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SooperKanoon Citation : sooperkanoon.com/1181985

Court : Allahabad

Decided On : Sep-15-2015

Judge : The Honourable Chief Justice Dr. Dhananjaya Yeshwant Chandrachud & Yashwant Varma

Appeal No. : Special Appeal Defective Nos. 607 of 2015 & 637 of 2015

Appellant : Ajeet Yadav and Others

Respondent : State of U.P. and Others

Judgement :

The controversy which is involved in the special appeals turns upon the guidelines which were framed by the National Council for Teacher Education (NCTE) in regard to the Teacher Eligibility Test under the Right of Children to Free and Compulsory Education Act, 2009 (Act of 2009). By a notification dated 23 August 2010 issued in exercise of the provisions of Section 23 (1) of the Act of 2009, NCTE laid down the minimum qualifications for a person to be eligible for appointment as a teacher for classes 1 to 8. Among the qualifications which were prescribed, is a pass in the Teacher Eligibility Test (TET) to be conducted by the appropriate Government in accordance with the guidelines framed by NCTE for the purpose.

On 11 February 2011, NCTE circulated its guidelines to the State Governments. Insofar as is material, the guidelines made the following provision for qualifying

marks in the TET:

"Qualifying marks

9. A person who scores 60% or more in the TET exam will be considered as TET pass. School managements (Government, local bodies, government aided and unaided)

(a) may consider giving concessions to persons belonging to SC/ST, OBC, differently abled persons, etc., in accordance with their extant reservation policy;

(b) should give weightage to the TET scores in the recruitment process; however, qualifying the TET would not confer a right on any person for recruitment/employment as it is only one of the eligibility criteria for appointment."

These guidelines hence, required a person to score 60% or more in the TET to be considered as having passed the test. However, the Government and local bodies were permitted to consider the grant of concessions to persons belonging to the Scheduled Castes, Scheduled Tribes, Other Backward Classes and other categories to whom the benefit of reservation has been extended. The issue of what should be the extent of the concession to be extended to reserved categories was engaging the attention of NCTE which had received representations from the State Governments and other stakeholders. On 1 April 2011, NCTE communicated a decision inter alia, to the State Governments in the following terms:

"The NCTE has received representations from State Governments and other stakeholders that in respect of SCs/STs, etc. relaxation upto 5% in the qualifying marks should be allowed, since such relaxation is permissible by the NCTE for admission in various teacher education courses.

The matter was considered by the Council in its meeting held on 16th March, 2011 and it has been decided that relaxation upto 5% in the aforementioned qualifying marks would be available to SCs/STs, etc. in accordance with the extant policy of the State Governments/UTs and other school managements. This decision comes into force with immediate effect."

Following the guidelines issued by NCTE, the Government of Uttar Pradesh allowed a relaxation of 5% in the qualifying marks for persons belonging to the reserved categories.

The TET consisted of a total of 150 marks. The requirement for open category candidates to pass the examination was 90 marks out of 150. For candidates belonging to reserved categories, since a relaxation of 5% was granted, these candidates were required to obtain at least 82.5 marks out of 150 to clear the examination. The difficulty arose because in the TET, 150 questions had to be answered in an objective type examination each of which carried one mark. Hence, it was physically impossible to obtain a fraction of a mark. There were reserved category candidates who had obtained 82 marks out of 150, who fell short of the pass mark by 0.5 mark which worked out to 0.33%.

Several affected candidates had filed a writ petition before this Court which was disposed of on 29 May 2013 by a learned Single Judge with a direction to approach NCTE for a clarification. Based on representations submitted to it, NCTE sought a clarification from the Central Board of Secondary Education (CBSE) by a letter dated 25 September 2013. In a reply dated 1 October 2013, CBSE which was authorised to conduct the Central TET for School Boards under the Central Government, clarified its decision. CBSE stated as follows:

"As per NCTE guidelines out of 150 marks, 55% marks exactly becomes 82.5, which cannot be scored, therefore, looking into the wider interest of the candidates and to ensure reasonableness and justness, 82.5 marks were rounded to 82 marks i.e. 54.67% treated as equivalent to 55% on rounding as the benefit of anomaly of impossibility of securing exactly 55% (82.5/150) marks in the examination was given to the candidates. Therefore, the reserved category candidates, securing marks upto 82 are issued the Eligibility Certificates for CTET-Nov 12 and onward examinations, applicable in KVS and Directorate of Education, Govt of NCT of Delhi in accordance with the relaxation granted to them."

