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SINGLE BENCH

**IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WRIT PETITION (C) No. 4750 OF 2010.**

**PETITIONER**

: Ashish Kumar Shukla,  
S/o. Shri Tirath Raj Shukla, aged  
about 25 years, R/o. Village  
Jatpura, Post Office Bhojpur,  
District Garhwa (Jharkhand).

**VERSUS**

**RESPONDENTS**

1. State of Chhattisgarh,  
Through : Secretary, School  
Education Department D. K. S.  
Bhawan, Raipur (C.G.)
2. Joint Director S.C.E.R.T.  
Raipur District Raipur (C. G.)
3. Chhattisgarh Professional  
Examination Board, Raipur,  
District Raipur (C.G.)
4. Union of India, through the  
Secretary Department of Education  
Hyman Resources New Delhi.

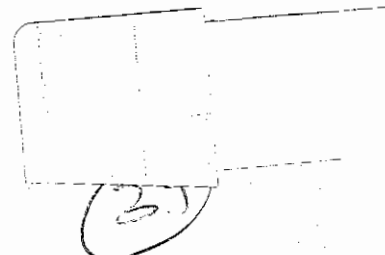
P.B. No. 5057/2010  
Presented by O.P. Yadav  
Dated 19/8/2010



**WRIT PETITION UNDER ARTICLE 226 OF THE**  
**CONSTITUTION OF INDIA**



AFR

**HIGH COURT OF CHHATTISGARH : BILASPUR****WRIT PETITION (C) NO.4749 OF 2010****PETITIONER**

Pankaj Kumar Pandey

Versus

**RESPONDENTS**

State of Chhattisgarh &amp; Others

**WRIT PETITION (C) NO.4750 OF 2010****PETITIONER**

Ashish Kumar Shukla

Versus

**RESPONDENTS**

State of Chhattisgarh &amp; Others

**WRIT PETITION (C) NO.4748 OF 2010****PETITIONER**

Kumar Kanishka

Versus

**RESPONDENTS**

State of Chhattisgarh &amp; Others

**WRIT PETITION (C) NO.3873 OF 2010****PETITIONER**

Vijay Kant Pandey

Versus

**RESPONDENTS**

State of Chhattisgarh &amp; Another

**WRIT PETITION (C) NO.4005 OF 2010****PETITIONER**

Preeti Rusia

Versus

**RESPONDENTS**

State of Chhattisgarh &amp; Others

(Writ Petition under Article 226/227 of the Constitution of India)

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

Present :- Shri O.P. Yadav, Shri B.P. Rao & Shri Harsh Wardhan,  
Advocates for the respective petitioners.

Shri M.P.S. Bhatia, Deputy Government Advocate for the State.

Ms. Farah Minhaj, Advocate on behalf of Shri Kashif Shakeel,  
Advocate for the Union of India.



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ORDER (ORAL)(Passed on this 31<sup>st</sup> day of August, 2010)

1. The petitioners, in this batch of petitions, are seeking admission to the B.Ed. Course in various colleges situated in the State of Chhattisgarh. Thus, the question of law and facts involved in all these petitions are the same and arise from the same cause of action. Hence, these petitions are being disposed of by this common order.
2. According to the petitioners, the petitioners appeared in the Pre-B.Ed. examination and thereafter, the petitioners were called for counselling. During the counselling, the petitioners were asked to produce the marks of having 50% aggregate marks in graduation/post graduation degree in spite of the fact that there was a circular indicating 45% marks. The petitioners were not permitted to appear in the counselling. Thereafter, the petitioners submitted representations, but the same have not been considered and decided till date. Thus, these petitions.
3. Learned counsel appearing for the petitioners submit that once the process of selection starts, the selection criteria including the eligibility cannot be changed, as the petitioners have spent their time in preparation of the examination and they have also incurred huge amount. Thus, the impugned action of the respondent authorities is illegal, arbitrary and against the principles of natural justice.
4. On the other hand, learned counsel appearing for the State submits that as per the guideline issued by the National Council for Teacher Education (for short "NCTE"), under Norms and Standard for Secondary Teacher Education Programme for admission to Bachelor

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of Education (B.Ed.) Degree, the eligibility criteria is that the candidates with at least fifty percent marks either in the Bachelor's Degree and/or in the Master's degree or any other qualification equivalent thereto, are eligible for admission to B.Ed. course. Learned counsel further submits that the field of 'teachers training education' is covered under entry 25 of the concurrent list, read with entry 66 of the Union List of the Seventh Schedule. The State has no competence to make Rules in contravention of the regulations/ notifications issued by the Union of India i.e. National Council for Teacher Education. There is no entry in the State list dealing with the 'teachers training'.

5. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.
6. The petitioners, pursuant to the online notice dated 12.7.2010 [Annexure P/4 to W.P.(C) No. 4749/2010] made applications for appearance in Pre-B.Ed. examination for admission to B.Ed course, 2010-11. The minimum qualification prescribed in the notice was acquisition of 50% in the graduate/post graduate degree, as per the Chhattisgarh B.Ed Entrance Rules, 2006, (*for short 'the Rules, 2006'*). The minimum qualification as prescribed in Rule 4(b) was modified and reduced to 45% by notification dated 14.02.2008 [Annexure P/3 to W.P.(C) No. 4749/2010]. However, it was mentioned in the clause 2.9 of the on-line notice that the minimum qualifying marks was 50% in graduate/post graduate degree as fixed by National Council for Teacher Education. The petitioners, participated in the pre-B.Ed examination held on 20.05.2010 and obtained 44.444%, 37.374%, 51.515%, 43.434% and 39.394% of

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marks, respectively. However, the petitioners were denied participation in the counselling on the ground that the minimum qualifying marks in graduation/post graduation degree was less than 50%.

7. Contention of learned counsel appearing for the petitioners is that once the State Government has amended the Rules, 2006, by reducing the minimum qualifying marks from 50% to 45% in graduate/post graduate degree, the same ought to have been given effect to as no amendment thereafter has been made by the State Government.
8. The identical issue came into consideration before this Court in *Mukesh Singh Thakur v. State of Chhattisgarh & Others*<sup>1</sup>, wherein this Court observed as under:

"16. Applying the dicta laid down by the Hon'ble Supreme Court in various cases, quoted above, to the facts of the present case, I am of the considered opinion that the State Government is fully justified in amending the requisite qualification for admission to the B.Ed courses, as the qualification prescribed in the State Rules, 2006 notified in gazette dated 20<sup>th</sup> April, 2006 was not in accordance with the Regulations, 2006, framed by the N.C.T.E. which has full authority to regulate and monitor standard of education in teacher training institute. The State Government cannot make any prescription of the standard which is adverse to or lower than the standards fixed by the N.C.T.E. Even otherwise the candidates who had appeared in the examination and passed written examination had only the legitimate expectation for consideration of their claims according to the Rules, then in vogue. (Ref.: *State of M.P. and Others v. Raghuveer Singh Yadav and Others* (1994) 6 SCC 151)

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<sup>1</sup> AIR 2008 CG 4

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17. The Rules, 2006 framed by the State Government was notified on 20<sup>th</sup> April, 2006. At that point of time, there was no prescription by the N.C.T.E. for qualification. Regulations, 2006 made by the N.C.T.E. prescribing the qualification i.e. graduate/post graduate degree not having less than 50% marks, for admission to the B.Ed course was notified on 20<sup>th</sup> July, 2006, which will have overriding effect on the State Rules 2006, prospectively. The prospectus for Pre B.Ed examination, 2007 was issued in April, 2007. The State Government did not take any step to amend the Rules, 2006 to prescribe requisite qualification for admission to B.Ed. course in accordance with the prescription made by the N.C.T.E. in the Regulations, 2006. The subsequent amendment in Rule 4(b), by gazette notification dated 6<sup>th</sup> June 2007, cannot be faulted with, as the same was made to prescribe qualification for admission to B.Ed. course in conformity with the prescriptions made by the N.C.T.E. in Regulations, 2006."

