academic value.

50. In the result, the impugned notification dated 28.06.2018 is set aside. The letter dated 30th May 2018 of the MHRD to NCTE being in the nature of internal communication, does not give rise to cause of action unless acted upon and therefore, it is not necessary to separately set it aside.

53. The interim orders granted earlier allowing the petitioners holding B.Ed. degree to appear in the REET are vacated. The candidature of those





petitioners, who appeared in the REET under the interim orders of this Court, shall not be processed further.”

22. She also submits that as the impugned notification was a central notification, the striking of it by the High Court of Rajasthan should have, in itself, repudiated the notification. This decision was then challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its judgment dated 11.08.2023 in the matter of **Devesh Sharma v. Union of India and others, 2023 SCC Online SC 985** upheld the decision rendered by the Hon'ble High Court of Rajasthan in **Rajendra Singh Chotiya** (supra). The Hon'ble Supreme Court herein directed the quashing of the notification dated 28.06.2018 issued by the NCTE. The relevant extracts of **Devesh Sharma** (supra) which are being relied upon by the petitioners are produced hereinunder:-

“64. Under these circumstances, we are unable to comprehend as to what was the pressing need to include B.Ed. candidates, who are admittedly not fully trained to take up Primary Classes! Consequently, the decision of the NCTE to include B.Ed. as a qualification for teachers in a primary school seems arbitrary, unreasonable and in fact has no nexus with





the object sought to be achieved by the Act i.e. Right to Education Act, which is to give to children not only free and compulsory but also 'quality' education.

65. In our considered opinion therefore NCTE was not justified in including B.Ed. as a qualification for appointment to the post of primary school teacher (Level-1), a qualification it had so far consciously kept out of the eligibility requirement. The Rajasthan High Court by way of the Impugned Judgement had rightly struck down the notification dated 28.06.2018, on the following grounds:-

“(i) The impugned notification dated 28.06.2018 is unlawful because: -

(a) it is under the direction of the Central Government, which power the Central Government under Subsection (1) of Section 23 of the RTE Act did not have; and

(b) it is not in exercise of power of the Central Government under Sub-section (2) of Section 23 of RTE Act relaxing the eligibility criteria prescribed by the NCTE, nor there has been any exercise for ascertaining existence of the conditions precedent for exercising such power.

(ii) The petitioners have locus standi to challenge the notification dated 28.06.2018. Merely because an additional qualification is recognized as one of the eligibility criteria, the petitioners cannot be prevented from challenging it.





(iii) Accepting a candidate with B.Ed. degree as eligible for appointment and thereafter subjecting him to complete the bridge course within two years of appointment is in the nature of relaxing the existing eligibility criteria, which the Central Government could have done only within Sub-section (2) of Section 23 and subject to existence of circumstances necessary for exercise of such power.

(iv) The State Government could not have ignored the notification of NCTE dated 28.06.2018 while issuing advertisement for REET. However, when we have declared that this notification is illegal and are in the process of setting aside, the issue becomes one of academic value.

77. The decision whether to include or exclude B.Ed. as a qualification for teachers in primary school is an academic decision, which has to be taken after proper study by the academic body i.e. NCTE and should be better left to this expert body.

80. In our considered opinion therefore the direction of the Central Government dated 30.05.2018 culminating in the notification dated 28.06.2018 of NCTE are violative of the principles as laid down in RTE Act. Not only this, the notification goes against the purpose and the mandate of law, which is to provide a meaningful and 'quality' primary education to children.





81. The entire exercise is also procedurally flawed. The notification dated 28.06.2018 is not an independent decision of NCTE taken after due deliberation, but it simply follows the direction of the Central Government, a direction which fails to take into consideration the objective realities of the day.

Further, the Hon'ble Supreme Court in the matter of **Bhagwan Krishna v. The Union of India & Anr**, Writ Petition No.(s). 661/2023 directed the invalidation of the notification dated 28.06.2023 issued by the National Council for Teacher Education. The ratio established in **Devesh Sharma** (supra) was upheld, and it was further observed that consequential advertisements and subsequent steps pursuant to the "Impugned Notification" dated 28.06.2023 stand "invalidated." In essence, the orders/judgment implicitly emphasize that including B.Ed. candidates for primary classes contradicts several decisions of this Court, consistently asserting that a Diploma in elementary education (D.El.Ed.) and not B.Ed. is the appropriate qualification in Primary Schools. The relevant extract is produced here as under:-

"In the judgment of this Court delivered in Civil Appeal No.5068 of 2023 arising from SLP (C) No.20743/2021 titled "Devesh Sharma vs. Union of India & Ors." on

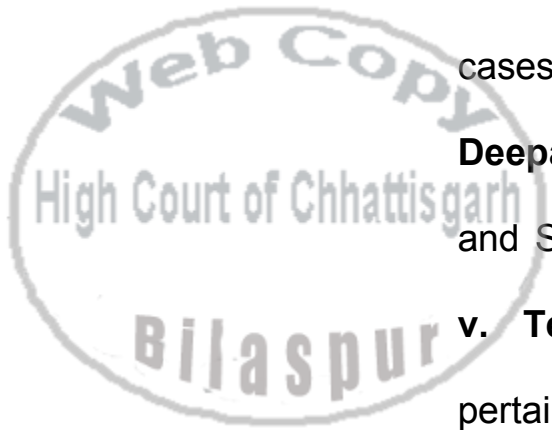




11.08.2023, the said notification has been directed to be quashed. By this judgment this 2 Court upheld the decision of the Rajasthan High Court quashing the said notification. We apply the ratio of the said judgment in this writ petition.

