



## Teachers' Recruitment Board, Tripura

Education (School) Department, Govt. Of Tripura  
Shiksha Bhavan, Office Lane, Agartala 799001

NO.F.4 (1-1)/COE/TRBT/2015/211

Dated: 17.04.2020.

### NOTICE

This is for information to all concerned that as per verdict of the Honourable High Court of Tripura, dated: 12.03.2020 and 13.03.2020, Diploma in Elementary Education (D.El.Ed.) from National Institute of Open Schooling (NIOS) will be considered as valid. Necessary steps will be initiated after the ongoing lockdown period (COVID-19) is over.

  
(P.R.DEB) 17/04/2020

Controller of Examinations  
Teachers' Recruitment Board, Tripura.

**HIGH COURT OF TRIPURA  
AGARTALA**

**W.P. (C) No.87/2020**

Sri Raju Nama and others .....Petitioner(s)

Versus

The State of Tripura and others .....Respondent(s)

**W.P. (C) No.88/2020**

Md. Omar Faruque .....Petitioner(s)

Versus

The State of Tripura and others .....Respondent(s)

**W.P. (C) No.102/2020**

Smt. Aparajita Choudhury and others .....Petitioner(s)

Versus

The State of Tripura and others .....Respondent(s)

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For Petitioner(s) : Mr. Somik Deb, Advocate.

For Respondent(s) : Mr. Debalay Bhattacharjee, GA.

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**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI**

Date of hearing and judgment : 12.03.2020 & 13.03.2020.

Whether fit for reporting : Yes.

**JUDGMENT & ORDER(ORAL)**

**12.03.2020.**

These petitions arise in common background and would be disposed of by this common judgment. For convenience, we may record facts from W.P. (C) No.87 of 2020.

2. Petitioners have prayed for a direction to the respondents-State Government authorities to verify their mark sheets/certificates of the online Diploma course in Elementary Education ('D.El.Ed', for short) pass certificate issued by National Institute of Open Schooling (NIOS) and to issue Tripura Teachers' Eligibility Test ('T-TET', for short), 2018, certificate in their favour.

3. The petitioners' prayers arise in following background:

The Government of India, Ministry of Human Resource Development, Department of School Education and Literacy, had been issuing orders for relaxation for strict compliance with the qualifications required for appointment of a teacher in various schools in terms of Section 23 of Right of Children to Free and Compulsory Education Act, 2009 ('RTE Act', for short). By a communication dated 03.08.2017, the said authority appraised all concerned that the amendment to Section 23(2) of the RTE Act to extend the period for which training up to 31.03.2019 has been passed by the Parliament. It was reiterated that this shall be the last chance to acquire requisite minimum professional qualifications. Any teacher in the school, who does not have the minimum qualifications provided in the RTE Act, would not be allowed to continue in service beyond 01.04.2019. This communication also laid down a brought strategy to complete the training of all in-service untrained teachers by 31.03.2019. One of the clauses of this action plan was that the States and Union Territories will be responsible for ensuring that all in-service untrained teachers be it Government schools or private schools

acquire minimum qualifications required in the RTE Act within the extended period till 31.03.2019, through **Online Distance Learning** ('ODL', for short) programme of NIOS. It was also provided that the State and Union Territories will appoint the State Coordinator to facilitate conduct of the programme and for continuous engagement with MHRD and NIOS. It was further provided that it would be mandatory for all in-service untrained teachers to undertake D.El.Ed. programme only through ODL of NIOS. This communication also provided timelines within which these milestones would be achieved. For example it provided that by 10.08.2017 appointment of a Nodal Officer shall be made by the States and Union Territories and NIOS. Between 01.08.2017 to 14.08.2017 all States and Union Territories would issue advertisements in newspapers and conduct wide propaganda of the programmes informing all teachers about the opportunity of acquiring the minimum qualifications provided through NIOS failing which his services could be terminated from 01.04.2019. Window of 16.08.2017 to 15.09.2017 was provided for opening the admission for all teachers to apply for such a course. The course would be conducted in two terms. First term would be between 03.10.2017 to 18.06.2018 and the second term would be between June, 2017 to 31.03.2019.

4. It is not in dispute that all the petitioners were employed in Government or Government aided or private unaided recognized schools. Previously they were untrained teachers. They all enrolled themselves with NIOS for D.El.Ed. course which was Open

Distance Learning course duly recognized by the Government of India.

