

HIGH COURT OF MADHYA PRADESH AT JABALPUR**WRIT PETITION NO. 7910/2017**

PETITIONER : VINEETA PRAJAPATI

Vs.

RESPONDENTS : BOARD OF SECONDARY EDUCATION
AND ANOTHER.

WRIT PETITION NO.7911/2017

PETITIONER : KUNJ LATA AHIRWAR

Vs.

RESPONDENTS : BOARD OF SECONDARY EDUCATION
AND ANOTHER.**WRIT PETITION NO. 7913/2017**PETITIONERS : ANIL KUMAR CHOURASIA
AND OTHERS

Vs.

RESPONDENT : BOARD OF SECONDARY EDUCATION

WRIT PETITION NO. 7915/2017

PETITIONERS : RAHUL PARMAR & ANOTHER

Vs.

RESPONDENT : BOARD OF SECONDARY EDUCATION

WRIT PETITION NO.8129/2017PETITIONER : RAMDEVI RAGHU
AND OTHERS

Vs.

RESPONDENTS : BOARD OF SECONDARY EDUCATION
AND ANOTHER.

WRIT PETITION NO.8134/2017

PETITIONERS : ASHISH KUMAR DHAKAR
AND OTHERS

Vs.

RESPONDENTS : BOARD OF SECONDARY EDUCATION
AND ANOTHER.

WRIT PETITION NO.8185/2017

PETITIONERS : PREM NARAYAN DANGI
AND OTHERS

Vs.

RESPONDENTS : BOARD OF SECONDARY EDUCATION
AND ANOTHER.

WRIT PETITION NO. 8190/2017

PETITIONERS : SMT. CHETNA SINGH
AND ANOTHER

Vs.

RESPONDENTS : BOARD OF SECONDARY EDUCATION
AND OTHERS.

WRIT PETITION NO. 8203/2017

PETITIONERS : FAROOQUE BAIG
AND OTHERS

Vs.

RESPONDENTS : BOARD OF SECONDARY EDUCATION
AND ANOTHER.

WRIT PETITION NO. 8220/2017

PETITIONER : PREMCHAND CHAKRAWARTI

Vs.

RESPONDENTS : BOARD OF SECONDARY EDUCATION
AND ANOTHER.**WRIT PETITION NO. 8222/2017**PETITIONERS : TAJMA BEE RAJAN
AND OTHERS

Vs.

RESPONDENTS : BOARD OF SECONDARY EDUCATION
AND ANOTHER.**WRIT PETITION NO.11149/2017**

PETITIONER : NEELESH DUTT SURYAVANSHI

Vs.

RESPONDENTS : BOARD OF SECONDARY EDUCATION
AND ANOTHER.

**Present : Hon'ble Shri Justice R.S. Jha,
Hon'ble Smt. Justice Nandita Dubey.**For the petitioners : Shri Sidharth Gupta, Shri Manoj
Kumar Chansauriya, Shri Satyendra
Tiwari and Shri Rajmani Singraul,
Advocates.

For respondent/State : Shri Anubhav Jain, Govt. Advocate.

For respondent no.1 : Shri Bhoopesh Tiwari, Advocate.

For respondent NCTE : Shri K. K. Singh and Shri Anirudh
Singh, Advocates.

Whether approved for reporting: **Yes**Law laid down :Significant paragraph numbers :

ORDER
(26/10/2017)

Per R. S. Jha, J.

The aforesaid petitions involve similar questions of law for adjudication and are, therefore, heard and decided concomitantly by a common order, moreso as common arguments have been made in all the petitions.

2. The petitioners are all persons who had taken admission in the two years D.El.Ed. Course and all of them have either got supplementary in the first year or in the second year and have thereafter not been able to pass either the first or the second year in the two chances that are given to them under the circular/direction issued by the respondent Board dated 17.12.2012. As the petitioners and persons similarly placed have been denied more than two chances to pass the first or second year of the D.El.Ed. Course, they have challenged the circular/direction of the respondent/Board dated 17.12.2012 on the ground that the Board had no power or authority to issue such a circular, that the circular/direction was opposed to the Regulation framed by the NCTE specifically Regulations 2009 and 2014, and that it was issued in violation of the provisions of Section 28 of the Madhya Pradesh Madhyamik Shiksha

Adhiniyam, 1965 (hereinafter referred to as 'the Adhiniyam of 1965'), and is, therefore, non-est, unenforceable and ab-initio void.