The present petition stands allowed in terms of prayer 'a' to the extent the same relates to the notification issued by the NCTE on 28.06.2018. Consequential advertisements and other subsequent steps taken in pursuance thereof shall also stand invalidated.”

23. She further submits in a significant development, two cases, namely W.P.(C) No.001128/2023 filed by **Deepankar Gaurav v. the State of Bihar** on 31.10.2023, and SLP(C) No.022049/2023 filed by **The State of Bihar v. Tet Teachers Association** on 09.10.2023, both pertaining to similar matters and facts, have been officially withdrawn from the Hon'ble Supreme Court. She also submits that the High Court of Patna in **Writ Case No.5053 of 2021**, declared the NCTE notification dated 28.06.2018 as no longer applicable, making B.Ed. candidates ineligible for appointment as primary school teachers. This action was taken following the decisions of the Hon'ble Supreme Court in **Devesh Sharma** (supra). The relevant extract is produced here as under:-







“24. Now, the question arises as to whether there is any justification from the argument that the declaration made in *Devesh Sharma (supra)* is prospective in nature. *Somaiya Organics (India) Ltd. (supra)* applied the doctrine of prospective overruling and referred to *Golaknath v. State of Punjab; (1967) 2 SCR 762*, wherein the parameters of such power were laid down and first employed. It was noticed that *Golaknath (supra)* laid down that, the doctrine of prospective overruling can be invoked only in matters arising under our Constitution, it can only be applied by the Hon’ble Supreme Court and the scope of the retroactive operation of the law declared by the Hon’ble Supreme Court, superseding its earlier decisions left discretion to itself, to be moulded in accordance with the justice of the cause or the matter before it. Prospective overruling was found to be a recognition of the principle that the Court moulds the reliefs claimed, to meet the justice of the case, justice not in its logical but in its equitable sense. There is no such express declaration made by the Hon’ble Supreme Court in *Devesh Sharma (supra)*.

25. Much has been argued about the Hon’ble Supreme Court having noticed that the Rajasthan Government when issuing an advertisement had included the qualification of B.Ed candidates; especially when they were made eligible as per the statutory notification of ‘the NCTE’, which was also binding on the Rajasthan Government. This impliedly





indicates the prospective overruling is the contention raised; which we are unable to accept. The above observation was only in the context of the Rajasthan High Court, having set aside the notification dated 28.06.2018; in the operative portion of its judgment held that the State Government could not have ignored the notification of 'the NCTE' while issuing the advertisement. The Rajasthan High Court had then clearly stated that since the notification itself was declared illegal the issue was only one of academic value.

26. The Hon'ble Supreme Court had only affirmed the observation made by the Rajasthan High Court that when a statutory notification is issued by the academic authority authorized to issue such directions, the State Government ought not to have ignored it and that it cannot be assumed to be unconstitutional, till it is so declared illegal or unconstitutional by the Courts of law. This does not for a moment restore the eligibility of the B.Ed candidates to appear for the selection in the State of Rajasthan. When the decision did not confer such a benefit to the candidates of the selection which was subjected to challenge therein; there is no question of that being allowed in a selection similarly challenged, which writ petition is being now disposed off in the light of the binding decision of the Hon'ble Supreme Court.





28. We find absolutely no reason to permit the notification issued by ‘the NCTE’, which is challenged in the above batch of writ petitions, to be acted upon, though the selection is prior to the judgment of the Hon’ble Supreme Court. We are bound by the decision of the Hon’ble Supreme Court and so is the State, under Article 141 of the Constitution, which has been reaffirmed in Annexure-P/12 order of the Hon’ble Supreme Court produced in C.W.J.C. No.16055 of 2023, by a three Judges Bench of the Hon’ble Supreme Court following Devesh Sharma (supra).

29. The writ petitions are allowed with the finding that the notification dated 28.06.2018, issued by ‘the NCTE’ is no longer applicable and the B.Ed candidates cannot be considered eligible for appointment as primary school teachers. It goes without saying that the appointments made will have to be reworked and the eligible candidates as per the original notification of ‘the NCTE’ of the year 2010 can only be continued in the post to which they have been appointed. The State would also take a decision as to whether the vacant posts falling vacant on such reworking are to be filled up from the merit list available with the State, of the candidates eligible for appointment as primary school teachers.”