In the meantime, since no directions were issued by NCTE, several affected candidates again moved this Court, which issued directions on 13 November 2013 to NCTE to take an appropriate decision. NCTE constituted a Committee to study

the entire issue. In its recommendation, the Committee observed as follows:

"In view of the above, it seems reasonable to allow the benefit of the anomaly of impossibility (82.5 marks) in favour of SC/ST/OBC and differently abled persons, which will ensure 5% relaxation by just exceeding it to the tune of 0.33% in the considered view of this Committee all SC/ST/OBC and differently abled persons securing 82 marks or above out of 150 be declared eligible at the TET."

Following this recommendation, NCTE by a communication dated 10 January 2014 addressed to the Secretary, Basic Education to the State Government, observed that the recommendation/report of the Committee has been accepted and approved by NCTE and hence, the Government of Uttar Pradesh may take appropriate action accordingly.

After the communication of NCTE dated 10 January 2014, the State Government issued a Government Order dated 25 April 2014, observing that the TET for 2013 had been concluded on 27 and 28 June 2013 of which results were declared on 13 August 2013. The State Government opined that it would not be possible to grant the benefit of the clarification issued by NCTE on 10 January 2014 since this would give rise to difficulties in regard to the TET for 2013. This decision of the State Government was challenged before a learned Single Judge in *Bhagirath Singh v State of Uttar Pradesh* (Writ-A No.26313 of 2014). The learned Single Judge held that the ground which had been advanced in the Government Order dated 25 April 2014 was unsustainable and observed as follows:

"...Such a ground for declining the claim of the petitioner is not only unreasonable but also arbitrary as this Court as well as NCTE which is the expert body in this field has declared the petitioner to be successful.

In my view, upon the grounds taken by the Secretary, Basic Education, the claim of the petitioner cannot be thrown out and as such the writ petition is disposed of with the direction to the Secretary, Basic Education to re-consider the claim of the petitioner and his claim should not be turned down only because the reasons as mentioned in the order that the credibility of the examination would be at stake. It was own fault of the authorities not to declare the petitioner successful according

to the marks obtained when even the expert body declared the petitioner to be entitled for selection. The ground for continuing his disqualification in the order impugned cannot be sustained in the eyes of law and accordingly the order dated 25.4.2014 is quashed with the direction to the Secretary, Basic Education to consider the claim of the petitioner in view of the decision of this Court in Writ Petition No. 59978 of 2013 and the order of the National Council for Teachers Education dated 10.1.2014 within a period of one month from the date a certified copy of this order is presented before the authority concerned."

With identical observations, the learned Single Judge proceeded to allow another petition (Brijendra Singh and Ors. v. State of Uttar Pradesh and Ors.) (Writ Petition No.28590 of 2014) on 22 May 2014. An appeal against the judgment of the learned Single Judge filed by the State Government (State of Uttar Pradesh and Ors. v. Brijendra Singh) (Special Appeal Defective No.680 of 2014) was dismissed by a Division Bench of this Court on 5 August 2014.

On 29 April 2014, the State Government issued a fresh direction through the Principal Secretary. By this direction, the State Government adopted the view which was taken by NCTE based on the report of CBSE and directed that the passing marks for candidates belonging to SC, ST and OBC candidates, heirs of freedom fighters, ex-servicemen and physically handicapped persons would be 82 marks out of 150. However, this decision was made applicable only for the examination to be conducted in 2013-2014 and not to the TET which had already been conducted.

