

Upendra Rai Vs. State of U. P. and Others

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Court : Allahabad

Decided On : Dec-07-1999

Reported in : 2000(1)AWC570; (2000)1UPLBEC235

Judge : Alok Chakrabarti, J.

Acts : [Constitution of India](#) - Articles 254 and 254(1); [National Council for Teacher Education Act, 1993](#) - Sections 14 to 17 and 17(4); Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 - Rule 8

Appeal No. : C.M.W.P. No. 19876 of 1999

Appellant : Upendra Rai

Respondent : State of U. P. and Others

Advocate for Def. : A. K. Singh, ;S. C.

Advocate for Pet/Ap. : Arvind Srivastava, Adv.

Judgement :

Alok Chakrabarti, J.

1. Heard Mr. Arvind Srivastava, learned counsel for petitioner and learned Standing Counsel as also Mr. A. K. Singh, learned counsel appearing on behalf of the Board.

2. Contentions raised by the learned counsel for petitioner are all on law and no dispute on facts are to be resolved for disposing the writ petition. Learned Standing Counsel agreed to final disposal of the writ petition at this stage without filing counter-affidavit.

3. The petitioner is challenging the advertisement dated 28.4.1999 and Government Circular dated 11.8.1997 alleging the illegality therein as qualifications acquired from recognised institutes in other States have been kept beyond consideration for appointment against the posts advertised. The said advertisement was in respect of appointment for the post of Assistant Teacher in Basic Schools and it has been provided therein that the candidates must have qualification of B.T.C, from a recognised institute in the State of Uttar Pradesh. The petitioner claims that his candidature cannot be refused to be considered as he has completed B.T.C. course from State of Madhya Pradesh.

4. Learned counsel for petitioner contended that the qualification acquired by the petitioner in the year 1998 after prescribing the course was recognised and certified by the Board of Madhyamik Shiksha Mandal, M.P., Bhopal and the said institute is known as District Institute of Education and Training of Jabalpur and is recognised by the authorities under the [National Council for Teacher Education Act, 1993](#) (hereinafter referred to as N.C.T.E. Act). It is stated that Section 14 of N.C.T.E. Act provides for details of the provisions required to be followed to get recognition of the Institution running teachers training course from the authorities under N.C.T.E. Act. Section 17(4) of the said Act was relied on to contend that certificate of teacher training given by every recognised Institution shall be a valid qualification for the purpose of employment under Central Government, any State Government or University or any School, College or Other educational body aided by the Central Government or any State Government. It is also stated that the aforesaid schemes have been taken and Statutes were framed for the purpose of improvement in the quality of education equally throughout the entire country. Learned counsel for petitioner further relied on the statements made in the writ petition for contending that the petitioner is having better qualifications and still his candidature is not being considered for the purpose of posting in Basic Schools in the State of Uttar Pradesh.

5. Relying on the aforesaid facts, learned counsel for the petitioner contended that under the provision of Article 254 of [Constitution of India](#), the Central Legislation N.C.T.E. Act made by Parliament is prevailing and its provision cannot be superseded by subordinate legislation, namely, Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as Rules of 1981).

6. Second contention of the learned counsel for petitioner is that the prescription of exclusion of B.T.C. from States other than Uttar Pradesh has been made by a Government Order and this is not permissible under law as by Government Order, provision of Statute or statutory rule cannot be modified. In support of such contention, reference has been made to the case of K. Kuppusamy v. State of Tamil Nadu and others, J 998 (8) SCC 469 and the case of Subhash v. State of Maharashtra and another, 1995 Supp. (3) SCC 332.

7. The third contention of the learned counsel for petitioner is that standards of the courses for B.T.C. in two States, namely, Uttar Pradesh and Madhya Pradesh are equivalent and, therefore, refusal to consider the candidature of the petitioner is arbitrary and therefore, is liable to be corrected.

8. With regard to contention that such Statewise restriction is not permissible, on behalf of petitioner reference was made to the case of Ashok Kumar Verma and others v. State of U. P. and another, (1990) 2 UPLBEC 1024 ; Vijay Pratap Singh v. Nideshak Ayurvedic Avam Unani Chikitsa Seva Lucknow and others, 1996 (1) ESC 68 ; Union of India v. Sanjay Pant, AIR 1993 SC 1365 ; Dr. B. L. Asawa v. State of Rajasthan and others, (1982) 2 SCC 55 ; P. Rajendran v. State of Madras, AIR 1968 SC 1012 ; Dr. Pradeep Jain v. Union of India, AIR 1984 SC 1420 and the case of A. Periakaruppan v. State of Tamil Nadu, AIR 1971 SC 2303.

