

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE VIVEK JAIN

WRIT PETITION No. 12985 of 2021

AVNISH TRIPATHI

Versus

THE STATE OF MADHYA PRADESH AND ORS.

WITH

WRIT PETITION No. 10018 of 2021

SMT. SANGEETA JAMRA AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND ORS.

WRIT PETITION No. 22082 of 2021

KALPANA CHOUDHARY

Versus

THE STATE OF MADHYA PRADESH AND ORS.

WRIT PETITION No. 684 of 2023

PRADEEP KUMAR AHIRWAR

Versus

THE STATE OF MADHYA PRADESH AND ORS.

WRIT PETITION No. 3198 of 2023

HUSSAIN MOHAMMAD AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND ORS.

WRIT PETITION No. 8253 of 2023

MAHENDRA CHOUDHARY
Versus
THE STATE OF MADHYA PRADESH AND ORS.

WRIT PETITION No 16874 of 2023

AWADHESH PAL
Versus
THE STATE OF MADHYA PRADESH AND ORS.

WRIT PETITION No. 1177 of 2024

HEMANT KUMAR CHOUDHARY
Versus
THE STATE OF MADHYA PRADESH AND ORS.

WRIT PETITION No. 23704 of 2024

SMT. PREETI YADAV
Versus
THE STATE OF MADHYA PRADESH AND ORS.

WRIT PETITION No. 29838 of 2024

SHIVANI SHAH
Versus
THE STATE OF MADHYA PRADESH AND ORS.

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Appearance:

Shri Rameshwar Singh Thakur – Sr. Advocate with Shri Shivanshu Kol and Shri Ramesh Prajapati – Advocates, Shri Satyendra Jyotishi, Shri Rajmani Singraul, Miss Ruby Haldkar, Shri Brindavan Tiawri and Miss. Kanchan Tiwari – Advocates for the petitioners in their respective cases.

Shri B.D. Singh – Dy. Advocate General for the respondents / State.
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ORDER

(Reserved on : 19.02.2025)

(Pronounced on : 17.03.2025)

Per: Hon'ble Shri Justice Vivek Jain.

By way of these petitions challenge is made to the vires of Column No.5 to Entry-1 to Schedule III of M.P. State School Education Service (Educational Branch) Service Conditions and Recruitment Rules, 2018 (for short 'Rules of 2018') on the ground that Column No.5 captioned as "educational qualification" is ambiguous and contrary to National Council for Teachers Education regulations (for short 'NCTE regulations') and that the regulations framed by the NCTE should prevail to the extent they are repugnant to the Rules framed by the State Government.

2. It is the case of the petitioners that they are the aspirants for appointment to the post of High School Teacher in the School Education Department of the State of Madhya Pradesh. For appointment to the said post the requisite qualification was laid down in Schedule III which has been framed under the enabling provision of Rule 8 of the said Rules of 2018. The challenge is made to Column 5 of Entry 1 of Schedule III providing requisite minimum qualification for High School Teacher which is as under:-

"Masters Degree in the relevant subject with Second division and Bachelor of Education (B.Ed.) or its equivalent."

3. The petitioners are aggrieved by the aforesaid requirement in the eligibility criteria to the extent that the aforesaid entry in the Schedule III of the Rules 2018 mentioning the "Second Division" in Masters degree is ambiguous and non-specific and suffers from manifest arbitrariness. It is their case that there is no uniformity amongst various universities in India

and even in the State of Madhya Pradesh, different State universities established under the M.P. Vishwavidhyala Adhiniyam, 1973 are treating Second Division differently. Some universities are treating Second division on basis of marks 45% and above, some universities are treating Second division as marks 50% and above. Therefore, it is the contention of the petitioners that some candidates who have secured 46% marks but their marksheets mentioned that they have passed in Second division have been allowed to participate in the recruitment process and have been ultimately selected whereas there are many candidates who have acquired 49% marks but whose degrees mentioned Third division because the concerned university treats Second division to be above 50% marks then they have been left out of selection process though they have attained more marks than other candidates in post graduation degree but only on account of the fact that concerned University has treated Second division to be above 50%.

4. It is the case of the petitioners that in this manner there has been a total chaos in the selection to the High School Teacher by mentioning 'Second Division' which is a very ambiguous term in place of specific percentage so that uniformity in the selection could be maintained and any arbitrariness in selection process could have been avoided by the State.

