

For the Respondent/s : Mr.Subhash Chandra Mishra (Sc16)  
(In Civil Writ Jurisdiction Case No. 20847 of 2019)  
For the Petitioner/s : Mr.Manoj Kumar Manoj  
For the Respondent/s : Mr.Smt. Binita Singh (Sc28)  
(In Civil Writ Jurisdiction Case No. 21465 of 2019)  
For the Petitioner/s : Mr.Sushanta Kumar Das  
For the Respondent/s : Mr.Subash Chandra Mishra (Sc16)  
(In Civil Writ Jurisdiction Case No. 21682 of 2019)  
For the Petitioner/s : Mr.Bimlesh Kumar Pandey  
For the Respondent/s : Mr.Subhash Chandra Mishra (Sc16)  
(In Civil Writ Jurisdiction Case No. 23584 of 2019)  
For the Petitioner/s : Mr.Uma Shankar Sharma  
For the Respondent/s : Mr.Madanjeet Kumar (Gp20)  
For NCTE (in all cases) : Mr. P.K. Shahi, Senior Advocate

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**  
**ORAL JUDGMENT**

**Date : 21-01-2020**

Heard Mr. Y.V. Giri, learned Senior counsel for the petitioners, learned counsel for the State as well as Mr. P.K. Shahi, learned Senior counsel appearing on behalf of the NCTE.

2. The petitioners seek following reliefs:

*“(i) To issue an appropriate writ order direction in the nature of certiorari for quashing the letter no. 7/Misc.-25/2019/1188 dated 11.09.2019 issued under the signature of the Director, Primary Education, Bihar where-under it was mentioned that certificates of the teachers / candidates working in Government/ Government aided / private unaided schools who have completed D.El.Ed. Training through National Institute of Open Schooling (NIOS) during their service, will not be valid/ considered for selection of primary teachers in the Government of Bihar on the basis of the letter no. NCTE-Reg 1011/166/2017-US(Regulation)-HQ/81645 dated 06.09.2019 (Annexure-11 pg. 207).*



(ii) To issue an appropriate writ order direction in the nature of certiorari for quashing the letter no. NCTC-Reg1011/166/2017-US(Regulation)-HQ/81645 dated 06.09.2019 where-under upon the clarification sought by the Additional Chief Secretary, Education Department, Bihar the National Council for Teacher Education (NCTE) held that the duration of D.El.Ed. Training Course is of 18 months. Annexure-10 Pg.101).

(iii) To declare and hold that the D.El.Ed. Training Course conducted by NIOS notified by MHRD and recognised by NCTE as a valid D.El.Ed. (ODL) course per the NCTC (Recognition Norms & Procedure) Regulations, 2014 (hereinafter referred to as the '**NCTE Regulations**') and its order dated 22.09.2017 is a course of 2 years and the petitioners are eligible to be appointed on the post of Primary Teachers and Upper Primary Teachers for Class-I to V and VI to VIII in terms of the guidelines of the NCTE issued in its notification dated 23.08.2010 and 29.07.2011 and possess the requisite qualification to be appointed on the post of Primary Teachers in terms of the memo no. 7/Misc.-51/2019-1098 dated 22.08.2019.

(iv) To issue a appropriate writ order direction in the nature of mandamus commanding the respondent Education Department, Govt. of Bihar to accept the application forms submitted by the petitioners / similarly situated candidates who are in service teachers and have completed two years D.El.Ed. Training Course conducted by NIOS under the instruction of MHRD duly recognised by the NCTE



*which is going to commence from 18.09.2019 to 17.10.2019.*

*(v) To any other relief for which the petitioners appear to be found entitled by the Hon'ble Court."*

3. The only question arises as to whether the course of Diploma in Elementary Education through National Institute of Open Schooling (hereafter referred to as 'the NIOS') provided to teachers working in Government Schools/Government Aided Schools and Private Unaided Schools duly recognized by National Council of Teacher Education in pursuance of the directions by the Human Resources Department, Union Government under Section 29 of the National Council for Teacher Education Act, 1993 in view to meet the exigencies to train about 14 lacs untrained teachers in different schools to allow those candidates to fulfill all eligibility criteria of two years teachers training course which has been made compulsory for appointment on the post of teachers in elementary and primary schools under the Right to Education Act can be treated to be at par with the B.Ed. and Diploma in elementary education for fresh appointment on the post of teachers in different Government Schools/Government Aided Schools/ Private Unaided Schools.

