

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR

**+ WRIT PETITION Nos.1315, 1495, 1741, 4277, 4283,
5276, 29791, 31250 of 2018; 7878 and 9164 of 2019**

% Date: 15.09.2023

Venugopal Charry,
and others.

... Petitioners

v.

\$ The State of Telangana,
Rep. by its Special Chief Secretary to Government,
the School Education (General) Department,
Secretariat, Hyderabad,
and others.

... Respondents

! Counsel for the petitioners:

Mr. G.Vidya Sagar,
learned Senior Counsel,
Representing Ms. K.Udaya Sri

Ms. B.Rachna Reddy,
learned Senior Counsel

Mr. Jakkula Sridhar,

Mr. S.Rahul Reddy,

Mr.G.V.L.Murthy

and

Ms. P.Sumalatha

^ Counsel for the respondents : Mr. M.V.Rama Rao,
learned Special Government
Pleader attached to the office of
learned Additional Advocate
General for the State.

Mr.M.Mehboob Ali,
learned Standing Counsel for the
National Council for Teacher
Education.

Mr. Manoj Kumar Mishra,
learned counsel representing
Mr. Gadi Praveen Kumar,
learned Deputy Solicitor General
of India.

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➤ HEAD NOTE:

? CASES REFERRED:

1. (2018) 12 SCC 595
2. 2022 SCC OnLine Bom 3381
3. (2019) 2 SCC 404

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COMMON ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

The petitioners in this batch of writ petitions have assailed the validity of Rule 4(I)(G)(i) and Rule 4(III)(B)(i) notified vide G.O.Ms.No.25, dated 10.10.2017, namely the Telangana State Direct Recruitment for the posts of Teachers Rules, 2017 (hereinafter referred to as, "the 2017 Rules").

2. The petitioners seek a declaration that the qualification of Hindi Vidwan/Madhyama/Visharada is equivalent to the degree conferred by the University Grants Commission (UGC) recognised under the University Grants Commission Act, 1956, for the posts of Language Pandit (Hindi)/School Assistant (Hindi). The petitioners have also challenged the validity of the order dated 23.12.2017 passed by the State Government by which the qualification

of Hindi Vidwan/Madhyama/Visharada held by the petitioners has not been held to be equivalent to the degree conferred by the UGC.

3. In order to appreciate the grievance of the petitioners, relevant facts need mention which are stated infra.

4. The petitioners have acquired the qualification of Hindi Vidwan/Madhyama/Visharada from the recognized institution from the Government of India for the purposes of employment as Language Pandit (Hindi)/School Assistant (Hindi). The qualification held by the petitioners was treated to be equivalent qualification to the degree conferred by the UGC under the rules notified vide G.O.Ms.No.4, dated 09.01.2012, namely the Andhra Pradesh Direct Recruitment for the posts of Teachers (Scheme of Selection) Rules, 2012 (hereinafter referred to as, “the 2012 Rules”).

5. The National Council for Teacher Education Act, 1993 (hereinafter referred to as, “the NCTE Act”), is an Act to provide for establishment of National Council for

Teacher Education (NCTE) with a view to achieve planned and coordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system. The NCTE Act has also been enacted with the object of prescribing qualifications of school teachers and for the matters connected therewith. Section 12 of the NCTE Act deals with functions of the NCTE. Section 12(d) empowers the NCTE to lay down the guidelines in respect of minimum qualifications for a person to be employed as a teacher in the recognized institutions. Section 12A of the NCTE Act deals with power of the NCTE to determine minimum standards of education of school teachers. Section 32 of the NCTE Act deals with powers of the NCTE to make regulations. Section 32(2)(dd) empowers the NCTE to make regulations for qualification of teachers under Section 12A.

6. In exercise of powers conferred under Clause (dd) of Section 32(2) read with Section 12A of the NCTE Act, the NCTE has made the regulations which are known as

National Counsel for Teacher Education (Determination of Minimum Qualifications for Persons to be recruited as Education Teachers and Physical Education Teachers in Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014 (hereinafter referred to as, “the 2014 Regulations”). Regulation 4 provides for qualifications for recruitment. Regulation 4(a) provides that the qualifications for recruitment of teachers in any recognized schools imparting Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges imparting senior secondary education shall be as given in the First and Second Schedules annexed to the Regulations. The relevant extract of the First Schedule is reproduced below for the facility of reference:

First Schedule

{See Sub-regulation (2) of Regulation (4)}

The National Council for Teacher Education (Determination of Minimum Qualifications for Persons to be recruited as Education Teachers in Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014.