5. It is further the case of the petitioners that the National Council for Teachers Education ("NCTE" for short) regulations do not provide for the ambiguous term like 'Second Class or Second Division'. The NCTE regulations provide for specific percentage of marks which is with the view to ensure uniformity in the selection process so that there can be no heartburning among the candidates by arbitrariness in the matter of selection whereby candidates having lesser marks in P.G. examination have been

declared eligible while the candidates having more marks in the P.G. examination have been left out.

6. The petitioners have quoted the following examples of different universities in the State of Madhya Pradesh itself whereby different universities have treated different Divisions/Class differently. It is the case of the petitioners that even the State Universities of M.P. are not unanimous in the matter that what should be the cut off marks for Second division or Third division, though they are unanimous in the cut off marks of 1st division i.e. 60%. For instance, it has been stated that Jiwaji University, Gwalior and Devi Ahilya University, Indore, are awarding second Division on marks above 50%, whereas Barkatullah University, Bhopal, Rani Durgavati University, Jabalpur and Hari Singh Gour University, Sagar (prior to being converted to Central University) were awarding Second Division on 45% marks. All these Universities are State Universities of Madhya Pradesh.

7. Further, the case of the petitioners is that in the State of M.P. all the State Universities have a common Coordination Committee as per provisions of Section 34 of the M.P. Vishwavidhyala Adhiniyam, 1973 and they have unified syllabus which is more or less the same and there is no remarkable difference in the syllabus, examination system and teaching standard but despite that different universities are treating cut off of different division/class differently which is totally arbitrary. It is further the case of the petitioners that no uniform body has been set up either in the State or at the national level to ascertain the comparative difficulty level of the syllabus and examinations of different universities so that it could be conclusively established that 50% marks in a particular university would be equivalent to 45% marks in some other university. The different universities are simply treating different divisions differently on basis of different cut off of marks

as per their own sweet will which is leading to the candidates being treated arbitrarily.

8. Another ground is taken that the NCTE has framed regulations from time to time in the matter of prescribing standards for teachers. The NCTE prescribes different standards at different point of time by different regulations. However, those candidates who have attained the requisite qualification at the relevant point of time when some earlier regulations were in force having different standards i.e. lower standards, then the said aspect has not been recognized under the questioned entry of schedule III of Rules of 2018, the NCTE in its regulations recognizes the said fact and has made due provisions to that effect M.P. Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 and under authority of said Act, the State Government has framed consequential rules named as The M.P. Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Rules, 1998 (for short ‘ Rules of 1998’). The said enactment and rules of 1994 and 1998 respectively have been enacted and framed by exercising powers and authority drawn from Article 16(1) and 16(4) of the Constitution of India given to the State.

9. As per Rule 4A of the Rules of 1998 relaxation has been granted to candidates of SC/ST category to get 10% relaxation in minimum qualifying marks but their selection shall be made on the basis of merit of selection list of SC/ST candidates. It is the specific contention of the petitioners that said provision was required to be engrafted in the Schedule III of Rules of 2018 for the reason that the Constitution mandate under Article 16(1) and 16(4) could be fulfilled, moreso, when the State Government has itself framed

Rules of 1998 by drawing authority under Articles 16(1) and 16(4) of the Constitution of India.

10. Another ground is taken that Government schools are run in the State of M.P. under the School Education Department as well as under the Tribal Welfare Department. Corresponding rules of 2018 are framed under School Education Department as well as under Tribal Welfare Department. However, Entry-1 of Schedule III of Rules of 2018 as framed for Tribal Welfare Department do not contain any corresponding provision in the matter of minimum marks or division or class to be obtained in PG degree and mere passing the PG degree has been treated to be sufficient for all candidates irrespective of category. Therefore, the State should have maintained uniformity in framing rules for different departments.

11. *Per Contra*, it is contended by learned counsel for the State that there is no arbitrariness or ambiguity in Entry 1 of Schedule III of Rules of 2018. It is the case of the State that the State is not bound to maintain uniformity in Rules framed by two different departments because the candidates willing to serve in the respective two different departments are different. The schools belonging to Tribal Welfare Department are in hard areas of the State and looking to the specific needs of the said department, a more lenient provision has been carved out in the rules as applicable to the School Education Department and the petitioners have no vested right to seek any relaxation and claim parity with the schools being run by the Tribal Welfare Department.

12. It is also contended by learned counsel for the State that the State in its wisdom has provided that passing PG degree with Second division is the requisite minimum qualification to participate in selection process. A Second division is awarded by the concerned university and concerned university is

academic body which is having all the powers and authority to decide whether looking to difficulty level of its syllabus and examination level what should be the minimum cut off marks for Second or Third division. The Courts in exercise of powers of judicial review cannot substitute their own wisdom in place of wisdom of academic authorities that what should be the cut off marks for Second or Third division in PG courses. The universities being the sole academic bodies were at liberty to prescribe Second or Third division for their courses and the State has accepted the wisdom of the Universities, and that this Court should not interfere in that.