3. W.P Nos.8129/2017, 8134/2017, 8185/2017, 8203/2017, 8220/2017 and 8222/2017 have been filed by the petitioners challenging the constitutional validity of the circular/directions issued by the respondent Board dated 17.12.2012, whereas W.P Nos.7910/2017, 7911/2017, 7913/2017, 7915/2017, 8190/2017 and 11149/2017 have been filed praying for a direction to the respondent authorities to permit the petitioners to participate in the ensuing D.El.Ed. Examination even if they have not been able to clear their first or second year examination in the two chances given to them by the circular/directions/executive instructions dated 17.12.2017 issued by the Board.

4. At the very outset it needs to be emphasized and stated that the issues involved in the present bunch of petitions and raised by the petitioners therein, stands concluded and has already been decided against the petitioners, which fact is well within their knowledge, in a series of judgments passed by this Court namely; **Ram Kishore Yadav and others vs. M.P. Board of**

Secondary Education and others, 2016 (4) MPLJ 658; **Ankita Shukla vs. State of M.P. and another**, 2016 (4) MPLJ 478; **Sanjay Jaitwar and others vs. State of M.P. and others**, 2017 (2) MPLJ 72; **Sheela vs. Board of Secondary Education and others**, 2017 (2) MPLJ 303; **Poonam Pattaiya and others vs. Board of Secondary Education and others**, 2017 (3) MPLJ 711 and another decision in a subsequent petition filed by **Poonam Pattaiya and others vs. Board of Secondary Education and others** (W.P No.5452/2017) decided by this Court on 25.4.2017.

5. It is also pertinent to note that the petitioners in W.P Nos.8129/2017, 8134/2017, 8185/2017, 8203/2017 and 8222/2017 had previously filed petitions claiming relief of a direction to appear in the D.El.Ed. Examination which have been dismissed and in some cases like W.P No.8185/2017, it is the third approach by the petitioners before this Court claiming the same relief after petition W.P No.12979/2015 was dismissed alongwith the Bunch of petitions decided in the case of **Ram Kishore Yadav and others vs. M.P. Board of Secondary Education and others**, 2016 (4) MPLJ 658.

6. It is also pertinent to note that similar and identical issue relating to Section 28 of the Adhiniyam of 1965, and the prayer for referring the issue to a Larger Bench, said to have been raised by the petitioners for the first time in this Bunch of petitions, has already been considered and decided by this Court in W.P No.5452/2017 against the petitioners against which the petitioners therein have approached the Supreme Court by filing Special Leave to Appeal (Civil) No.16725/2017 in which notices have been issued and an interim order permitting the petitioners to appear in the ensuing examination with a stipulation for not publishing/declaring the result has been issued by the Supreme Court on 8.6.2017.

7. The aforesaid legal position is within the full knowledge of the petitioners in all these petitions inspite of which they have again sought to raise the same issue before this Court on the sole pretext that the Supreme Court has entertained an S.L.P against the order passed in W.P No.5452/2017 in which the issue of non-compliance of Section 28 of the Adhiniyam of 1965, has been raised.

8. In view of the aforesaid series of decisions of this Court and the fact of pendency of the S.L.P before the Supreme Court, the present petitions again raising the same issues cannot be entertained as they amount to abuse and misuse of the process of law and this Court and are, therefore, required to be dismissed at the threshold itself with costs.

9. However, when confronted with the aforesaid fact and that the only remedy now available to the petitioners was to approach the Supreme Court, the learned counsel for the petitioners has filed I.A No.11499/2017 in W.P No.8129/2017 for passing an order on the basis of the averment made in the said application and for referring the issue involved and the decisions mentioned in the preceding paragraph to a Larger Bench for adjudication as it is stated that all the aforesaid decisions mentioned in the preceding paragraph have been considered and decided against the petitioners without taking into consideration the provisions of Section 28 of the Adhiniyam of 1965 and, therefore, all the aforesaid decisions should be treated as per incurium and the matter should be referred to the Larger Bench for adjudication.