9. Mr. A. K. Singh, learned counsel for the respondent Board contended that the Government Order dated 11.8.1997 was challenged and by Judgment and order dated 16.9.1997, the validity of the said Government Order has been upheld in the case of Smt. Kiran Kumari v. State of U. P. and others, (1997) 3 UPLBEC 1243.

10. After considering the aforesaid contentions of the respective parties. I find that Article 254 of the [Constitution of India](#) provides as follows :

'254. (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact ; or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause 12), the law made by Parliament, whether passed before or after the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, (the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State : Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.'

11. The first contention that qualification recognised by N.C.T.E. Act has been superseded has no force. Sections 14, 15, 16 and 17 of the said Act indicate that every Institution offering or intending to offer a course or training in teacher education is to obtain a recognition. Even a recognised institution is to obtain permission when it intends to start any new course or training in teacher education. Granting affiliation to any institution or holding examination for a course or training conducted by a recognised institution, cannot be made by any examining body unless the institution concerned obtains recognition from the appropriate authority. Section 17 of the said Act dealt with circumstances when a recognised institution contravenes any of the provisions of the said Act or the Rules or the Regulations made thereunder. Subsection (4) of Section 17 of the said Act, strongly relied on by the learned counsel for petitioner, deals with an institution offering any course or training in teacher education after withdrawal of the recognition or when recognition or permission under the Act was not obtained.

Therefore, recognition under the said Act itself does make holder of a certificate of training entitled for consideration against any post of teacher in the country, particularly when nothing has been disclosed on facts to show said training certificate obtained by the petitioner is equivalent to the qualification prescribed here.

12. Qualification prescribed under Rule 8 of the Rules of 1981 is not repugnant to any provision of the said N.C.T.E. Act. Therefore, in the present facts. Article 254 of the [Constitution of India](#) is not violated by prescription of qualification either by the said Rules or by virtue of power granted to the Government under the said Rules and no grievance can be made against such prescription under Rule 8 of the said Rules of 1981.

13. With regard to second contention of petitioner. I find that the impugned advertisement relates to appointment in the posts which are governed by the aforesaid Rules of 1981 and Rule 8 thereof is as follows :

'8. Academic qualification.--(1) The essential qualifications of candidates for appointment to a post referred to in clause (a) of Rule 5 shall be as shown below against each :

Post

Academic qualification

(i)

Mistress of Nursery Schools

Certificate of Teaching (Nursery) from a recognised training Institution In Uttar Pradesh or any other training qualification recognised by the equivalent thereto.

(ii)

Assistant Master Assistant Mistress of Junior Basic Schools

Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh or any other qualification recognised by the Government as equivalent thereto together with the training qualification consisting of a Baste Teacher's Certificate. Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other training course recognised by the equivalent thereto :

Provided that the essential qualification for candidate who has passed the required training course shall be the same which was prescribed for admission to the said training course.

* * * * *

14. The aforesaid provision of Rule 8 clearly indicates that qualifications recognised for the said purpose have been mentioned with an additional clause to include any other training course recognised by the State Government as equivalent thereto.

15. Therefore. Government Orders Issued from time to time under the aforesaid Rule prescribing such training course, in exercise of power under the aforesaid Rule 8. cannot be assailed as superseding statutory Rule. On the contrary, I find that the said Government Order has been issued exercising the power of Government under the aforesaid Rules of 1981.

16. Moreover, the cases referred to by the learned counsel for the petitioner with regard to Districtwise or Statewise restriction will not apply In the present case as in those cases, academic degree obtained from a recognised University in the country was under consideration. So far as such degrees are concerned, they are treated uniformly throughout the country and if the university granting such degrees is recognised in one State, such degree is to be recognised in other State. But. with regard to training courses for different levels of education, policy is required to fix a standard and .to follow it. In such subjects, the Courts are not in a position to substitute its view In place of the decision taken by any appropriate authority under a particular State Government. It is admitted position that for

different levels of education, different types of training courses are felt to be required for their teachers. In such subjects, the Courts of law are not in a position to prescribe a qualification or direct an authority to accept a particular qualification as a proper one. Under similar circumstances in Civil Misc. Writ Petition No. 28243 of 1996, Nirmal Chandra Mishra and others u. State of U. P. and others, when the candidates having B.Ed. qualification claimed to be treated equally for the purpose of appointment against posts requiring B.T.C. qualification, it was held on 29.10.1996 that in such subjects, the Courts of law will be reluctant to express its view as to whether B.Ed. is equivalent to B.T.C. or being a superior qualification is required to be treated as sufficient qualification for such posts.

17. Applying the aforesaid tests, I am of the opinion that neither Rule 8 of the said Rule, 1981 nor Government Order dated 11.8.1997 suffers from any irregularity as alleged.

18. In view of aforesaid findings, the writ petition fails and the same is hereby dismissed.