Further, the High Court of Uttarakhand at Nainital, in the matter of **Binmaya Mall v. Union of India & Ors.**,





addressed a similar issue and followed the decision of Devesh Sharma (supra). The relevant extract is produced here as under:

“4. Since the issue has been decided by Hon'ble Supreme Court in the aforementioned judgment, therefore, present writ petition is disposed of in terms of the said judgment rendered by Hon'ble Supreme Court.”

24. She contended that a M.A. Dairy No.36321 of 2023 was filed before the Hon'ble Supreme Court seeking modification / clarification of the order dated 11.8.2023 passed by the Hon'ble Supreme Court in Civi Appeal No.5068 of 2023 – Devesh Sharma. The M.A.(Dairy) No.36321 of 2023 was filed on 02.09.2023 before the Hon'ble Supreme Court with the following prayer:

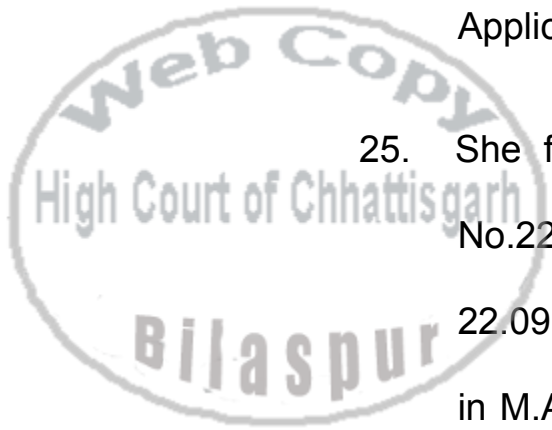
“To modify/clarify that any recruitment process that has commenced prior to the judgment dated 11.08.2023 passed by this Hon'ble Court in Civil Appeal No.5068 of 2023 shall not be interrupted and appointments shall continue to be made as per recruitment notifications for recruitment to the post of primary teachers issued prior to the judgment dated 11.08.2023.”





The Learned Registrar (Judl. Listing) through an Order dated 22.09.2023 declined to register the Miscellaneous application (M.A.Diary No.36321/2023), placing it under Order XV Rule 5 of the Supreme Court Rules, 2013, on grounds that the said miscellaneous application is intended to “seek for recall/review.”. The lodgement order stated that it is firmly established that one cannot attempt to seek a recall, review, or modification of the Orders issued by this Hon'ble Court under the guise of filing a Miscellaneous Application.

25. She further contended that a Miscellaneous Application No.2206 of 2023 was filed in response to the order dated 22.09.2023 issued by the learned Registrar (Judl. Listing) in M.A. Diary No.36321 of 2023 and the Hon'ble Supreme Court dismissed M.A. No.2206 of 2023 through an order dated 11.01.2024, stating “*We are not inclined to entertain this application.*”. Another similar matter, W.P.(C) No.26 of 2024 titled **B.Ed. Chhatra Welfare Association v. Union of India and Ors.** was filed before the Hon'ble Supreme Court on behalf of B.Ed. students pertaining to similar matters and facts and the same was dismissed by the Hon'ble Supreme Court with costs. Another Miscellaneous





Application baring [Diary] No.49800 of 2023 was filed in response to the order dated 22.09.2023, issued by the learned Registrar (Judl. Listing) in M.A.Diary No.36769 of 2023. The same came to be dismissed by the Supreme Court.

26. She would submit that as seen above through a series of judgments along with the decision of the Supreme Court in **Devesh Sharma** (supra), establishes a consistent legal precedent on the matter. The consistent withdrawal and dismissal of cases in the Hon'ble Supreme Court in terms of **Devesh Sharma** (supra) along with the applications seeking modification of the said decision, have also been dismissed by the Hon'ble Supreme Court. Furthermore, disposal of cases in Uttarakhand and Patna indicates a clear adherence to the Supreme Court's stance on the eligibility criteria for primary teachers. These actions underscore a consistent alignment with the legal principles established by the Supreme Court, particularly in cases with similar facts and circumstances and the given consistent legal precedents established by the Courts following the decision of the Supreme Court in **Devesh Sharma** (supra), it is imperative that the High Court of





Chhattisgarh adjudicates the instant writ petition in accordance with the principles set forth in the matter of **Devesh Sharma** (supra). The aforementioned series of cases and judgments reinforce this assertion, thereby affirming the authoritative stance on the matter as established in **Devesh Sharma** (supra). She would further submit that the issue with regard to legality and validity of the notification dated 28.6.2018 issued by the NCTE has been considered by the Hon'ble Supreme Court in **Devesh Sharma** (supra) and it has been declared illegal and violative of Article 21-A of the Constitution of India. She would also submit that once the law has been settled by the Hon'ble Supreme Court nothing remains for adjudication on merits in the present case. She added in her arguments that writ petition being WPS No.3541 of 2023 has been filed on 30.05.2023 i.e. prior to the order passed by the Hon'ble Supreme Court and, thus, since the substantive prayer as prayed in para 10.4 with regard to quashment of notification dated 28.06.2018 is covered by the judgment of the Hon'ble Supreme Court passed in **Devesh Sharma** (supra) other ancillary prayer as prayed in para 10.1,







