

Parimal Kumar & Ors.
v.
The State of Jharkhand & Ors.

(Civil Appeal No. 1297 of 2025)

30 January 2025

[J.K. Maheshwari* and Rajesh Bindal,* JJ.]

Issue for Consideration

Issue arose whether on commencement of recruitment process on the date of advertisement, the private respondents or the appellants possessed the minimum qualification prescribed in the 2022 Recruitment Rules; whether the interim order and the impugned judgment passed by the High Court based on the concession of the Advocate General of the State, would amount to change of rules of the game after commencement of recruitment process; whether in terms of s.23(2) of RTE Act and para 10 of NCTE Guidelines dated 11.02.2011, how far the State Government can change the eligibility criteria and the impugned judgment recording concession, falls within such parameter.

Headnotes[†]

Right of Children to Free and Compulsory Education Act, 2009 – s.23 – Eligibility criteria for recruitment of teachers – Selection of Assistant Teachers – Private respondents-residents of Jharkhand having cleared the Central Teacher Eligibility Test-CTET or neighbouring states’ Teacher Eligibility Test-TET sought permission to participate in the recruitment process for the post of Assistant Teacher in Jharkhand or sought directions against the State to conduct the JTET – Private respondents contended that the State of Jharkhand conducted the last JTET in the year 2016 and since then failed to conduct JTET, which caused irreparable loss to thousands of eligible aspirants, waiting for recruitment as teachers in Jharkhand – High Court permitted the private respondents to participate in the recruitment process for the post of Assistant Teacher, with the stipulation to clear the JTET in the first chance available within three years from the date of appointment, and

* Author

Supreme Court Reports

in case the JTET is not conducted within the next three years, the candidates who had cleared the examination process shall not be removed from service – Challenged by the appellants, who have cleared the JTET:

Held: Impugned judgment of the High Court permitting the candidates of CTET and STET holders of neighbouring States to participate in ongoing selection process to the post of Assistant Teacher of Primary and Upper Primary schools pursuant to Advertisement set-aside – On the date of commencement of recruitment process and on the date of publication of Advertisement, the members of the respondent no. 6 and son/daughter of respondent no. 7 did not possess the requisite qualification as specified in the 2022 Recruitment Rules – Giving concession by the Advocate General on the basis of oral instructions to allow the CTET candidates or STET of neighbouring States in the ongoing selection process, not in consonance with law, it amounts to arbitrary alteration of eligibility in the ongoing recruitment process mid-way – Passing of TET conducted by the State for the schools as defined in s.2(n) essential on the date of commencement of the recruitment process, which is posited in the 2022 Recruitment Rules as well as the Advertisement – State Government had not taken any decision to not to conduct the TET prior to the date of commencement of the recruitment process to fulfil the prerequisite of para 10(b) and the notification of Central Government relaxing the minimum qualification as prescribed u/s.23(2) also not on record – State could not have changed the eligibility criteria as laid down after the point of time of issuance of the advertisement, in the absence of any power in the relevant recruitment rules or the advertisement to give effect to such a change – Thus, the Revised eligibility criteria by 2024 amended rules cannot be applied to the ongoing recruitment process initiated under the Advertisement, as doing so would amount to altering the rules of the game after the recruitment process has commenced – Directions issued by the High Court amounts to change in eligibility criteria in the ongoing recruitment process – Concession given by the Advocate General was contrary to the stand of the State Government which is unconscionable, unjustified and unfair – JTET holders who were possessing the requisite qualification under the 2022 Recruitment Rules, prior to the 2024 Amendment and participated to be eligible for appointment and their result be declared forthwith and the appointments be made strictly on merit – CTET holders or STET

Parimal Kumar & Ors. v. The State of Jharkhand & Ors.

holders, who have applied after the judgment of the High Court or after amendment in the rules or advertisement would not be eligible for the recruitment in furtherance to the Advertisement – Assistant Acharya Cadre (Appointment, Promotion and Conditions of Service) Rules, 2022. [Paras 34-63]

Education/Educational Institutions – Role of teachers in nation building – Importance of:

Held: [Per Rajesh Bindal J.] Role played by a teacher especially when dealing with students in primary schools is of utmost importance – Teachers educate the young minds, to mould them into better human beings – Imprint a teacher leaves on the minds of their students is everlasting – Social media has overpowered our lives and so the cyber-bullying, which is affecting students more – Proper guidance is essential to educate them at an early stage, enabling them to discern right from wrong – In this context, the role of a teacher is crucial – It is the duty of the teacher to guide the students as to how to make a distinction – Positive and negative applications of artificial intelligence are being experienced by everyone today – In this context, the role of teachers becomes crucial, as they can guide students on the dos and don'ts of use of technology – With the change in scenario, it is the utmost duty of a teacher to apprise the young minds and also guide them regarding safe use of technology – This is one of the important areas where teachers also need to appreciate their responsibility besides formal education, to prepare them to be responsible citizens of the country. [Paras 2, 9, 10, 12]

Case Law Cited

[Per J.K. Maheshwari J.]

Tej Prakash Pathak & Ors. v. Rajasthan High Court & Ors., 2024 INSC 847 : [2024] 12 SCR 28 – followed.

Vikas Sankhala and Ors. v. Vikas Kumar Agarwal and Ors. [2016] 7 SCR 639 : (2017) 1 SCC 350; *V. Lavanya and Ors. v. State of Tamil Nadu* [2016] 9 SCR 835 : (2017) 1 SCC 322 – held inapplicable.

N.T. Devin Katti v. Karnataka Public Service Commission (1990) 3 SCC 157; *P.M. Latha v. State of Kerala* [2003] 2 SCR 653 : (2003) 3 SCC 541; *Devesh Sharma v. Union of India and Ors.* [2023] 11 SCR 167 : 2023 SCC OnLine SC 985; *Assam PSC v.*

Supreme Court Reports

Pranjal Kumar Sarma and Ors. [2019] 14 SCR 1072 : (2020) 20 SCC 680; *State of Bihar v. Madhu Kant Ranjan* [2021] 9 SCR 506 : (2021) 17 SCC 141; *State of Tripura v. Nikhil Ranjan Chakraborty and Ors.* (2017) 3 SCC 646; *Vikas Sankhala and Ors. v. Vikas Kumar Agarwal and Ors.* [2016] 7 SCR 639 : (2017) 1 SCC 350; *V. Lavanya and Ors. v. State of Tamil Nadu* [2016] 9 SCR 835 : (2017) 1 SCC 322; *Bedanga Talukdar v. Saifudaullah Khan* [2011] 11 SCR 635 : (2011) 12 SCC 85; *Bank of India v. Aarya K. Babu* [2019] 11 SCR 627 : (2019) 8 SCC 587; *Ankita Thakur v. HP Staff Selection Committee* [2023] 16 SCR 813 : 2023 SCC OnLine SC 1472; *Sivanandan C.T. and Ors. v. High Court of Kerala and Ors.* [2023] 11 SCR 674 : (2024) 3 SCC 799; *State of Tripura v. Nikhil Ranjan Chakraborty and Ors.* (2017) 3 SCC 646; *Bank of India v. Aarya K. Babu* [2019] 11 SCR 627 : (2019) 8 SCC 587; *Ankita Thakur v. HP Staff Selection Committee* [2023] 16 SCR 813 : 2023 SCC OnLine SC 1472 – referred to.

[Per Rajesh Bindal J.]

Andhra Kesari Educational Society v. Director of School Education [1988] Supp. 3 SCR 893 : (1989) 1 SCC 392; *State of Maharashtra v. Vikas Sahebrao Roundale* [1992] 3 SCR 792 : (1992) 4 SCC 435; *Sushmita Basu & Ors. v. Ballygunge Siksha Samity* [2006] Supp. 6 SCR 506 : (2006) 7 SCC 680 – referred to.

