



2024:CGHC:27393-DB

**AFR****HIGH COURT OF CHHATTISGARH, BILASPUR****WPS No. 2358 of 2024**

- 1 - Shravan Kumar Pradhan S/o Jugeshwar Pradhan aged about 33 Years Presently Working as Teacher (L.B.) At Govt. Middle School, Lukapara, Block Saraipali, District Mahasamund Chhattisgarh.
- 2 - Sanjeet Kumar Ratro S/o Shashikant Patro, aged about 36 Years Presently Working as Teacher (L.B.) At Govt. Girls Upper Primary School, Toresingha, Block Saraipali, District Mahasamund Chhattisgarh.
- 3 - Omprakash Sao S/o. Makardhwaj Sao, aged about 35 Years Presently Working as Teacher (L.B.) At Govt. Middle School, Rimji, Block Saraipali, District Mahasamund Chhattisgarh.
- 4 - Rakesh Kumar Bhoi S/o. Nagewshwar Bhoi, aged about 33 Years Presently Working as Teacher (L.B.) At Govt. Upper Primary School, Amaldih, Block Saraipali, District Mahasamund Chhattisgarh.
- 5 - Bhagavan Sahu S/o. Kailash Sahu aged about 35 Years Presently Working As Teacher (L.B.) At Govt. Middle School, Semliya, Block Saraipali, District Mahasamund Chhattisgarh.
- 6 - Gourishankar Patel S/o. Tilak Ram Patel aged about 38 Years Presently Working as Teacher (L.B.) At Govt. Girls Upper Primary School, Saraipali, Block Saraipali, District Mahasamund Chhattisgarh.
- 7 - Pawan Sahu S/o Bhagwat Prasad Sahu, aged about 35 Years Presently Working as Teacher (L.B.) At Govt. Upper Primary School, Hadaband, Block Bagbahara, District Mahasamund Chhattisgarh.
- 8 - Devendra Chandra S/o. Hari Ram Chandra, Aged About 36 Years Presently Working as Teacher (L.B.) at Govt. Middle School, Arjunda Block Saraipali, District Mahasamund Chhattisgarh.
- 9 - Pushpendra Singh Rajput S/o. Vishwa Singh Rajpur, aged about 39 Years Presently Working As Teacher (L.B.) at Govt. Middle School, Kheda, Block Nawagarh, District Bemetara Chhattisgarh.
- 10 - Ramesh Kumar Ogare S/o. Dharamdas Ogare, aged about 39 Years

Presently Working As Teacher (L.B.) At Govt. Middle School, Mudpar, Block Bilaigarh, District Sarangarh Bilaigarh Chhattisgarh.

11 - Rishi Kumar Sahu S/o. Devendra Kumar Sahu, aged about 34 Years Presently Working As Teacher (L.B.) At Govt. Middle School, Baradoli, Block Saraipali District Mahasamund Chhattisgarh.

12 - Shashikant Soni S/o. Narmada Prasad Soni, aged about 47 Years Presently Working As Teacher (L.B.) at Govt. Middle School, Madholongra, Block Shankargarh, District Balrampur Chhattisgarh.

13 - Yogesh Kumar Borkar S/o Lt. Bhuvan Lal Borkar, aged about 44 Years Presently Working as Teacher (L.B.) At Govt. Middle School, Bhadasena, Block Ambagarh Chowki District Mohla Manpur Ambagarh Chowki Chhattisgarh.

---- **Petitioners**

**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 The Secretary/chairman, National Council of Teacher Education (N.C.T.E.). G-7, Sector -10, Dwarka Landmark Near Metro Station New Delhi -110075

3-State of Chhattisgarh, Through The Secretary, Department of School Education, Mantralaya, Mahanadi Bhawan Atal Nagar, Nawa Raipur District Raipur Chhattisgarh.

4-Director, Directorate of Public Instructions, Indrawati Bhawan, Atal Nagar, Nawa Raipur District Raipur Chhattisgarh.

5-State Council of Education Research and Training, Shankar Nagar, Raipur District Raipur Chhattisgarh.

---**Respondents**

(Cause title taken from Case Information System)

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For the Petitioners	:	Mr. Aakash Pandey alongwith Mr Govind Prasad Dewangan, Advocate
For Resp.No.1/UOI	:	Mr. Tushar Dhar Diwan, Central Government Counsel
For Respondent No.2	:	Mr. Bhaskar Payashi, Advocate
For Resp. No.3 to 5/ State	:	Mr. Shashank Thakur, Dy. A.G.