13. It is further contended that the State is not bound to maintain uniformity in the matter of service rules for appointment of teachers at par with NCTE regulations because the State of M.P. is having power to determine condition of service of employees serving the State by drawing authority under Article 309 of the Constitution of India. The State is at liberty to frame service rules as per its needs and requirements and there is no lack of authority available with the State to frame service rules and regulations inconsistent with the regulations framed by the NCTE in the matter or recruitment of teachers.

14. So far as question of not providing 10% relaxation in the Post Graduate examination for the candidates belonging to SC / ST category is concerned, it is argued that it is not mandatory for the State to provide relaxations and concessions as per Articles 16(1) and 16 (4) of the Constitution of India and aforesaid provisions are only enabling provisions which enable the State to make provisions. However, no writ will lie directing the State to insert provisions in the law nor can the law enacted by the State can be declared unconstitutional or ultra vires in Constitution only for the fact that the State has not provided any concession or relaxation to

candidates belonging to socially and economically backward classes as covered under Article 16(4) of the Constitution of India. On these grounds, it is contended that the petitions be dismissed on the questions of law raised.

15. Factual objections were also raised by counsel for the State by stating that the selection process was initiated firstly in the year 2018 under the Rules of 2018 and the said process has been completed. Thereafter these petitions have been filed in the year 2021 and when almost complete progress had been made in the matter of selection and appointment of teachers under the selection process of 2018, though the said process rolled over till the year 2022. Thereafter in the year 2023 fresh process was initiated which has also been almost completed, though during pendency of present petitions. Therefore, this Court should not disturb the selections already made because it will lead to chaos and disturb the legitimate expectation of the persons already selected and appointed.

16. It is further stated by the learned counsel for the State that some of the petitioners in these batch of petitions participated in the recruitment process by mis-stating their division /class in the PG degree to be Second division though as per their degree/marksheet they were Third division candidates and there has been suppression of facts on the part of some of these candidates. On these grounds also it is prayed to dismiss the petitions.

17. Heard the learned counsel for the parties and perused the record.

18. The first issue raised to challenge the vires of the impugned entry of Schedule III regarding educational qualification for High School Teacher (“Uchch Madhyamik Shikshak”) is taken up first.

19. So far as the argument in relation of the impugned entry being inconsistent with similar rules framed for same posts in Tribal Welfare

Department is concerned, in our opinion, in that manner, no parity can be sought for the simple reason that the schools of the said Department cater to different strata of society, those schools are situated in hard areas of the State and mostly in Scheduled Tribal areas, and therefore, looking to its peculiar requirements, the said Department could have adopted different parameters.

20. It is settled in law that the scope of interference with the legislation or statutory rules/delegated/subordinate legislation deriving authority from the Constitution or legislation are limited. In the case of **Cellular Operators Assn. of India v. TRAI, (2016) 7 SCC 703**, the Supreme Court has held that the provision under challenge must be shown to have been drafted as a result of intelligent care, deliberation and due application of mind which is expected from the authority. In absence of such intelligent care deliberation or diligence of consideration of relevant factors and material by the decision making authority it is always prone to challenge on the ground of being manifestly arbitrary and ultra vires to provisions of parents enactments.

21. In an earlier Constitutional Bench judgment in the case of **Lord Krishna Sugar Mills Ltd. v. Union of India [Lord Krishna Sugar Mills Ltd. v. Union of India, (1960) 1 SCR 39 : AIR 1959 SC 1124]**, it has been held by the Hon'ble Supreme Court that the Court in judging the reasonableness of a law, will necessarily see, not only the surrounding circumstances but all contemporaneous legislation passed as part of a single scheme. The reasonableness of the restriction and not of the law has to be found out, and if restriction is under one law but countervailing advantages are created by another law passed as part of the same legislative plan, the Court should not refuse to take that other law into account.

22. In the case of **Shayara Bano v. Union of India, (2017) 9 SCC 1** the test for manifest arbitrariness was reiterated by the Supreme Court. The

entire development of law on the subject of manifest arbitrariness and proportionality was discussed in detail and ultimately, it was held that a legislation or subordinate legislation would become manifestly arbitrary under Article 14 when the enacting authority acts capriciously, irrationally, with oblique motive without adequately determining the principle. When something is done excessive in disproportionate manner contrary to provisions, purpose and objective for which such a power is conferred by parents enactments such a piece of legislation, subordinate legislation or executive action becomes manifestly arbitrary. Test of manifest arbitrariness can be resorted to for invalidating subordinate legislation or enactments. The Constitutional Bench summed up as under :-

“101. It will be noticed that a Constitution Bench of this Court in Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14.”

