

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 4907/2019

1. National Federation Of The Blind, Through Its General Secretary Mr. S.k. Rungta, S/o Late Shri M.p. Rungta, Having Its Office At Plot No. 21, Sector-Vi, Pushp Vihar, New Delhi
2. S.k. Rungta, Senior Advocate S/o Late M.p. Rungta, R/o D-67, Gf, East Of Kailash, Srinivaspuri S.o, South Delhi, New Delhi

-----Petitioners

Versus

1. State Of Rajasthan, Through Secretary, Secondary Education Department, Secretariat, Jaipur
2. The Secretary, Rajasthan Secondary Education Board, Rajive Gandhi Vidhya Bhawan, Madhyamik Shiksha Board Colony, Civil Lines, Ajmer Rajasthan
3. The Commissioner, Persons With Disability, Department Of Social Justice And Empowerment, G-3/1, Vishesh Yogyaan Bhawan, Hotel Rajmahal Residency Area, Jaipur
4. National Council For Teacher Education, Through Its Chairperson Hans Bhawan, Wing-Ii,1, Bahadurshah Zafar Marg, New Delhi

-----Respondents

Connected With

S.B. Civil Writ Petition No. 6074/2016

Rajasthan Netraheen Seva Sangh, a Registered Society under the Rajasthan Societies Registration Act 1958 through its General Secretary Shri Jairam Meena S/o Shri Bhura Ram Meena, aged about 52 years, R/o Opp. Dainik Bhasker Press, Vaishali Nagar, Ajmer.

-----Petitioner

Versus

1. The State Of Rajasthan, through Secretary, Secondary Education Department, Secretariat, Jaipur.
2. The Secretary, Rajasthan Secondary Education Board, Ajmer.

3. The Commissioner, Persons with Disability, Department Of Social Justice And Empowerment, Jaipur.

----Respondent

S.B. Civil Writ Petition No. 24073/2017

Rajasthan Netraheen Seva Sangh, A Registered Society Under The Rajasthan Societies Registration Act 1958 Through Its General Secretary Shri Jairam Meena S/o Shri Bhura Ram Meena, Aged About 53 Years, R/o Opp. Dainik Bhasker Press, Vaishali Nagar, Ajmer.

----Petitioner

Versus

1. The State Of Rajasthan, Through Secretary, Secondary Education Department, Secretariat, Jaipur.
2. The Secretary, Rajasthan Secondary Education Board, Ajmer.
3. The Commissioner, Persons With Disability, Department Of Social Justice And Empowerment, Jaipur.

----Respondents

For Petitioner(s)	:	Mr. S.K. Rungta, Senior Advocate (petitioner No.2 present in person) Mr. Atishay Jain & Mr. Jai Lodha
For Respondent(s)	:	Mr. M.S. Singhvi, Advocate General assisted by Mr. Raunak Singhvi
For Respondent No.2	:	Mr. Vinod Kumar Gupta
For Respondent No.4	:	Mr. Ashish Sharma

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE VEERENDRA SINGH SIRADHANA**

ORDER

Reportable

Per S. Ravindra Bhat, CJ:

22/07/2019

1. The writ-petitioners' grievance is that State of Rajasthan's position that its policy does not permit any relaxation to persons with disabilities, is arbitrary and untenable.

2. The Rajasthan Netraheen Seva Sangh - who has approached this Court in two writ petitions and one National Federation Of The Blind, which is petitioner in the third proceeding, submit that interpretation given by the State of Rajasthan is untenable.

3. According to the petitioners, the advertisement issued for recruitment to the post of Teachers for Ist level and 2nd level, inasmuch as, they do not prescribe any specific relaxation in passing/qualifying marks in the Rajasthan Eligibility Examination for Teachers (REET), is arbitrary. The petitioners rely upon a ruling of Supreme Court in *Vikas Sankhala & Ors. vs. Vikas Kumar Agarwal & Ors.*, (2017) 1 SCC 350. It is pointed out that the State of Rajasthan had, in the past - with respect to same post - in the years 2011, 2012 and 2013, granted relaxation to the tune of 20% marks in passing/qualifying marks in REET Examination held for those years. Therefore, it is submitted that the State cannot now turn around and contend that such policy of relaxation does not exist and cannot be now directed by the court.