4. The admitted facts bereft of unnecessary details but essential and necessary for answering the question arises in these cases are that the petitioners are working as teachers in Government Schools/Government Aided Schools/Private Unaided Schools but



they were not trained. They had experience of several years in teaching the students of Class I to V and VI to VIII in several private schools within the State of Bihar. The Government of India introduced the Constitution (Eighty Sixth Amendment) Act, 2002 inserting Article-21A of the Constitution of India by which the Right to Education has been declared to be fundamental right and in pursuance of the aforesaid amendment, Right to Education for the children in the age group of 6 to 14 years has been made free and compulsory. The Government of India enacts the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as 'the RTE') to provide elementary education to all children of weaker sections and also duties imposed upon the State to implement the fundamental right to education. Section 23 of the Act provides the qualification for appointment and terms of conditions of service of teachers under the RTE Act. One of the essential criteria for appointment of teachers is two years teachers training such as B.Ed. and D.El.Ed. In terms of the RTE Act, the State of Bihar also framed Rules known as Bihar Panchayat Primary Teacher (Selection and Service) Rules, 2012, Bihar Prakhand Teacher (Selection and Service) Rules and Bihar Zila Parishad Teacher (Selection and Service) Rules (hereinafter referred to as 'the Rules). Rule 5 of the aforesaid Rules also prescribes minimum qualification for appointment of teachers and one of the requisite qualification was



that a person must have trained such as two years B.Ed. course and D.El.Ed. According to the provisions of Section 23 of the RTE Act, one of the requisite qualification was that the teachers must have got two years training course or any other equivalent degree recognized by the NCTE.

5. Soon, thereafter the Government of India realized that approximately 14 lacs in-service teachers working in Government Schools/Government Aided Schools/Private Unaided Schools were carrying out teaching work but they are untrained teachers and to resolve this issue, the Government of India through its Ministry of Human Resources Department introduced a course, namely, D.El.Ed. to be conducted by NIOS and the duration of the said course was fixed for two years. Ministry of Human Resources Department issued a direction on 03.08.2017 as contained in D.O. No.17-2/2017-EE.17 to the Secretaries, NIOS on the issue of training of untrained in-service elementary teachers working in Government Schools/Government Aided Schools/Private Unaided Schools. Accordingly, amendment was brought about in Section 23(2) of the RTE Act and the teachers working therein were provided to undergo teachers training till 31.03.2019 and if the teachers working therein did not acquire requisite minimum qualification of training till 31.03.2019, they would not be allowed to continue as teachers after 01.04.2019. Accordingly, itinerary of course of D.El.Ed. for two



years from different dates were published. In pursuance of the directions of the MHRD, an advertisement dated 20.08.2017 was published in daily newspaper wherein NIOS called for application for admission in D.El.Ed. course for in-service untrained teachers. The advertisement clearly stipulates that the course is for two years programme and has the sanction of NCTE as well as MHRD. After attainment of the course, they are eligible for appointment on the post of teachers. Thereafter NIOS published programme guide for two years D.El.Ed. for in-service untrained teachers as per the guidelines of MHRD and NCTE.

6. The proposal for two years was sent to NCTE for its approval and subsequently by recognition order/182459-61 approval was accorded by the NCTE and the course was duly recognized with certain conditions and relaxations. The course was of two years and by special relaxation by the Chairman, NCTE, the D.El.Ed. course was allowed to be completed within a time span of 18 months. Resolution dated 22.09.2017 by NRC/NCTE/NIOS/Recognition/275th (Part-3) Meeting/2017 was duly recognized 18 months training course conducted by NIOS for grant of D.El.Ed.

7. The Government of Bihar has also recognized D.El.Ed. course vide its letter dated 11.02.2019 and directed the Chairman, Bihar School Examination Board to conduct the examination of D.El.Ed. course from session 2015-17, 2016-18 and 2017-19 and



published the result prior to 31.03.2019 (Annexure-6). All the in-service teachers completed the said course of D.El.Ed. through different recognized institutions.

8. The Government of Bihar through Education Department issued memo no.1098, dated 22.08.2019 detailing the programme for selection/appointment of Panchayat Teacher and Block Teacher for different subjects for Class I to V and Class VI to VIII. The last date for application was fixed to 17.10.2019 and thereafter further procedure for appointment shall follow.

