

Devendra Singh and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : May-14-2004

Reported in : 2004(3)AWC1891

Judge : M. Katju and ;R.S. Tripathi, JJ.

Acts : Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 - Rules 5, 8, 8(1) and 14

Appeal No. : Special Appeal No. 461 of 2004

Appellant : Devendra Singh and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : S.C.

Advocate for Pet/Ap. : K.M. Asthana, Adv.

Judgement :

M. Katju, J.

1. Heard Learned counsel for the parties.

2. The appellants in these appeals are graduates with B.Ed./L.T. training qualifications. They are seeking admission to Special B.T.C. Course 2004, vide Government order dated 14.1.2004 as amended on 20.2.2004. They have

challenged the judgment of the learned single Judge dated 5.3.2004, on the ground that they should be given preference in admission to the Special Basic Teachers' Certificate Course as they had appeared for selections in Special B.T.C. Course 2001, and that the appointments should be made on the basis of yearwise training course passed by the candidates, and that the candidates who have passed the required training course earlier be placed above those who have passed the training course later.

3. The brief facts giving rise to the writ petitions before the learned single Judge were that there are a large number of vacancies of Assistant Teachers in the Basic Schools run by the U.P. Basic Education Board in the State. The U.P. Basic Education Act, 1972 provides for establishment of a Board of Basic Education. The Board constituted under Section 3 of the Act, has been provided with the functions under Section 4 to organize, coordinate and control the Basic Education and Teachers Training imparting of Basic Education and Teachers' Training in the State, to raise its standards and to co-relate with the system of education as a whole in the State. The Board has been given powers under Sub-section (2) to prescribe the course of instruction and for Basic Education and Teacher's Training thereof, the Junior High School and Basic Training Certificate Examination, and such other examinations as the State Government may from time to time by general or special order assign to it, and to grant diplomas and certificates to candidates successful at such examinations, to lay down by general and special orders in that behalf the norms relating to the establishment of institutions by the Gaon Shiksha Samiti, and Municipalities and to superintend the Goan Shiksha Samitis, Gram Panchayats and Municipalities in respect of administration of such institution, for imparting instructions and preparing candidates for admission to examinations conducted by the Board. These powers included in Sub-section (2) (d) are to exercise supervision and control over Basic Schools, District Institute of Education and Training, Basic Training Certificate units and the State Institute of Education. Section 12 provides that the Director may from time to time inspect or cause to be inspected any basic schools and also the records and proceedings of the local bodies concerning or engaged with the discharge of the functions of the local bodies in respect of basic education. The Director can refer a case to the Board for withdrawal or recognition of such schools. If the management of a basic

school fails to comply with any directions Sub-section (2) provides that the Director may direct the management of the basic school to remove any defect and deficiency. Section 13 provides for control by the State Government. Sub-section (1) of Section 13 provides that the Board shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of the Act. Section 19 gives power to the State Government to make rules, and includes in subsection (2) the recruitment and conditions of service of persons appointed to the post of officers/ teachers and other employees under Section 6, the tenure of service, remuneration and other directions and conditions of service of officers, teachers and other employees transferred to the Board under Section 9, the recruitment and the conditions of service of the persons appointed, to the post of teachers and other employees of the basic schools recognized by the Board, and, any other matter in Clause (d) for which insufficient provision exists in the Act and provision in the rules considered by the State Government to be necessary on any other matter.

4. The U.P. Basic Education (Teachers) Services Rules, 1981, made under Section 19 (1) of the U.P. Basic Education Act, 1972 provides for the service conditions of the teachers in basic schools. The word 'Basic School' is defined under Rule 2 (e) to mean a school where Instructions from Class I to VIII are imparted. Rule 4 provides for strength of the service. There shall be separate cadres for service under the Rules for each local area. Sub-section (2) provides that the strength of the cadre of the teaching staff pertaining to a local area and the number of the posts in the cadre shall be such as may be determined by the Board from time to time with the previous approval of the State Government. The Board may under the second proviso, with the previous approval of the State Government, create from time to time such number of temporary posts as it may deem fit. The source of recruitment and age is provided under Rules 5 and 6. Rule 8 provides for academic qualifications. For the purpose of this appeal, we are concerned with Sub-rule (1) (ii) of Rule 8 of the Rules of 1981, which prescribes essential qualifications for candidates for appointment to a post referred to in Clause (a) of Rule 5. For Assistant Master and Assistant Mistress of a Junior Basic School, the academic qualifications prescribed are, 'A bachelor's degree from a University established by law in India and a degree recognized by the Government

as equivalent thereto, together with the training qualification consisting of Basic Teachers Certificate, Hindustani Teachers Certificate, Junior Teachers Certificate, Certificate of Teaching in any other training course recognized by the Government as equivalent thereto ; Provided that the essential qualification for a candidate who has passed the required training course shall be the same which was prescribed for admission to the said training course.'