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

**Hon'ble Shri Justice Ravindra Kumar Agrawal**

**Order on Board**

**Per Ramesh Sinha, Chief Justice**

**26.07.2024**

1. The petitioners have filed the instant writ petition challenging the constitutional validity of the column No. 3 of Serial No.14 of the schedule IV enacted under the Rules 14 and 15 of the Chhattisgarh School Education Services Educational and Administrative Cadre Rules 2019 (in short the rules of 2019) whereby the minimum requirement/eligibility for promotion to the post of lecturer, from the post of Teacher/Head Master, Primary School (tend post graduate) is prescribed the requirement of five years of minimum experience in feeder cadre whereas the essential/ minimum qualification for the post of lecturer in direct recruitment is post graduate/equivalent with second class from a recognized university/institution in any of the following subjects and B.Ed (as per column 2 of serial No 5 of schedule III) enacted under rule 8 of rules 2019 and as per [Annexure-i (iii)].
  
2. The brief facts of the case are that the petitioners, who are presently working on the post of teacher (LB) and have posted at different schools as shown with the cause title under the department of school education. The petitioners where initially appointed under the department of panchayat as per prevailing recruitment rules at that time. They did their duty with utmost sincerity and their service records are satisfactory. On 30.06.2018 the State Government had taken a policy decision regarding absorption of the teachers who are working under the department of panchayat will be absorbed in the

department of school education on their completion of eight years of services. On the basis of the said policy decision, the teachers who were working under the department of panchayat, their services have been absorbed in the department of school education with effect from 01.07.2018 and 01.07.2019 respectively. Subsequently the minimum period of eight years of service for absorption has been reduced for a period of 2 years. The services of the petitioners were absorbed in the department of school education and from the date of their absorption they became the employees of school education department and the respondents are treating them fresher from the date of their absorption and their seniority is also counted from the date of their absorption and not from the date of their initial appointment. That petitioners are having the essential qualification for the post of lecturer and have also the B.Ed certificate and they are eligible for promotion to the post of lecturer.

3. The State Government has further introduced the new Rules which is called as the Chhattisgarh School Education Services (Educational and Administrative Cadre) Rules 2019, by exercising the powers conferred under the proviso of article 309 of the constitution of India. The said Rule of 2019 is came into force with effect from 05.03.2019. The Rule 6 of the Rules 2019 provides the method of recruitment which includes the first method of recruitment by direct recruitment and the second method is by way of promotion, third one is transfer/ deputation and the last method is by way of absorption.

4. As per the first and second method of recruitment that is direct recruitment and promotion, requires the different criteria/minimum qualification for the same post which is violative of article 14 and 16 of the Constitution of India as also violative of the guide lines fixed by the NCTE under the Regulations, 2014.
5. The rules 8 to13 of the rules 2019 relates to the direct recruitment and Rules 14 to 19 deals with the promotion. The essential/minimum qualification for the post of Lecturer by way of direct recruitment is provided under Annexure-1 and according to which the essential qualification is post graduate/equivalent with second class from a recognized university/ institution, in any of the following subjects and B.Ed/second class degree.
6. The minimum qualification fix for direct recruitment to the post of Lecturer is post graduate/equivalent with second class come a recognizance university/institution in any of the following subject and B.Ed. The B.Ed degree is one of the minimum qualification along with the post graduate with second class for direct recruitment on the post of Lecturer. It is further the case of the petitioners that they are presently working on the post of teacher LB and the next promotional post of teacher is Lecturer. The post of Lecturer may be filled by way of either by direct recruitment or by promotion. As per the schedule 2 under the Rule 6 of the Rules 2019, the details of the post of Lecturer is given at serial No. 22 of the schedule 2 and according to which the 50% posts of lecturer shall be filled up by the direct recruitment and the remaining 50% posts shall be filled by

way of promotion.