List of Acts

Right of Children to Free and Compulsory Education Act, 2009; Jharkhand Teachers' Eligibility Test 2019; Assistant Acharya Cadre (Appointment, Promotion and Conditions of Service) Rules, 2022; Jharkhand Elementary School Teachers Appointment Rules, 2012; Jharkhand Primary School Sahayak Acharya Sanwarg (Assistant Teacher Cadre) (Appointment, Promotion and Service Conditions) (Third Amendment) Rules, 2024; Constitution of India.

List of Keywords

Central Teacher Eligibility Test; Jharkhand Teacher Eligibility Test; Recruitment process; Post of Assistant Teacher; Teacher Eligibility Test; Revised eligibility criteria; Concession of the Advocate General; Altering the rules of the game after the recruitment process has commenced; CTET and STET holders of neighbouring States to participate in ongoing selection process; Assistant Teacher of

Parimal Kumar & Ors. v. The State of Jharkhand & Ors.

Primary and Upper Primary schools; Legitimate expectations; Change in eligibility criteria; Teachers; Social media; Cyber-bullying; Duty of the teacher to guide the students; Positive and negative applications of artificial intelligence; Safe use of technology; Utmost duty of a teacher to apprise the young minds.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1297 of 2025

From the Judgment and Order dated 20.12.2023 of the High Court of Jharkhand at Ranchi in WPC No. 2785 of 2023

With

Civil Appeal No. 1298 of 2025

Appearances for Parties

Gopal Sankaranarayanan, Ms. V Mohana, Sr. Advs., Sahil Bhalaik, Amritansh Vats, Tushar Giri, Ritik Arora, Shivam Mishra, Ms. Shivani Vij, Ms. Bhavya Pande, Ms. Oishi Das, Abhishek Kumar Singh, Tushar Arora, Ekansh Bansal, Siddhartha Sinha, Abhishek Kumar Singh, Nring Chamwibo Zeliang, Ms. Anu Priya Nisha Minz, Ms. Jyoti Fartiyal, Advs. for the Appellants.

Maninder Singh, Guru Krishan Kumar S., Ms. Meenakshi Arora, Sr. Advs., Anirudh Sharma, Ms. Tulika Mukherjee, Ms. Pallavi Langar, Aditya Kumar A. C., V. Aravind, Beenu Sharma, Mandeep Kalra, Ms. Chitrangada Singh, Ms. Radhika Jalan, Ms. Nanakey Kalra, Chandratany Chaube, Ms. Pallavi Langar, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment****J.K. Maheshwari J.**

1. Leave granted.
2. To educate is not merely to impart information, but to instil the ability to think critically, to inspire curiosity and to foster the love of learning. By imparting knowledge and life skills, teachers shape the foundation for lifelong learning and responsible citizenship. The importance of

Supreme Court Reports

education and the paramount role of teachers in today's day and age cannot be underplayed.

3. The instant appeals arise out of the judgement dated 20.12.2023 of the High Court of Jharkhand at Ranchi, permitting the private respondents who were residents of Jharkhand and cleared the Central Teacher Eligibility Test (the “**CTET**”) or neighbouring states’ Teacher Eligibility Test (the “**STET**”) to participate in the recruitment process for the post of Assistant Teacher in Primary and Upper Primary schools in the State of Jharkhand in furtherance to Advertisement No. 13 of 2023. The appellants have cleared the Jharkhand Teacher Eligibility Test (the “**JTET**”) and are challenging the participation of the private respondents in the said recruitment process.
4. In the present case, the dispute arose when private respondents herein, i.e., the CTET qualified candidates filed Writ Petition (PIL) No. 2785 of 2023 and other Writ Petitions being Writ Petition (C) Nos. 5559/2022, 5697/2022 and 1936/2023 before the High Court of Jharkhand at Ranchi seeking directions against the State to either conduct the JTET or permit CTET qualified candidates to participate in the recruitment process for the post of Assistant Teacher. It was contended by the private respondents herein (Petitioners therein) that the State of Jharkhand conducted the last JTET in the year 2016 and since then failed to conduct JTET. This has caused irreparable loss to thousands of eligible aspirants who have been waiting for recruitment as teachers in Jharkhand but have not been permitted to participate as they do not possess JTET qualification. Before discussing the merits of the case, it would be apposite to discuss the factual background which culminated in the impugned judgment.

Factual Background –

5. The Right of Children to Free and Compulsory Education Act, 2009 (the “**RTE Act**”) came into force on 01.04.2010. Section 23(1) thereof authorises the ‘academic authority’ to lay down minimum qualifications required for any person to be eligible for appointment as a teacher. The Central Government *vide* Notification S.O. 750(E) dated 31.03.2010, authorized the National Council for Teacher Education (the “**NCTE**”) as the academic authority to prescribe the minimum qualifications for the post of teacher.

Parimal Kumar & Ors. v. The State of Jharkhand & Ors.

6. NCTE issued the Notification F. No. 61-03/20/2010/NCTE/(N&S) dated 23.08.2010 prescribing the minimum qualifications for the post of teacher in Class I to Class VIII in a school referred to in clause (n) of Section 2 of the RTE Act. One of the minimum qualifications is passing Teachers Eligibility Test (the “**TET**”) “*conducted by the appropriate Government in accordance with Guidelines framed by the NCTE for the purpose*”. It is this requirement which is central to the present litigation.
7. On 11.02.2011, the NCTE issued the Guidelines for conducting Teacher Eligibility Test (TET) under RTE Act. As per para No. 10, the Central Government and State Government both would conduct separate TETs, which shall make them eligible for appointment in the schools specified therein. The said guideline is relevant, hence reproduced as under –

“10. Applicability –

(a) TET conducted by the Central Government shall apply to all schools referred to in sub-clause (i) of clause (a) of section 2 of the RTE Act.

(b) TET conducted by a State Government/UT with legislature shall apply to:

(i) a school of the State Government/UT with legislature and local authority referred to in sub-clause (i) of clause (n) of section 2 of the RTE Act; and

(ii) a school referred to in sub-clause (ii) of clause (n) of section 2 of the RTE Act in that State/UT.

A school at (i) and (ii) may also consider eligibility of a candidate who has obtained TET Certificate awarded by another State/UT with legislature. In case a State Government/UT with legislature decides not to conduct a TET, a school at (i) and (ii) in that State/UT would consider the TET conducted by the Central Government.”

8. In reference to applicability of the guidelines, definitions as contained in Section 2(a)(i), 2(n)(i) and 2(n)(ii) of RTE Act, 2009, are also relevant, which are quoted herein under –

Supreme Court Reports

“2. Definitions –

(a) *“appropriate government” means -*

(i) in relation to a school established, owned or controlled by the Central Government, or the administrator of the Union territory, having no legislature, the Central Government;

XX XX XX XX

(n) *“school” means any recognised school imparting elementary education and includes—*

(i) a school established, owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;”

9. The State of Jharkhand on 04.10.2019 came up with the rules styled as ‘Jharkhand Teachers’ Eligibility Test 2019’ wherein Rule 5 posited that to check the eligibility for appointment to the post of teacher, the examination will be conducted every year by the Jharkhand Academic Council or by the authority authorized by the State Government in this behalf and the successful candidates will be eligible for appointment in the Elementary Schools (Primary/Higher Primary School).
10. The service conditions for appointment to the post of Assistant Teacher in primary schools in the State of Jharkhand are governed by the ‘Assistant Acharya Cadre (Appointment, Promotion and Conditions of Service) Rules, 2022’, (hereinafter referred to as the “**2022 Recruitment Rules**”). Under these Rules, one of the eligibilities for appointment to the post of Assistant Teacher in Primary or Upper Primary Schools is that the candidate should qualify “**JTET**”. Prior to these rules, the appointment to the post of elementary school teachers was governed by the Jharkhand Elementary School Teachers Appointment Rules, 2012 (the “**2012 Rules**”).
11. On 19.07.2023, the Jharkhand Staff Selection Commission (the “**JSSC**”) advertised and notified 13,000 vacancies for the post of Assistant Teachers *vide* Advertisement No. 13/2023 (the “**Advertisement No. 13**”) and scheduled the ‘Jharkhand Primary School Trained Assistant Teacher Combined Competitive Examination

Parimal Kumar & Ors. v. The State of Jharkhand & Ors.