23. As far as back as in 1985 in the case of **Indian Express Newspapers (Bombay) Vs. Union of India, reported in 1985 (1) SCC 641**, the Hon’ble Supreme Court laid down the tests for challenging the virus of any legislation from the vice of arbitrariness or discrimination and also discussed

the difference between English and Indian Law in that in India arbitrariness are available as additional grounds. It was held as under :-

*“75. A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because subordinate legislation must yield to plenary legislation. It may also be questioned on the ground that it is unreasonable, unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly arbitrary. In England, the Judges would say “Parliament never intended authority to make such rules. They are unreasonable and ultra vires”. The present position of law bearing on the above point is stated by Diplock, L.J. in *Mixnam's Properties Ltd. v. Chertsey Urban District Council* [(1964) 1 QB 214 : (1963) 2 All ER 787 : (1963) 3 WLR 38 (CA)] thus:*

“The various special grounds on which subordinate legislation has sometimes been said to be void ... can, I think, today be properly regarded as being particular applications of the general rule that subordinate legislation, to be valid, must be shown to be within the powers conferred by the statute. Thus, the kind of unreasonableness which invalidates a bye-law is not the antonym of ‘reasonableness’ in the sense in which that expression is used in the common law, but such manifest arbitrariness, injustice or partiality that a court would say: ‘Parliament never intended to give authority to make such rules; they are unreasonable and ultra vires’...if the courts can declare subordinate legislation to be invalid for ‘uncertainty’ as distinct from unenforceable...this must be because Parliament is to be presumed not to have intended to authorise the subordinate legislative authority to make changes in the existing law which are uncertain.”

77. In India arbitrariness is not a separate ground since it will come within the embargo of Article 14 of the Constitution. In India any enquiry into the vires of delegated

legislation must be confined to the grounds on which plenary legislation may be questioned, to the ground that it is contrary to the statute under which it is made, to the ground that it is contrary to other statutory provisions or that it is so arbitrary that it could not be said to be in conformity with the statute or that it offends Article 14 of the Constitution.”

24. When examining the impugned provision of Schedule III on the touch-stone of the legal principles as narrated above, we see that the rule making authority has simply mentioned particular division/class in place of specific percentage of marks. This is stated to be contrary to the regulations framed by the NCTE which will be discussed later on, when we proceed to discuss the validity of the rules on the anvil of it being inconsistent with NCTE Regulations.

25. The posts in question are the posts of appointment of teachers teaching higher secondary classes of subjects of science and humanities etc. The award of M.A. and M.Sc. Degree in such subjects is made by Universities which are subjected to regulatory control of University Grants Commission (for short “UGC”). The UGC has framed regulations from time to time exercising powers under Section 26 (1) (e) and (g) of the UGC Act 1956, laying down this qualifications for recruitment of teachers. In the Regulations of 2010 known as *UGC Regulations On Minimum Qualifications for Appointment of Teachers and Other Academic Staff In Universities and Colleges and Measures for the Maintenance of Standards in Higher Education 2010* (for short, “Regulations 2010), clause 4.4.0 related to minimum qualification for appointment of Assistant Professor as having attained 55% marks in Post Graduate Degrees. In certain sub-clauses of clause 4.4.0, specific percentage was specified in some and division/class was specified in some others. The UGC thereafter framed fresh regulations in the year 2018 known as *University Grants Commission (Minimum*

Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and other Measures for the Maintenance of Standards in Higher Education) Regulations, 2018. In clause 3.4 of the said Regulations of 2018, a specific percentage i.e. 55% at Masters level has been provided and now in the regulations of 2018 in every place specific percentage is prescribed in place of ambiguous term like First Division or Second Division. Therefore, it can be seen by this Court that even the UGC has done away with the ambiguous practice of prescribing class/division and has replaced the said practice with specification of percentage.

26. It appears that even the UGC realized the position that prescribing class/division in place of specified marks was an ambiguous and arbitrary rule and has done away with that.

27. Even apart from that, when we consider the argument raised by the State that every University is a academic body and is having power and authority to determine that how much percentage of marks should be treated to be Second or Third division looking to the difficulty level of the examination in syllabus of the concerned University. We find that this argument is very attractive in the first flush. However, when the actual ground situation is seen then it is seen by this Court that even in the State Universities of Madhya Pradesh which are governed by the same State enactment that is M.P. Vishwavidyalaya Adhiniyam, 1973 and subjected to the same Coordination Committee and there is almost identical syllabus among all the Universities which is more or less the same and maintains almost same standard of course curriculum and examination, then also different State Universities in the state of Madhya Pradesh itself are adopting different yardstick to determine Second or Third division.