10. We propose to decide I.A No.11499/2017 first, before proceeding any further in the matter. Having perused the record as well as the aforesaid decisions of this Court, it is observed that the issue raised by the petitioners in the present petition relating to Section 28(3) of the Adhiniyam of 1965, as well as the prayer and argument for referring the matter to a Larger Bench have already been duly considered and rejected by this Court in the decision in W.P No.5452/2017, **Poonam Pattaiya** (supra) decided on 25.4.2017 and, therefore, the contention of the petitioners that these issues are being raised for the first time and have not been considered earlier, is factually incorrect and apparently mischievous as the learned counsel who had appeared in W.P No.5452/2017 and is appearing in these bunch of petitions as well as in the S.L.P filed before the Supreme Court against the order passed in W.P No.5452/2017, is the same and, therefore, we are of the considered opinion that I.A No.11499/2017 which has been filed on this false premise has been filed mischievously, demonstrates obstinacy and perversity, and is also an abuse and misuse of the process of this Court.

11. We are constrained to say so as the issue raised in the present petitions regarding grant of more than two chances to pass the first or second year D.El.Ed. Course stands conclusively decided by several Division Bench decisions of this Court and in fact the issue stands decided in the petitions filed by the petitioners themselves in the previous round of litigation and in such circumstances filing of repeated petitions for the same relief is absolutely mischevious and not permissible.

12. We are also of the opinion that once an issue has been decided on the behest of the petitioners against them and the decision has attained finality inter-party, subsequent petitions for the same relief raising the same issue by adding an additional ground, is neither permissible nor maintainable and cannot be entertained.

13. We are also of the considered opinion that the validity of a decision of a Co-ordinate Bench or review thereof is absolutely impermissible and cannot be asked for in a fresh petition as has been done in the instant case by the petitioners, by filing the present petitions and I.A No.11499/2017 therein for reconsidering and rehearing of the order passed by this Court in the case of

Poonam Pattaiya (supra) and thereafter referring it for reconsideration to a Larger Bench.

14. Before we proceed any further or pass any order in the present petitions in the back-drop of the aforesaid facts, we think it appropriate to clarify certain issues that have already been considered and decided by this Court in the judgment that have been referred to in the preceding paragraphs, specially in view of I.A No.11499/2017 filed by the petitioners.

15. A Division Bench of this Court in the case of **Ram Kishore Yadav** (supra) at the first instance considered the validity of the order passed by the Board dated 17.12.2012 on various grounds and dismissed the petition by holding that the Board was the affiliating and examining body and, therefore, had the power to issue such executive instructions and that the Executive Instructions restricting the chances to pass the first or second year D.El.Ed. Course was not in conflict with NCTE Regulations in the following terms in para-16:-

“16. The counsel for the petitioner has contended that the Board had no power and authority to limit the chances because in the year 2012 NCTE did not prescribe period for completion of the course. In our opinion, the

arguments advanced by the learned counsel for the petitioners could not be accepted because in accordance with the regulation of 2009 framed by the NCTE, which was applicable at the time of admission of the petitioners, the institution after recognition had to take affiliation from the examining body and there was no provision to control period to complete the course. Certainly, the affiliating body had power and authority to control the same because there is no conflict between the Regulation, 2009 and the order issued by the Board in 2012 limiting the chances of clearing examination. Hence, in our opinion, the petitioners are not eligible to get third chance. Even if the arguments of the petitioners are accepted, then the petitioners would get unlimited chances and this would be contrary to the procedure adopted by the affiliating body/Board for the purpose of conducting the examination. It is a fact that the regulation prescribes that after getting recognition to conduct course, the institution has to get affiliation from the examining body and in that event, the examining body has power and authority to regulate the procedure of examination which includes chances to clear the examination.”