9. The dispute starts arising with regard to the eligibility of such in-service teachers who had acquired D.El.Ed. duly recognized by the MHRD and NCTE as to whether they are deemed to have acquired two years training course. The Additional Chief Secretary/Principal Secretary, Education Department sought a clarification by his letter dated 22.09.2017 from the Principal Secretary, Education Department from NCTE regarding the status of the D.El.Ed. course run by NIOS through its letter no.1124, dated 29.08.2019 addressed to the Chairman, NCTE (Annexure-9).

10. The NCTE through its letter no. NCTE-Reg1011/166/2017-US(Regulation)-HQ/81645 informed the Additional Chief Secretary/Principal Secretary, Education Department that since, as per the NRC/NCTE order dated 22.09.2017 the D.El.Ed. is only for those untrained in-service teachers in



Government and the duration of the programme is 18 months but in para 2 in relation to the appointment with respect to the Primary and Upper Primary level the notification dated 23.08.2010 and 29.07.2011 is required to be followed. On the basis of this letter, the Director, Primary Education issued letter no.7/Misc.-25/2019/1188 on 11.09.2019 stating therein that the teachers/candidates working in Government Schools/Government Aided Schools/Private Unaided Schools who have completed D.El.Ed. through NIOS during their service will not be eligible for consideration in selection of Primary Teachers and thereby debarred the petitioners from applying for appointment on the post of teachers in Government Schools/Government Aided Schools (Annexure-11).

11. Mr. Y.V. Giri, the learned Senior counsel for the petitioners submits that for all practical purposes the Ministry of Human Resources Department has made amendment in Section 23(2) of the NCTE Act and provided one time D.El.Ed. course to such teachers who were working in Government Schools/Government Aided Schools/Private Unaided Schools without having any Degree/Diploma of training course and they are allowed to obtain the training course run by NIOS and other duly recognized institutions but the Director, Primary Education misconstrued the instructions of the Ministry of Human Resources Department, NCTE and debarred the petitioners who had already obtained their training course for two





years (although special arrangement was made for in-service teachers to complete the course of two years within 18 months plus six months in service training) but the respondents illegally debarred the petitioners holding that they are not eligible to apply for appointment on the post of teachers in Government Schools/Government Aided Schools on the ground that they are not having requisite qualification of two years training course. The Director, Primary Education has misread and misinterpreted the true imports of two years abridge programme for imparting training course to in-service teachers duly recognized by the NCTE. Exclusion of such candidates for their consideration on the ground that they had not undergone the two years training programme and obtained degree is discriminatory, illegal and violative of Article 14 of the Constitution inasmuch as such candidates who have already been working in the Government Aided Schools may get all benefits in their service as trained teachers but those candidates such as petitioners who have been working in Government Aided Schools or Private Unaided Schools cannot be held to be eligible for appointment in Government Schools and Government Aided Schools for their better placement and, therefore, Annexure-11 is fit to be quashed and the petitioners should be allowed to apply for appointment on the post of teachers in Elementary/Primary Schools in pursuance of the advertisement (Annexure-8).



12. Mr. P.K. Shahi, the learned Senior counsel appearing on behalf of the National Counsel for Teacher Education, respondents no.3 to 6 submits that Rule 5 of the Bihar Panchayat Primary Teacher Rules, 2012 stipulates eligibility for being appointed as Panchayat and Block teachers. One of the requisite qualification is D.El.Ed. It is submitted that D.El.Ed. course is for two years but Right to Education Act, 2009 was amended on 10<sup>th</sup> August, 2017 to provide opportunity to all in-service untrained and thus unqualified school teachers to acquire minimum necessary qualification by 31.03.2019 and that is why two years course was made less than for two years and the Ministry of Human Resources Department implemented the programme through different mechanism appointing NIOS as the single agency for conducting the Diploma in Elementary Education Programme. Mr. Shahi however, submits that the eligibility criteria for two years for training course as mentioned in Section 23 of the NCTE Act and Rule 5 of the Bihar Panchayat Primary Teacher Rules has not been amended accordingly, and, therefore, the petitioners have rightly been held to be ineligible for making application for appointment on the post of teachers in elementary and primary schools.