5. During the time when these petitioners were undertaking training in the D.El.Ed. course from NIOS, the Teachers Recruitment Board, Tripura ('The Board', for short) issued a Prospectus Cum Instructions inviting online applications from 09.11.2018 to 18.11.2018 for Tripura Teachers Eligibility Test (T-TET), 2018. The qualifications required for applying for the said test were as under:

"(c) Candidates who are appearing in the final year of Bachelor Degree in Education(B.Ed.)/Diploma in Elementary Education (D.El.Ed) are provisionally allowed to appear in T-TET 2018: Second Session. Such candidates must have to produce Bachelor Degree in Education (B.Ed)/ Diploma in Elementary Education (D.El.Ed.) pass mark-sheet and certificate (if any) during certificate verification or else their candidature will be rejected and no communication will be entertained."

6. Since the petitioners were pursuing the D.El.Ed. course, in terms of the above noted condition, they applied for the T-TET, 2018. They were enrolled in such course and in due course of time they also completed the said course of T-TET. However, when the question of issuing certificate of completion of T-TET course arose, the petitioners could not produce the original mark sheets of D.El.Ed. course. The authorities, therefore, refused to issue T-TET pass certificate in their favour. They thereupon approached the

High Court by filing **W.P. (C) No.754 of 2019** and similar petitions in which they pointed out that they had successfully completed the D.El.Ed. course, they were declared pass also. Such result was declared by NIOS on its portal. However, the physical mark sheets were not yet issued. Learned Single Judge's Court by an order dated 01.10.2019 in the said writ petition directed the authorities to take a fresh decision bearing in mind certain observations made by the Court. The Government challenged the said decision in W.A. No.4 of 2020, which was dismissed. In the meantime, an independent fresh petition W.P. (C) No.1415 of 2019 for similar purpose was filed which was also decided along with the Writ Appeal on 13.01.2020. The Court was of the opinion that subject to fulfillment of all requirements of qualification except for non-production of the mark sheet earlier, they should be allowed to clear the T-TET course. Suitable directions were issued.

7. When the said authorities examined the qualifications of the petitioners of their claim of having cleared D.El. Ed. course, they had reservation. The reservation stems from the fact that the course in question was of duration of 18 months where as for being eligible to undertake T-TET course, the D.El.Ed. course must be of a minimum duration of 24 months. The State authorities therefore did not issue the T-TET clearance certificate in favour of the petitioners where upon these fresh petitions were filed.

8. Learned counsel Mr. Somik Deb appeared for the petitioners and submitted that the objection of the Government is wholly untenable. The online programme offered by NIOS was widely publicized by the Government of India as the only course recognized for a trained teacher. The last extension allowing untrained teachers to impart education in primary and secondary schools was made till 31.03.2019. The programme laid out for the purpose of ensuring that all untrained teachers undertake and complete the course of D.El.Ed. itself suggests that no such course could be of a duration of 24 months. Counsel placed heavy reliance on a decision of learned Single Judge of Patna High Court dated 21.01.2020 passed in case of **Sanjay Kumar Yadav and others vs. The State of Bihar and others** in which similar issue had come up for consideration.

9. On the other hand, learned Government Advocate opposed the petitions contending that the Government stand is valid. The course undertaken by the petitioners was only of 18 months duration. Clearing such a course would not qualify the petitioners for obtaining T-TET certificate. He, therefore, submitted that the petitions be dismissed.

**13.03.2020.**

10. In order to resolve the controversy, we may peruse more minutely certain statutory provisions as well as circulars issued by the Government of India and NCTE. For convenience, learned counsel for the petitioners had provided a compilation of such

documents which is taken on record. As a well-known, flowing from Article 21A of the Constitution recognizing free and compulsory primary education as a fundamental right, RTE Act was in acted. Section 23 of the Act pertains to qualifications for appointment and terms and conditions of service of teachers and reads 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, authorized 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 its 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.

[Provided further that every teacher appointed or in position as on the 31<sup>st</sup> March, 2015, who does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of four years from the

date of commencement of the Right of Children to Free and Compulsory Education (Amendment) Act, 2017.]

(3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed.”

11. In terms of sub-Section (1) of Section 23, a person possessing such minimum qualifications, as laid down by an academic authority, authorized by the Central Government by notification, shall be eligible for appointment as a teacher. Sub-Section (2) of Section 23 provides that 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, relax the minimum qualifications required for appointment as a teacher by issuing a notification, for such purpose, not exceeding five years, as may be specified. The proviso and further proviso to sub-Section (2) of Section 23 require teachers to acquire such minimum qualifications within the specified time.