10.2 & 10.3 deserves to be allowed being consequential prayers based on the substantive prayer. It is also the argument of Ms. Arora that since the notification issued by the NCTE dated 28.06.2018 was quashed by the Rajasthan High Court vide its Judgment dated 25.11.2021, therefore the State of Chhattisgarh has erred in keeping the effect of said notification alive in their Recruitment Rules 2019 and the advertisement was issued on 04.06.2023 prescribing the said invalid qualification of B.Ed. as eligible/permissible qualification for appointment to the post of Assistant Teachers. It is the argument of Ms Arora that once the provision of Central Act has been quashed by one of the High Court, it ought to have given effect to by all the concerned Governments/departments in the country. She lastly submits that sufficient numbers of the candidates having the qualification of D.El.Ed are available in the State of Chhattisgarh and, therefore, it is also quite unjust to prescribe the other qualification as eligible qualification. She pointed out other various proceedings by which futile attempt were made by





some of the candidates for modification/clarification of the Judgment of **Devesh Sharma** (supra).

27. By Supplementing the arguments Mr. Anurag Dayal Shrivastava and Mr. Ajay Shrivastava, learned counsel of the petitioners in Writ Petition (S) No. 5788 of 2023 submits that Rule 8 (II) of the Rules 2019 prescribes the educational qualification and experience for recruitment/selection to the post of preliminary education which reads as under:-

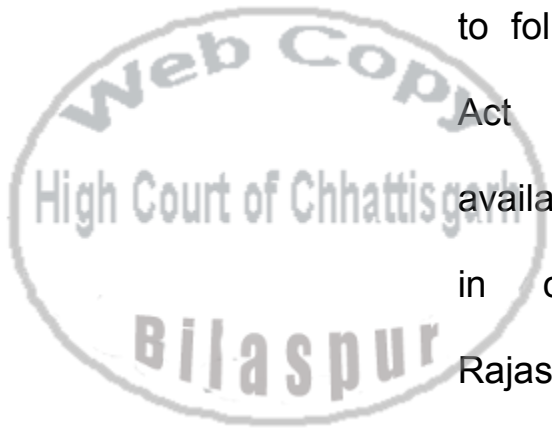


(II) Educational Qualifications and Experience-  
The candidate must possess the educational qualifications and experience as prescribed for the service as shown in column (5) of Schedule III. For Preliminary education the prescribed qualification will be applicable as per provisions of Right to Free and Compulsory Education Act 2009.

In view of above stated provision, it is clear that for preliminary education the qualification prescribed under RTE Act 2009 will be applicable meaning thereby the qualification as prescribed under RTE Act 2009 has been incorporated by legislation under the Recruitment Rules 2009. He further submits that when the qualification prescribed by the NCTE vide its notification dated 28.06.2018 is quashed and declared



unconstitutional by the Rajasthan High Court and which was not stayed by the Hon'ble Supreme Court, then the said provision remain inoperative and was not alive in the statute book i.e. in the RTE Act 2009 and consequently, the said provision can not be made applicable by the State of Chhattisgarh after 25.11.2021 (the date of judgment passed by the Rajasthan High Court). In view of clause (III) of Rule 8 of the Rules 2019, the State Government is bound to follow the prescribe qualification as existed under RTE Act 2009. The said qualification of 'B.Ed.' is not available under the statute book of the RTE Act 2009, in consequence of the judgment passed by the Rajasthan High Court, at the time of issuance of advertisement by the State Government i.e. on 04.05.2023 and, consequently, the advertisement dated 04.05.2023 and further proceeding with respect to inclusion of B.Ed. qualification is illegal. Mr. Anurag Dayal Shrivastava has relied upon para 22 of the judgment passed by the Hon'ble Supreme Court in the matter of **M/s Kusum Ingots and Alloys Ltd v.**





**Union of India, AIR 2004 SC 2321** which reads as under :

*“22. ....An order passed on writ petition questioning the constitutionality of a Parliamentary Act whether interim or final keeping in view the provisions contained in Clause (2) of Art 226 of the Constitution of India will have effect throughout the territory of India subject of course to the applicability of the Act.”*

Mr. Shrivastava has further relied upon the judgment passed by the Hon'ble Supreme Court in the matter of **Satyajeet Kumar and others v. State of Jharkhand and others, 2022 SCC Online SC 954** on the preposition that once the notification dated 28.06.2018 has been quashed by the Hon'ble Supreme Court all subsequent proceedings including the appointment of Intervenors, which has already been made subject to outcome of this Petition in view of the interim order dated 29.08.2023 passed by the Hon'ble Supreme Court, deserves to be quashed and direction may be issued to the State Government to complete the process of selection after excluding the candidates having the qualification of 'B.Ed'.