16. This Court, while dismissing the petition, took note of the fact that under the Regulations of 2009, the duration of the D.El.Ed. Course was prescribed as two years with no further relaxation or stipulation whereas

the Regulation of 2014 notified by the NCTE specifically Clause 2.1 of Appendix 9 appended to the Regulation specifically provided and prescribed that the D.El.Ed. programme shall be of a duration of two academic years but a student may complete the programme within a maximum period of three years from the date of admission to the Course. The Court, while dismissing the petition, also took note of the fact that there was no maximum period or duration of the Course prescribed under the Regulation of 2009, whereas such a maximum period was prescribed under the Regulation of 2014 in spite of which and in the absence of anything to the contrary, the examining body had the power to issue the executive instruction dated 17.12.2012 limiting the chances to pass the D.El.Ed. course in two attempts. The judgment of this Court in this petition upholding the executive instructions dated 17.12.2012 has been consistently followed in all other decisions that have been quoted and mentioned in the preceding paragraphs.

17. In the case of **Poonam Pattaiya** (W.P No.5452/2017), the petitioners had initially approached this Court claiming that the petitioners should be

granted an additional chance to clear the examination which petition was dismissed by the judgment rendered in the case of **Poonam Pattaiya** (supra) whereafter the same petitioners filed another petition again challenging the constitutional validity of the impugned direction/executive instructions dated 17.12.2012 issued by the Board with reference to Section 28(3) of the Adhinyam of 1965, stating that the validity had not been considered on that ground in the previous decisions and, therefore, the previous decisions be treated as per incurium and the circular/executive instructions of the Board dated 17.12.2012 be quashed and declared unconstitutional, nonest, still born and unenforceable. The petitioners in W.P No.5452/2017 also prayed for referring the aforesaid decisions to a Larger Bench for deciding their correctness.

18. This Court, after taking into consideration the decision rendered in the case of **Ram Kishore Yadav** (supra), **Sanjay Jaitwar** (supra), **Sheela** (supra) as well as the decisions of the Supreme Court relied upon by the petitioners in the case of **Rajendra Agricultural University vs. Ashok Kumar Prasad and Others**, (2010) 1 SCC 730 and **I.T.C. Bhadrachalam Paper**

Boards and another vs. Mandal Revenue Officer, A.P and others, (1996) 6 SCC 634, held that this Court in all the previous petitions had treated the order/direction issued by the Board on 17.12.2012 as an executive instruction and not a Regulation and in such circumstances the procedure for seeking prior approval of the State Government and publishing it in the Official Gazette as provided under section 28(3) of the Adhiniyam of 1965, was not required to be followed by the Board while issuing the executive instructions dated 17.12.2012 and that the circular of the Board was not dealing with any matter covered by the Regulation framed by the NCTE relating to the duration of the Course or standard of education but was dealing with the number of chances to pass the examination and was, therefore, not in conflict with the NCTE Regulations and on that count dismissed the petition. The prayer for referring the matter to a Larger Bench was also categorically rejected.

19. After dismissal of the aforesaid petition, though the petitioner has taken up these issues before the Supreme Court, the petitioners in W.P No.8129/2017 have again filed I.A No.11499/2017 again reiterating the prayer that

the matter be reconsidered and referred to a Larger Bench on account of the fact that:-

(A) Validity and legal enforceability of the impugned executive instructions framed by the respondent BSE, in light of specific mandate of Section 28 of the MP Madhyamik Shiksha Adhiniyam 1965, for want of formal publication in the official gazette and sanction of the State Government in terms of Section 28(3) of the Act of 1965.

(B) Validity & vires of impugned executive instructions framed by the respondent BSE in light of the various provisions of NCTE Regulations 2014, which occupies the field pertaining to teacher education and shall take precedents override any executive instructions or law framed by the State Government or its undertakings. The various judgments that have been relied upon in the previously filed WP no.2396/2017 of the petitioner, did not examine the validity of executive instructions of FAQ's on the aforesaid 2 grounds specifically, more particularly in light of the judgments of the Hon'ble Supreme Court in the cases of PREETI SHRIVASTAVA Vs. STATE OF MP (1999) 7 SCC 120 & the recently passed judgment of the Hon'ble Supreme Court in the matter of STATE OF UP Vs. DINESH SINGH CHAUHAN AND ORS., (2016) 9 SCC 749, wherein it has been held that if any provision pertaining to standards of education is framed by the Central Government or its undertaking in exercise of its statutory powers conferred by Parliamentary statute, then State Government cannot by any means legislate to the contrary. In light of the aforesaid judgment, and the long line of precedents, the impugned circular of the respondent BSE, being repugnant and contrary to NCTE Regulations 2014 shall