2023'. As per the Advertisement and the Recruitment Rules, passing JTET is one of the eligibility for the candidates along with other qualifications.

Proceedings before the High Court –

12. In the Writ Petition (PIL) No. 2785 of 2023, filed by Respondent No. 6 (an unregistered association of CTET holders) and Respondent No. 7 (mother of one of the aspirants), the directions were sought against the State to either conduct the JTET or permit CTET qualified candidates to participate in the selection process for primary and upper primary teachers.
13. The State of Jharkhand being respondent contested the claim and in the counter-affidavit, *inter-alia* stated that the JTET could not be conducted due to COVID-19 and the new rules to bring the JTET at par with the quality and standard of CTET was in progress. It was also contended that CTET is conducted to determine the eligibility of teachers to be recruited in Central Government Schools, thus it does not fulfil the needs and requirements of the schools in the State of Jharkhand.
14. The High Court vide order dated 25.07.2023 directed the State of Jharkhand to file an affidavit clarifying, whether the State intends to allow the candidates who had cleared CTET or STET, to participate in the recruitment process. The said order is relevant, hence, quoted hereunder for ready reference –

“In course of hearing, learned Senior Counsel Mr. Ajit Kumar, appearing for the petitioners in the lead case would draw the attention of the Court to Clause 10 of the Guidelines for conducting TET wherein it is provided at Sub Clause (b) that a School referred to in Sub clause (i) and Sub clause (ii) mentioned therein may also consider eligibility of a candidate who has obtained TET Certificate awarded by another State / UT with legislature. In case a State Government/UT with legislature decides not to conduct a TET, a School at (i) and (ii) in that State/UT would consider the TET conducted by the Central Government we are of the opinion that if the State Government is genuinely creating a number of posts for which State TET examination is required to be conducted, which has

Supreme Court Reports

not been held for at least almost 9 (nine) years, i.e., last examination was held in 2016, then it should take into consideration the said provision.

We advise the State to file a short affidavit stating whether they intend to allow those candidates, who have obtained TET Certificate from the Central Government or any other State / UT, provided other conditions are fulfilled.

Let all these cases be listed on 18th August, 2023.”

15. In compliance, supplementary counter-affidavit was filed by State contending that there are sufficient JTET qualified candidates available in the State, and allowing CTET qualified teachers to apply for the vacancies advertised will cause prejudice to the rights of the JTET qualified candidates. Further, the CTET or STET qualified candidates can be considered only if the State Government ‘decides not to conduct TET’, however, ‘no such decision’ has been taken.
16. The High Court *vide* impugned judgment dated 20.12.2023 allowed WP (PIL) No. 2785/2023 and batch, recorded the ‘concession’ of the Advocate General based on oral instructions, contrary to the stand taken in the counter affidavit and supplementary counter affidavit that the State had decided to relax the eligibility criteria and was ready to permit the respondents and other residents of Jharkhand having cleared CTET or STET to participate in the ongoing process of recruitment vide Advertisement No. 13, with the stipulation to clear the JTET in the first available opportunity within three years. It was directed that the candidates who would be appointed on the strength of CTET or STET, would have to obtain JTET within a period of three years on first available chance. It was also directed that in case the State Government does not conduct JTET within the next three years, the candidates who had cleared the examination process shall not be removed from service.

Subsequent developments after the judgement –

17. Subsequent to the impugned judgment, the JSSC by way of corrigendum invited online applications from the residents of Jharkhand who cleared CTET or STET and could not apply as per Advertisement No. 13 and rescheduled the test to be held on 10.02.2024.

Parimal Kumar & Ors. v. The State of Jharkhand & Ors.

18. The State Government amended the Recruitment Rules on 29.01.2024 and styled them as “Jharkhand Primary School Sahayak Acharya Sanwarg (Assistant Teacher Cadre) (Appointment, Promotion and Service Conditions) (Third Amendment) Rules, 2024”, (in short “**2024 Amended Rules**”). By amending Rule 3, residents of Jharkhand who had qualified CTET or STET were made eligible for appointment as Assistant Teacher with the stipulation as specified by the High Court in the impugned order, i.e., to clear the JTET in the first chance available within three years from the date of appointment.
19. After amendment in the Rules, Advertisement No. 13 was further amended on 15.02.2024 changing the eligibility criteria as per 2024 Amended Rules, permitting the residents of Jharkhand such as the private respondents to participate in the ongoing recruitment process and thereafter changed the date of examination from time to time.
20. In the instant appeal, this Court *vide* order in the proceedings dated 26.04.2024 issued interim directions that the Jharkhand Primary School Assistant Teacher Joint Competitive Examination, 2023 scheduled to commence from 27.04.2024 may continue, but its result would not be declared without leave of this Court. As such, the examination has been conducted awaiting the outcome of these appeals.

Rival Contentions –

21. We now record the broad contentions advanced by appellants in assailing the impugned judgment, which are as follows: -
 - 21.1 The appellants contend that it is only the Central Government which has the power to relax the minimum required qualifications for appointment as a teacher laid down by the NCTE by notification dated 11.02.2011 issued under Section 23 of the RTE Act, and the State Government could not have usurped the said power and granted relaxation allowing private respondents to participate in the ongoing recruitment process, otherwise it would militate the object and purpose of the RTE Act, 2009.
 - 21.2 The “JTET” is better suited for the needs and requirements of the schools in Jharkhand State since specific regional/tribal language notified for each district is tested in the examination and only the persons proficient in such languages are posted in those districts.

Supreme Court Reports

- 21.3 More than one lakh teachers holding JTET qualification are available in the State and there was no need to relax the minimum qualifications for ongoing selection in furtherance to the Advertisement No. 13.
- 21.4 By virtue of the impugned judgment, teaching will be imparted by teachers who would be under-qualified during the interregnum, as they may or may not clear the JTET.
- 21.5 The appellants have a legitimate expectation to be recruited on the strength of their 2016 JTET qualification and their chance of being considered for recruitment cannot be denied.
- 21.6 The 2022 Recruitment Rules and the Advertisement No. 13 mandate clearing the JTET as a minimum eligibility criterion to participate in the recruitment process, which cannot be taken away merely on the basis of the impugned judgment based on the concession of the Advocate General, contrary to the provisions of the Central Act and the notification.
- 21.7 After the advertisement, once the recruitment process had been initiated, it is not be lawful for the State to change the eligibility criteria, otherwise it would tantamount to changing the rules of the game mid-way.
- 21.8 To buttress the said contentions, reliance has been placed on the judgments of this Court in ***N.T. Devin Katti Vs. Karnataka Public Service Commission*, (1990) 3 SCC 157; *P.M. Latha Vs. State of Kerala*, (2003) 3 SCC 541; *Devesh Sharma Vs. Union of India and Ors.*, 2023 SCC OnLine SC 985; *Assam PSC Vs. Pranjal Kumar Sarma and Ors.*, (2020) 20 SCC 680.**
22. The said contentions have been countered by the private respondents. Their contentions are summarized as follows:
- 22.1 The requirement of knowledge of local language has been given due weightage in the Recruitment Examination as specified in the Advertisement No. 13.
- 22.2 Para 10(b) of the NCTE Guidelines dated 11.02.2011 permits the State Government to recognize CTET and STET as qualification, in case the State Government decides not to conduct TET.
- 22.3 Appellants have no legitimate expectations since the rules were amended prior to the examination.