9. There is no dispute that Appendix 4, i.e. Norms and Standards for Bachelor of Education Programme leading to Bachelor of Education (B.Ed) degree, appended to National Council for Teacher Education (Recognition Norms & Procedure) Regulations, 2007 (*for short 'the Regulations, 2007'*) which was notified on 27<sup>th</sup> November, 2007, published in the Gazette of India, prescribes that "candidates with at least 45% marks either in the Bachelor's Degree and/or in the Master's degree or any other qualification equivalent thereto, are eligible for admission to the programme. Accordingly, it appears that the State Government, by notification dated 14.02.2008, reduced the qualification from 50% to 45% marks in graduate/post graduate degree. Thereafter, the National Council for Teacher Education (Recognition Norms & Procedure) Regulations, 2009 (*for short 'the Regulations, 2009'*) came into force w.e.f. 31<sup>st</sup> August, 2009, as

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published in the Gazette of India. The notifications were issued in exercise of powers conferred by sub-section (2) of section 32 of the National Council for Teacher Education Act, 1993 in supersession of the Regulations, 2007, whereby the minimum qualification of 45% was increased to 50%, in clause 3(2) of the norms (Appendix 4 to the Regulations, 2009), as under:

**"3. Intake, Eligibility and Admission Procedure**

**(1) Intake**

xxx                      xxx                      xxx

**(2) Eligibility**

(a) Candidate with at least fifty percent marks either in the Bachelor's degree and/or in the Master's degree or any other qualification equivalent thereto, are eligible for admission to the programme.

xxx    xxx    xxx

xxx    xxx    xxx"

10. Accordingly, after 31<sup>st</sup> August, 2009, the minimum qualification was 50% marks in graduate/post graduate degree or any other equivalent qualification. Thus, the contention of the petitioners that since there was no change in the admission rules, the State Government cannot be permitted to change the rules after notice for pre-B.Ed examination was issued, has squarely been considered and decided in *Mukesh Singh Thakur (supra)* holding that the prescription of qualification by the N.C.T.E. of having 50% marks in graduate/post graduate degree cannot be reduced to 45%. The Regulations, 2009 was duly notified on 31<sup>st</sup> August, 2009 and admission programme for B.Ed. course was notified online on 12.07.2010 (Annexure P/4). Thus, the contention of the petitioners are rejected. The decision of the government not to admit a candidate, though he may have been successful in the pre-B.Ed. examination, but has less than 50%

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marks in graduate/post graduate degree, is just and proper and does not warrant interference.

11. In *Mukesh Singh Thakur (supra)*, it was observed that the petitioners appeared on the basis of mis-representation made by the State Government in prescription of qualification, despite change in the minimum qualification prescribed by the N.C.T.E. In that case, the petitioners were held entitled to refund of the payment made and the counselling fee, thereafter. In the case on hand, the similar misrepresentation has been made by the State Government. The rules were modified on 14.02.2008 by reducing the qualifying marks by reducing 50% to 45%, may be the same was done in accordance with the qualification prescribed in the Regulations, 2007. Thereafter, the minimum qualification was modified to 50% marks in graduate/post graduate degree by Regulations, 2009. The State Government did not make any amendment in their rules accordingly. It has been held in *Mukesh Singh Thakur (supra)* that any qualification which is fixed in contravention with the prescribed qualification determined by the regulations made by the N.C.T.E., was bad. The State government ought to have amended its rules, accordingly.
12. From the afore-stated analysis and in view of the observations in *Mukesh Singh Thakur (supra)*, it is held that the qualification of having 50% in graduate/post graduate degree cannot be reduced. Thus, the petitioners have acquired no right on the basis of amendments dated 14.02.2008 by the State Government for appearing in the pre-B.Ed examination, which is contrary to the regulations prescribed by the N.C.T.E.



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13. Accordingly, all the writ petitions are dismissed.
14. However, looking to the attitude of the State Government by not being sincere in informing the candidate about the minimum prescribed qualification as prescribed by the N.C.T.E. time to time, each petitioner, since has suffered, is entitled to compensation at the rate of Rs. 15,000/- with refund of all the payments made by them, in making application forms and counselling fee, thereafter.

Sd/-  
**Satish K. Agnihotri**  
Judge

Arun/Amit