be overridden by the latter and therefore liable to be stuck down, in so far it has the operation and effect of diluting the maximum period/duration within which the D.El.Ed. Course can be completed by any students, which is 3 years as per NCTE Regulation.”

20. It is stated that as the aforesaid aspects have not been considered which is a false and incorrect statement of fact within the knowledge of the petitioners, therefore, all the aforesaid decisions be treated as per-incurium and be referred to a Larger Bench for decision.

21. During arguments, the learned counsel for the petitioners has stated that he does not dispute the fact that the respondent Board is entrusted with the power to conduct the examinations of the D.El.Ed. Course. He, however, states that the powers of the Board are confined by and regulated by the Regulations framed under the Adhiniyam of 1965 namely, the Board of Secondary Education, Madhya Pradesh, Regulations 1965. It is submitted that Regulation 106 of the Regulations of 1965, confers power on the Board to conduct examination for award of Diplomas and the entire procedure of examination is regulated by the statutory Regulations. It is stated that the only manner in which the Regulations can be amended is by seeking

prior approval of the State Government and thereafter by issuing a notification in the Official Gazette as has been provided under Clause 28(3) of the Adhiniyam of 1965. It is submitted that the circular/executive instructions dated 17.12.2012 which limits the chances and attempts to clear the first and second year D.El.Ed. Course has been issued by the Board without following the procedure prescribed under section 28(3) of the Adhiniyam of 1965, and therefore, the said executive instructions is nonest, still born and unenforceable and for that purpose the learned counsel for the petitioners has relied upon the decision rendered in the case of **Rajendra Agricultural University** (supra) and **I.T.C. Bhadrachalam Paper Boards** (supra).

22. It is stated by the learned counsel for the petitioners that under the Regulations of 2014, the maximum period prescribed under the Regulation of 2014 to complete the D.El.Ed. Course is three years whereas the impugned executive instruction issued by the Board results in disqualifying a candidate from appearing in the second year examination even in a given case where he would be able to complete the D.El.Ed. Course inspite of availing three chances to pass

the first or the second year examination and, therefore, the executive instructions dated 17.12.2012 runs counter to the statutory provisions of Regulation 2014 of the NCTE Regulations.

23. As stated by us in the preceding paragraphs, all these issues have already been considered and rejected by this Court in the previous petition. It is pertinent to note that the NCTE Act of 1993 and the Regulations framed thereunder are enacted by the Central Government in exercise of powers under Entry-66 of List-I of the Constitution of India, whereas the statutes relating to education are enacted by the State in exercise of powers under Entry 25 of List-III of the Constitution of India. The issue of conflict between the Central Act and the State legislation has been considered and has come up before the Supreme Court for adjudication in several cases and the Supreme Court has categorically held that the power to provide for co-ordination and to lay down the standards of technical education that have been conferred on the Union of India under Entry-66 of List-I of the Constitution of India, and the Act or Legislation made by the Union of India thereunder would prevail over any State law which is re-pugnant to or in conflict with the

Central Act relating to co-ordination and the standard of technical education. The Supreme Court has further held that the power to legislate in respect of education under Entry 25 List-III of the Constitution of India, is concurrent and in such circumstance the State Government has the power to make legislation relating to education and the Act made by the State legislature would be enforceable to the extent that it is not in conflict with any Act made by the Central Legislature.

