

NEUTRAL CITATION NO. 2025:MPHC-JBP:25033



W.A. 1738/2024 & CONNECTED MATTERS

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE THE ACTING CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VINAY SARAF

WRIT APPEAL-1738/2024

VIKRAM SINGH RATHORE

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION -11376/2024

VIPIN KUMAR PATEL OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT PETITION -19227/2023

NITIN KUMAR BAGHMARE AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS



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WRIT PETITION - 26799/2022

RAKESH DHARWAAND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT APPEAL - 1877/2024

SHIVANI SHARMA

Versus

THE STATE OF MADHYA PRADESH

WRIT APPEAL - 1886/2024

SUNITA SASTEAND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

WRIT APPEAL - 1953/2024

AJITESH TIWARI AND OTHERS

Versus

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THE STATE OF MADHYA PRADESH AND OTHERS

WRIT APPEAL - 2198/2024

MANOJ SASTE AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri K.C.Ghildiyal– Senior Counsel with Ms. Warija Ghildiyal – Advocate.

Shri S.R.Tamrakar – Senior Counsel with Shri Ankit Chopra- Advocate for Appellants/ Petitioners.

Shri Piyush Jain Government Advocate for Respondents/State.

Reserved On : 25.02.2025

Pronounced On:24.05.2025

JUDGMENTS

Per: Acting Chief Justice

1. Writ Appeals being W.A. No. 1738 of 2024 (arising out of Writ Petition No.16384 of 2019), W.A. No. 1877 of 2024 (arising out of Writ



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Petition No. 22359 of 2021), W.A. No. 1886 of 2024 (arising out of Writ Petition No. 24543 of 2021), W.A. No. 1953 of 2024 (arising out of Writ Petition No. 27662 of 2022) and W.A. No. 2198 of 2024 (arising out of Writ Petition No. 6432 of 2022) all impugn a common order dated 22.07.2024 passed in the respective Writ Petitions, dismissing the petitions seeking quashing of circular dated 19.03.2019.

2. Writ Petitions being W.P. No. 11376 of 2024, W.P. No. 19227 of 2023 and W.P. No. No. 26799 /2022 inter alia seek quashing of circular dated 19.03.2019.

3. The main challenge in the Writ Appeals and the Writ Petitions is to circular dated 19.03.2019 and all of them seek a direction to the Respondents to appoint candidates having BSc. (Mathematics) and BSc. (Biology) in equal proportion on the post of science and mathematics teacher, in all institutions on the post of *Madhyamik Shikshak* (Middle School Teacher). Since common question arises for consideration in all the appeal and petitions, they are taken up together.

4. The contention of the Appellants/petitioners is that the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the RTE Act), apart from providing for free and compulsory education to children also provides for duties of appropriate government, local



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authorities and parents. Chapter IV provides for the responsibilities and norms for the School and Teachers have been prescribed. The Schedule under section 19 and 25 lays down norms and standards for a school and schedule 1(b) in respect of number of teachers lays down as under:

“1. Number of Teachers

*(a) ******

(b) For sixth class to eighth class:

(1) At least one teacher per class so that there shall be at least one teacher each for:

(i) Science and Mathematics;

(ii) Social studies;

(iii) Languages.

(2) At least one teacher for every thirty five children.

(3) Where admission of children is above one hundred-

(i) a full time head - teacher ;

(ii) part time instructors for-

(A) Art Education;

(B) Health and Physical Education;

(C) Work Education.”

5. Respondent State Government issued an order dated 11.05.2016, providing for staffing pattern in the middle schools keeping in view the provisions of the RTE Act. In the staffing Pattern, the post of Science and Mathematics was kept at serial No. 1, language was at serial No. 2 and Social Science was at serial No. 3. Depending upon the number of students,



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in case of requirement of additional teachers, 4th post was earmarked for Language and 5th post was assigned for Science (Biology).

6. Subsequently, by order dated 26.09.2017, it was provided that upto the strength of 105 students; 1st post would be of mathematics, 2nd of English and 3rd of Social Science. If the strength is above 105 students; 4th post will be of language and in case the strength is above 141 students, the 5th post will be of science (biology).

7. As per the Appellants/Petitioners, they had appeared in the Madhyamik Shikshak Eligibility Examination, 2018, an examination conducted by the Professional Examination Board, Bhopal for appointments on the post of Middle School Teachers. The examination for mathematics and science was a common examination. By letter dated 28.08.2018, Respondent No. 1 stipulated that a candidate shall be subjected to subject wise eligibility test. Examination shall be held in Mathematics, Science, Social Science, Hindi, English, Sanskrit & Urdu. A candidate in Mathematics would be required to have graduation with Mathematics and Physics or Engineering subjects, whereas in respect of Science Subject, the candidate would be required to have a degree in at least 2 subjects out of Chemistry, Botany, Zoology, Microbiology, Bio-Technology and Bio-Infermetrics.