A writ petition was filed by five candidates who had appeared in the 2011 TET conducted by the Board of Secondary Education. Those candidates stated that they had obtained 82 marks out of 150 and had been declared as unqualified on the ground that their percentage was 54.67. Their contention was that the "principle of rounding off" should be applied and in accordance with the settled principle of rounding off, 54.67% should be increased to 55% as a result of which, they would be treated as having qualified. The relief which was sought in the writ petition (Writ-A No.22993 of 2015) was a mandamus for the acceptance of the forms of the petitioners and for permitting them to participate in the counselling

process for the post of Assistant Teacher (Science and Mathematics) initiated in pursuance of the advertisement dated 11 July 2013 issued by the Uttar Pradesh Basic Education Board for classes 6 to 8. The writ petition was disposed of by a learned Single Judge on 24 April 2015 with an observation that the Government by its order dated 29 April 2014 had treated reserved category candidates, who had secured 82 marks, as having passed in the TET-2011. The learned Single Judge directed that if the petitioners submit their provisional TET certificates, their candidature would be considered in any future round of counselling and their applications would be accepted for the post of Assistant Teacher (Science and Mathematics) in upper primary schools run by the U P Basic Education Board against 29,000 vacancies advertised on 11 July 2013.

In the meantime, an appeal filed against the judgment of the learned Single Judge dated 12 May 2014, quashing and setting aside the order of the State Government dated 25 April 2014, had also been dismissed by a Division Bench of this Court on 1 September 2014 (*State of Uttar Pradesh and Ors. v. Bhagirath Singh*) (Special Appeal Defective No.716 of 2014 (decided on 1 September 2014)). The Division Bench followed the view of the earlier Division Bench in the judgment dated 5 August 2014 in *State of Uttar Pradesh and Ors. v. Brijendra Singh* (supra) and observed as follows:

"Even otherwise, the claim of the respondent - writ petitioner appears to be perfectly justified as, for getting 55% marks, no candidate could obtain 82.5% marks as each question was of one mark and since the petitioner had obtained 82 marks, he should have been declared successful as has been recommended by the NCTE and the same norms were accepted by several other States as well as the Central Government. Even the State Government has itself now accepted the same to be reasonable and has accordingly amended its Government Order on 29.4.2014. As such the view taken by the learned Single Judge is perfectly justified in equity as well as in law. We do not find any good ground to interfere with the same."

At this stage, it would be material to note that on 10 July 2014, a circular was issued by the Secretary of the Board by which candidates, who had secured 82

marks in the Central TET and belonged to the reserved categories, were permitted to be included in the list of eligible candidates for selection. These candidates who had passed the Central TET with 82 marks had earlier been treated as disqualified and their names had been directed to be removed from the list of eligible candidates. On 17 June 2015, the State Government issued a communication to the Secretary of the Board intimating that candidates from the TET of 2013 belonging to the reserved categories who had secured 82 marks, should be included in the ongoing process of counselling. Thereafter on 12 August 2015, a press note was issued by the Board by which the candidates of TET-2013, who had secured 82 marks and belonged to the reserved categories, were permitted to apply on-line, since they had been declared to have cleared the TET. Subsequently, a corrigendum was issued by the Secretary of the Board to the effect that candidates from the UP TET of 2011 batch would also be allowed along with the candidates from the TET of 2013.

Another writ petition (Writ-A No.45541 of 2015) was filed by a group of six candidates who sought to challenge the order of the State Government dated 17 June 2015, permitting the inclusion of candidates from the TET of 2013, who had secured 82 marks and belonged to reserved categories. In that writ petition, an interim order has been passed by the learned Single Judge on 17 August 2015, allowing the counselling in accordance with the Government Order dated 17 June 2015 to go on, but directing that the result of the process of counselling shall not be finalized and declared unless the petitioners there, who had appeared in the seventh round of counselling are adjusted.