Parimal Kumar & Ors. v. The State of Jharkhand & Ors.

- 22.4 Para 10 of the NCTE Guidelines dated 11.02.2011 must be read along with para 11, which mandates TET to be conducted annually by the State.
23. The contentions of the appellants have also been opposed by the State, and the arguments can be summarized as follows:
- 23.1 The State Government has taken the bona-fide decision to expand the zone of consideration for recruitment without altering the criteria for selection, which is in consonance with the NCTE Guidelines dated 11.02.2011.
- 23.2 After the judgment, the last date of application has been extended from time to time till 06.04.2024 and the eligibility of candidates ought to be reckoned on the last date of submission of application form.
- 23.3 Para 10 of the NCTE Guidelines dated 11.02.2011 does not prohibit the State Government to consider candidates holding CTET certificates or STET and it can be pressed into service in a situation as prescribed.
- 23.4 The respondents have relied upon the judgements of this Court in '***State of Bihar Vs. Madhu Kant Ranjan (2021) 17 SCC 141; State of Tripura Vs. Nikhil Ranjan Chakraborty and Ors. (2017) 3 SCC 646; Vikas Sankhala and Ors. Vs. Vikas Kumar Agarwal and Ors. (2017) 1 SCC 350; V. Lavanya and Ors. Vs. State of Tamil Nadu (2017) 1 SCC 322; Bedanga Talukdar Vs. Saifudaullah Khan (2011) 12 SCC 85; Bank of India Vs. Aarya K. Babu (2019) 8 SCC 587; Ankita Thakur Vs. HP Staff Selection Committee 2023 SCC OnLine SC 1472; Sivanandan C.T. and Ors. Vs. High Court of Kerala and Ors. (2024) 3 SCC 799***'.
24. The core dispute revolves around the eligibility criteria for recruitment of teachers across the State of Jharkhand. Before adverting to the controversy, the main grievance of the Appellants who are JTET certificate holders and having the eligibility prescribed in the recruitment rules as per the Advertisement No. 13 on the date of its publication stems from writ petition filed by Respondent No. 6 (an un-registered association of CTET certificate holders) and Respondent No. 7 (mother of one of the aspirants holding CTET certificate) seeking direction to the State to either conduct

Supreme Court Reports

the JTET or permit CTET qualified candidates to participate in the recruitment process for the post of Assistant Teachers. During the pendency of the said writ petition, the Advertisement No. 13 was issued to fill up the post of Assistant Teachers from the candidates, who possessed the qualifications as prescribed in the recruitment rules and the advertisement. In the said writ petition, the Court passed an interim order on 25.07.2023 and asked the response of the State, in which serious reservations were raised by the Government. Despite such reservations on affidavit, the High Court issued directions recording the concession of the Advocate General permitting the CTET or STET holders to participate in the ongoing recruitment process in furtherance to the Advertisement No. 13. It is not out of place to mention here that on the date of passing of the final judgment i.e., 20.12.2023, as per Recruitment Rules, the minimum qualification for Primary and Upper Primary Teacher was passing the JTET along with other educational qualifications, however, impugned judgment was passed issuing a direction permitting the CTET or STET holders contrary to the mandate of Recruitment Rules. It is pertinent to further mention that in the writ petition neither the Advertisement No. 13 was under challenge nor the 2022 Recruitment Rules, even then by the direction of the High Court, the CTET holders of State as well as the STET holders from neighbouring States were permitted to participate in the ongoing recruitment process, which had already commenced, which is not in accordance with law.

25. The case as set up is that, the State Government by providing relaxation and allowing CTET and STET holders to participate in the ongoing recruitment process under the Advertisement No. 13 has usurped the powers of relaxation vested only with the Central Government under Section 23(2) of RTE Act. In case the State lacks adequate institutions for imparting training to teachers or there is dearth of sufficient teachers possessing minimum qualifications, then the Central Government may by notification, relax the minimum qualifications of the teachers. The State Government does not possess power to relax the qualifications for appointment except in a manner prescribed in the NCTE Guidelines.
26. It has also been argued before us that once the Advertisement No. 13 was notified and recruitment process commenced, no such change in the eligibility criteria could have been brought by the State

Parimal Kumar & Ors. v. The State of Jharkhand & Ors.

Government in the ongoing recruitment process. It is in this context the following questions arise for consideration: -

- i) *Whether on commencement of recruitment process on 19.07.2023, i.e., the date of advertisement, the private respondents or the appellants possessed the minimum qualification prescribed in the 2022 Recruitment Rules?*
- ii) *Whether the interim order dated 25.07.2023 and the impugned judgment passed by the High Court based on the concession of the Advocate General of the State, would amount to change of rules of the game after commencement of recruitment process?*
- iii) *Whether in terms of Section 23(2) of RTE Act and para 10 of NCTE Guidelines dated 11.02.2011, how far the State Government can change the eligibility criteria and the impugned judgment recording concession, falls within such parameter?*

Discussions and reasonings**In reference to Question (i)**

27. Heard learned counsel for the parties at length and perused the relevant material placed before us. It is not disputed that 2022 Recruitment Rules were framed in exercise of the powers under proviso to Article 309 of the Constitution of India and to fulfil the standards of the RTE Act for the post of Assistant Teachers. Chapter 2, Rule 3(d)(1) prescribes qualification for Intermediate Trained Assistant Teacher with JTET as mentioned in Rule 3(f)(i)(b) and Rule 3(d)(2) applies for Graduate Trained Teacher wherein passing of the JTET as mentioned in Rule 3(f)(ii)(b) is essentially required in addition to other qualifications. We are not referring to the other qualifications prescribed in the Rules except above since it is pivotal to the issue involved.
28. On perusal of Rule 3(f)(i)(b) and Rule 3(f)(ii)(b), it is clear that the Assistant Teachers of Primary or Upper Primary Schools have to pass the JTET examination conducted by the Government of Jharkhand. Therefore, as per Rules, on the date of commencement of the recruitment process in furtherance to Advertisement No. 13 for the recruitment of teachers of Primary Schools and Upper Primary School, passing of the JTET examination is the minimum eligibility prescribed.

Supreme Court Reports

29. In terms of the rules, the Advertisement No. 13 was notified on 19.07.2023 and in Clauses 5(1) and 5(2), the eligibility criteria for the post of Intermediate Trained Assistant Teacher and Graduate Trained Assistant Teacher was specified as under: -

“5(1) – Passed the Teacher Eligibility Test (JTET) conducted for classes 1 to 5 by the Government of Jharkhand under the guidelines formulated by the National Council for Teacher Education.

5(2) – Passed the Teacher Eligibility Test (JTET) organized by the Government of Jharkhand for classes 6 to 8 under the guidelines formulated by the National Council for Teacher Education.”