<i>LEVEL</i>	<i>MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATIONS</i>
...	...
4. Secondary/High School (For Classes IX-X)	(a) Graduate/Post Graduate from recognized University

	<p>with at least 50% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed) from National Council for Teacher Education recognized institution.</p> <p>Or</p> <p>(b) Graduate/Post Graduate from recognized University with at least 45% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution {in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002 and National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007}</p> <p>Or</p> <p>4 years degree of B.A.Ed./ B.Sc.Ed. from any National Council for Teacher Education recognized institution.</p>
5. Senior Secondary/ Intermediate (For Classes	(a) Post Graduate with at least 50% marks (or its

XI-XII)	<p>equivalent) from recognized University and Bachelor of Education (B.Ed) from National Council for Teacher Education recognized institution.</p> <p style="text-align: center;">Or</p> <p>(b) Post Graduate with at least 45% marks (or its equivalent) from recognized University and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution {in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002 and National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007.</p> <p style="text-align: center;">Or</p> <p>Post Graduate with at least 50% marks (or its equivalent) from recognized University and B.A.Ed./ B.Sc.Ed. from any NCTE recognized institution.</p>
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7. Thus, if Regulation 4(a) and (b) of the 2014 Regulations is read in conjunction with the First Schedule, it is evident that the qualification which has been prescribed for recruitment to the posts of teacher is Graduate/Post Graduate from any recognized University with at least 50% marks either in Graduation or Post Graduation. From a close scrutiny of the First Schedule entry made at serial Nos.4 and 5, it is evident that a person holding an equivalent qualification of Graduation/Post Graduation from a recognized university with at least 50% marks either in Graduation or Post Graduation is also entitled for recruitment as teacher. However, the State Government has issued G.O.Ms.No.25, dated 10.10.2007, by which the 2017 Rules had been notified. Rule 4(I)(G)(i) and Rule 4(III)(B)(i) read as under:

4(I)(G).School Assistant (Hindi):-

- (i). Must possess Graduation with Hindi as one of the Optional/Graduation in Literature in Hindi/Bachelor's Degree in Oriental Language (BOL) in Hindi/Post Graduation Degree in Hindi from a University recognized by UGC with 50% (in case of SC/ST/BC/Differently abled candidates, the minimum marks shall be 45%) and pass in Bachelor of Education (B.Ed.) course with

Hindi as a Methodology subject or Language Pandit Training in Hindi or Hindi Shikshan Parangat from any institution recognised by NCTE.

4(III)(B). Language Pandit (Hindi):-

(i) Must possess Graduation with Hindi as one of the Optional/Graduation in Literature in Hindi/Bachelor's Degree in Oriental Language (BOL) in Hindi/Post Graduation Degree in Hindi from a University recognised by UGC with 50% (in case of SC/ST/BC/Differently abled candidates, the minimum marks shall be 45%) and pass in Bachelor of Education (B.Ed.) course with Hindi as a Methodology subject or Language Pandit Training in Hindi or Hindi Shikshan Parangat from any institution recognised by NCTE.

8. Thus, the aforesaid Rules do not treat the qualification of Hindi Vidwan/Madhyama/Visharada as equivalent to the degree conferred by the UGC.

9. In the aforesaid factual background, the petitioners have filed the present writ petitions seeking the relief as stated supra.

10. Mr. G.Vidya Sagar, learned Senior Counsel for the petitioners submits that qualification for recruitment to the posts of teacher have been prescribed by the NCTE under

the 2014 Regulations. The State Government, therefore, is under an obligation to act as per the notification and cannot give effect to any contrary rule. It is further submitted that while enacting the 2017 Rules, the State Government has acted in contravention of the regulations prescribed by the NCTE inasmuch as the equivalent degree of the petitioners of Hindi Vidwan/Madhyama/Visharada has not been treated as equivalent to the degree conferred by the UGC. It is further contended that the rule enacted by the State Government is in respect of a field which has already been occupied by a regulation framed under the central enactment, namely the NCTE Act. Therefore, the regulations framed by the NCTE shall prevail in the matter of educational institutions over the 2017 Rules.