7. Schedule 3 of Rules 2019 provides the details of the post of Lecturer which is given at serial No. 7 and the minimum qualification fixed for the post of Lecturer by way of direct recruitment is post graduate/equivalent with second class from a recognized university/institution, in any of the following subjects and B.Ed. Thus the B.Ed is one of the essential qualification for the post of Lecturer and the persons who is having the D.El.Ed./D.Ed will not be eligible for appointment by way of direct recruitment.
8. Schedule 4 of the Rules 14 and 15 of the Rules 2019 provides about the promotion of the teachers. Column 3 of serial no 14 of the schedule 4 enacted under Rule 14 and 15 of the Rules 2019, the minimum requirements/eligibility for promotion to the post of Lecturer from the post of Teacher/Head Master, Primary School (trained and graduate) is prescribed as five years of minimum experience in feeder cadre. Since no stipulations of passing the B.Ed, the right to promote the teacher who are not having the B.Ed qualification was also given and therefore, there are two different criteria/minimum qualification for the same post by two different method of recruitment.
9. The NCTE regulation, 2014 does not provides two different criteria /minimum qualification for the same post by two different method of recruitment.
10. Rule 15 of the Rules 2019 deals with the condition of eligibility

criteria for promotion. The criteria for promotion on the post of lecturer is the seniority cum fitness basis and when the promotion is on the basis of seniority cum fitness or on the seniority basis leaving unsuitable candidates and there will be no grounds for considerations for all categories.

11. Rule 16 of the Rules 2019 provides about the preparation of list of suitable candidates it further provides that the committee shall prepare the list of such candidates satisfying the conditions prescribed in Rule 5 and a held by the committee to be suitable for promotion.
12. The conjoint reading of Rule 15 and 16 of the Rules 2019, the committee shall prepared the list of suitable candidates who satisfies the conditions which means the persons who is not having the proper qualification/minimum qualification for the promotional post is not a suitable person.
13. The respondents have prepared a gradation list as on 01.04.2022, in the State Level of the candidates who are under the zone of consideration for promotion.
14. From perusal of the gradation list it appears that the persons who are not having the proper and minimum qualification for promotion on the post of Lecturer, had also been included in the list and the candidates who are otherwise not entitled to get promotion on the post of lecturer have also been included in the said list.

15. The qualification of B.Ed degree is an essential qualification for the post of Lecturer whereas the D.Ed and D.EL.Ed qualification are required for teachers teaching in Primary Schools and therefore, the qualification of B.Ed degree which is essential for qualification for the post of Lecturer cannot be diluted.
16. It is the further case of the petitioners that the Hon'ble Supreme Court in the matter of Devesh Sharma vs. Union of India (Civil appeal no 5068/23) have recently passed the order on 02.04.2024 have reiterated that D.Ed/D.EL.Ed is qualification required for Primary/Elementary schools whereas B.Ed qualification required for High/Higher Secondary Schools.
17. The National Council for Teachers Education Act, 1993 is enacted to provide for establishment of National Council for teachers Education (NCTE) with a view to achieving planned and coordinated development for the teachers education system through out the country. The qualification described by the NCTE would bind all the State Government, Boards etc. The qualification prescribed by the NCTE in-terms of Section 12 A of the Act of 1993 will prevailed and binding over the State Government.
18. There is inconsistency in the minimum qualification for the post of Lecturer which prescribed under the Act of 1993 and under the Rules of 2019. There is inconsistency between the State and NCTE regulations regarding the minimum qualification on the Lecturer for promotion. The NCTE is competent to fix the minimum qualification



and to frame the regulation and the respondent No. 2 ought to have the clarify that the Act and regulation framed by it will binding in nature to the State Government or not. The persons who is aspiring for the promotional post of the Lecturer who are having degree of post graduation along with B.Ed, however the respondent authorities have also included the names of various candidates who does not have B.Ed degree but having D.Ed/D.El.Ed and the authorities in ignorance of Regulation of 2014 are allowing those ineligible candidates for the promotional post of Lecturer which is illegal. The respondent authorities of the State have called the ACR's of the concerned employees whose name in the gradation list. In the Rules of 2019 it has been specifically mentioned that Chhattisgarh Promotion Rules 2003 would also be followed which provides that the promotion on the post of class-III and class-II, shall be on the basis of seniority subject to fitness. Rules 6 provides that when promotion is on the basis of seniority subject to fitness, there shall be no zone of consideration and all those candidates who have completed minimum qualifying services shall be allegeable for consideration for promotion but the State Government is not following their own Rules while preparation of the gradation list which is prepared against the Rule 2019.