24. In the case of **Chairman, Bhartia Education Society and another vs. State of Himachal Pradesh and others**, (2011) 4 SCC 527, the Supreme Court, while considering the provisions of the NCTE Act, vis-a-vis, the State Legislation, has held that while the Central enactment deals with the standard of education and confers power on the NCTE to grant recognition to an institution imparting D.El.Ed. Course or other Courses, the State or the University/Examining Body which is empowered to grant affiliation to such an institution under the State law is not totally powerless and that the affiliating body has the limited power to decide the manner of admission in the institution, the eligibility

criteria, etc. without interfering with the conditions of recognition prescribed by the NCTE.

25. In the case of **St. Johns Teachers Training Institute vs. Regional Director, National Council for Teacher Education and another**, (2003) 3 SCC 321, the Supreme Court has again held that the role of the University/affiliating body is limited and is confined to admissions of student, laying down the criteria thereof, holding of examinations and implementation of prescribed course while maintaining the standards of education as prescribed.

26. In the case of **Maa Vaishno Devi Mahila Mahavidyalaya vs. State of Uttar Pradesh and others**, (2013) 2 SCC 617, in reference to the NCTE Regulations and inspite of the same, the Supreme Court in para-71 has held that the examining body can impose conditions relating to eligibility of students for admission, conduct of examination, etc. in the following manner in para-71:-

“71. The examining body can impose conditions in relation to its own requirements. These aspects are

- (a) eligibility of students for admission;
- (b) conduct of examinations;

(c) the manner in which the prescribed courses should be completed; and
(d) to see that the conditions imposed by the NCTE are complied with. Despite the fact that recognition itself covers the larger precepts of affiliation, still the affiliating body is not to grant affiliation automatically but must exercise its discretion fairly and transparently while ensuring that conditions of the law of the university and the functions of the affiliating body should be complementary to the recognition of NCTE and ought not to be in derogation thereto.”

27. From the aforesaid decisions of the Supreme Court it is apparent that while the NCTE has full power and authority to regulate the standard of Education, duration of the Course etc., the power to regulate and conduct examinations is conferred upon the affiliating/examining body which is the respondent/Board in the instant case. In fact, Regulation 11 of the Regulations of 2014, framed by the NCTE itself clearly stipulates that the admissions would be controlled and regulated by the affiliating body.

28. In such circumstances, and in view of the law laid down by the Supreme Court in the aforesaid decisions, it is apparent that the power to regulate admissions and examinations in Educational Institutions lies with and has been conferred upon the State or the

University/affiliating body, as the case may be, even by the Regulations of the NCTE and, therefore, the power to make admissions, conduct examinations and prescribe the procedure in that regard is the sole prerogative of the State or the University/affiliating body, as the same is neither in conflict with nor does it effect or interfere with the co-ordination and standard of education that are prescribed by the NCTE.

29. It is in this context that this Court in the case of **Ram Kishore Yadav** (supra), **Poonam Pattaiya** (supra) and **Ankita Shukla** (supra) has held that the Board, which is the affiliating and examining body, has the power to prescribe and limit the chances to pass the examination that are available to a student for passing the D.El.Ed. Course. It is for this very reason that this Court in the aforesaid decisions has held that the impugned executive instructions dated 17.12.2012 is not in conflict with the Regulation of the NCTE and is within the power and authority of the respondent/Board to prescribe.

30. As regards the second contention of the learned counsel for the petitioners to the effect that the Board could not have issued the impugned executive instructions without amending the Regulations in the

manner prescribed under section 28 (3) of the Adhiniyam of 1965, is concerned, the said contention is heard only to be rejected for two reasons. Firstly, that the Board has been conferred with clear and specific powers to issue instructions from time to time in relation to admission and examination under Regulation 199-200 of the Regulations of 1965, and secondly, once it is an admitted and undisputed fact that the Board has been conferred with the power to conduct examinations, by the Adhiniyam of 1965, and the Regulations framed thereunder as well as by the NCTE, it goes without saying that it has the inherent power to prescribe the procedure for conducting such examination.

31. As the Board has the power to issue such executive instructions which is conferred by Regulations 199 and 200, therefore, the contention of the learned counsel for the petitioners that the Board was required to amend the Regulation by following the procedure prescribed under section 28(3) of the Adhiniyam of 1965, for the purposes of implementing and limiting the chances for passing the D.El.Ed. examination is misconceived and therefore, had been rightly rejected by this Court in its previous decisions.