11. Learned counsel for the petitioners in the other writ petitions have adopted the submissions made by Mr. G.Vidya Sagar, learned Senior Counsel for the petitioners, and they contended that the order dated 23.12.2017 passed by the State Government holding that the qualification held by the petitioners is not recognized

by the UGC and since no equivalence is provided in the rules, therefore, their qualification cannot be treated at par with the degree conferred by the UGC, is patently arbitrary and suffers from the vice of non-application of mind. Learned counsel for the petitioners in the other writ petitions have pointed out to the counter affidavit filed on behalf of the UGC wherein UGC has taken a stand that it is for the State Government to decide the question of equivalence and the UGC cannot decide the same. It is, therefore, submitted that the impugned order dated 23.12.2017 is liable to be quashed. In support of the aforesaid submission, learned Senior Counsel has placed reliance on a decision of the Hon'ble Supreme Court in **State of Uttar Pradesh v. Shiv Kumar Pathak**¹.

12. On the other hand, learned Special Government Pleader has submitted that Sections 12 and 12A of the NCTE Act only empower the NCTE to lay down the minimum standard of education and the NCTE has prescribed the minimum standards of education. Therefore, it is open for the State Government to prescribe

¹ (2018) 12 SCC 595

the higher qualification. It is also submitted that by enacting the 2017 Rules, the Government has not prescribed any qualification which is at variance with the qualification prescribed by the NCTE. It is also pointed out that the validity of the 2017 Rules was assailed before a Division Bench of this Court and the Division Bench by a common order dated 18.12.2017 passed in W.P.Nos.40590 and 40936 of 2017 has disposed of the writ petitions directing the respondents therein to examine whether or not the qualification secured by the petitioners therein was equivalent to a Bachelor's Degree in Hindi. Learned Special Government Pleader has also placed reliance on the decision of the High Court of Bombay in **Abhijit Madhavrao Patil v. State of Maharashtra**².

13. We have considered the rival submissions made on both sides and perused the record.

14. In **Zahoor Ahmad Rather v. Imtiyaz Ahmad**³, it was held by the Hon'ble Supreme Court that prescription of a particular qualification to the concerned post is solely a

² 2022 SCC OnLine Bom 3381

³ (2019) 2 SCC 404

matter of recruitment policy and it is not the duty nor the function of the judiciary to delve upon the validity of the prescribed qualifications. In paragraphs 26 and 27 of the said decision, it was held as under:

26. We are in respectful agreement with the interpretation which has been placed on the judgment in *Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664]* in the subsequent decision in *Anita [State of Punjab v. Anita, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329]*. The decision in *Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664]* turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine. The decision in *Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664]* turned on a specific statutory rule under which the holding of a higher

qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench [*Imtiyaz Ahmad v. Zahoor Ahmad Rather*, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the High Court was justified in reversing the judgment [*Zahoor Ahmad Rather v. State of J&K*, 2017 SCC OnLine J&K 936] of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications. We find no error in the decision [*Imtiyaz Ahmad v. Zahoor Ahmad Rather*, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the Division Bench.

27. While prescribing the qualifications for a post, the State, as employer, may legitimately bear in mind several features including the nature of the job, the aptitudes requisite for the efficient discharge of duties, the functionality of a qualification and the content of the course of studies which leads up to the acquisition of a qualification. The State is entrusted with the authority to assess the needs of its public services. Exigencies of administration, it is trite law, fall within the domain of administrative decision-making. The State as a public employer may well take into account social perspectives that require the creation of job opportunities across the societal structure. All these are essentially matters of policy. Judicial review must tread warily. That is why the decision in *Jyoti K.K.* [*Jyoti K.K. v. Kerala Public Service Commission*, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] must be understood in the context of a specific statutory rule under which the holding of a

higher qualification which presupposes the acquisition of a lower qualification was considered to be sufficient for the post. It was in the context of specific rule that the decision in *Jyoti K.K. [Jyoti K.K. v. Kerala Public Service Commission, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664]* turned.