Special Appeal Defective No.607 of 2015 has been filed by a group of seven appellants, who were the petitioners before the Court in Writ-A No.22993 of 2015, which was allowed by an order of the learned Single Judge dated 24 April 2015, permitting them to participate in the counselling process. Special Appeal Defective No.637 of 2015 has been filed by four appellants out of the petitioners in Writ-A No.45541 of 2015. When the special appeal (Special Appeal Defective No.607 of 2015) came up before this Court on 2 September 2015, the Division Bench noted that several interim orders were passed by learned Single Judges in diverse writ petitions of which the Court was apprised during the course of the hearing. The

Division Bench, by its order dated 2 September 2015, directed that all the writ petitions raising a similar issue should be consolidated and heard by the Division Bench in order to resolve the issue and bring the uncertainty from the pendency of the litigation to an end.

The Court has before it, in a special appeal (Special Appeal Defective No.637 of 2015), the final judgment of the learned Single Judge dated 24 April 2015, which is called into question. By that judgment, the learned Single Judge has allowed participation in the counselling process for the post of Assistant Teacher (Science and Mathematics) against 29,000 vacancies advertised on 11 July 2013 by the Board for the upper primary schools, persons who have passed TET-2011 having secured 82 marks out of 150 from the reserved categories. The second special appeal (Supra) is against an interim order passed by the learned Single Judge on 17 August 2015 by which, it has been directed that while candidates from TET 2013 may be called for counselling, the result will not be finalized and declared unless the petitioners who had appeared in the seventh round of counselling are adjusted.

NCTE had initially issued guidelines on 11 February 2011 by which a decision was taken to the effect that a score of 60% or more in the TET would be considered as a pass mark. The Government and local bodies were permitted to grant concessions to the reserved category candidates. On 1 April 2011, NCTE decided that a relaxation upto 5% in the qualifying marks would be available to reserved categories in accordance with the extant policy of the State Government. As we have noted earlier, the pass percentage for the open category candidates being 60%, the pass marks required were 90 out of 150. In the case of candidates belonging to reserved categories, the pass marks with a 5% relaxation worked out to 82.5. CBSE which was the authority nominated for conducting the Central TET took a considered view to the effect that since it was physically impossible to score 82.5 marks, the pass marks should be lowered to 82 (54.67% being treated as equivalent to 55% on the principle of rounding off). However, this was to be applicable from CTET-2012 onwards. NCTE by its notification dated 10 January 2014 accepted the view of CBSE and that formed by its own Committee which had recommended that a similar principle should be applied. Accordingly, NCTE also

accepted that 82 marks out of 150 be declared as the pass marks for reserved category candidates. The State of Uttar Pradesh was permitted to take appropriate action accordingly.

The Government of Uttar Pradesh on 29 April 2014 accepted the principle which was laid down by NCTE, but sought to grant the benefit only prospectively from 2013-2014 and not to the TET batches of 2011 and 2013. The State Government again reiterated that position on 27 June 2014. However, as we find in the record, the State Government by a decision of 17 June 2015 has granted the same benefit to candidates who appeared as reserved category candidates in the TET of 2013, who have been treated to be qualified if they obtained 82 marks. As regards candidates who have appeared in the Central TET held by CBSE, it is not in dispute that they have also been treated as having qualified at the TET upon securing 82 marks and have, accordingly, been granted the benefit in terms of a circular of the Board dated 10 July 2014. On 12 August 2015, the Board permitted the candidates from TET of 2013 with 82 marks from the reserved categories to apply on-line in the process of counselling.

Basically, candidates, who have applied in pursuance of the original advertisement dated 11 July 2013 by which 29,334 posts were advertised, seek exclusion of those persons from the counselling process, who have appeared in the TET of 2011 and 2013 and secured 82 marks out of 150. Their reliance is on the decisions of the State Government dated 29 April 2014 and 27 June 2014 according to which, the benefit of the clarification issued by NCTE on 10 January 2014 has to be granted prospectively.