30. With the said eligibility, the filling up of the form commenced on 08.08.2023 and the last date as specified was 07.09.2023, which was subsequently changed to 15.09.2023. As per the information furnished by respondent no. 6, the said process of filling up of the forms was disrupted as per order dated 05.09.2023 passed in W.P. (S) No. 4049/2023 in the case of **“Bahadur Mahato and Ors. Vs. The State of Jharkhand”** till vacation of stay on 05.10.2023. The date of filling up of the form was extended till 22.10.2023, which was further extended to 06.11.2023. The extension was further allowed as per order passed in W.P. (S) No. 4436/2023 until 09.11.2023. We need not refer to various other orders passed in other writ petitions as they have no relevance to the issue involved in the present case.
31. It is to state that in furtherance to the orders, the last date of filling up of the forms was extended from time to time. For clarity it is to mention that some of the aspirants filed W.P. (S) No. 4425/2023 challenging the 2022 Recruitment Rules and the Advertisement No. 13 on the pretext that prior to the 2022 Recruitment Rules, the 2012 Rules were in vogue and without repealing those Rules, notifying the 2022 Recruitment Rules is *ultra-vires* the Constitution of India. The challenge was also made on ground that introduction of provision of the written examination and interview in the 2022 Recruitment Rules is not compatible for the persons possessing the minimum eligibility under the 2012 Rules. The said challenge was negated by the High Court vide order dated 07.12.2023 dismissing the writ

Parimal Kumar & Ors. v. The State of Jharkhand & Ors.

petition. The Special Leave Petition (Diary) No. 23389/2024 preferred against the said order was also dismissed on 09.09.2024. As such the minimum eligibility prescribed in the recruitment rules on the date of commencement of the recruitment process as specified in the 2022 Recruitment Rules and Advertisement No. 13 have relevance and must be possessed by the candidates who participated in the recruitment process.

32. Thus, the date of issuance of the advertisement i.e., 19.07.2023 would be date of the commencement of the recruitment process and the minimum qualification and eligibility prescribed for an Assistant Teacher was to pass the JTET conducted by the Government of Jharkhand along with other educational qualifications as specified in the Advertisement No. 13. As such, it can be safely concluded that on the date of commencement of the recruitment process, the qualification as prescribed was intermediate or graduation (as the case may be) with JTET for the candidates applying in furtherance to the advertisement for the post of Assistant Teacher.
33. Reverting to the material placed before us on behalf of respondent no. 6 (an un-registered association of CTET certificate holders), nothing is brought to our notice to indicate that how many residents of Jharkhand have passed CTET and whether they possess JTET certificate or not. Further, respondent no. 7 is the mother of an aspirant and the certificate of the son or daughter passing the CTET or JTET examination has not been placed. It has also not been brought on record that the members of the said un-registered association and the son/daughter of respondent no. 7 possessed the qualification as specified in the 2022 Recruitment Rules on the date of commencement of the recruitment process. In absence of any material, upon hearing we can safely conclude that neither members of respondent no. 6 nor son/daughter of respondent no. 7 possess the requisite qualification i.e., JTET as prescribed in the 2022 Recruitment Rules.
34. In view of above discussion, the question No. (i) is answered holding that on the date of commencement of recruitment process and on the date of publication of Advertisement No. 13, i.e., 19.07.2023, the members of the respondent no. 6 and son/daughter of respondent no. 7 did not possess the requisite qualification as specified in the 2022 Recruitment Rules.

Supreme Court Reports**In reference to Question Nos. (ii) & (iii) –**

35. For analysing the questions and to elucidate the issue, it is necessary to reiterate that the writ petition was filed by an un-registered association of CTET holders and the mother of one of the aspirants, seeking direction against the State either to conduct JTET or permit the CTET qualified candidates to participate in the recruitment process for the post of Assistant Teacher. The High Court by an interim order dated 25.07.2023 quoted in para 14 above, referred sub-clause (b) of para 10 of the NCTE Guidelines and asked the State Government that since it was creating number of posts for which JTET was a necessary criteria, the State TET examination is required to be conducted, which has not been held for last almost nine years (wrongly mentioned, though it was seven years) from the last examination held in 2016. In the order, the High Court advised the State to file affidavit stating whether they intend to allow those candidates, who have obtained the TET certificate in an examination conduct by Central Government or any other State provided they fulfil other eligibility.
36. In compliance, the State Government filed a supplementary counter affidavit, *inter-alia* stating that JTET tests the knowledge of local languages of the candidates, which is essential for the purpose of recruitment as language teachers, and that there are adequate number of JTET qualified candidates available within the state and allowing CTET qualified teachers in the vacancies of the state run schools will cause prejudice to the JTET qualified candidates. Most importantly, in the context of para 10 of the NCTE Guidelines, the stand taken by the State in the counter affidavit before High Court is referred as under: -

“18. It is further stated that a Central TET qualified candidate or a candidate qualifying TET by another State/UT can only be considered for a State run schools when the particular State Government has decided not to conduct its own TET.

19. That it is most humbly stated that it is not the case that the State Government had decided not to conduct the JTET and in these circumstances the State Government is not bound to consider Central TET or a candidate qualifying TET by another State/UT as eligible qualification.

20. That CTET qualified candidates can be made eligible in a given contingency where the State Government is

Parimal Kumar & Ors. v. The State of Jharkhand & Ors.

not conducting TET, but when this contingency does not exist, there is no occasion to make Central TET candidates eligible or to allow those candidates who have obtained TET certificates from Central Government or another other State/UT.

21. *That it is most humbly stated that there has been certain contingencies due to which regular JTET Examination could not be conducted regularly and hence the state is intending to allow age relaxation to the candidates for upcoming vacancies, moreover, it is also intended to conduct JTET examination before the start of fresh recruitment of teachers within the State.*

22. *That it is stated that the issue whether to consider the CTET or the TET from other State/ UT is a matter of policy decision of the State Government.”*

37. On perusal of the stand noted above, it is apparent that a candidate who has qualified TET, conducted by another State or conducted by the Centre, can be considered for State run schools only when the State has decided not to conduct its own TET. As the Government has not taken decision for not conducting the TET therefore, the CTET or the STET qualified candidates are not required to be made eligible. Even then, the High Court in the impugned judgment recorded the concession of the Advocate General based on oral instructions contrary to the stand taken in counter affidavit and in para 6 observed as thus: -

“6. *However, in course of hearing of these writ petitions today, learned Advocate General appearing for the State would submit that he has received oral instructions that the State is willing to relax the criteria for eligibility as far as the candidates having CTET examination certificate with a stipulation that in a future date they have to clear the State TET examination and those persons should be the residents of Jharkhand. Since the law provides that every year, there should be a TET Examination and for the last so many years, there has been no examination for testing the eligibility of aspirants to be appointed as teachers, we are of the opinion that not only those candidates, who have CTET certificate and residents of Jharkhand, but also those residents of Jharkhand, having other qualification*

Supreme Court Reports

and having State TET examination certificate of any of the neighbouring States should also be given a chance to appear in the examination with certain stipulations which we propose to lay down in the following paragraphs.”

38. In view of the said observations, concluding paras 7, 8 and 9 of the impugned judgment of the High Court are also relevant and are quoted for ready reference as under: -

“7. In view of the proposal made by the learned Advocate General and also having considered the matter to a great anxiety, we hereby, dispose of the writ petitions and the W.P. (PIL) directing the State Government to conduct the TET examination every year, henceforth.

8. We further direct that those residents of the State of Jharkhand, who are otherwise eligible to appear in the examination and hold a CTET certificate or a certificate issued by the neighbouring States having resident of Jharkhand shall be allowed to appear in the ongoing process with a further stipulation that the State shall ensure that the examination, if not held within a year, is held at least within next three years and the candidates who have participated in the selection process and have been appointed have to clear that STET examination within a period of three years by giving one chance. They shall pass it within three years and in one first available chance.

9. We further stipulate that the State Government shall not conduct the examination at least for next three months so that the candidates should get some time to get ready or prepare for the exam. If the State Government fails to conduct the examination within three years, then the stipulation will not take its full effect and those candidates who have cleared the examination process and having otherwise qualified shall not be removed from service.”

39. On filing these appeals and after issuance of notice, the State respondents Nos. 1 to 5 have filed the counter affidavit and stated that the concession given by the Advocate General on behalf of the State providing relaxation is in consonance with para 10(b) of the NCTE Guidelines dated 11.02.2011, for which the Government is having competence.

Parimal Kumar & Ors. v. The State of Jharkhand & Ors.