15. In the light of the aforesaid legal position, we may advert to the validity of the order dated 23.12.2017 passed by the Government of Telangana. The relevant extract of the order dated 23.12.2017 reads as under:

4. This makes it very clear that it should be Graduation from a recognized University or its equivalent which means that whichever qualification is claimed, it should be equivalent to Graduation from a recognized University. In this case, Hindi Vidwan Course/Examination conducted by Hindi Prachara Sabha, Hyderabad or the Hindi Sahitya Samelan, Allahabad or the Dakshin Bharat Hindi Prachar Sabha, Madras, if these are recognized Universities by the UGC, wherein this Course is treated by UGC as Graduation, then only the petitioners can be treated as eligible. In G.O.Ms.No.25, School Education (General) Department, dt.10.10.2017, it is clearly mentioned that the applicants must possess Graduation in Hindi from a University recognized by the UGC. Thus, if the petitioners' qualification of Hindi Vidwan is from a recognized University of the UGC as 'Graduation' and the course has the recognition of the UGC, then only

they will become eligible as per G.O.Ms.No.25, School Education (General) Department, dt.10.10.2017, to apply in the Teachers' Recruitment, 2017.

16. Thus, from a perusal of the aforesaid order, it is evident that the aforesaid order has been passed on twin grounds. Firstly, that the qualification acquired by the petitioners is not recognized by the UGC and secondly, that the 2017 Rules do not provide that the qualification of Hindi Vidwan/Madhyama/Visharada held by the petitioners is equivalent to the degree conferred by the UGC.

17. In the counter affidavit filed by the respondents, at paragraph 10(3) it is stated as under:

The University Grants Commission has clarified that the equivalency of a qualification is to be determined by the employer but not by the UGC. Therefore, it is for the employer to determine the equivalency in qualification for a post for the purpose of employment.

18. It is evident that the UGC itself has clarified that the equivalency of a qualification cannot be decided by the UGC, but the same has to be adjudicated by the State Government. Therefore, the State Government cannot take

a view against the petitioners on the ground that the UGC has not recognized the qualification held by the petitioners. It is pertinent to note that in the 2012 Rules, the qualification held by the petitioners was treated as equivalent to the degree conferred by the UGC. However, in the 2017 Rules, the aforesaid requirement has been deleted. There is no explanation on record as to why the aforesaid qualification has been deleted. By not treating the qualification of Hindi Vidwan/Madhyama/Visharada as equivalent to the degree conferred by the UGC, the State Government has not prescribed any higher qualification.

19. The issue of equivalence has to be considered by the State Government. The impugned order dated 23.12.2017 suffers from the vice of non-application of mind and has been passed in a casual and callous manner without even adverting to the stand taken by the UGC. The impugned order dated 23.12.2017 therefore cannot be sustained in the eye of law. It is accordingly set aside.

20. The inevitable result is that the matter has to be remitted to the State Government for deciding the issue of

equivalence of the qualification of Hindi Vidwan/Madhyama/Visharada held by the petitioners. The State Government is required to decide whether the Hindi Vidwan/Madhyama/Visharada is equivalent to the degree conferred by the UGC.

21. It is also pertinent to mention here that the 2017 Rules are no longer in force and by G.O.Ms.No.25, dated 05.09.2023, new Rules, namely the Telangana State Direct Recruitment for the posts of Teachers (Scheme of Selection) Rules, 2023, have come into force. The order dated 23.12.2017 has been set aside and issue of equivalence has to be decided by the State Government. We, therefore, are not inclined to examine the validity of the 2017 Rules. The issue with regard to the validity of the 2017 Rules as well as the 2023 Rules is kept open to be agitated in appropriate proceedings. The State Government is directed to decide the issue of equivalence of Hindi Vidwan/Madhyama/Visharada to the degree conferred by the UGC on or before 15.11.2023 by a speaking order.

22. Accordingly, with the aforesaid directions, the writ petitions are disposed of. Needless to state that in case the qualification held by the petitioners is found to be equivalent to the degree conferred by the UGC, the case of the petitioners for appointment to the post of teachers, subject to vacancy, shall be considered.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

ALOK ARADHE, CJ

N.V.SHRAVAN KUMAR, J

15.09.2023

Note: LR copy to be marked.

B/o.

vs