28. There is no regulatory body in the State or at national level which monitors the difficulty level of course curricular and/or examinations of different Universities and comes out with a equivalence chart or equivalence level for different examinations of different universities and decides that how much percentage of marks of which university is equivalent to how much percentage of marks of another University. Unless this exercise is undertaken and it is conclusively established by any regulatory body established for that purpose which determines that particular marks of a particular University are equivalent to particular marks of some other particular University, the prescription of Division/Class in place of percentage is manifest arbitrary subordinate legislation. Merely on the basis of the position that each University is treating different marks as Second division marks, it cannot be inferred by this Court that there has been application of mind by each University in determining its own level of cut-off of Second or Third division. Nothing has been placed before us that any exercise of carrying out the evaluation of comparative difficulty level of curriculum and examination has taken place either at Central or State level on basis of which different Universities have arrived at their own different divisions/classes for determining Second or Third division marks. Unless such an exercise had been undertaken by either the University concerned or by any academic regulatory body in the State or at national level, then the subordinate legislation in question, could have been saved from vice of manifest arbitrariness. Unfortunately that is not so and therefore, we have no option but to hold that the requirement of class/division in place of specific percentage of marks suffers from manifest arbitrariness. It deserves to be and thereby declared arbitrary and liable to be struck down.

29. Another ground was raised that no requirement for teachers qualification could be laid down by the State which is inconsistent with the provisions of the NCTE Regulations.

30. Before dealing with that we dwell upon the list contained under Seventh Schedule to the Constitution of India. The subject of education is at Entry 25 of list-III (concurrent list). The said entry reads as under :-

“25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour”.

31. Certain exceptions are there to Entry 25 which are entry 63, 64, 65 and 66 of list-I (Union list). However school education is a subject not under the aforesaid entries in the Union List and is covered under entry 25 of list III which is the concurrent list. It cannot be disputed that in case of repugnancy, in terms of Article 254 of the Constitution, the Central Law will prevail.

32. The NCTE as well as the State Government have been framing parallel rules in the matter of laying down qualification for appointment of teachers.

33. As per section 12 (d) of National Council for Teachers Education Act 1993, NCTE has been authorized to lay down guidelines in respect of minimum qualification for a person to be employed as teachers in recognized institutions. Section 12 lays down functions of NCTE and 12 (d) provides as under :-

“lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognised institutions;”

Section 1 relates to application and commencement of the Act 1993 and as per section 1(4)(c) of the said Act, provisions of the said Act apply to school imparting pre-primary, primary, upper primary, secondary or senior secondary education.

Section 12-A as inserted w.e.f. 01.06.2011 further clarifies the position that NCTE shall have the power to determine minimum standards of Education for school teachers. The power to frame regulations is given to NCTE as per Section 32 of the Act and as per Section 32(d)(i) NCTE has been given power to make regulations to prescribe minimum qualifications for a person to be employed as teacher under section 12(d). Section 12-A is as under :-

“12-A. Power of Council to determine minimum standards of education of school teachers.—For the purpose of maintaining standards of education in schools, the Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognised by the Central Government or a State Government or a local or other authority:

Provided that nothing in this section shall adversely affect the continuance of any person recruited in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate schools or colleges, under any rule, regulation or order made by the Central Government, a State Government, a local or other authority, immediately before the commencement of the National Council for Teacher Education (Amendment) Act, 2011 solely on the ground of non-fulfilment of such qualifications as may be specified by the Council:

Provided further that the minimum qualifications of a teacher referred to in the first proviso shall be acquired within the period specified in this Act or under the Right of Children to Free and Compulsory Education Act, 2009.”

34. The aforesaid issue of repugnancy of State Service Rules with NCTE resolution was considered in detail recently by the Division Bench of Chhattisgarh High Court in the case of **Ashokanand Patel Vs. State of Chhattisgarh (2025:CGHC:6548-DB)** and Chhattisgarh High Court considering the similar issues held that the State Government, without obtaining relaxation from the NCTE, cannot deviate from the standards prescribed by the NCTE.

35. As per Right of Children to Free and Compulsory Education Act 2009 (for short, “RTE Act”), Section 23 thereof provides that qualifications for appointment and terms and conditions of service of future would be such as are laid down by academic authority authorized by the central government by notification. Section 23 of RTE Act 2009 is as under :-

“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.”