13. It is not in dispute that after implementation of Right to Education Act, the NCTE in pursuance of the direction of the Human Resources Department fixed the minimum qualification for



appointment of teachers in elementary and primary schools. It was found that about 14 lacs untrained teachers were working in different Government Schools/Government Aided Schools/Private Unaided Schools. Thereafter the MHRD, Government of India issued a direction to the National Council of Teacher Education under Section 29 of the NCTE Act to run a course of D.El.Ed. to impart training course in-service teachers so that in-service teachers may get their minimum requisite qualification till 31.03.2019. Although the Right to Education Act was enacted in 2009 and Section 23 of the Act prescribes the minimum qualification for appointment of teachers and training of two years is made essential. Accordingly, Bihar Panchayat Primary Teachers (Selection and Service) Rules was framed in 2012 itself in consonance of Section 23 of the Right to Education Act. But thereafter the NCTE issued letter in pursuance of direction of MHRD under Section 29 of the Right to Education Act. The NCTE issued recognition order on 22.09.2017 (Annexure-5). The aforesaid letter clearly says that the matter of recognition of the Project Proposal of National Institute of Open Schooling (NIOS) Noida for D.El.Ed. (ODL) programme through SWAYAM Portal of MHRD for training of in-service untrained teachers was considered by NRC and NRC observed as follows:

*“AND WHEREAS, the NCTE has received directions under Section 29 of the NCTE Act, 1993 from the Ministry of Human Resource Development*



*vide their letters no. 11-15/2017-EE-10 dated 21.08.2017 and 04.09.2017. The project proposal for recognition of Diploma in Elementary Education (D.El.Ed.) programme through ODL mode has been submitted by National Institute of Open Schooling (NIOS) to NCTE Headquarter). The proposal is for conducting on-line D.El.Ed. programme through the SWAYAM portal of the Ministry of HRD for the in-service untrained teachers of elementary level working in Government/Government-aided and unaided private schools in the country.*

*AND WHEREAS, the said project proposal has been considered by an expert committee constituted by NCTE vide order dated 19.09.2017. The Committee considered the project and found that the NIOS is adequately prepared to conduct the programme and the curriculum proposed therein meets the requirement of the D.El.Ed. (ODL) programme of NCTE.*

*AND WHEREAS, In view of above mentioned directions of the Ministry of Human Resource Development under Section-29 of the NCTE Act, 1993 and after considering the recommendation of the Eexpert Committee, Chairperson NCTE in exercise of his powers under clause 12 of the NCTE (Recognition Norms and Procedure) Regulations, 2014, granted relaxation vide NCTE Hqrs letter No. NCTE-Regu1011/166/2017-US(Regulation)-HQ dated 21.09.2017 & letter dated 22.09.2017 to the following provisions in the NCTE Regulations -2014 for ensuring that the directives of the MHRD for*



*implementing the amendment to the RTE Act, 2009 are duly fulfilled.”*

14. From bare perusal of the decisions, it is apparent that the NCTE recognized one time the course in D.El.Ed. conducted by NIOS. The relaxation of some period was only granted to the in-service teachers who had not obtained the required degree training course such as B.Ed./D.El.Ed. which is made minimum requisite qualification for appointment on the post of teachers in elementary and primary schools thus, it cannot be said that the teachers who had obtained D.El.Ed. through NIOS and any other institute duly recognized by the NCTE is not at par with the two years period D.El.Ed. course as prescribes under Section 23(2) of the NCTE Act and Rule 5 of the Bihar Panchayat Primary Teacher Rules. From perusal of the letter as contained in Annexure-10 issued by the Under Secretary (Regulation), NCTE, it appears that the NCTE has simply informed the Additional Chief Secretary, Education Department, Government of Bihar by way of clarification that as per the NRC, NCTE order dated 22.09.2017 the D.El.Ed. (ODL) programme of NIOS is only for those un-trained in-service teachers in Govt./Govt. aided/private unaided schools appointed on or before 10.08.2017 but it is nowhere mentioned that the said course cannot be treated at par with the two years training course and on the basis of such directions, two years degree course whereas the same course was duly



recognized by the NCTE in pursuance of the direction issued by the Government of India, MHRD under Section 29 of the NCTE Act.



15. Thus, I find that on such misrepresentation and misreading of the clarification issued by the NCTE, the Director, Primary Education has illegally issued direction that the persons who had obtained D.El.Ed. course duly run for 18 months by NIOS are not eligible for appointment on the post of teachers in primary schools and thus, the letter as contained in Annexure-11 is illegal, unsustainable and violative of Article 14 of the Constitution. Accordingly, Annexure-11 is set aside.

16. The writ petitions are allowed. The respondents are directed to allow the petitioners to apply within one month and consider the case of the petitioners for appointment on the post of primary teachers.

**(Prabhat Kumar Jha, J)**

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27.01.2020
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