4. The State in its response urged in the counter affidavit that the policy of relaxation - i.e. granting 20% marks in the qualifying REET Examination, was confined to the two years i.e. 2011 - 2012. Its argument in short is that there is no general relaxation policy and that in the past, having regard to the peculiar circumstances, relaxation was given on year by year basis.

5. In *Vikas Sankhala* (supra), this issue engaged the attention of the Supreme Court, which *inter alia* had occasion to deal with Clause 9(c) of the Notification issued by the State of Rajasthan on 11.2.2011.

6. We notice, at the outset, that the same Clause 9 is also subject matter of the present controversy. The Supreme Court held, as follows:-

"60. In fact, it hardly needs to be emphasised that the Government may prescribe relaxed standards for such reserved categories, as it is in conformity with the spirit of the constitutional provisions contained in Articles 15 and 16 read with Articles 38, 39(a) and 46 of the Constitution, which are enabling provisions

permitting the State to make special provisions and provide relaxed standards for persons belonging to Scheduled Castes, Scheduled Tribes and socially and educationally backward classes.

61. Keeping in mind the aforesaid ethos of the Constitution, we proceed to interpret Clause 9(a) of the Notification dated 11-2-2011 which permits concessions to be given to certain clauses "in accordance with their extant reservation policy". The question here is as to whether it was necessary that there had to be an "existing" policy before the State Government issued its letter dated 23-3-2011 or laying down of such a policy in communication dated 23-3-2011 itself, may be for the first time, would fulfill the requirement of "extant policy". We do not find any condition in Clause 9(a) for "pre-existing" reservation policy. On the contrary, the provision only mentions that if there is a reservation policy providing concessions to the persons belonging to SC/ST, OBC, differently-abled persons, etc., concessions can be given in accordance with the said policy. Even if there was no such policy in existence as on the date when NCTE issued the Guidelines dated 11-2-2011, it would not mean that the State Governments are precluded from formulating such reservation policy even thereafter. Para 9(a) uses the expression "extant" reservation policy and not "pre-existing" reservation policy. Mr Mata, learned Senior Advocate is right in submitting that a holistic reading of Para 9 of the Guidelines would mean that at the time of recruitment process, the school managements were being given liberty to consider and provide for concessions to reserved category candidates in TET qualifying marks. Thus, it becomes clear that the word "extent" means which remains or survives.

62. To give a practical interpretation to Clause 9 of the Guidelines dated 11-2-2011, the phrase "extant reservation policy" should be read to mean the policy surviving at the time of TET examination or the at the most at the time of recruitment. Any other interpretation of the said phrase would be totally impracticable and would deprive the State for taking a decision to give relaxation to reserved category candidates. Such interpretation cannot be applied thereby seizing the powers of the State in recognising reserved categories and to give relaxations and to modify them from time to time with changing socio-economical conditions. The advertisement issued by the local authorities for the recruitment of teachers in 2012 as well as in 2013 specifically contains Clause 7(b) that the candidates is required to be passed in TET conducted by the State of Rajasthan in accordance with the guiding principles issued by

NCTE. In our opinion this would meet the requirement of "extant reservation policy" of the State."

7. At this stage, it would be pertinent to reproduce the relevant guidelines with respect to the concession granted to persons with disabilities, by the Circular/Order dated 23.03.2011 – which was in the form of a letter addressed to the Secretary and Co-ordinator of RTET (Rajasthan Teacher Eligibility Test). This reflected State of Rajasthan's policy; it reads as under:-

"Concessions to the persons belonging to Schedules Caste/Scheduled Tribe, Other Backward Classes, differently able to persons etc.