36. The NCTE has been appointed as an academic authority by the Central Government in terms of Section 23 of RTE Act, 2009 by notification dated 31.3.2010. Therefore, apart from the provisions of NCTE

Act, the NCTE now has an added authority to lay down such qualifications for appointment of teachers in view of Section 23 of RTE Act 2009. The said provisions were considered by the Hon'ble Supreme Court in the case of State of U.P. vs. Shiv Kumar Pathak, (2018) 12 SCC 595 wherein it was held as under:-

“17. There is no manner of doubt that NCTE, acting as an “academic authority” under Section 23 of the RTE Act, under the Notification dated 31-3-2010 issued by the Central Government as well as under Sections 12 and 12-A of the NCTE Act, was competent to issue Notifications dated 23-8-2010 and 11-2-2011. The State Government was under obligation to act as per the said notifications and not to give effect to any contrary rule. However, since NCTE itself has taken the stand that Notification dated 11-2-2011 with regard to the weightage to be given to the marks obtained in TET is not mandatory which is also a possible interpretation, the view of the High Court in quashing the 15th Amendment to the 1981 Rules has to be interfered with. Accordingly, while we uphold the view that qualifications prescribed by NCTE are binding, requirement of weightage to TET marks is not a mandatory requirement.”

37. The Supreme Court has conclusively held that it is not open to the State Government to frame any rule contrary to NCTE Regulation and that is exactly what has been done in the present case.

38. After the Notification dated 31.03.2010, the NCTE initially came out with notification dated 23.08.2010 laying down the minimum qualifications for appointment as Teachers. In the said Notification dated 23.08.2023, the qualifications for appointment of Teachers were laid down. However, it did not lay down any qualification for Teachers to teach Classes 9th to 12th. Thereafter, the NCTE issued Notification dated 29.07.2011 amending the Notification dated 23.08.2010. By this amendment dated 29.07.2011 qualifications were not laid down for Teachers to teach Classes 9th to 12th.

Thereafter, the NCTE framed Regulations in 2014 notified on 12.11.2014 known as NCTE (determination of minimum qualifications for persons to be recruited as Education Teachers and Physical Education Teachers in Pre-Primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014.

39. These regulations were framed after insertion of Section 12-A in NCTE Act, 1993. For the first time, the NCTE laid down qualifications for Secondary Classes (Classes 9th and 10th) and Senior Secondary (Classes 11th and 12th) and these regulations contained the qualification of Graduates/PG Degree with at least 50% marks with B.Ed. or its equivalent. 45% marks are required at Graduation/PG level with B.Ed. for Teachers, who had acquired qualifications in accordance with the earlier Regulations, 2002 and 2007 notified on 13.11.2022 and 10.12.2007 respectively.

40. For Classes 11th and 12th qualification of PG Degree with 50% marks and B.Ed. Degree is laid down, but again there is a relaxation for those candidates, who have acquired qualifications earlier when the earlier regulations were in force, i.e. Regulations of 2002 and 2007. The relevant provisions of NCTE Regulations of 2014 are as under:-

First Schedule

{See Sub-regulation (2) of Regulation (4)}

The National Council for Teacher Education (Determination of Minimum Qualifications for Persons to be recruited at Education Teachers in Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014.

Level	MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATIONS
4. Secondary/High School (For Classes IX-X)	(a) Graduate/Post Graduate from recognized University with at least 50% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution,

	Or (b) Graduate/Post Graduate from recognized University with at least. 45% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution (In accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002 and National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007) Or (c) 4-years degree of B.A.Ed/B.Sc.Ed, from any National Council for Teacher Education recognized institution.
5. Senior Secondary /Intermediate (For Classes XI-XII)	(8) Post Graduate with at least 50% marks for its equivalent) from recognized University and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution. Or (b) Post Graduate with at least 45% marks (or its equivalent) from recognized University and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution (in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002 and National Council for Teacher Education Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007: Or (c) Post Graduate with at least 50% marks (or its equivalent) from recognized University and B.A.Ed./B.Sc.Ed. from any NCTE recognized institution.

41. The NCTE has laid down specific percentage of marks, which has not been followed by the State Government and no reason has been shown. Moreover, requirement of division is leading to ambiguities and arbitrariness in the selection process, because different universities are treating different divisions differently. The position would have been different if there was an uniformity in all universities in awarding Second or Third division marks at the same percentage basis. However, it is not so and it is leading to all sorts of arbitrariness, whereby candidates having 46% marks in PG Degree are getting selected and candidates having 49% marks in PG Degree are being declared disqualified.