32. This Court while dismissing W.P No.5452/2017 and other matters, had rejected the contention of the petitioners regarding non-compliance of the provisions of Section 28(3) of the Adhinyam of 1965, by stating that the order dated 17.12.2012 issued by the Board was an executive instructions which the Board was empowered to issue and, therefore, the question of applicability of Section 28 of the Adhinyam of 1965, to the direction/executive instructions did not arise. The aforesaid conclusion was recorded by the Court keeping in mind the fact that initially when the board took up the task of conducting examinations for making admissions in the D.El.Ed. Course it issued executive instructions in the years 2000, a copy of which has been filed by the respondent/Board alongwith the application for taking additional documents on record. This executive instruction that was issued by the Board in 2000 provided that the students pursuing D.El.Ed. Course would get only two continuous chances to pass the first year examination and in case he fails to pass the second year examination in one attempt, he could do so in one other additional attempt as a private candidate. This executive instruction was amended by the Board vide its

order dated 26.02.2010 and the cap relating to the chances to pass the first and second year D.El.Ed. course was removed giving unlimited opportunities to the students to pass the examination. However, subsequently, as it was found that such a course of granting unlimited chances to the students was seriously affecting the standards of education, the impugned executive instructions dated 17.12.2012 was issued again reimposing the restrictions of two continuous chances to pass the first and second year D.El.Ed. Course.

33. We have given the history of the impugned notification dated 17.12.2012 only to indicate that since the very beginning the entire process of examinations that has been conducted by the respondent/Board is governed by the executive instructions only, and not by any Regulations, which have been issued by the Board in exercise of its power under Regulation Nos. 199 & 200 and its inherent powers for conducting examination that are conferred upon it by the provisions of Adhiniyam 1965, the Regulations framed thereunder as well as the NCTE Regulations and that the impugned Executive Instructions dated 17.12.2012 was issued not for the

purposes of amending the Regulation of the Board for which the procedure prescribed under section 28 of the Adhiniyam of 1965, was required to be followed but was in fact issued to amend the previously existing executive instructions only.

34. The contention of the petitioners that by way of the impugned executive instructions dated 17.12.2012 the Regulations of the Board have been amended or that it results in amending the Regulations framed by the Board is factually incorrect and misleading.

35. It is pertinent to note that even today the admissions to D.El.Ed. Course are conducted in accordance with the yearly orders/rules issued by the State Government in the name of Governor of the State and under clause 8 of the orders/rules, the State Government clearly specifies that the entire procedure and manner of conducting the examinations for the first and second year of D.El.Ed. Course would be governed by the rules and detailed instructions issued by the M.P. Madhyamik Shiksha Mandal. One such order/notification issued by the State dated 30.6.2017 relating to admission to the D.El.Ed. Course in non-government colleges for the year 2017, has been placed before this

Court by way of an example, a copy of which is taken on record as **Annexure 'C-1'**.

36. At this stage we may also clarify the observation made by this Court in W.P No.5452/2017 to the effect that the NCTE Regulations only deal with the duration of the course and not the number of chances to clear the examination by taking note of the fact that the Regulations of the NCTE only prescribes the duration of the course and do not talk about or prescribe anything in relation to the examinations to be conducted by the affiliating and examining body basically because the power and manner of conducting the examination is conferred upon and is the sole domain of the examining body. The Regulation is absolutely silent in relation to the examinations to be conducted by the affiliating and examining body. The maximum period during which the course can be completed as prescribed under the NCTE Regulations of 2014, does not confer any indefeasible statutory right on an individual to insist that he shall complete the course within three years. It simply provides that in case of some unforeseen circumstances if an individual is unable to complete the course in two years he may do so within a maximum period of three

years. The maximum duration of the course and the number of chances to be provided to clear the examination of a particular year of the course are two separate and distinct subjects and issues and are within the power and authority of two distinct and separate authorities.