In paragraph No.9 of the guidelines issued by NCTE on February 11, 2011 for the conduct of the TET examination it has been provided that a person who scores 60% or more in the TET examination will be considered as having passed the TET examination. However the State Government may consider giving concessions to the persons belonging to Scheduled Caste/Scheduled Tribe, Other Backward Classes, differently able to persons etc. This matter has been considered by the State Government a 15% concession may be given to all the and it has been decided as follows:

(a) 10% concession may be given to all the persons belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes, Special Backward Classes, and all women belonging to the General Category.

(b) 15% concession may be given to all the women belonging to Schedules Castes, Scheduled Tribes, Other Backward Classes, Special Backward Classes, and all widowed and divorced women.

(c) 20% concession may be given to all the persons covered under the definition of "person with disability" under clause (t) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995."

8. The State of Rajasthan has resisted these proceedings; yet it has nowhere indicated how and in what circumstances there was a policy change and as to what is its new policy. The thinking

reflected in its policy dated 23.03.2011, therefore, continues - in our opinion, to be the "extant" policy with respect to concession to be granted to persons with disabilities such as those represented by the petitioner organizations.

9. In these circumstances, the Court is of the opinion that the benefit of the 20% concession, enure and have to be granted by the State of Rajasthan in the ongoing recruitment in REET Examination, to the extent of unfilled vacancies (for year 2017) and in the ongoing process initiated in the year 2019.

10. The Court is also cognizant of the fact that under the new Rights of Persons with Disabilities Act, 2016 (hereinafter to be referred as 'the Act of 2016'), the State Government has to take necessary steps to ensure "reasonable accommodation" for persons with disabilities under Section 3(5) of the Act of 2016. "Reasonable accommodation" under Section 2(y) of the Act of 2016 means appropriate modification and adjustments, without imposing a disproportionate or undue burden in a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others.

11. In the case of visually impaired candidates, "reasonable accommodation" means that to attempt the examination, a proper scribe should be provided to the candidate who has a visual disability or impairment. Furthermore, Examiner or State authority has to provide reasonable time for the scribe to meet the candidate before the examination, to familiarize himself or herself to some extent and also other aspects relating to the conduct of the examination.

12. In the light of the above discussion, a direction is issued to the second respondent- Rajasthan Secondary Education Board to carry out the exercise of revising the results of the REET, 2015 and REET, 2017, after giving appropriate concession of 20% to the qualifying marks. Based upon such result, the State of Rajasthan shall review the select list for 2018 (to the post of Teacher Grade III, Level I and II). The Board shall complete this exercise within eight weeks; results shall be correctly transmitted to the State and also appropriately published. Thereafter, the State shall complete the review within another eight weeks

thereafter, and take appropriate consequential action towards processing the results for selection and issuing appointment letters within the prescribed percentage under the Act, as advertised.

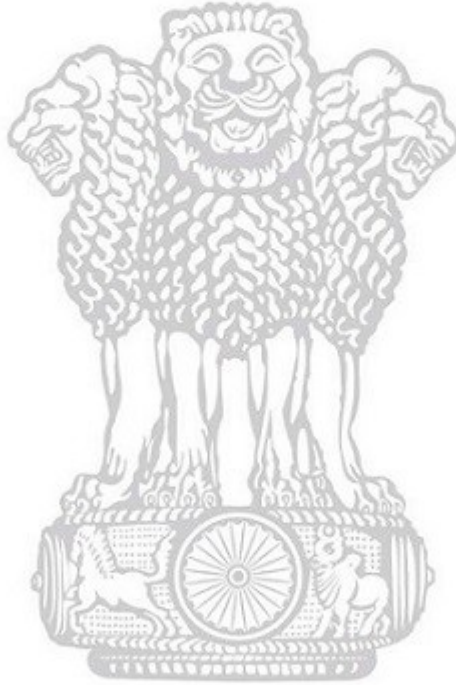
13. The writ petitions are allowed; in the above terms. All applications are disposed of.

(VEERENDRA SINGH SIRADHANA),J

(S. RAVINDRA BHAT),CJ

ANIL MAKWANA/KAMLESH KUMAR /1 to 3

RAJASTHAN HIGH COURT



सत्यमेव जयते