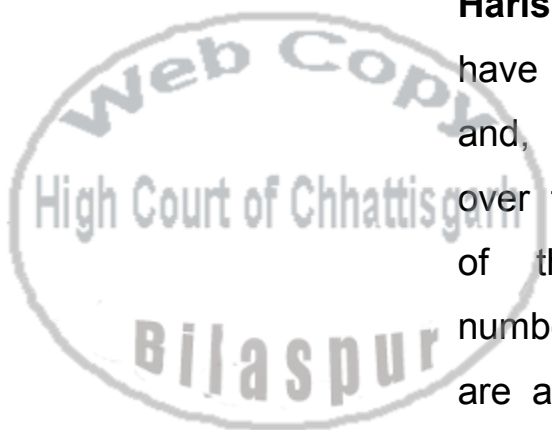


**State Submission:**

28. Mr. Y. S. Thakur, learned Additional Advocate General appearing for the respondent-State, submits that since at the time of advertisement the Rules 2019 prescribed the qualification of 'B.Ed.' as eligible qualification, therefore, candidates having such qualification have been allowed to participate in the process of selection, however he submits that the appointment to these candidates have been made pursuant to the interim order dated 29.08.2023 passed by the Hon'ble Supreme Court in the matter of **Harishankar & others v. State of Chhattisgarh** which have been made subject to outcome of this Petition and, therefore, the candidates can not claim right over the post. Their rights are subjudice to the decision of this Petition. He further submits that sufficient numbers of candidates having the qualification of D.El.Ed. are available in the State.

**Submission of Intervenors:**

29. Mr.Ravindra Shrivastava & Mr.Rajeev Shrivastava, learned Senior Advocates assisted by Ms.Naushina Ali, learned counsel for the interveners-Arvind Kumar and others, submits that the petitioners (D.Ed. candidates) have no locus standi or cause of action to file writ petition and seek relief as prayed for, for want of "legally enforceable right" in their favour. In the select list, the petitioners are way below.





Even if B.Ed. candidates are struck off from the select list as contended by the learned counsel for the petitioners, the impleaded respondents submits that on the basis of instructions, that the petitioners stand no chance of being appointed as Assistant Teacher. Curiously, the petitioners have not disclosed their position in the select list. The submission of the writ petitioners that the issue pending before this Court is covered in their favour (Diploma candidates) to eliminate B.Ed. candidates from recruitment is entirely incorrect and seriously refuted. Further the submission that the Hon'ble Supreme Court has dismissed all the cases/I.A.'s filed by B.Ed. candidates is even more incorrect and untrue statement of fact to prejudice the Hon'ble Court. It is emphatically denied. There are cases and IAs pending before the Supreme Court including the review petition against the main judgment in the matter of **Devesh Sharma** (supra). It is a completely incorrect statement that the State of Chhattisgarh was a party in the Supreme Court in **Devesh Sharma's** case. The petitioners (D.Ed. Group) are entirely misreading **Devesh Sharma's** judgment (supra) to oust the impleaded respondents (B.Ed. Group) from the current recruitment and appointment to the





post of Assistant Teacher in the government schools. They also submit that the petitioners are outrageously suppressing the fact which is apparent on the face of the judgment of the Hon'ble Supreme Court in **Devesh Sharma** (supra) that the notification issued by the NCTE dated 28.06.2018 was binding on the Rajasthan Government till it was invalidated. Consequently, both the Rajasthan High Court and the Supreme Court have held that the Rajasthan Government was not empowered and otherwise acted illegally in not calling B.Ed. candidates for recruitment and appointment as per the notification dated 28.06.2018. The Hon'ble Supreme Court has held that the Rajasthan Government was bound to follow the notification. This dictum of the Hon'ble Supreme Court clearly applies to the facts of the case in so far as the recruitment in the State of Chhattisgarh is concerned. They also contended that the order passed by the Hon'ble Supreme Court on 28.08.2023 in **Bhagwan Krishna** (supra), arising out of the State of Bihar to the extent of the notification dated 28.06.2018 being set aside in light of **Devesh Sharma** judgment, the position of B.Ed. candidates in Chhattisgarh is not affected much less