19. B.Ed is one of the essential/minimum qualification for the post of Lecturer in direct recruitment under the Rules of 2019 whereas in case of promotion, the essential/minimum qualification is only five years of minimum experience in feeder cadre without there being

any stipulation for passing of B.Ed, which permits the candidate having the qualification of B.Ed/D.EL.Ed or not having the minimum qualification to be considered for appointment to the post of Lecturer by way promotion. The minimum qualification for any particular post by way of direct recruitment or by promotion should be the same. The experience criteria of five years to become allegeable for the promotional post under the School Education Department, Government of Chhattisgarh has been relaxed to three years to giving effect to promotion by ones by the notification dated 31.12.2021. Fixation of the different criteria/minimum qualification for direct recruitment and promotion on the same post is violative of Article 14 and 16 of the Constitution of India.

20. Section 3 of National Council for Teacher Education Act, 1993 provides that the school includes a school established, owned and controlled by the Central Government or the State Government or a Local Authority. The NCTE has an exclusive jurisdiction to regulate all the schools situated or controlled by the Central Government, State Government or a Local Authority. Section 12 of the Act of 1993 empowers the NCTE to take all such steps for ensuring planned and coordinated development of teachers education and for ensuring planned and planned and coordinated development of teacher education and to maintain their standards, the Council has also empowered to determine the minimum standards of education and under Section 32 of the Act of 1993, the NCTE empowered to make regulations, which will not in consistence with the provisions of Act

of 1993. From the conjoint reading of Section 12A and Section 32 of the Act of 1993, the NCTE is empowered to make regulations and in exercise thereof, the NCTE has framed the regulation, which is called as “the National Council for Teacher Education (Determination of Minimum Qualification for Persons to be recruited as an Education Teacher and Physical Education Teacher in Pre-primary, Primary, Upper primary, Secondary, Senior secondary or Intermediate schools or Colleges) Regulations, 2014” (hereinafter called as “Regulations, 2014), which came into force from 12.11.2014. As per the regulations, the minimum qualification for the post of Level 4 and 5 is graduate/post graduate from recognized University with atleast 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. In the year 2021, the NCTE has amended its regulation and 50% marks in either graduation or post graduation has been amended as 55%.

21. The NCTE Regulations-2014 is binding upon the State and the State may not go beyond the regulations framed by NCTE. If any inconsistency appears in the rules framed by the State and the NCTE regulations, then the Regulations of 2014 will prevail and the minimum qualification fixed by the NCTE will be applicable for direct recruitment as well as promotion. As per the NCTE Regulations-2014 the minimum qualification for the post of Level 4 and 5, B.Ed. is mandatory and one of the essential and minimum qualification

and the State cannot relax such requirement of minimum qualification while giving promotion, therefore, the entry No. 14 in column No. 3 of Schedule-IV of Rule 14 of the Chhattisgarh School Education Service (Educational and Administrative Cadre) Rules, 2019 is unconstitutional and ultra vires.

22. The respondents/State have filed their written and have submitted that the Chhattisgarh School Education Service (Educational and Administrative Cadre) Rules, 2019 have been framed by the State Government in the year 2019 and was published in the official Gazette on 05.03.2019, whereas the petitioners have approached this Court on 12.04.2024, seeking declaration of entry No. 14 of column No. 3 of Schedule-IV of Rules 14 and 15 as ultra vires i.e. after lapse of about 5 years, and therefore the petition itself is suffered by delay and laches. The State Government has framed the Rules of 2019 by invoking the powers conferred under Article 309 of the Constitution of India. The petitioners have approached this Court for their individual grievances in view of the settled law that the individual hardship cannot be called for in challenging the legislation as well as the Rules framed thereunder, which otherwise have been framed while exercising the powers conferred upon them. It is also submitted that under the Rules 2019, those teachers/headmasters, primary schools (trained post-graduate) having D.Ed., D.El.Ed. qualification with 5 years working experience in the feeder-cadre post have been made eligible for promotion to the post of Lecturer, whereas as per the NCTE regulations, the

minimum qualification for appointment on the post of Lecturer is B.Ed. and thus their chance of promotion has been reduced by the said regulations. The rules cannot be challenged on the ground that their chance of promotion is being adversely affected. The chance of promotion are not the service condition and did not tantamount to change the condition of service.