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8. On 19.03.2019 the impugned Circular/order dated 19.03.2019 was issued by Commissioner, Public Instructions that upto 105 students, there would be 3 Teachers, 1 each in Mathematics, English and Social Science. In case, the strength is between 105 to 140, the 4th teacher will be of Sanskrit and in case the strength is between 141 to 175, the 5th teacher will be Science (Biology) teacher. Out of the total 5670 posts of Madhyamik Shikshak, in School Education Department, 1312 posts were earmarked for teachers in Mathematics whereas only 50 posts were earmarked for Science (Biology) Teachers. In Tribal Department, out of 5740 posts 1783 posts were earmarked for teachers in Mathematics whereas only 446 posts were earmarked for Science (Biology) Teachers

9. The case of the Appellants/Petitioners is that the RTE Act provides for the 1st post of Science and Mathematics Teacher. It is submitted that the on the 1st post the appointment can be made either of a teacher with Science (Biology), or Science (Mathematics), however, Respondents have kept the post of Science (Biology) at serial no. 5, which would be required only in the institutions, where the strength of students is 141 or above. It is contended that students having B.Sc. with mathematics gets the opportunity of serving in large number of institutions whereas a candidate having B.Sc. Degree with Biology gets the chance of serving in limited number of institutions having student strength of 141 or above.



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10. The learned Single Judge by order dated 22.07.2024, dismissing the Writ Petitions (subject matter of the Writ Appeals), held that looking at the plain language of Clause (1) (b) of the Schedule to the RTE Act, the court was unable to accept the contentions of the Petitioner. Learned Single Judge held that *“The schedule mentions that there shall be one teacher per class so that there shall be at least one teacher each for the three clauses from (i) to (iii). By a plain reading of said provision, it is evident that there will be a minimum of three teachers in all middle schools with each teaching (i) Science & Mathematics (ii) Social Science and (iii) Languages. If the intention was otherwise, then legislature would have carved out four clauses from (i) to (iv) and not (i) to (iii).”* The learned single Judge thus held that *“no mandatory direction can be issued to the State Government to appoint separate teachers for Science and Mathematics in middle schools having strength below 105 students. However, it is observed that it is always upon to the State Government to appoint separate teachers for Science and Mathematics subjects even in such schools”*.

11. The contention of the Appellants/Petitioners is that there has to be a teacher for Science and Mathematics in every school teaching the class 6th to 8th compulsorily and the rules do not curtail the requirement of a Science Teacher on the basis of number of students.



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12. All the Appellants/Petitioners have done their graduation in Science, in Biology, Chemistry, Botany and Zoology, however, without Mathematics.

13. Learned Senior Counsels for the Appellants/Petitioners submit that the State Government has not decided to post a separate teacher of Science (Biology) and State Government is treating Mathematics and Science as one and the same for the purpose of posting of teachers in middle school. It is submitted that Appellants/Petitioners are qualified in Science (Biology) subjects but are not qualified in Mathematics and by not separately advertising the post of science teachers in middle school, on one hand the students of such middle school will be put to a loss and on the other hand, the petitioners who are qualified in science are not having avenues of appointment in public service for the post of teacher in middle schools.

14. In respect of the schedule to the RTE Act, it is contended that that the expression “Science and Mathematics” is being wrongly construed by the State Authorities. It is contended that said clause does not mandate that the teacher must be qualified both in Science and Mathematics. But a teacher qualified either in Science or Mathematics would be eligible. It is submitted that the method of subject wise distribution of post is absolutely illegal, arbitrary and contrary to the provisions of the RTE Act. It is contended that



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the post of “Science and Mathematics” means that the appointment can be made either of a teacher with Science (Biology), or Science (Mathematics).

15. Learned Senior Counsels for the Appellants/Petitioners submit that the word “and” is used in Schedule 1 in the expression “Science and Mathematics” meaning thereby that the word “and” is a disjunctive. It separates one from the other. Thus, Science and Mathematics can never come together. Had it been a case of inclusion of the word “OR” which separates saying that ‘either / or’ implies the word with reference to choosing one from the two but in the instant case, the word “AND” has been used, which separates and does not club the expression “Science and Mathematics”.

16. As per the Respondents, if the number of students is more than 105, then on the basis of proportion of 35 children per teacher, one additional teacher would be appointed for Languages like Sanskrit / Urdu / Marathi/ Gujarati etc. and then an additional teacher for Science (Biology) and thereafter if there is a requirement to appoint a 6th teacher then the 6th teacher would be of Hindi Subject which is otherwise included in Social Science.