40. We have examined the guidelines, on plain contextual reading of para 10(b), it is unambiguously clear that TET conducted by the State Government/UT with legislature shall apply to schools of State Government/UT and local authority as defined in clause (i), (ii) of sub-section (n) of Section 2 of RTE Act. The discretion is conferred to the State schools to consider the candidates who have obtained TET certificate awarded by another State/UT with legislature for the purpose of eligibility. For the candidates possessing TET conducted by the Central Government, it is specified that they may be considered in case the State Government has decided 'not to conduct the TET.' Therefore, in respect of the TET certificate awarded by another State/UT, it was a discretion of the State to accept for the purpose of eligibility but for the TET of the Central Government such discretion was with a rigour wherein the State Government has to decide that it does not want to conduct the TET in the State. In our view, such discretion may be exercised by the Government taking conscious decision prior to commencement of the recruitment process, but not after issuance of the advertisement or on the basis of direction of the Court.
41. At the cost of repetition, at this juncture the stand taken in the counter affidavit filed by the State Government before the High Court was that, JTET could not be conducted due to COVID-19 and framing the new rules in pipeline to bring the JTET at par with the quality and standard of CTET. It was also contended that CTET is conducted to determine the eligibility of teachers to be recruited in Central Government Schools, thus, it does not fulfil the needs and requirements of the schools in the State of Jharkhand. In furtherance to the interim order dated 25.07.2023, the stand taken in the supplementary counter affidavit was that there are sufficient JTET qualified candidates available in the State, and allowing CTET qualified teachers to apply for the vacancies advertised will cause prejudice to the rights of the JTET qualified candidates. Further, the CTET or STET qualified candidates can be considered only if the State Government 'decides not to conduct TET', however, 'no such decision' has been taken. The said stand has been quoted in para 36 above.
42. The stand taken by the State in counter affidavit before this Court was that the relaxation provided by the State Government is an equitable solution, which is conditional with the stipulation that the candidates must clear JTET in first available chance within 3 years

Supreme Court Reports

and in consonance with para 10(b) of the NCTE Guidelines dated 11.02.2011. However, in the written submission, the stand taken is that para 10(b) of the Guidelines dated 11.02.2011 does not require the State Government to take a 'specific decision' to not conduct TET examination at all. It attracts when the TET has not been conducted by the State Government and alternative methods as set out in Guideline 10(b) can be availed. Para 11 of the Guidelines dated 11.02.2011 require the State to conduct TET annually, and in situations where the State decides not to conduct TET, it can consider the eligibility as per para 10(b) of the Guidelines dated 11.02.2011.

43. In above reference, it is luculent that the State Government has changed its stand at every stage of the litigation, which is not conscionable and acceptable and in other words, it would amount to arbitrary and unfair exercise of power by the State. After the specific stand taken by the State in the counter-affidavit before the High Court, the concession given by the Advocate General during hearing would not amount to the communication of conscious decision of the State. In fact, it ought to have been taken prior to the issuance of advertisement and cannot disturb the ongoing recruitment process. In the said factual situation, giving concession by the Advocate General on the basis of oral instructions to allow the CTET candidates or STET of neighbouring States in the ongoing process, cannot be said to be in consonance with law.
44. In the impugned judgment, para 7 refers the concession of the Advocate General and directions to the State Government to conduct TET every year. Para 8 of the judgment contemplates that in view of the concession of the Advocate General, the State is willing to relax the criteria for eligibility as far as the residents of Jharkhand having CTET or STET of the neighbouring States and they be allowed to appear in the ongoing selection process. In our view, it amounts to arbitrary alteration of eligibility in the ongoing recruitment process mid-way.
45. An endeavour has been made by the State to justify its act on the strength of para 10 of the NCTE Guidelines. In this regard, to further understand the true rigour thereof, it is pertinent to discuss the provisions relating to minimum eligibility criteria for teachers under the RTE Act and subsequent notifications.
46. Section 23 of the RTE Act specifies qualifications for appointment and terms & conditions of the service of teachers. The said provision is relevant therefore, reproduced as under: -

Parimal Kumar & Ors. v. The State of Jharkhand & Ors.**“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 (24 of 2017).

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

47. From the above, it is clear that Section 23(1) prescribes minimum qualification notified by the academic authority to be possessed by a teacher. Vide notification dated 31.03.2010, NCTE has been declared as the academic authority to lay down the minimum qualification. As per notification dated 23.08.2010, NCTE prescribed the minimum qualification, whereby in addition to the intermediate or graduate in the respective subject, passing of TET conducted by the appropriate government in accordance with the guidelines for the purpose is essential. NCTE has framed the guidelines for conducting the TET and published it on 11.02.2011 wherein para 5 deals eligibility to acquire

Supreme Court Reports

the academic and professional qualifications as specified in the NCTE notification. Para 5(iii) makes it clear that eligibility for appearing in TET may be relaxed in respect of the State/UT under sub-section (2) of section 23 of the RTE Act by way of notification of the Central Government. Para 10 of the NCTE Guidelines deals with applicability, in particular of TET. The said guideline has already been referred to in para 7 above, as per which, the TET conducted by the Central Government shall apply in relation to a school established, owned or controlled by the Central Government or the Administrator of UT having no legislature. Similarly, TET conducted by State Government/UT with legislature applies to a school of the State Government/UT with legislature or local authority referred to in clause (i) or (ii) of sub-section (n) of Section 2 of the RTE Act. As discussed earlier above, para 10 further specifies that a school to which the TET conducted by the State Government/UT with legislature applies, may also consider eligibility of a candidate who has obtained TET certificate awarded by another State/UT with legislature. In case a State /UT with legislature decides not to conduct a TET, a school under para 10(b)(i) and (ii) would consider the TET conducted by the Central Government.

48. Thus, from the said guidelines, it is quite vivid that for a school covered by para 10(b)(i) & (ii), discretion has been conferred to accept the TET certificate awarded by another State/UT. But for the same school, if the State decides not to conduct TET, then discretion has been given to consider the TET conducted by the Central Government for eligibility. In our view, the High Court has not considered the said provision in right perspective for which it is introduced.
49. Now reverting to Section 23(2) of the RTE Act, by which the power to relax the minimum qualification can be exercised by the Central Government in case the State does not have adequate institutions offering courses or training in teacher education or teachers possessing minimum qualifications as laid-down in sub-section (1) of Section 23 are not available in sufficient numbers. In the said contingency, the relaxation in the eligibility condition may be granted not more than 5 years. From the material placed before us, it is clear that the State Government has not applied asking relaxation and it has failed to make out a case within the four corners of Section 23(2) of RTE Act.
50. From the above discussion, passing of TET conducted by the State for the schools as defined in Section 2(n) of the RTE Act is essential on the date of commencement of the recruitment process, which is

Parimal Kumar & Ors. v. The State of Jharkhand & Ors.

posited in the 2022 Recruitment Rules as well as the Advertisement No. 13.