42. Even the Schedule-III laid down by the State Government has not recognized the provisions carved out by NCTE for those Teachers, who have acquired the qualifications earlier and the earlier regulations of NCTE were in force, i.e. Regulations of 2002 and 2007. By not doing so the State has shown nothing, but manifest arbitrariness, which is not backed by intelligent care, deliberation and due application of mind which is expected from the authority, nor any valid objectives sought to be achieved by the State Government and we have, therefore, no hesitation in holding that Column-5 of Entry-1 of Schedule III Rules of 2018 impugned in the present petitions suffers from manifest arbitrariness for the above reasons and also being violative of Regulations framed by the NCTE in a matter relating to concurrent list. Therefore, the Regulations framed by the NCTE would take primacy over the statutory rules framed by the State Government for a matter, which falls in the concurrent list and has held so by the Supreme Court in the case of **Shiv Kumar Pathak (supra)**. The said impugned entry stands **quashed** for the said two reasons.

43. The other issue raised was regarding non-providing of relaxation to socially and educationally backward classes in terms of Articles 16 (1) and 16 (4) of the Constitution of India. It is not in dispute that there cannot be any mandamus directing the Government to give some relaxation or concession in the matter of benefits under Articles 16 (1) and 16 (4) of the Constitution of India (See- **Bir Singh v. Delhi Jal Board, (2018) 10 SCC 312** and **C. Udayakumar v. Union of India, 1995 Supp (3) SCC 146**). However, the State Government by exercising powers under the aforesaid Articles 16 (1) and (4) has framed Adhiniyam, 1994 and Rules, 1998. As per Rule 4-A the following has been provided :-

“4-A. Relaxation to the candidates of Scheduled Caste/Scheduled Tribes in the minimum qualifying marks. – The candidates of Scheduled Castes and Scheduled Tribes shall get relaxation of 10% marks in minimum qualifying marks but their selection shall be made on the basis of merits of the selection list of the Scheduled Castes/Scheduled Tribes candidates.”

44. Therefore, from a bare perusal of the aforesaid Rules, it is clear that the State itself has granted relaxation to persons belonging to SC and ST categories to get 10% relaxation in minimum qualifying marks. However, this provision has not been engrafted in the impugned Column 5 of Entry – I of Schedule – III. We are aware of the fact that this provision is not there in the NCTE Regulations of 2014. However, the legislations and subordinate legislations framed in the matter of granting reservations or concessions to socially and educationally backward classes is not traceable to the lists under Schedule-VII of the Constitution of India, but is traceable to Articles 16 (1) and 16 (4) of the Constitution of India and therefore, once the State Government itself has taken a decision to grant relaxation in qualifying

marks, then there was no reason why the said relaxation was not engrafted in the Entry-I of Schedule – III of the Rules of 2018.

45. In the celebrated case of **Indra Sawhney v. Union of India** reported in **1992 Supp (3) SCC 217**, the Constitution Bench held that such relaxations are permissible and held as under :-

“831. We must also make it clear that it would not be impermissible for the State to extend concessions and relaxations to members of reserved categories in the matter of promotion without compromising the efficiency of the administration. The relaxation concerned in Thomas [(1976) 2 SCC 310, 380 : 1976 SCC (L&S) 227 : (1976) 1 SCR 906] and the concessions namely carrying forward of vacancies and provisions for in-service coaching/training in Karamchari Sangh [(1981) 1 SCC 246, 289 : 1981 SCC (L&S) 50 : (1981) 2 SCR 185, 234] are instances of such concessions and relaxations. However, it would not be permissible to prescribe lower qualifying marks or a lesser level of evaluation for the members of reserved categories since that would compromise the efficiency of administration. We reiterate that while it may be permissible to prescribe a reasonably lesser qualifying marks or evaluation for the OBCs, SCs and STs — consistent with the efficiency of administration and the nature of duties attaching to the office concerned — in the matter of direct recruitment, such a course would not be permissible in the matter of promotions for the reasons recorded hereinabove.”

46. Initial view was in favour of such relaxations in the cases of direct recruitment and not in promotions. However, subsequently, in the matter of promotions also, such relaxation has been enabled by inserting proviso to Article 335 of the Constitution of India as per the 82nd Amendment of the Constitution in the following terms :-

“Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters or promotion to any

class or classes of services or posts in connection with the affairs of the Union or of a State.”

