



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.05 of 2025

Pradeep Kumar Jena **Appellant**

-Versus-

State of Odisha and others **Respondents**

Advocates appeared in this case:

For Appellant : Mr. B. Routray, Senior Advocate
Mr. S. Sekhar, Advocate
For Respondents : Mr. Bimbisar Dash, Addl. Govt. Advocate

CORAM:

**THE HON'BLE MR. JUSTICE ARINDAM SINHA,
ACTING CHIEF JUSTICE
AND
THE HON'BLE MR. JUSTICE M.S. SAHOO**

J U D G M E N T

Date of hearing: 24th February, 2025
Date of judgment: 25th February, 2025

ARINDAM SINHA, ACJ.

1. Mr. Routray, learned senior advocate appears on behalf of appellant, who was writ petitioner. He submits, by impugned judgment dated 4th October, 2024, the writ petition stood dismissed by the learned single Judge on finding that his client having two years' B.Ed (Special



Education) experience was disqualified since the requirement was of the one year course.

2. On query made, he refers to final merit list dated 5th August, 2024 to submit, thereby his client, candidate for the applied post, stood rejected as having two years' B.Ed (Special Education). Drawing attention to the requirement on eligibility in respect of category-2 (for classes VI to VIII) he submits, the requirement was graduation with at least 50% marks and 1 year B.Ed (Special Education). Relied upon criterion is reproduced below.

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

3. Mr. Routray submits, National Council for Teacher Education (NCTE) had earlier issued notification dated 23rd August, 2010. At that time the B.Ed (Special Education) course was of duration, one year. Government of Odisha, School and Mass Education Department adopted resolution dated 22nd August, 2023 to have recruitment. On query made he submits, the resolution also carried age criteria by clause 6. Clause 6.1 without the proviso is reproduced below.

“ 6.1 Candidates shall not be below 18 years of age and above 38 years of age as on the date of publication of advertisement.”



Following the resolution there was notice dated 10th September, 2023 for filling up 20,000 Junior Teacher (Schematic) posts in primary and upper primary schools. Long prior to publication of said notice the 1-year B.Ed course stood terminated in year 2014 and from year 2015-16 it became two years' B.Ed course. Corresponding notifications were issued by NCTE but for purpose of said notice dated 10th September, 2023, the 2010 notification was relied upon.

4. He lays emphasis that by said notification dated 23rd August, 2010, minimum qualification was prescribed and that too with several alternatives. His client disclosed mail dated 28th September, 2023 to demonstrate that a candidate had asked regarding absence of option showing two years' Special B.Ed qualification and whether she could, having the qualification of the two years course, could apply. Answer was given in the affirmative. Hence, his client and others, though had two years' Special B.Ed qualification, applied under the notice. Contents of the mails are reproduced below.

“1-I passed 2 year B.Ed Special Education. In application form there is no option for 2 year Special B.Ed Only show 1 year Spl. B.ed.

2- For choosing Qualification only shows B.ed/BA B.ed/B.Sc B.ed/D.el.ed/B.el.ed/B.A. But not Any option for Spl. B.ed. What will I choose Diploma/B.ed?



3- *I applied in 1 year Spl. B.Ed and Qualification Diploma then B.ed. do I need reapply?”*

xxx

xxx

xxx

“Need not apply again. You apply correct path. Thank You.”

5. Mr. Routray seeks to demonstrate that there was confusion in the department. He draws attention to letter dated 14th May, 2024 issued by NCTE to the Commissioner-cum-Secretary of the department. Text from the letter is reproduced below.

“ I am directed to refer to your D.O. letter No. No. SME-EL2-EL2-0038-2024 dated 15.03.2024 on the subject cited above and to say that the NCTE laid down the notifications regarding minimum qualification for a person to be eligible for consideration of appointment as a teacher for classes I to XII published on dated 23.08.2010 as amended on 23.08.2010, 29.07.2011, 12.11.2014, 13.11.2019 and 13.10.2021.