23. A trained teacher means a person, who has completed the NCTE recognized teacher education program i.e. D.El.Ed., D.Ed., B.Ed. etc. Thus, those teachers who possessed the aforesaid qualification would be treated as a trained teacher. The NCTE is only an advisory body pertaining to teacher's education, and therefore, Regulations 2014 is not binding upon the State. Fixing or determining the eligibility criteria for selection like; subjects, minimum qualifications and percentage of marks are always the prerogative of the employer. The candidate cannot dictate the terms and conditions and also cannot dictate that the employer should fix the eligibility criteria, so as to facilitate selection of any particular candidate. It is also replied by the State that the vires of any act or rules can be challenged only on the ground of legislative incompetence, exceeding the power conferred by the parent act, when the delegated legislation is conflict with the parent act and the whole legislation or part thereof is against the provisions of the Constitution of India or any other law existing on the field, but none of the conditions have been satisfied in the present petition, there is always a presumption in favor of the constitutionality of any

enactment. The power to frame rules to regulate the service conditions under the proviso to Article 309 of the Constitution of India carries with the power to amend or alter the said rules. The Rules of 2019 have been framed by the State Government as a matter of policy and before declaring an statute or rule to be unconstitutional, it should be considered that it violates the provisions of the Constitution.

24. From the promotion on the post of Lecturer is regulated and governed by the Chhattisgarh Civil Service (Promotion) Rules 2003 and Rule 4 of the Rules of 2003 deals with the determination of basis of promotion from Class-III to Class-II on the basis of "seniority subject to fitness" or "seniority-cum-suitability". Rule 6 of the Rules, 2003 provides for promotion on the basis of "seniority subject to fitness" or "seniority-cum-suitability", there shall be no zone of consideration for all categories. Rules 2019 are framed with the object for bringing equality amongst the persons having requisite qualifications, so as to get a chance of promotion, there is no illegality or infirmity in the provisions of the Rules of 2019 and the same is intra-vires to the Constitution of India and the petition is liable to be dismissed.
25. We have heard learned counsel for the parties and perused the documents annexed with the writ petition by either of the parties.
26. Learned counsel for the petitioners would submit that the State Rules of 2019 is contrary to the NCTE Regulations-2014. According

to the NCTE Regulations for appointment on the post of Lecturer, the B.Ed. qualification is an essential qualification, whereas the State Rules of 2019 provides B.Ed. and D.Ed. qualification as the essential qualification for the post of Lecturer. Learned counsel for the petitioners has further argued that the requisite qualification of B.Ed. has been fixed by the NCTE in clause 4 of the Regulations 2014, which is applicable for promotion also, therefore, the State has no power to fix any criteria contrary to the NCTE Regulations.

27. Learned counsel for the State would submit that the entry, which is challenged by the petitioners is with relates to the promotion. Admittedly, the B.Ed. qualification is required at the time of entry. Since there are number of teachers, who are working with the Department having D.Ed., and D.El.Ed. qualification, the provisions have been made in the Rules of 2019.
28. The National Council for Teacher Education Act, 1993 has been enacted by the Parliament to achieve planned and coordinated development of the teacher education system throughout the country and the Act of 1993 has been amended time to time, and in the year 2012, the clause (c) and (d) of sub-section 4 of section 1 of the Act of 1993 has been amended as; (c) Schools imparting pre-primary, primary, upper primary, secondary or senior secondary education and colleges providing senior secondary or intermediate education irrespective of the fact, by whatever names they may be called; and (d) Teachers for schools and colleges referred to in clause (c). The school has been defined in sub-clause (a) of section

3 of the Act of 1993, which provides that the school means any recognised school imparting pre-primary, primary, upper primary, secondary or senior secondary education and colleges providing senior secondary or intermediate education and includes a school established from owned and controlled by the Central Government or the State Government or a local authority. Section 12 of the Act of 1993 provides for functions of the council which empowers to the duty of the council to take all such steps as it may think fit for ensuring planned and coordinated development of teacher education and section 12(d) lay down the guidelines in respect of minimum qualifications for a person to be employed as a teacher in recognised institutions.