Four submissions have been urged in support of this contention. Firstly, it has been urged that there was a final judgment of the learned Single Judge of this Court in Kamta Prasad Vs. State of Uttar Pradesh (Writ-A No.383 of 2013 (decided on 7 January 2013)) in which, it was held that the requirement under law was to have obtained 55% marks in respect of the candidates belonging to the reserved categories. The learned Single Judge in a judgment dated 7 January 2013 held that candidates, who had obtained less than 55% marks in the TET, cannot be treated as qualified. Moreover, reliance has been placed on the

principle to the effect that rounding off cannot apply where a candidate has obtained less than 82.5 marks which is the required passing percentage of 55%. Secondly, it has been urged that after 23 August 2010 when NCTE issued its notification, the guidelines issued by NCTE hold the field which define the nature and extent of concessions to the reserved categories. Thirdly, it has been submitted that the principles which have been laid down in the Government Order dated 24 September 2014 cannot apply retrospectively. Finally, it has been urged that unless the Government Order dated 24 September 2014 had been challenged and set aside, such a relief could not have been granted by the learned Single Judge.

At this stage, it would be necessary for this Court to take note of the fact that in the judgment dated 12 May 2014 in Bhagirath Singh (supra), a learned Single Judge of this Court specifically rejected the ground which was advanced by the State Government for declining to grant the benefit of a decision taken by NCTE on 10 January 2014 to the previous batch of TET candidates. The learned Single Judge held that it was due to the fault of the authorities concerned in not taking action even when the expert body (NCTE) had taken a decision that had led to the situation and hence, there was no reason to allow the candidates to suffer. This view of the learned Single Judge was upheld by a coordinate Division Bench of this Court in a judgment dated 1 September 2014. While affirming the judgment of the learned Single Judge, the Division Bench held that it was found by NCTE that it was physically impossible for candidates to obtain 82.5 marks and it was, therefore, that NCTE had accepted a pass mark of 82. Moreover, the same norms were accepted by several other States and by CBSE. In fact, the State Government had also accepted the same position and had provided for the same principle in its order dated 29 April 2014. Undoubtedly, there was an earlier judgment of a learned Single Judge of this Court dated 7 January 2013 in Kamta Prasad (supra), which had taken the view that a candidate who had obtained less than 82.5 marks could not be treated as having been qualified since the pass percentage for reserved categories was 55%. This view of the learned Single Judge was much prior to the decision which was taken by NCTE on 10 January 2014. There can be no manner of doubt that if NCTE were not to take a decision on 10 January 2014 accepting the recommendation of CBSE as well as of its own

Committee to fix the pass marks for reserved categories as 82, no candidate of his own would have a vested right to be treated as a candidate who had passed the TET despite securing less than 55% which worked out to 82.5 marks. However, we have a situation in the present case where the expert body itself namely, NCTE had reconsidered the entire matter, having due regard to the fact that it was physically impossible to obtain 82.5 marks and having done so, arrived at a considered decision to treat 82 marks as qualifying marks in the TET. NCTE corrected what it considered to be an anomaly and adopted a solution in the interests of students belonging to reserved categories who had obtained 82 marks. We must note in this regard that all three decisions as reflected in the guidelines dated 11 February 2011, the further guidelines of 1 April 2011 and the decision as reflected in the communication dated 10 January 2014 are all of the expert body namely, NCTE. Once NCTE which had formulated the guidelines has taken a considered view in regard to the manner in which the pass marks for TET should be computed, there would be no occasion for this Court to interfere in that decision. Otherwise candidates from the batches of TET of 2011 and 2013 would have been unfairly ousted from applying for the post of Assistant Teacher for no fault of theirs, even though the matter has now been clarified by NCTE on 10 January 2014.

In this view of the matter, we find that the view which was taken by the learned Single Judge in the judgment and order dated 24 April 2015 was eminently fair and proper. The special appeal filed against that judgment (Special Appeal Defective No.637 of 2015) is lacking in merit and shall, accordingly, stand dismissed. In consequence, Special Appeal Defective No.607 of 2015 shall stand allowed and the interim order passed by the learned Single Judge on 17 August 2015 shall stand set aside. Writ A No. 45541 of 2015 shall stand dismissed. The State Government is now directed to proceed in terms of its Government Order/decision dated 17 June 2015.

Both the special appeals are, accordingly, disposed of. There shall be no order as to costs.