2. A set of aforesaid NCTE notifications is forwarded for ready reference and to make the appointments accordingly.”

(emphasis supplied)

Purportedly pursuant thereto circular dated 24th June, 2024 was issued by the department creating the confusion. Text of the circular is reproduced below.



*“In inviting reference to the subject cited above, I am directed to say that a line of clarification was sought for from the Chairperson, NCTE regarding the eligibility of the candidates having 2-year B.Ed (Special Education) for their selection in the Upper Primary (Class VI-VII) Schools. In response to which NCTE has forwarded Notifications regarding minimum qualification for a person to be eligible for appointment as a teacher. **It reveals from the Notifications that only candidates having ‘B.A/B.Sc. with at least 50% marks and 1-year B.Ed (Special Education)’ are eligible to be teacher in the Upper Primary Schools.**”*

(emphasis supplied)

6. He then draws attention to letter dated 5th August, 2024 of the Commissioner-cum-Secretary. Two paragraphs from the letter are reproduced below.

“It is relevant to mention here that during 2023-24 this Department had invited applications for filling up of 20,000 Junior Teacher (Schematic). Many candidates having two years B.Ed. (Special Education) have applied in the said recruitment but we are unable to consider their candidature. Being aggrieved, several representations are being filed on the ground that in letter dated 18.03.2015, the Rehabilitation Council of India (RCI) has informed all concerned Institutions and Universities that B.Ed. Special Education will be of two



year duration starting from academic session 2015-16 onwards (copy enclosed).

I would therefore request you to kindly reconsider the matter and in view of the changed circumstances, two years B.Ed. special education may kindly be allowed as a qualification for Upper Primary teachers. In this regard, it is humbly submitted that it may not justifiable that while one year B.Ed. (Special Education) is allowed for posting as a teacher, degree with a longer course duration is not allowed.”

(emphasis supplied)

He submits, the learned single Judge failed to appreciate the facts and erroneously applied the law. Impugned judgment be reversed in appeal for his client being considered for appointment.

7. Mr. Das, learned advocate, Additional Government Advocate appears on behalf of State and opposes the appeal. He submits, the learned single Judge made no error in appreciating the facts and duly applied the law. Appellant and others knowing fully well the requirement of 1-year Special B.Ed. qualification, they having done two years' Special B.Ed. course, applied. They then turned around and challenged the rejection of their applications. They had not challenged the eligibility criterion. He submits, close scrutiny of the eligibility essential requirement of qualification will reveal that at least 50% in



graduation marks and 1-year Special B.Ed. was required. The minimum attached to the graduation marks. The second qualification on Special B.Ed. was a specific qualification as opposed to being a minimum of 1 in a 2-year course. He submits, the appeal be dismissed.

8. We will approach controversy between candidates such as appellant and others who have connected appeals on the one hand and the department on the other upon presuming that there was requirement to fill up the 20,000 posts on a merit based selection process. The notice inviting applications is dated 10th September, 2023. It is pursuant to resolution dated 22nd August, 2023 adopted by the department. By the resolution the department decided to go by notification dated 23rd August, 2010 of NCTE. Several notifications were issued thereafter by NCTE. We have not been able to see why the department resorted to be guided by the notification issued in year 2010. Said notification gave several eligibility criteria on qualification. One of them was regarding having B.Ed. Special Education qualification, at that time available on a 1-year course. This qualification one could obtain only upto year 2014, after which the same qualification could only be had by undergoing a two years' course. Though several eligibility academic qualification requirements were given in the alternative but controversy arose on only this particular requirement. It follows that clarifications were



sought and obtained. The NCTE was consistent in all correspondence originating from it that the requirement was on minimum qualification.

9. Additional Secretary to Government issued aforesaid circular dated 24th June, 2024, in which was discussed the matter of clarification. According to the Additional Secretary, the clarification revealed that only candidates having B.A./B.Sc. with at least 50% marks and 1-year B.Ed. (Special Education) are eligible to be teacher in the upper primary schools. The clarification was originally sought for by the Commissioner-cum-Secretary. After this revelation, said Commissioner-cum-Secretary by her letter dated 5th August, 2024 again said that it may not be justifiable that while one year B.Ed. (Special Education) is allowed for posting as a teacher, degree with a longer course duration is not allowed. This was not considered. On the contrary, the department sought to stick with its stand that it was an essential eligibility qualification for a candidate, who had done the B.Ed. (Special Education) 1-year course. This therefore became an eligibility criterion, by which many candidates stood eliminated simply because the course ceased to be available from year 2015-16 onwards.