29. Section 12-A of the Act of 1993 has been inserted by the amendment with effect from 01.06.2012, which empowers the council to determine minimum standards of education of school teachers, which is as under:

**“[12A. Power of Council to determine minimum standards of education of school teachers.-** For the purpose of maintaining standards of education in schools, the Council may, the qualifications of persons for being recruited as by regulations, determine teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognised by the Central Government or a State Government or a local or other authority:

Provided that nothing in this section shall adversely affect the continuance of any person recruited in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate schools or colleges, under any rule, regulation or order made by the Central Government, a State Government, a



local or other authority, immediately before the commencement of the National Council for Teacher Education(Amendment) Act, 2011 (18 of 2011) solely on the ground of non-fulfilment of such qualifications as may be specified by the Council:

Provided further that the minimum qualifications of a teacher referred to in the first proviso shall be acquired within the period specified in this Act or under the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009).]"

30. Section 32 of the Act of 1993 gives power to the council to make regulations, which will not be inconsistent with the provisions of the Act of 1993. Section 32 of the Act of 1993 reads as under:

**“32. Power to make regulations. -** (1) The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, generally to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) the time and the place of the meetings of the Council and the procedure for conducting business thereat under sub-section (l) of section 7;

(b) the manner in which and the purposes for which persons may be co-opted by the Council under sub-section (i) of section 9;

(c) the appointment and terms and conditions of service of officers and other employees of the Council under sub-sections (l) and (2) respectively of section 10;

(d) the norms, guidelines and standards in respect of-

(i) the minimum qualifications for a person to be employed as a teacher under clause (d) of section 12;

(ii) the specified category of courses or training in teacher education under clause (e) of section 12;

(iii) starting of new courses or training in recognised institutions under clause (f) of section 12;

(iv) standards in respect of examinations leading to teacher education qualifications referred to in clause (g) of section 12;

(v) the tuition fees and other fees chargeable by institutions under clause (h) of section 12;

(vi) the schemes for various levels of teacher education, and identification of institutions for offering teacher development programmes under clause (l) of section 12;

(dd) the qualifications of teachers under section 12A;]

.....”

31. The council by exercising the powers conferred under section 12-A and section 32 of the Act of 1993 frames the regulation for determination of the minimum qualification for the teachers in the aforesaid schools by whatever name called, established, run, added or recognised by the Central Government or the State Government or of a local authority. The regulations is framed in the name of “The National Council for Teachers Education (Determination of minimum qualification 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.

32. The regulation 4 of the Regulations 2014 provides for fixation of minimum qualification for direct recruitment as well as for the promotion. The clause (b) of regulation 4 of the Regulations 2014 provides the minimum qualification for promotion of the teachers. The minimum qualifications for promotion of the teachers specified in the first and second schedules, which are applicable for one level to the next level and the relevant part of the first schedule is as under:

**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.

Level	Minimum Academic and Professional Qualifications
4. Secondary/ High School (For Classes IX-X) High School (For Classes IX-X)	(a) Graduate /Post Graduate from recognized University 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.  or  (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 (From of application for recognition, the time limit of submission of application, determination of norms and standards for re recognition of teacher education programmes and permission to start new course or training) Regulation, 2002 notified on 13.11.2002 and National Council for Teacher Education (Recognition Norms and Procedure)

	<p>Regulations, 2007 notified on 10.12.2007)</p> <p>or</p> <p>(c) 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 XI-XII)	<p>(a) Post Graduate with at least 50% marks (or its equivalent) from recognized University and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution.</p> <p>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 (From of application for recognition, the time limit of submission of application, determination of norms and standards for re recognition of teacher education programmes and permission to start new course or training) Regulation, 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>(c) 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>

33. From bare perusal of the aforesaid provisions, it is very clear that the minimum qualification for the post of Level 4 and 5 is graduate/post graduate from recognized university with at least 50% marks in either graduation or post graduation (or its equivalent) and B.Ed from National Council of Teacher Education recognized institution. In the year 2021, the NCTE has amended its Regulation 2014 partially and now the requirement of 50% marks in either graduation or post graduation has been enhanced to 55%, but the

State has not made any amendment in its rules. The minimum qualification for the post of Level 4 and 5, the B.Ed is mandatory and one of the minimum qualification, which cannot be relaxed by the State Government while giving promotion.