51. The appellants have argued that in light of Section 23(2) of the RTE Act, only the Central Government has the power to relax the eligibility criteria. Per contra, the respondents have argued that in view of para 10 of the NCTE Guidelines dated 11.02.2011, the State Government has the power to relax and to consider CTET or STET. In the facts as discussed, issuance of the notification by the Central Government granting exemption in terms of Clause 23(2) of the RTE Act has neither been raised by the parties before the High Court nor answered, therefore, we are also not deciding this issue in true sense. As discussed above, the State Government had not taken any decision to not to conduct the TET prior to the date of commencement of the recruitment process to fulfil the pre-requisite of para 10(b) and the notification of Central Government relaxing the minimum qualification as prescribed under Section 23(2) of the RTE Act is also not on record. As per the material placed above, it is suffice to conclude that the concession of the Advocate General referring para 10, styled as “Applicability” of the NCTE Guidelines having effect of change of eligibility criteria in the ongoing recruitment process cannot be accepted. In said circumstances, we are restricting our opinion on the question of relaxing the qualification mid-way in on-going recruitment process and its applicability.
52. In the sequel of the facts and discussions made hereinabove and to elucidate the issue legally in detail, we can profitably refer the recent judgement of the Constitution Bench of this Court in **‘Tej Prakash Pathak & Ors. v. Rajasthan High Court & Ors., 2024 INSC 847**, whereby this Court had the occasion to deal with the question as to whether the State can tinker with the rules of the game insofar as the prescription of eligibility criteria mid-way. While answering the said question in clear terms, it was held that eligibility criteria/ essential qualifications of candidates seeking recruitment cannot be altered after the recruitment process has begun. The relevant part of the judgment dealing with the issue, is reproduced hereunder –

“6. Cut-off date with reference to which eligibility has to be determined is the date appointed by the relevant service rules; where no such cut-off date is provided in the rules, then it will be the date appointed in the advertisement inviting applications; and if there is no such date appointed,

Supreme Court Reports

then eligibility criteria shall be applied by reference to the last date appointed by which the applications were to be received.

7. The law is settled that after commencement of the recruitment process the eligibility criteria is not to be altered because candidates even if eligible under the altered criteria might not apply by the last date under the belief that they are not eligible as per the advertised criteria. Such alteration/change, therefore, deprives a person of the guarantee of equal opportunity in matters of public employment provided by Article 16 of the Constitution. The reference order therefore acknowledges this legal position and in clear terms accepts that 'the rules of the game' cannot be changed after commencement of the recruitment process insofar as the eligibility criteria is concerned."

53. The Constitution Bench has also clarified that the recruitment process commences from the date of issuance of the advertisement and concludes with the filling up of notified vacancies.

"13. The process of recruitment begins with the issuance of advertisement and ends with the filling up of notified vacancies. It consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment."

54. After much deliberation, the Constitution Bench concluded the reference as thus –

"42. We, therefore, answer the reference in the following terms –

(1) Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

(2) Eligibility criteria for being placed in the Select List, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process

Parimal Kumar & Ors. v. The State of Jharkhand & Ors.

unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

(3) *The decision in K. Manjusree (supra) lays down good law and is not in conflict with the decision in Subash Chander Marwaha (supra). Subash Chander Marwaha (supra) deals with the right to be appointed from the Select List whereas K. Manjusree (supra) deals with the right to be placed in the Select List. The two cases therefore deal with altogether different issues;*

(4) *Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/non-arbitrary and has a rational nexus to the object sought to be achieved.*

(5) *Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the Rules are non-existent, or silent, administrative instructions may fill in the gaps;*

(6) *Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list."*

55. The position of law as per **Tej Prakash Pathak** (supra) is therefore clear, that the recruitment process commences from the issuance of the advertisement, and that eligibility criteria as laid down therein cannot be changed mid-way during the recruitment process unless the extant rules or the advertisement permit such a change after the issuance. Even if such a power to amend is reserved in the advertisement or the rules, it must be tested on the anvil of Article 14 and pass the test of non-arbitrariness.

Supreme Court Reports

56. Learned counsel for the respondents referring Clause 5(i) of the Advertisement No. 13 made an attempt to contend that the last date of submission of application form which is amended time to time may be taken as the date of eligibility. For ready reference, Clause 5(i) of the Advertisement No. 13 is reproduced as under: -

“(i) It will be mandatory for the candidates to have passed the desired minimum educational qualification by the last date of receipt of applications in the Commission. That is, the last date of submission of online application will be considered as the reference date for determining educational qualification. If any candidate does not possess the prescribed educational qualification by this date, he/she will be considered ineligible to fill the application.”

57. In the present case, undisputedly, the Advertisement No. 13 was issued on 19.07.2023 and the eligibility criteria was set out as per 2022 Recruitment Rules. By which the candidates must have passed Teachers Eligibility Test conducted by the State of Jharkhand. On the date of pronouncement of impugned judgment, those rules were in vogue, even then, the High Court issued the direction accepting the CTET and STET as eligibility contrary to the existing rules. After the impugned judgment, the examination was postponed until 10.02.2024. Applications were called from the residents of Jharkhand possession CTET and STET qualification between 19.01.2024 to 23.01.2024 as per notice dated 10.01.2024. The amendments in 2022 Recruitment Rules were brought on 29.01.2024 with intent to give statutory backing for changing the eligibility in the on-going recruitment process. Later, the amendment in the advertisement was made. Thus, it is clear that on the date of advertisement, as per prevailing rules, the eligibility criteria were changed. In our considered opinion, this is amounting to change the rules of game after the game has begun as settled in the case of **Tej Prakash Pathak** (Supra). Therefore, the entire action on the part of the State Government is arbitrary and contrary to the law settled by this Court.
58. Considering the above, we do not find much strength in this argument. The import of clause 5(i) of the advertisement is merely that the eligibility of the candidate participating in the recruitment process shall be reckoned on the last date of submission of applications. It

Parimal Kumar & Ors. v. The State of Jharkhand & Ors.

does not empower the State to amend / alter / change the eligibility criteria specially when it has been notified on the date of issuance of the advertisement, unless the extant Rules permit to do so, which is evidently not the case here. To put it in another way, applying the ratio as laid down in **Tej Prakash Pathak** (Supra), the State could not have changed the eligibility criteria as laid down after the point of time of issuance of the advertisement, in the absence of any power in the relevant recruitment rules or the advertisement to give effect to such a change. Without expressing any opinion on the State's authority to promulgate the 2024 Amended Rules or its validity, we hold that the revised eligibility criteria introduced therein cannot be applied to the ongoing recruitment process initiated under the Advertisement No. 13, as doing so would amount to altering the rules of the game after the recruitment process has commenced.

59. Our attention has been drawn to the judgements of this Court in '**Vikas Sankhala and Ors. v. Vikas Kumar Agarwal and Ors. (2017) 1 SCC 350**' and '**V. Lavanya and Ors. v. State of Tamil Nadu (2017) 1 SCC 322**', but those judgements relate to interpretation of power of relaxation in TET under para 9 of the NCTE Guidelines dated 11.02.2011. Those judgments have no bearing or applicability in the facts and circumstances of this case. The other judgements cited by the learned counsel for the parties are not directly applicable on the facts of the present case, hence are not being dealt with to burden the judgement.
60. The private respondents have relied upon the judgement in '**State of Tripura v. Nikhil Ranjan Chakroborty and Ors., (2017) 3 SCC 646**' and '**V. Lavanya and Ors. v. State of Tamil Nadu, (2017) 1 SCC 322**' to argue that mere expansion of zone of consideration without changing the eligibility criteria and without excluding candidates, is permissible under the law. Reference has also been made to the judgements in '**Bank of India v. Aarya K. Babu, (2019) 8 SCC 587**' and '**Ankita Thakur v. HP Staff Selection Committee, 2023 SCC OnLine SC 1472**' to argue that change of eligibility criteria after the issuance of the notification can be done provided that wide publicity is made of such a change and opportunity is given to similarly situated candidates to participate and compete with the others. In the facts of this case and in view of the Constitution Bench judgement in **Tej Prakash Pathak** (supra). It is not necessary to again reiterate the issue.