10. Referring to the age criteria, we must consider it in context of this asserted elimination eligibility qualification. The age for general



candidates is 18 years till 38 years. On taking estimates, further elimination is also possible because candidates, who hold B.Ed. 1-year course qualification must have been of the appropriate age at the end of year 2014, to apply for recruitment under the notice dated 10th September, 2023. This assertion therefore does not lead to a logical conclusion for furthering recruitment by due process of selection on merit. Also to be considered is the fact that the eligibility criteria were in several alternatives. That militates on any one of them being construed as elimination eligibility criterion. Still further, the department itself was not sure of the position, having embarked on a recruitment process based on an obsolete NCTE notification. It sought clarification. It got the clarification, misinterpreted it and thereafter disregarded the submission made by the Commissioner-cum-Secretary, who had sought the clarification in the first place.

11. The judgments that have been considered by the learned single Judge are in context of essential eligibility criterion, changing of rules and other questions but not on what the facts were, giving rise to the controversy between the parties. We do not want the situation to lead to elimination of meritorious candidates, who have been required to do B.Ed. Special Education on a course of longer duration. There is no rationale, as to why persons who had done the course upto year 2014



should be deemed to be better qualified than persons who did the same course later on a longer duration, to stand disqualified.

12. The learned single Judge considered the following judgments of the Supreme Court.

i. **Zahoor Ahmad Rather v. Sheikh Imtiyaz Ahamad** reported in (2019) 2 SCC 404, paragraphs 26 and 27. The Supreme Court said it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. This was not the proposition involved simply because the required qualification was same, being B.Ed. (Special Education). Relied upon NCTE notification dated 23rd August, 2010 mentioned 1-year course duration. Subsequently, from year 2015-16 course duration became 2 years. It was the same qualification but on different course periods. The judgment thus is inapplicable to facts of the case.

ii. **Chief Manager, Punjab National Bank v. Anit Kumar Das** reported in (2012) 12 SCC 80 for proposition that in absence of challenge to prescribed eligibility criteria, participation of the candidate in the recruitment would bar him from mounting the challenge. In this case we have referred to facts of a candidate seeking clarification at the



time of submitting her application and receiving answer in the affirmative. Furthermore, the department itself sought clarifications. The relied upon case is also not applicable because appellant is challenging his disqualification as opposed to challenging the eligibility criterion.

iii. **Yogesh Kumar v. Government of NCT, Delhi** reported in **(2003) 3 SCC 548**. The learned single Judge appreciated declaration of the law made by the Supreme Court to be that recruitment to public services should be held strictly in accordance with terms of the advertisement and the recruitment rules. It is open to the recruiting authorities to evolve a policy of recruitment and to decide the source, from which the recruitment is to be made. The department while embarking on the recruitment process did not evolve its own policy but relied upon an obsolete notification issued by NCTE. At the time of resolving to recruit and thereafter publishing the recruitment notice, B.Ed. (Special Education) course was to be had over a period of 2-years. There is no material on record to show a policy decision was taken to eliminate those candidates, who took the course on 2-year period commencing year 2015-16.



13. Prayer of appellant made in his writ petition is, inter alia, for inclusion of his name in final merit list dated 5th August, 2024 is allowed for onward action on appointment to be taken pursuant to recruitment notice dated 10th September, 2023.

14. Impugned judgment is reversed. The appeal is allowed and disposed of.

**(Arindam Sinha)
Acting Chief Justice**

**(M.S. Sahoo)
Judge**

Sks

Signature Not Verified

Digitally Signed
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Designation: Personal Assistant
Reason: Authentication
Location: ORISSA HIGH COURT
Date: 25-Feb-2025 16:53:56