34. The State Government in exercise of powers conferred by the proviso to Article 309 of the Constitution of India has made the Chhattisgarh School Education Service (Educational and Administrative cadre) Recruitment and Promotion Rules, 2019 which came into force from 05.03.2019. The column 3 of serial No. 14 of the schedule IV of the Rules of 2019 provides the appointment by promotion and the conditions regarding eligibility of promotions, which is provided under rules 14 and 15 of the Rules of 2019. The column 3 of serial No. 14 of the schedule-IV enacted under rules 14 and 15 of the Rules of 2019 is given here in below:

14.	Teacher/Head Master Primary School (trained post graduate)	05 years	Lecturer	(1) Director, Public Instruction/Officer nominated by him – Chairman (2) Joint Director / Deputy Director-Member (3) Assistant Director (Establishment)- Member Secretary
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35. In column No. 3 the word “trained post graduate” has been used, but the same has not been defined anywhere in the Rules of 2019, and therefore non-mentioning of the specific criteria i.e. B.Ed would give presumption to the D.Ed or D.El.Ed candidates to be promoted on the post of Lecturer by stretching its interpretation to the Rules of

2019. The qualification of B.Ed degree is an essential qualification for the post of Lecturer, who deals mainly with education in high schools and higher secondary schools, whereas D.Ed and D.El.Ed qualification is required for teachers teaching in primary schools. The said qualifications of B.Ed and/or D.Ed/D.L.Ed and its requirement for high/higher secondary school and primary/elementary schools respectively has been considered by the Hon'ble Supreme Court in the case of **Devesh Sharma versus Union of India, 2023 SCC online SC 985**, in which the Hon'ble Supreme Court has held in para 38 to 45 that:

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

**39. 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.**

**40. In Dilip Kumar Ghosh v. Chairman , this Court had to decide on the question whether B.Ed degree candidate can be equated with a candidate who holds training in Primary School teaching or in other words who is trained specifically for Primary Schools. The Contention of the appellants (in the aforesaid case) who were B.Ed. candidates was that, their course (B.Ed.), equips them to teach Primary Classes. Their contention was rejected by this Court. In Para 9, it stated as under:**

**“In B.Ed. curriculum such subjects like child psychology are not found. On the other hand, the curriculum is of a generic nature and deals with subjects like the principle of educational-curriculum studies, educational psychology, development of education in modern India, social organization and instructional methods, etc.”**

41. Then again in Para 10 it was stated as under:

“.....For teaching in the primary school, therefore, one must know the child psychology and development of a child at a tender age. As already noticed, the candidates like the appellants who are trained in B.Ed. degree are not necessarily to be equipped to teach the students of primary class. They are not trained and equipped to understand the psychology of a child of tender age.”

42. In P.M. Latha v. State of Kerala<sup>13</sup> the argument that B.Ed. qualification is a higher qualification than Diploma in Elementary Education (D.El.Ed.) was rejected. Again, it was a case before the Apex Court where B.Ed candidates, were claiming appointment as Primary School teachers on the basis of the claim that their educational qualification (i.e. B.Ed.) was even higher than the Diploma in Elementary Education (D.El.Ed.) which was held by the other candidates. In para 10 of the said case, it was stated as under:

“We find absolutely no force in the argument advanced by the respondents that B.Ed. qualification is a higher qualification than TTC and therefore, the B.Ed. candidates should be held to be eligible to compete for the post.....”

43. These findings were reiterated by Supreme Court in Yogesh Kumar v. Government of NCT, Delhi , holding that though B.Ed. is a well-recognized qualification in the field of teaching, yet it is a training which equips a candidate to teach higher classes, not classes at primary level.

44. 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.

45. 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."

36. The Hon'ble Supreme Court in **Yogesh Kumar v. Government of NCTE, Delhi, (2003) 3 SCC 548** held that though B.Ed is a well recognized qualification in the field of teaching, yet it is a training which equips a candidate to teach higher classes, not classes of primary level. The NCTE Act 1993 and NCTE Regulations of 2014 are in binding nature to the State while framing the Rules and it should not be inconsistent between two legislature and the State ought to have framed and fixed the minimum qualification in consonance with the regulations of the NCTE. The NCTE Act of 1993 and Regulations 2014 will prevail over the State rules of 2019 as provided under Article 254 of the constitution of India.
37. In the matter of **A.P.J. Abdul Kalam Technology University and another v. Jail Bharath College of Management and Engineering Technology and others (2021) 2 SCC 564**, it has been held by the Hon'ble Supreme Court that the State can make qualification or provide benchmark by providing additional qualification to the minimum eligibility criteria, but it cannot dilute the norms provided by the NCTE. In para 46 and 41 the Hon'ble Supreme Court has held that, from the aforesaid provisions of law the minimum qualification fixed by the NCTE is quite vivid that the



