**IN THE HIGH COURT OF JHARKHAND**

WP (C) No. 6142 of 2012

Decided On: 03.01.2013

Appellants: **Jaytun Purty & Ors.**
**Vs.**
Respondent: **The State of Jharkhand & Ors.**
[Alongwith WP (C) Nos. 6402, 6404, 6447 and 6482 of 2012]

**Hon'ble Judges/Coram:**Alok Singh, J.

**ORDER**

**Alok Singh, J.**

1. The petitioners have invoked writ jurisdiction of this Court under Article 226 of the Constitution of India seeking writ of mandamus commanding upon the respondents to issue TET Certificate in favour of the petitioners pursuant to the examination held on 20.7.2011. Since all the writ petitions involve identical questions of fact and law, therefore, with the consent of learned counsel for the parties, all the writ petitions are taken up together. W.P.(C) No. 6142 of 2012, (Jaytun Purty and Others vs. The State of Jharkhand and Others) is taken up as the leading case.

2. The brief facts of the present case inter alia are that Jharkhand Academic Council vide advertisement No. 27 of 2011, Annexure-1 to the writ petition had invited applications for the post of Assistant Teacher against the district wise vacancies. As per the advertisement, every candidate had to appear in the preliminary examination consisting of one paper of Language, second paper of Social Science and third paper of General Knowledge with further stipulation that general candidates had to secure minimum 50 per cent marks while reserved category candidates had to secure 35 per cent marks to be eligible for the main examination.

3. In fact as per the Section 23 of Right of Children to Free and Compulsory Education Act, 2009, a person possessing such minimum qualifications, as laid down by an academic authority, authorized by the Central Government, shall be eligible for appointment as Teacher. National Council of Teacher Education vide notification dated 23rd August, 2010, Annexure-8 to the writ petition has prescribed the qualification for the Assistant Teacher for Classes-I to V which reads as under:-

1. Minimum Qualifications:-

(l) Classes-I-V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2 year Diploma in Elementary Education (by whatever name known).

Or

Senior Secondary (or its equivalent) with at least 45% marks and 2 year Diploma in Elementary Education (by whatever name known) in accordance with the NCTE (Recognition Norms and Procedure) Regulations, 2002.

Or

Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor of Elementary Education (B.EI.Ed.).

Or

Senior Secondary (or its equivalent) with at least 50% marks and 2 year Diploma in Education (Special Education)

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

4. As per the qualification prescribed, a candidate applying for the post of Assistant Teacher for Class-I to V. must possess Senior Secondary or its equivalent degree with two years Diploma in Elementary Education or four years Bachelor Elementary Education and must pass in Teachers Eligibility Test (hereinafter referred to as TET'), to be conducted by the appropriate Government in accordance with the guidelines framed by the N.C.T.E. for the purpose.

5. Undisputedly, advertisement no. 27 of 2011 calling the applications for the post of Assistant Teacher does not provide N.E.T. Certificate as one of the essential qualifications for the post of Assistant Teacher. Realising the mistake, Jharkhand Academic Council had issued another advertisement no. 46 of 2011, providing that preliminary examination pursuant to the original advertisement no. 27 of 2011 shall be deemed as TET Certificate examination and would be consisting of five (5) papers viz. General Knowledge/ Environmental Studies, Mathematics, Local Language, Hindi or Urdu as a case may be and Child Development and Pedagogy. All the petitioners have appeared in the preliminary examination and have secured passing marks. The grievance of the petitioners is that in spite of quashing of the entire process of selection/appointment pursuant to the advertisement no. 27 of 2011 vide judgment dated 22.11.2011 passed by the Division Bench of this Court in the case of Anjuman Taraqqi-e-Urdu vs. State of Jharkhand reported in MANU/JH/1677/2011 : (2012) JCR 291 : [MANU/JH/1677/2011 : 2011 (4) JLJR 387], the petitioners are entitled to obtain TET Certificate since all of them have cleared preliminary examination, which was to be deemed as TET examination.

6. As observed hereinabove, initially as per the advertisement no. 27 of 2011, TET Certificate was not prescribed as one of the essential qualifications and preliminary examination was consisting of three, papers only. Realising the mistake that TET Certificate is one of the essential qualifications for the appointment of the Assistant Teacher, second advertisement no. 46 of 2011 was issued making preliminary examination consisting of five papers with this provision that it would be deemed as TET Examination. In view of the dictum of the Hon'ble Apex Court as relied upon by the Division Bench of this Court in the case of Anjuman Taraqqi-e-Urdu (supra), it was not open to the Academic Council to change the norms and process of selection. Not only this if, the State Government or Academic Council wanted to conduct fresh TET Test, they should have issued fresh advertisement calling the fresh applications from all eligible candidates and confining the test only to those who have applied pursuant to the initial advertisement no. 27 of 2011 cannot be said to be a fair practice and is in violation of the Article 14 of the Constitution of India. Moreover, since entire process has already been quashed by the Division Bench of this Court in the case of Anjuman Taraqqi-e-Urdu (supra), the petitioners cannot be said to have accrued any right to obtain TET Certificate pursuant to the preliminary examination.

7. The Hon'ble Apex Court in the case of Bihar Eastern Gangetic Fishermen Co-Operative Society Ltd. vs. Sipahi Singh & Ors. reported in MANU/SC/0060/1977 : (1977) 4 SCC 145 : [1978 PLJR (SC) 60] has held as under:-

[A] Writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.

8. In view of the dictum of the Hon'ble Apex Court, writ of mandamus can be issued in favour of those who have legal right to be enforced. Since the procedure adopted by the Academic Council by not inviting applications from all the eligible candidates is against the fundamental principles of public employment, therefore, no rights in favour of the petitioners accrue pursuant to the illegal procedure adopted by the Academic Council, which was also quashed by the Division of this Court, therefore, the petitioners are not entitled for any mandamus. Consequently, the writ petition fails and is hereby dismissed, however, it is expected that the State Government shall conduct the TET Test and the petitioners may apply afresh in future TET Test.