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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P.(C) 12010/2018 & CM APPL. 46537/2018, CM APPL. 4660/2020**

JUSTICE FOR ALL

.....Petitioner

Through: Mr. Khagesh B. Jha, Ms. Shikha Sharma Bagga, Mr. Ankit Mann, Mr. Naman Jain and Ms. Jyoti, Advs.

versus

NATIONAL COUNCIL FOR TEACHER EDUCATION AND ORS.

.....Respondent

Through: Mr. Akhilesh K. Srivastava, SC with Ms. Archana Joshi and Mr. Sunil Kumar Singh, Advs for NCTE.  
Mr. Bhagvan Swarup Shukla, CGSC with Mr. Satyam Singh, Advs.  
Ms. Monika Arora, CGSC with Mr. Subhrodeep Saha and Mr. Prabhat Kumar, Advs. for MCD.  
Mr. Saroj Bidwal, SC for EDMC.

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+ **W.P.(C) 12046/2018**  
JUSTICE FOR ALL

.....Petitioner

Through: Mr. Khagesh B. Jha, Ms. Shikha Sharma Bagga, Mr. Ankit Mann, Mr. Naman Jain and Ms. Jyoti, Advs.

versus

GOVT. OF NCT OF DELHI AND ORS.

.....Respondent

Through: Mr. Tushar Sannu, SC, MCD with Mr. Utkarsh Singh, Adv.  
Ms. Monika Arora, CGSC with Mr.



Subhrodeep Saha and Mr. Prabhat  
Kumar, Advs for MCD.  
Mr. V. Selvarash, OSD, School  
Branch, Directorate of Education,  
GNCTD.  
Ms.Puja S.Kalra, SC for MCD.

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**ORDER**  
**24.02.2025**

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1. This Public Interest Litigation Petition (*hereinafter referred to as 'PIL'*) primarily challenges Clause 4 of the Notification dated 23.08.2010, issued by the National Council for Teacher Education (*hereinafter referred to as 'NCTE'*) whereby, minimum qualification for a person to be eligible to be appointed as teacher to teach Class I to VIII is waived off in case appointment was made before this notification.
2. Our attention has also been drawn to Clause 5 of the said Notification which provides that if an advertisement to initiate the process of appointment has been issued prior to issuance of the said Notification, such appointment may be made in accordance with 2001 Regulations. Learned counsel for the petitioner submits that in view of the second proviso appended to Section 23(2) of the Right of Children to Free and Compulsory Education Act, 2009 (*hereinafter referred to as the 'RTE Act'*), if any teacher has been appointed pursuant to an advertisement issued prior to the Notification, 2010, they will also have to acquire the qualification as per the requirement of the second proviso.
3. The said Notification dated 23.08.2010, is statutory in nature as the



same has been issued by the NCTE in terms of the authority conferred on it by way of a Notification issued by the Central Government on 31.03.2010, declaring it to be an 'Academic Authority' as per Section 23(1) of the RTE Act.

4. Section 23 of the RTE Act, provides that persons possessing such minimum qualification shall be eligible for appointment as teachers, who fulfill the minimum qualification to be laid down by an 'Academic Authority' to be authorised by the Central Government by a notification.

5. The Notification dated 31.03.2010, issued by the Central Government in terms of Section of 23(1) of the RTE is on record, perusal of which reveals that Central Government by the said Notification, authorised the NCTE as the 'Academic Authority' to lay down the minimum qualification for a person to be eligible for appointment as a teacher. Thus, the Notification dated 23.08.2010 is referable to Section 23(1) of the RTE Act.

6. As observed above, the said Notification was issued on 23.08.2010, however, subsequent to issuance of the said Notification, by means of The RTE (Amendment) Act No.24 of 2017 (*hereinafter referred to as the 'Act 24/2017'*), which came into force with effect from 01.04.2015, a proviso to Section 23(2) has been added to the RTE Act which provides that a teacher who at the commencement of the RTE Act did not possess minimum qualification, as laid down in Section 23(1) of the RTE Act, shall acquire such minimum qualification within a period of 5 years.

7. Though, as has been stated at bar by the learned counsel for the parties, subsequent to the Notification issued in the year 2010, various other notifications supplementing the same have been issued, however, there is nothing on record to infer as to whether, the Notification, 2010 has been



supplemented by any subsequent notification to give effect to the mandate available in the second proviso appended to Section 23(2) of the RTE Act.

8. The stand taken by the NCTE in their counter affidavit is that before issuance of the Notification, 2010 regulations were made by it, prescribing for minimum eligibility qualification for teachers as per the mandate and the powers available to it under Section 12(d) of the NCTE, 1993 which prescribes that one of the functions of the NCTE is to lay down guidelines in respect of minimum qualification for a person to be employed as a teacher in a recognized institution. The said regulations were framed under Section 12(d) of the NCTE Act, 1993 in 2001. However, on enactment of RTE Act in 2009, and on issuance of notification by the Central Government authorizing the NCTE to provide for minimum qualification in terms of Section 23(1) of the RTE Act. Qualifications have been prescribed in the Notification issued in the year 2010 and accordingly, the Notification, 2010 in our *prima facie* opinion is referable to Section 23(1) of the RTE Act, 2009 and not to Section 12(d) of the NCTE Act, 1993.

9. While we observe as above, we do not undermine the functions assigned to the NCTE under Section 12(d) of the NCTE Act, 1993. It is this very function for exercise of which the Central Government had issued notification, authorizing the NCTE to Act as 'Academic Authority' within the meaning of Section 23(1) of the RTE Act.

10. The second proviso which has been inserted in the RTE Act with effect from 01.04.2015, appears to be mandatory, according to which the teachers who were appointed or were in service as on 31.03.2015 and do not possess minimum qualification, shall acquire such qualification within a period of four years from the date of commencement of Act 24/2017 i.e.



01.04.2015.

11. In view of the aforesaid, we direct that an affidavit shall be filed by the appropriate authority of the NCTE, placing on record the steps taken by the NCTE or any other authority of the Government to give effect to the second proviso appended to Section 23(2) of the RTE Act which was inserted by means of amending Act, 24/2017.

12. Let the said affidavit be filed within a period of four weeks after serving a copy thereof upon the learned counsel appearing for the petitioner, who may file response to the said affidavit, if any, by the next date of listing.

13. List on 14.05.2025.

**DEVENDRA KUMAR UPADHYAYA, CJ**

**TUSHAR RAO GEDELA, J**

**FEBRUARY 24, 2025/MJ**