17. The State Government has filed an additional affidavit dated 24.02.2020 stating that that Section 25 of RTE Act provides for pupil teacher ratio and also that subject of science is a consolidated subject in middle



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school which includes Chemistry, Physics and Biology and the share of Biology in Science is only about $1/3^{\text{rd}}$. It further states that the candidates qualified in Mathematics and Science can cover complete syllabus of Mathematics and a major portion of the Science syllabus but the same is not true in reverse.

18. The Schedule to the RTE Act in respect of classes 6th to 8th, provides that for upto 100 students there shall be at least one teacher per class so that there shall be at least one teacher each for (i) Science and Mathematics; (ii) Social studies; and (iii) Languages. The ratio prescribed is at least one teacher for every thirty five children. If the number of children exceed 100, then a full time head – teacher and part time instructors for Art Education, Health and Physical Education and Work Education.

19. As per the ratio of one teacher per 35 students in a middle school of upto 100 students, the requirement is of 3 teachers. One who can teach the subjects of Science and Mathematics and second who can teach the social studies subjects and third who can teach the languages. The Sciences subjects taught in middle school comprise of Physics, Chemistry and Biology. The Social Studies comprises of History, Geography and (Civics) and Economics.



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20. The impugned Circular/order dated 19.03.2019 stipulates that the posts are reserved as per the RTE Act and the flowing table has been shown to depict the setup:

Basic setup (Enrollment Upto 105)	In case of excess Enrollment extra subject teachers					
Maths, English, Social Science	105-140	140-175	175-210	210-245	245-280	280-315
	Sanskrit	Science (Bio)	Social Science	Maths	Social Science	English

21. As per the Basic setup, upto 105 students, there would be 3 Teachers, 1 each in Mathematics, English and Social Science. In case, the strength is between 105 to 140, the 4th teacher will be of Sanskrit and in case the strength is between 140 to 175, the 5th teacher will be Science (Biology) teacher and so on. The Mathematics teacher comprised in the Basic Setup of 105 children is being taken as a teacher in Science and Mathematics as stipulated in the Schedule to the RTE Act. As per the Respondents this was clarified by the notification dated 11.05.2016.

22. There is also merit in the contention of the Respondents that the expression “Science and Mathematics” means a teacher who has studied both Science and Mathematics and not a teacher who has either studied Science or Mathematics. Clearly a teacher who holds a Bachelor degree in Science with Mathematics would be able to teach the subjects of Science



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(i.e. Physics, Chemistry and Biology) and also Mathematics. On the other hand a teacher who holds a Bachelor degree in Science (Bio) would be unable to teach Physics, Chemistry and Mathematics. The stand of the Respondents is clearly logical. Out of the four subjects : Mathematics, Physics, Chemistry and Biology, one teacher who is BSc with Mathematics would be a graduate in 3 out of 4 subjects, whereas, the other teacher who is a BSc (Bio) without Mathematics would be a graduate only in 1 of the 4 subjects.

23. There is clearly no merit in the contention of learned Senior Counsels for the Appellants/Petitioners that the word “and” used in Schedule 1 in the expression “Science and Mathematics” is disjunctive. There is no merit in the contention that the expression “Science and Mathematics” should mean either Science or Mathematics. If this were the case, as noticed by the learned single judge there would have been (iv) clauses and not (iii). The teachers then would have been in (i) Maths, (ii) Science, (iii) Social science and (iv) Language, but that is not the case. There is a requirement of only 3 teachers in the basic setup i.e. (i) Maths & Science, (ii) Social science and (iii) Language.

24. Further, if the above interpretation were to be accepted then it would mean that a teacher possessing a degree in B.A. (Maths.) or B.Com.with



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Maths. or B.A. Economics with Maths. or B.A. (History) with Maths.Etc.would also be qualified even though they have not studied Science subjects. The intention of the schedule to the RTE Act is that there should be minimum 3 teachers in a Basic setup of upto 100 students. One who can teach the Science subjects and Mathematics, one who can teach all the Social Science subjects and the third who can teach the languages. In case of more than 100 students then per 35 students, teacher of the specified subject is added.

25. As noticed above, the classification has a rationale with the object sought to be achieved so that all the subjects are taught by duly qualified teachers. Consequently, there is no infirmity in the impugned Circular dated 19.03.2019. We are in complete agreement with the view taken by the learned single judge in his judgment dated 22.07.2024. There is no infirmity in the said Judgments.

26. In view of the above, we find no merit in the Appeals and the Writ Petitions. The same are dismissed. There shall be no orders as to costs.

(SANJEEV SACHDEVA)
Acting Chief Justice

(VINAY SARAF)
Judge

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