47. During the course of hearing of these petitions various orders were passed from time to time and the State was directed to take instructions whether amendment can be made in the rules to remove the ambiguity in the matter of mentioning specific percentage in place of division/class and in the matter of granting relaxation and qualifying marks to SC/ST. The State has filed additional return dated 11.02.2025 and has filed a report of expert committee, which was constituted by the State. In this report of the expert committee dated 07.02.2005 filed as Annexure A-1 to Document No.2484/2025, the expert committee of the State has also accepted the position that indeed a specific percentage needs to be inserted in the impugned entry for Schedule-III in place of division and also that relaxation should be given to SC, ST and OBCs so also persons with disability in qualifying marks to the tune of 5%. However, the expert committee took note of the fact that selection process as per the advertisement of 2018 is complete and the selection process as per advertisement of 2023 is almost complete and therefore, any amendment would be carried out only prospectively.

48. We are not bound by the aforesaid recommendation of the committee to amend the rules prospectively. However, we can take note of the recommendations of the committee, whereby the committee of the State Government comprising of Senior Officers of School Education Department, Higher Education Department, Tribal Welfare Department and academicians has held that specific percentage needs to be replaced in place of division of marks and 5% relaxation needs to be given to SC, ST, OBC and persons with disabilities.

49. We have already held above that impugned Entry-I of Schedule-III is liable to be struck down as ultra vires on the ground of it being manifestly arbitrary so also contrary to the NCTE Regulations, which have primacy over the State Rules. Therefore, we hereby strike down Column 5 of Entry-I of Schedule-III of Rules of 2018 as quoted in para -2 of this order and hold that the minimum qualifications as laid down by the NCTE would govern the field in place of the impugned entry that we have struck down. As the High School Teachers of Madhya Pradesh teach classes IXth to XIIth, we clarify that the qualifications etc. prescribed by the NCTE for Senior Secondary classes will be applicable for High School Teachers in Madhya Pradesh.

50. We further hold that being contrary to Rule 4-A of Rules of 1998, the non-provision of relaxation to SC and ST candidates in the matter of qualifying marks was also *ultra vires* the Adhinyam 1994 and Rules 1998, which are framed by deriving authority under Articles 16(1) and 16(4) of the Constitution of India. As there is no such provision for OBC and PWD (Persons with Disability) candidates in Rule 4-A of Rules 1998 but only for SC/ST candidates, therefore, we hold that SC and ST candidates shall be entitled to 5% relaxation in minimum qualifying marks in Masters/Post Graduate Degree and their selection shall be made on the basis of merit of selection list of SC/ST candidates in accordance with Rule 4-A as quoted above.

51. We further make it clear that those candidates, who have acquired requisite qualification at the time when earlier Regulations of NCTE, i.e. Regulations of 2002 and 2007 were in force, they will be entitled to be considered as per the then prevailing qualifications as already recognized by the NCTE in the Regulations of 2014. The State would be at liberty to carry out an amendment in the Rules of 2018 with retrospective effect.

52. Now coming to the consequential relief which is to be granted as a consequence of impugned entry being quashed and replaced by NCTE Regulations and 5% relaxation being made available to SC/ST candidates for the recruitments conducted prior to this order. It is not in dispute that no petition was filed in this matter prior to the year 2021 up to which substantial progress had been made in the matter of recruitment pursuant to advertisement of 2018. Therefore, we hold that any candidate, who is liable to be affected by this order and got selected in the selection of 2018 would not be disturbed. However, the selection of the year 2023 has taken place during pendency of the present petitions and is obviously subject to the outcome of these petitions. The State would be required to conduct a supplementary recruitment to the recruitment process conducted in the year 2023 and would give opportunity to all the candidates, who may be benefited by this order to participate in the recruitment test and process. They would be allowed to compete against the posts, which were advertised for 2023 recruitment. It would be open for the State to adjust the candidates, who have already been appointed in the 2023 selection process and whose selection is liable to be disturbed as a consequence of this order, by creating supernumerary posts or by adjusting them against other vacancies, or future vacancies, or in any other manner deemed fit by the State. However, continuance of their appointment will not affect the right of candidates, who will be benefited by this order and who either could not participate in 2023 recruitment or participated but were declared ineligible or their forms were rejected in 2023 for recruitment process of the year 2023.

53. We further make it clear and order that the State would be under obligation to carve out a provision for the relaxation of 5% qualifying marks for OBC as well as PWD candidates, as already accepted by its expert committee, for all future recruitments. However, 2023 recruitment will not be re-opened for that purpose.

54. Let supplementary recruitment process be initiated within two months and completed within six months from the date of this order.

55. With the aforesaid directions, the petitions are **allowed** and **disposed of**.

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(VIVEK JAIN)
JUDGE

Nks/MISHRA/RJ