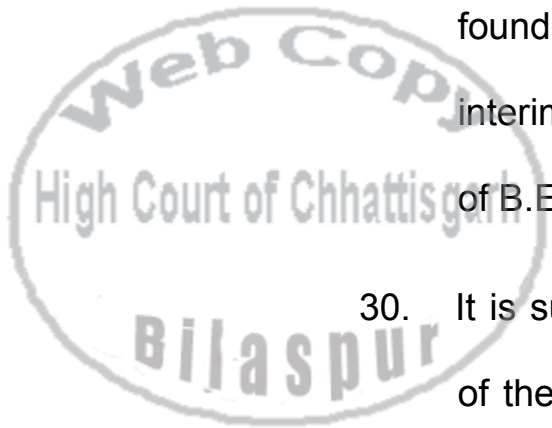




worsened off. It is clear from the order that the writ petition in **Bhagwan Krishna** (supra) has been allowed only in terms of the judgment passed in **Devesh Sharma's** case (supra). It would clearly therefore mean that the judgment would apply with the caveat in Para 36 that the advertisement already issued or the recruitment commenced prior to the date of the judgment would not disqualify B.Ed. candidates. This is the contention of B.Ed. candidates in **Harishankar** (supra), which *prima facie* found acceptance of the Hon'ble Supreme Court in the interim order dated 29.08.2023. The same is the contention of B.Ed. candidates before this Court.

30. It is submitted that the above narration of facts in the light of the dictum of the Hon'ble Supreme Court would clearly show that **Devesh Sharma's** case cannot be pressed into service by the petitioners to hold that the impleaded respondents and similarly situated persons were not eligible or did not possess academic qualification for appointment to the post of Lecturer, Teacher or Assistant Teacher.

31. It is further submitted that the Governor of Chhattisgarh in exercise of power under Article 309 of the Constitution of





India framed the Rules 2019 which were published in the Gazette on 5.3.2019. The Rules as amended prescribe statutorily academic qualifications for appointment as various class of teachers. In pursuance of the Rules, the advertisement was published on 4.5.2023. The Rules and advertisement were not challenged by the Diploma candidates (D.Ed.) before commencement of the recruitment. They instead participated in the recruitment without any objection or grievance. The Governor of Chhattisgarh has independent power under the Constitution to frame recruitment Rules which are binding. Under the Rules, higher qualifications can be prescribed. **Devesh Sharma's** case (supra) has not dealt with the superior Rule making power of the Governor under Article 309 of the Constitution of India. Hence, reliance placed on the said judgment is legally flawed and ought to be rejected. They further submit that the intervenors are having the qualification of 'B.Ed.' and they all are eligible as per the provision of the Rules 2019 as well as the criteria as prescribed in the advertisement dated 04.05.2023 and, as such, right has been accrued in their favour for consideration of their candidature. They





further submit that criteria which were prevailing at the time of advertisement will prevail and can not be subsequently altered. They also submit that the law which has been settled by the Hon'ble Supreme Court vide Judgment dated 11.08.2023 in **Devesh Sharma** (supra) can not be made applicable retrospectively. They relied upon the judgments of the Supreme Court in the matters of **N.T. Devin Katti and others v. Karnataka Public Service Commission and others, (1990) 3 SCC 157** (paras-11, 12 and 13), **A.K. Bhatnagar and others v. Union of India and others, (1991) 1 SCC 544** (para-13), **Secretary, State of Karnataka and others v. Umadevi (3) & Ors, (2006) 4 SCC 1** (para-6) and **S. Satyapal Reddy and others v. Govt. of A.P. and others, (1994) 4 SCC 391** (para-7). Learned counsel of other intervenors have supported the arguments of Mr. Ravindra Shrivastava.

32. We have heard the arguments advanced by the learned counsel appearing for the parties, perused the documents appended with writ petitions and gone through the judgment of the Supreme Court in **Devesh Sharma** (supra) and the Rajasthan High Court in **Rajendra Singh Chotiya**



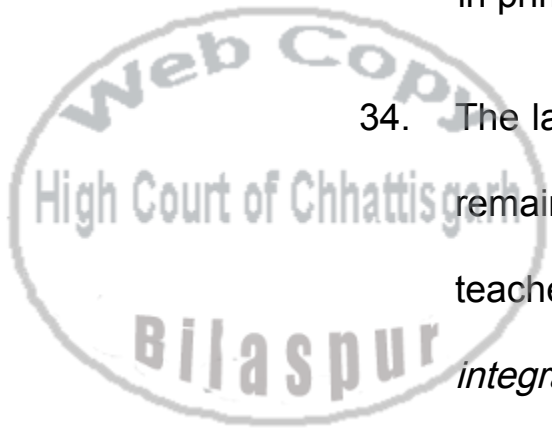


(supra).

**ANALYSIS:**

33. The issue which has arisen for consideration is as to what would be the effect of the law as settled by the Hon'ble Supreme Court in the matter of **Devesh Sharma** (supra) regarding notification dated 28.06.2018 issued by the NCTE prescribing the qualification of B.Ed. as eligible/permissible qualification for appointment of teacher in primary level school (Class I to V).