12. It was in the context of the provisions contained in Section 23 and in particular, sub-Section (2) thereof that the Government of India, Ministry of Human Resource Development had issued the said Circular dated 03.08.2017 in which, as noted above, it was provided that the period referred to in sub-Section (2) of Section 23 has been extended up to 31.03.2019, that this will be the last chance to acquire the minimum qualifications and no teacher, who

does not possess such qualification would be allowed to continue in service beyond 01.04.2019. To ensure that maximum possible teachers complete that training within such extended time, this circular also laid down a broad guideline providing timelines for completion of important stages such as inviting applications for fresh courses, enrolling teachers in such courses and completing online training programme. This circular also specified ODL programme offered by NIOS as the only certificate course as recognized for such purpose.

13. To provide for establishment of National Council for Teacher Education with a view to achieving plan and coordinating development of teacher education system throughout the country, regulation and proper maintenance of non-standards in the teacher education system including qualifications of school teachers and for matters connected therewith, the Parliament had enacted the National Council for Teacher Education Act, 1993 ('the Act of 1993', for short). Term 'teacher education' has been defined in Section 2 (l) of the said Act as to mean programmes of education, research or training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools, and would include non-formal education, part-time education, adult education and correspondence education. Under Section 3 of the Act, the Central Government would establish a Council called National Council for Teacher Education. Section 12 of the Act pertains to functions of the Council which include its duty to lay down norms for any specified category of

courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof and method of selection of candidates, duration of course, course contents and mode of curriculum. Section 32 of the Act empowered the Council to frame regulations. In exercise of such powers, the NCTE framed National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2014 (hereinafter to be referred to as 'the Regulations of 2014'). Regulation 9 thereof pertains to norms and standards and provides that every institution offering the programmes indicate in the said regulation shown in the table shall have to comply with the norms and standards for various teacher education programmes as specified in Appendix 1 to Appendix 15. Item 2 in the said pertains to elementary teacher education programme leading to Diploma in Elementary Education i.e. D.El.Ed. The norms are laid down in Appendix 2 which inter alia provides that D.El.Ed. is a two year professional programme of teacher education. It aims to prepare teachers for elementary stage of education i.e. class-I to class-VIII. The duration of the programme would be two academic years.

14. NCTE had passed a recognition order dated 22.09.2017 under which after due consideration and recommendation of the Expert Committee in exercise of powers under clause 12 of the Regulations 2014, it was decided that the recognition be granted to the National Institute of Open Schooling (NIOS), Noida for D.El.Ed. (ODL) programme for training of in-service untrained

teachers subject to fulfilling the conditions contained therein.

Relevant portion of this order reads as under:

**"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 Expert 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.

- I. Any provision related to on-line submission of the application on NCTE Application portal;
- II. Any provision related to the duration of the programme so as to reduce it to 18 months instead of 2 years and the requirement of 6 months internship to be subsumed within the duration of 18 months;
- III. Any requirement of minimum eligibility for admission to D.El.Ed. programme, i.e. 50% marks in class 12, to the extent that those who do not fulfill this requirement shall be allowed to take provisional admission to the programme subject to their acquiring 50% marks before completion of the D.El.Ed. programme of NIOS.
- IV. Any provision in the Regulations to enable NIOS to administer the programme through SWAYAM Portal of MHRD;
- V. Any provision prescribing the number and nature of study centers to enable NIOS to cater to around 11 lakh untrained teachers;
- VI. Allow NIOS to operate study centres manned by staff (academic and others) as per instructions of

MHRD to enable NIOS to complete the training of in-service teacher numbering around 11 lakh by 31.03.2019.

- VII. Any provision in Regulations restricting the intake capacity in D.El.Ed. (ODL) programme to enable NIOS to train the any required number of untrained teachers.
- VIII. Since almost all the states and union territories of the country are involved in the exercise of training untrained teachers, there shall be no requirement of seeking no objection certificates from individual States/UTs.
- IX. Besides the above relaxation, NRC may also consider imposing a condition of regular inspection/monitoring of the programme through a mechanism of inspection of centers by senior NIOS personnel or any agency deployed for the purpose, on random basis during the entire duration of the project, so as to cover all states at least once every 9 months. Report of such inspections must be submitted to the MHRD.