qualification of B.Ed degree is an essential qualification for the post of Lecturer, who deals mainly education in high schools and higher secondary schools, whereas D.Ed and D.El.Ed qualification is required for teachers, teaching in primary schools, and thus the qualification of B.Ed degree is an essential qualification for the post of Lecturer cannot be diluted. The inclusion of D.Ed or a trained teacher as a qualification for post of Lecturer amounts to lowering down the quality of education at higher Level. As per clause 4 of Regulations 2014, the minimum qualification for promotion of the teachers are also applicable for consideration from one level to the next level specified in the first and second schedules, which clearly prescribes in the first schedule that for Level 4 (secondary/high school) the minimum qualification is graduate/post graduate from recognized university with at least 50% marks (55%) as amended in the year 2021. In either graduation or post graduation (or its equivalent) and bachelor of education (B.Ed) from National Council for Teacher Education Recognized Institution, whereas the column 3 of serial No. 14 of the schedule IV of rules 14 and 15 of the Rules of 2019 framed the State Government provides that post, from which the promotion is to be made is teacher/headmaster, primary school (trained post graduate) and the name of the post on which the promotion is to be done is Lecturer. Meaning thereby the teacher/headmaster of primary school, who are the trained post graduate is entitled for promotion on the post of Lecturer without having B.Ed degree, which are the essential qualification prescribed under the Regulation of 2014 framed by the NCTE, which is

inconsistent with the Regulations of 2014 framed under the NCTE Act of 1993.

38. The coordinate bench of this Court has reiterated that the B.Ed is the qualification required for high/higher secondary schools' teachers and the D.Ed/D.El.Ed. is qualification required for primary/elementary schools' teachers and the B.Ed degree is an essential qualification for the post of Lecturer, as has been held in **Bhuvneshwar Sahu versus Union of India (WPS No. 3541 of 2023 and other batch of petitions vide order dated 02.04.2024.**
39. The law in this regard as to whether B.Ed would remain the essential qualification for appointment of teachers in primary level school remain no longer *res integra* after the judgement passed by Hon'ble Supreme Court in Devesh Sharma (supra). Course of D.El.Ed or D.Ed has been designed and structured to impart skills in a teacher, who is to teach primary level of students. To maintain the quality in primary education pedagogical skills, the teacher must be given a very high priority.
40. In view of the above discussions, the impugned provisions of the column 3 of serial No. 14 of the schedule-IV enacted under the rules 14 and 15 of the Chhattisgarh School Education Service (Educational and Administrative cadre) Recruitment and Promotion Rules, 2019 has been declared as unconstitutional and ultra vires and as such it is held that the candidates, who possessed the B.Ed degree are eligible for promotion to the post of Lecturer from the

post of Teacher/Headmaster, primary school (trained post graduate)  
as per the Regulations 2014 framed by NCTE.

41. The State Government is directed to exclude the D.Ed/D.El.Ed candidates from the list of promotional posts of Lecturer by holding that they are not eligible for promotion to the post of Lecturer and to arrange the selection list in accordance with the provisions of the Regulations 2014.
42. The writ petition is allowed to the extent indicated herein above. No order as to costs.

**Sd/-**  
**(Ravindra Kumar Agrawal)**  
Judge

**Sd/-**  
**(Ramesh Sinha)**  
Chief Justice

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## **Head Note**

The minimum qualification of B.Ed fixed by the NCTE under the **National Council for Teacher Education (Determination of Minimum Qualification for Persons to be recruited as an Education Teacher and Physical Education Teacher in Pre-primary, Primary, Upper primary, Secondary, Senior secondary or Intermediate schools or Colleges) Regulations, 2014**, is prevailing over the **Chhattisgarh School Education Service (Educational and Administrative Cadre) Rules, 2019** and the State Government cannot dilute the said requisite qualification of B.Ed for promotion on the post of Lecturer.