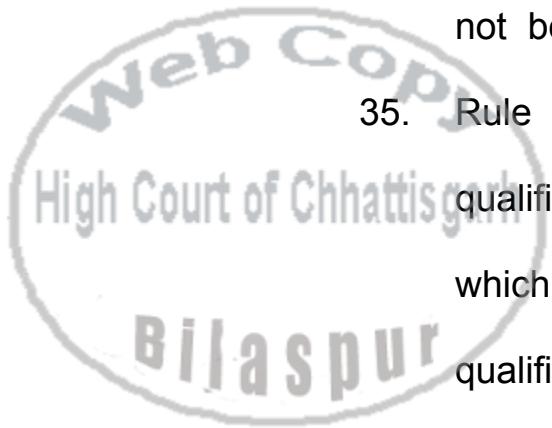
34. The law in this regard that as to whether B.Ed. would remain the eligible qualification for the appointment of teacher in primary level school remain *no longer res integra* after the judgment passed by the Supreme Court in **Devesh Sharma** (supra). It has been categorically held that prescribing of such qualification amounts to lowering down of the quality of education at primary level. Course of D.El.Ed. has been designed and structured to impart skills in a teacher who is to teach Primary level of students. The NCTE who is the 'Academic Authority' under Section 23 of the RTE Act 2009 itself has kept the qualification of B.Ed. out side of the eligible qualification at





the time of issuance of its first notification dated 23.08.2010 and same has been inserted only by way of the impugned notification dated 28.06.2018. To maintain the quality in primary education pedagogical skills of a teacher must be given a very high priority. The prayer as sought in the writ petition regarding declaring the notification dated 28.06.2018 is *ultra vires* and illegal and has already been decided by the Hon'ble Supreme Court in **Devesh Sharma** (supra) and, therefore it need not be again declared as *ultra vires* by this Court.

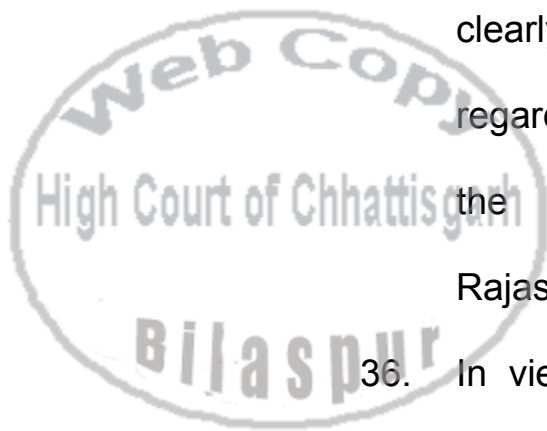
35. Rule 8 (III) of the Rules 2019 prescribes the qualification of teachers for appointment in Primary School which speaks about the applicability of the prescription of qualification under RTE Act 2009 as *mutatis mutandis* in the said Rules 2019. The State has committed illegality by permitting the candidates having the qualification of B.Ed. in the selection process initiated vide advertisement dated 04.05.2019 since the said qualification does not exist in the statute book of the RTE Act 2009 after its quashment by the Rajasthan High Court vide judgment dated 25.11.2021. The law is well settled in **M/S Kusum Ingots** case' (supra) that





once the central statute is quashed by one of the High Court it would be applicable to all the States subject to its applicability. The RTE Act 2009 being Central Act having the overriding effect by virtue of Article 254 of the Constitution of India and if any of the provision (in the present case notification dated 28.06.2018 issued under Section 23 of the said Act 2019) is quashed or declared as *ultra vires* then it would be applicable to all other States. The State of Chhattisgarh has clearly committed an error in keeping the provision regarding prescription of qualification of B.Ed. alive in the Rules 2019 even after the judgment of the Rajasthan High Court.

36. In view of the above discussion, the notification dated 28.06.2018 has been declared as illegal, without jurisdiction and *ultra vires* to the Article 21-A of the Constitution of India and, as such, the qualification as prescribed under Annexure - I (i) of Schedule-III appended to Section 8 of said Recruitment Rules 2019 to the extent of inclusion of B.Ed. as eligible qualification is also declared as illegal, without jurisdiction and *ultra vires* to Article 21-A of the Constitution of India.





37. One aspect also required to be considered that Recruitment Rules 2019 has been framed by invoking the power as vested under the proviso of Article 309 of the Constitution, which states as under:-

**“309. Recruitment and conditions of service of persons serving the Union or a State.-**Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

*Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.”*

The opening sentence of the said proviso speaks as : *Subject to the provisions of this Constitution,*

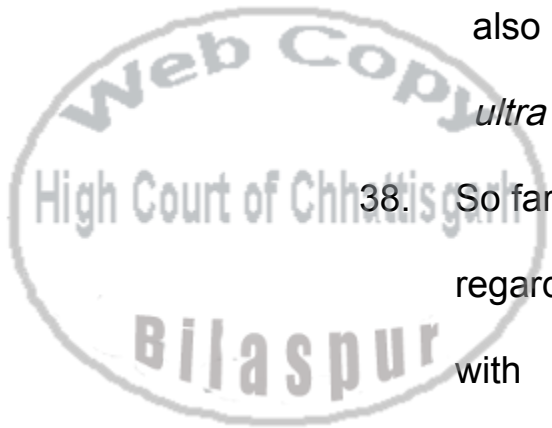






*Acts of the appropriate Legislature.....* meaning thereby that rules framed under Article 309 of the Constitution of India always remain subject to the provisions of the Constitution and acts of appropriate legislation. In the present case under the said Rules 2019 prescribing the qualification of B.Ed. under Rule 8 (III) as eligible qualification for teacher of Primary School is hit by Article 21-A of the Constitution of India and Section 23 of the RTE Act 2009. In this regard also the said provision deserves to be declared as *ultra vires*.