Supreme Court Reports

61. From the above discussions, in our view, it is clear that the directions issued by the High Court is amounting to change in eligibility criteria in the ongoing recruitment process. In addition, in the facts, the concession given by the Advocate General was contrary to the stand of the State Government which is unconscionable, unjustified and unfair. We are not inclined to accept the contentions of the respondents and the same are repelled. The question Nos. (ii) and (iii) are answered accordingly.
62. During pendency of these appeals, I.A. No. 197527/2024 has been filed by the appellants seeking declaration that the 2024 Amended Rules are *ultra-vires* to the RTE Act. As per the discussions made hereinabove, we are not expressing any view in regard to the *ultra-vires* of the amended rules since they are not under challenge before the High Court or before this Court. However, our judgment would apply only with respect to the question posited to answer. We make it clear that if *vires* of the 2024 Amended Rules is assailed before appropriate forum by the parties, it may be looked into on its own merit uninfluenced by the observations made in this judgment.
63. Accordingly, the present appeals filed by the appellants are allowed with the following directions: -
- (i) The impugned judgment of the High Court permitting the candidates of CTET and STET holders of neighbouring States to participate in ongoing selection process to the post of Assistant Teacher of Primary and Upper Primary schools pursuant to Advertisement No. 13 stands set-aside;
 - (ii) The JTET holders who were possessing the requisite qualification under the 2022 Recruitment Rules, prior to the 2024 Amendment and participated shall be eligible for appointment and their result be declared forthwith and the appointments be made strictly on merit;
 - (iii) We make it clear that CTET holders or STET holders, who have applied after the judgment of the High Court or after amendment in the rules or advertisement would not be eligible for the recruitment in furtherance to the Advertisement No. 13/2023.
 - (iv) Ordered accordingly.

Pending application(s), if any, shall stand disposed of.

Parimal Kumar & Ors. v. The State of Jharkhand & Ors.**Judgment****Rajesh Bindal, J.**

1. I have gone through the well-reasoned opinion expressed by brother J.K. Maheshwari, J. I fully endorse the views expressed and the answers to three questions as framed in paragraph '26' of the judgment.
2. As the case pertains to selection of Assistant Teachers, I wish to add a few lines regarding importance of their role in nation building. They are to teach in Primary and Upper Primary Schools i.e. upto Class VIII. The role played by a teacher, especially when dealing with students in primary schools, is of utmost importance. Teachers educate the young minds, much like sculptors shaping clay, to mould them into better human beings. The imprint a teacher leaves on the minds of their students is everlasting.
3. The status of a teacher is well said in the Sanskrit verse taken from Guru Gita which is said to be part of Visvasaratantra from Uttarakhand of Skandapurana. The same is reproduced hereunder:

“Gurur Brahma Gurur Vishnu, Gurur Devo Maheshwara;
Guru Sakshat Param Brahma, Tasmai Shri Gurave Namah”

This Shloka refers to the Guru as none other than Brahma– The creator, Vishnu– The sustainer and Shiva– The destroyer, since the Guru creates, sustains knowledge and destroys ignorance. By doing so he liberates the disciple from the ocean of samsara, from the trap of Maya, thereby attaining Moksha. For this, we bow down with utter humility and total gratitude to the Guru.

(Source: Guru Gita which is said to be part of Visvasaratantra from Uttarakhand of Skandapurana)

4. On number of occasions the importance of role of teachers was highlighted by this Court. In **Andhra Kesari Educational Society v. Director of School Education, (1989) 1 SCC 392** this Court opined that a teacher should have the quality to inspire and motivate his students. Relevant para thereof is extracted as under:

“20. Though teaching is the last choice in the job market, the role of teachers is central to all processes

Supreme Court Reports

of formal education. The teacher alone could bring out the skills and intellectual capabilities of students. He is the “engine” of the educational system. He is a principal instrument in awakening the child to cultural values. He needs to be endowed and energised with needed potential to deliver enlightened service expected of him. His quality should be such as would inspire and motivate into action the benefiter. He must keep himself abreast of everchanging conditions. He is not to perform in a wooden and unimaginative way. He must eliminate fissiparous tendencies and attitudes and infuse nobler and national ideas in younger minds. His involvement in national integration is more important, indeed indispensable.”

5. The observations made by this Court in **State of Maharashtra v. Vikas Sahebrao Roundale, (1992) 4 SCC 435**, pertaining to the role of a teacher are extracted hereunder:

“12. The teacher plays pivotal role in moulding the career, character and moral fibres and aptitude for educational excellence in impressive young children. Formal education needs proper equipping of the teachers to meet the challenges of the day to impart lessons with latest techniques to the students on secular, scientific and rational outlook. A well-equipped teacher could bring the needed skills and intellectual capabilities to the students in their pursuits. The teacher is adorned as Gurudevobhava, next after parents, as he is a principal instrument to awakening the child to the cultural ethos, intellectual excellence and discipline. The teachers, therefore, must keep abreast of ever-changing techniques, the needs of the society and to cope up with the psychological approach to the aptitudes of the children to perform that pivotal role. In short teachers need to be endowed and energised with needed potential to serve the needs of the society. The qualitative training in the training colleges or schools would inspire and motivate them into action to the benefit of the students. For equipping such trainee students in a school or a college, all facilities and equipments are absolutely necessary and institutions bereft thereof have no place to exist nor entitled to recognition. In that behalf

Parimal Kumar & Ors. v. The State of Jharkhand & Ors.

compliance of the statutory requirements is insisted upon. Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education.”

6. In **Sushmita Basu & Ors. vs. Ballygunge Siksha Samity (2006) 7 SCC 680**, this Court again had occasion to deal with the pivotal role played by the teachers in moulding the lives of students at their primitive age and sacrifice they are required to make. Relevant para thereof is extracted hereunder:

“5. We must remember that the profession of teaching is a noble profession. It is not an employment in the sense of it being merely an earner of bread and butter. A teacher fulfils a great role in the life of the nation. He is the “guru”. It is the teacher, who moulds its future citizens by imparting to his students not only knowledge, but also a sense of duty, righteousness and dedication to the welfare of the nation, in addition to other qualities of head and heart..... A teacher’s profession calls for a little sacrifice in the interests of the nation. The main asset of a teacher is his students, former and present. Teachers who have lived up to ideals are held in great esteem by their disciples. The position of the guru, the teacher, in our ethos is equal to that of God (Matha Pitha Guru Daivam). The teachers of today must ensure that this great Indian concept and the reverential position they hold, is not sacrificed at the altar of avarice.”

7. The importance of a teacher as narrated by Pandit Mohan Malaviya (the founder of the Banaras Hindu University) was highlighted in the following lines:

“... It lies largely in his teacher’s hand to mould the mind of the child who I father of the man. If he is patriotic and devoted to the national cause and realizes his responsibility, he can produce a race of patriotic men and women who would religiously place the country above the community and national gain above communal advantage.”

8. We have passed through COVID-19 pandemic. Computer and electronic gadgets such as mobile phones, tablets/l-pads, desktops which

Supreme Court Reports

were prohibited to be used by the students of elementary classes, to some extent became the necessity overnight as that was the only medium which kept various systems including education, continue.

9. Social media has also overpowered our lives and so the cyber-bullying, which is affecting students more. Proper guidance is essential to educate them at an early stage, enabling them to discern right from wrong. In this context, the role of a teacher is crucial. Lot of information is available on various web portals, how to differentiate between the right or wrong is the moot question. It is the duty of the teacher to guide the students as to how to make a distinction.
10. The positive and negative applications of artificial intelligence are being experienced by everyone today. Not only the illiterate or semi-literate individuals but also well-educated people fall victim to various cyber-crimes. In this context, the role of teachers becomes crucial, as they can guide students on the dos and don'ts of use of technology.
11. It is a matter of fact that whenever a student learns something, the family also learns as a consequence, especially in cases where the parents may be illiterate or semi-literate.
12. With the change in scenario, it is the utmost duty of a teacher to apprise the young minds and also guide them regarding safe use of technology. This is one of the important areas where teachers also need to appreciate their responsibility besides formal education, to prepare them to be responsible citizens of the country.
13. In the case in hand from the selection stage only, the candidates for the post of Assistant Teachers have been made to indulge in litigation, which should be avoided and for that matter for all kinds of services. This will enable the employees to concentrate more on their job than the litigation.

Result of the case: Appeals allowed.