**AND WHEREAS,** After having considered all the above facts and figures, the NRC considered the case in its 275<sup>th</sup> (Part-3) decided that recognition be granted to the 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 under Section 14 of NCTE, Act, 1993 and clause 7(16) of NCTE Regulations. 2014 subject to fulfilling the following conditions:

- I. The duration of the said programme shall be 18 months instead of 2 years including the 6 months internship.
- II. The requirement of minimum eligibility for admission to D.El.Ed. programme, i.e. 50% marks in class 12, to the extent that those who do not fulfill this

requirement shall be allowed to take provisional admission to the programme subject to their acquiring 50% marks before completion of the D.El.Ed. programme of NIOS;

- III. NIOS to administer the programme through SWAYAM Portal of MHRD;
- IV. NIOS shall operate study centres manned by staff (academic and others) as per instructions of MHRD to enable NIOS to complete the training of in-service untrained teachers numbering around 11 lakh by 31.03.2019 all over India.
- V. There shall be no restriction to the number and nature of study centres to enable NIOS to train the required number of untrained teachers;
- VI. The intake capacity at each centre shall be maximum 100.
- VII. Regular inspection/monitoring of the programme shall be conducted through a mechanism of inspection of centers by senior. NIOS personnel or any agency deployed for the purpose, on random basis during the entire duration of the project, so as to cover all states at least once every 9 months. Report of such inspections must be submitted to the MHRD.
- VIII. This programme shall be only for those in-service untrained teachers in Govt./Govt. Aided/Private unaided Schools appointed on or before 10/08/2017.
- IX. All the provisions in the NCTE Act & Regulations, 2014 other than those relaxed under clause 12 of NCTE Regulations, 2014, will be applicable.

NOW THEREFORE, in exercise of the powers vested under Section 14(3)(a)/15(3)(a) of the NCTE Act, 1993, the Northern Regional Committee hereby grants recognition to **National Institute of Open Scholling (NIOS) Noida, U.P.** under clause 7(16) of NCTE (Recognition Norms & Procedure) Regulations, 2014 for D.El.Ed. (ODL)

programme through SWAYAM Portal of MHRD for training of in-service untrained teachers subject to fulfillment of the conditions mentioned above.”

15. From the above materials, it can be clearly seen that the body authorized to prescribe the minimum standards of education qualifications for a trained teacher and one authorized to prescribe the minimum norms for imparting education in such programme, has recognized the ODL programme offered by NIOS for D.El.Ed. course. This was subject to certain specific conditions including that the duration of the said programme would be of 18 months instead of two years including 6 months of internship. The background leading to such recognition order would indicate that such limited relaxation was granted in the duration of the course particularly, bearing in mind the decision of the Government of India, Ministry of Human Resource Development to specify NIOS as the agency to impart the training in the said course and to complete the training of in-service teachers numbering to close to 11 lakhs across the country latest by 31.03.2019.

16. NCTE was thus dealing with an extraordinary situation where on one hand the Government of India had declared its decision not to extend the period for acquiring minimum educational qualifications for a trained teacher beyond 31.03.2019. At the same time, across the country there were lakhs of teachers, who had yet not completed such training. The time left before 31.03.2019 would not permit imparting such training over full two years of duration. It was therefore that while granting permission

to NIOS to crunch the programme within 18 months, other safeguards were provided.

17. If we accept the opposition of the State Government to the validity of the qualifications acquired by the petitioners on the ground that the programme duration was 18 months against that envisaged of a full term of 24 months, the entire purpose of the NCTE in recognizing such course as onetime extraordinary measure looking to the unusual emergent situation, would frustrate. In plain terms, the State Government has no authority to overrule or discard the decision of NCTE in the field. In any case, the State Government policy cannot be at loggerheads with that of the Union Government and its statutorily constituted body in the legislative field which falls in the concurrent list.

18. Learned Single Judge of Patna High Court in similar situation in case of **Sanjay Kumar Yadav (supra)** has held as under:

"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.

19. In the anticipation that the petitioners will acquire the minimum qualifications of D.El.Ed. certificate, they were allowed to undertake the T-TET course. They have duly completed the D.El.Ed certificate course. They must therefore be allowed to enjoy the fruits of their having cleared the T-TET examination

also. The State Government must issue a necessary certificate in this respect. The objection of the State Government that the basic qualification of D.El.Ed. pass was obtained by the petitioners from an institute which offered the course over duration of 18 months instead of 24 months envisaged as per the Regulations, is overruled.

20. In the result, petitions are allowed. The respondents shall accept the petitioners' certificate of D.El.Ed. pass from NIOS (ODL programme) as valid for all purposes including for the purpose of undertaking TET examination. Necessary certificate of T-TET clearance would be issued to them if they have passed the examination. This shall be done within a period of 4 (four) weeks from today.

Pending application(s), if any, also stands disposed of.

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**(AKIL KURESHI), CJ**

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