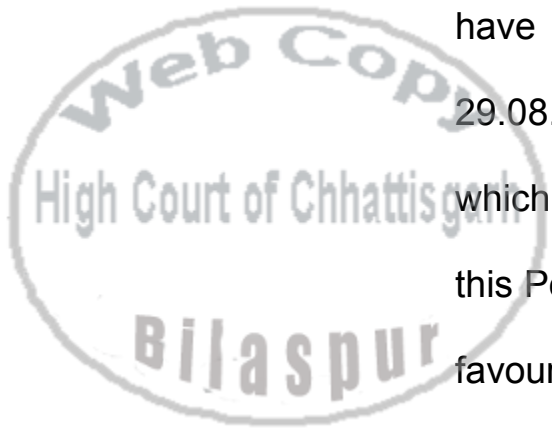
38. So far as the arguments of the Intervenors are concerned regarding applicability of the judgment dated 11.08.2023 with prospective effect and their joining to the post deserves to be saved are unacceptable prayer in view of the order passed by the Hon'ble Supreme Court in the matter of **Bhagwan Krishna** (supra) in which under similar circumstances the consequential advertisements and other subsequent steps taken in pursuance thereof were also declared invalidated. In other case the Miscellaneous Application (No 2206/2023 in D No 36321/2023) seeking modification/clarification of the





judgment dated 11.08.2023 passed in **Devesh Sharma** (supra) to the extent that the recruitment process that has commenced prior to the judgment dated 11.08.2023 shall not be interrupted and appointments shall continue to be made as per recruitment notifications for recruitment to the post of primary teachers issued prior to the judgment dated 11.08.2023 has also been dismissed by the Hon'ble Supreme Court vide order dated 11.01.2024. The appointments of the Intervenors have been made pursuant to the interim order dated 29.08.2023 passed by the Hon'ble Supreme Court in which the appointment is made subject to outcome of this Petition and, therefore, no such right is accrued in favour of the Intervenors.

39. For the foregoing reasons, the writ petitions deserve to be allowed by declaring the prescription of qualification of B.Ed. as eligible qualification for the post of Assistant Teacher (Class I to V) as illegal and without jurisdiction which deserves to be quashed and hereby quashed. Consequently, the advertisement dated 04.05.2023 to the extent it permit the candidates having the qualification of B.Ed. to participate in process of selection for the post of





Assistant Teacher is also declared illegal and quashed. The State Government is directed to rearrange the selection list in accordance with the provisions of the Rules 2019 by excluding the candidates participated in the selection process having qualification of B.Ed. This exercise deserves to be completed within a period of six weeks from today.

40. The writ petitions are allowed to the extent indicated hereinabove. No cost(s).

Sd/-

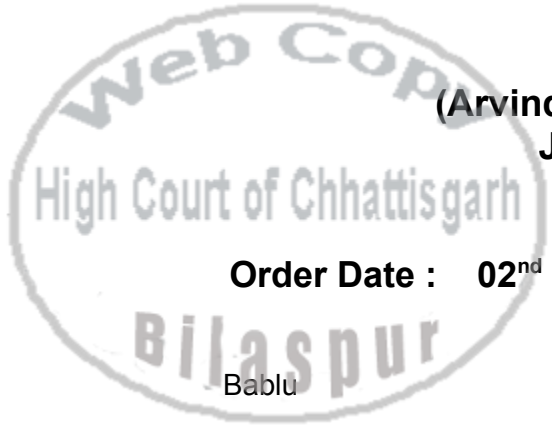
(Arvind Kumar Verma)  
Judge

Sd/-

(Ramesh Sinha)  
Chief Justice

Order Date : 02<sup>nd</sup> April, 2024

Bablu





HIGH COURT OF CHHATTISGARH AT BILASPUR

**WPS No. 3541 of 2023**

Bhuneshwar Sahu

-Versus-

Union of India and others

Head -Note

Taking into consideration the constitutional essence of Right to Education, the Chhattisgarh School Education Services (Educational and Administrative Cadre) Recruitment and Promotion Rules 2019 prescribing the qualification of B.Ed. under Rule 8(III) as eligibility criteria for Assistant Teacher of primary school deems to be *ultra vires*.