37. We are constrained to reiterate what has already been stated by this Court in its previous decisions that the object and purpose of issuing notification dated 17.12.2012 is in furtherance of increasing and enhancing the standards of education which is the very object and purpose of the NCTE Act and the Regulations, enacted by the Union of India realizing the special importance of the various teacher training programmes like D.El.Ed. programmes and on that count has prescribed certain uniform high standards for the coordinated development of teacher education and it is for this very purpose that Regulations of 2014 have fixed a maximum cap of three years for passing and clearing the D.El.Ed. Examinations. Apparently, the object and purpose is to ensure that those persons who undertake the teacher education programmes and thereafter are given employment as teachers by the State Government and other educational

institutions are highly proficient, capable, competent and conform to the high standards prescribed and required of a teacher and that they possess the necessary intelligence, knowledge and aptitude to impart education to the children of this country. In this backdrop the least that can be expected of such a person is that he is atleast able to pass the first year or second year D.El.Ed. Course as the case may be, in two attempts and no more.

38. As we have held that the Board has the power to issue the impugned executive instructions, that the instructions are not in conflict with or opposed to the NCTE Act and the Regulations and that the executive instructions infact in furtherance of and in tune with the basic object and purpose of enhancing and maintaining the standards of education, therefore, the reliance placed by the learned counsel for the petitioners on the decisions of the Supreme Court in the cases of **Preeti Shrivastava** (supra) and **Dinesh Singh Chouhan** (supra) in support of their misconceived submissions, is absolutely misplaced in view of the facts of the present case and the conclusions recorded by us in this petitions.

39. In our considered opinion such a restriction is perfectly justified and not unreasonable to demand of a person who would ultimately become a teacher. We are also of the considered opinion that in view of the maximum period of three years prescribed for clearing the course the arrangement made by the Board vide executive instruction dated 17.12.2012 to grant one and half years time to the student concerned to clear each year of the two year course by prescribing a uniform pattern is perfectly justified and reasonable.

40. We are also of the considered opinion that the NCTE Act or the Regulations framed thereunder, do not confer any statutory or fundamental right to claim either unlimited or a particular number of chances to pass an examination and therefore, the very basis of the claim made by the petitioners is misconceived.

41. The learned counsel for the petitioners fairly states that the 2014 Regulation being procedural in nature would apply even to those students who have taken admission earlier than 2014 and were pursuing their studies when the Regulations of 2014 came into force. We are in agreement with the submission of the learned counsel for the petitioners. That being the case since the

maximum duration of the course has been limited to 3 years by the NCTE Regulations of 2014, WP nos.7910/2017, 7913/2017, 7915/2017, 8129/2017, 8134/2017, 8185/2017, 8190/2017, 8203/2017, 8222/2017 and 11149/2017 even otherwise deserve to be dismissed without any further indulgence on account of the fact that more than 3 years have elapsed since the time they had taken admission in the D.El.Ed. Course and, therefore, they cannot be granted any further chances to pass the examination.

42. In the circumstances and with the aforesaid clarification, we reiterate and respectfully agree with the orders passed by us in the previous Writ Petitions as well as the orders passed by us in WP no.5452/2017 in the case of **Poonam Pataiya** dated 25.04.2017. For the aforesaid reasons I.A No.11499/2017, filed by the petitioners, praying for referring the issue of correctness of all the previous decisions passed by this Court referred to in the preceding paragraphs to a Larger Bench is misconceived, perverse, mischievous, obstinate and meritless and is, accordingly, dismissed.

43. With the aforesaid clarification we reiterate that in our considered opinion, filing of such repeated petitions

in spite of the decision by this Court in a series of cases and the law being settled to the knowledge of the petitioners, specifically in the case of the petitioners themselves, amounts to abuse and mis-use of the process of law as well as of this Court and in such circumstances while dismissing the petitions, **we impose a cost of Rs.5000/- on each of the petitioners** which shall be deposited with the High Court Legal Service Committee, Jabalpur within three weeks from today and report regarding compliance or otherwise shall be placed before this Court.

44. With the aforesaid direction, the petitions filed by the petitioners, being meritless, are, accordingly dismissed with costs as above.

(R. S. JHA)
J U D G E

(NANDITA DUBEY)
J U D G E

mms/-