5. Rule 14 provides for determination of vacancies and preparation of the list. Rule 16 provides for constitution of a selection committee. Rule 19 provides for appointment. Sub-rule (1) of Rule 19 provides that the Appointing Authority shall make appointment to any post referred to in Rule 5 by taking the vacancies of the candidates in the order in which they stand in the list prepared under Rule 17 or Rule 17A or Rule 18 as the case may be.

6. In the last several years, there has been an acute shortage of teachers in basic schools. The State Government was finding it difficult to fulfil its obligation as mandated by Article 45 of the Constitution of India, to provide for free and compulsory education for all children until they complete the age of 14 years. After the enforcement of National Council of Teachers' Education Act, 1993, enacted to provide for establishment of National Council of Teachers' Education, with a view to achieve planned and co-ordinated development of teachers' education system throughout the country and for regulation and to provide maintenance of standards in the teachers education system and for matters related thereto enacted thereof, every teachers training course has to be approved by the National Council of Teachers' Education established under Section 3 of the Act. Section 14 of the Act provides for recognition of an institution offering the course and training in teachers education, and Section 15 provides for promotion for a new course or training by a recognized institution. The State Government has limited resources for training of teachers for basic schools. Every year about 10,000 teachers retire from basic schools whereas the District Institutes of Education and basic teacher's training provide for training to only 5,600 candidates. The basic teachers training qualification is a special qualification for teaching in basic schools and any higher qualification including B.Ed. and L.T. is not sufficient for appointment in basic schools. Regulation 8 of the Rules of 1981 provides for training qualification

consisting of Basic Teachers' Certificate, Hindustani Teachers Certificate, Junior Teachers' Certificate, Certificate of Teaching for any other training course recognized by the Government as equivalent thereto. In *Yogesh Kumar and Ors. v. Government of N.C.T. Delhi and Ors.*, 2003 (3) AWC 1823 (SC) : (2003) 3 SCC 548, the Supreme Court held that the recruitment to public services should be held strictly in accordance with the directions of advertisement and the recruitment rules if any. There was paucity of candidates holding teachers training certificate and thus there was some deviation in the past made by the Government of N.C.T. Delhi in appointment of B.Ed. candidates. The Supreme Court held that the patent illegality should not continue. It was held that the B.Ed. qualification cannot be treated as a qualification higher than T.T.C. because the nature of training imparted for grant of the certificate and for the degree is totally different, and between them there is no parity whatsoever. Repelling the argument that more candidates are available for recruitment to primary schools from B.Ed. category and very few from T.T.C. category, the Supreme Court held that whether the B.Ed. qualification can also be prescribed for primary teachers is a question to be considered by the authorities concerned but the Court cannot consider the B.Ed. candidates for the vacancies advertised. The B.Ed. candidates were, therefore, rightly excluded by the authorities from selection and appointment as primary teachers.

7. Faced with this situation the State Government by Government order dated 9.1.1998 provided for a Special B.T.C. Course for B.Ed., L.T., C.P.Ed., B.P.Ed., D.P.Ed, trained applicants for a period of 6 months as equivalent to regular B.T.C. course for appointment in the basic schools run by the Basic Education Board. This arrangement was made only for the academic session 1997-98. The training was to be given in the District Institute of Education and Training, on a condensed training programme to be prepared by the State Institute of Education Training. The shortage of teachers in the year 2001 reached to about 20,000. Considering the emergent situation, the State Government by Government order dated 3.8.2001 provided for a Special B.T.C. Course, 2001. The Government order mentions that the Governor was pleased to accord permission for appointment of 20,000 B.Ed./L.T. qualified and selected candidates on the vacant post of Assistant Teachers in the primary schools run by the Board after they have

completed two months Special B.T.C. Training and are found successful in the examination. A detailed procedure for making applications and selections was prescribed by the Government order. The vacancies were to be determined districtwise and candidates were eligible to make applications only against the vacancies available in their home district. No written examination was to be conducted for the selection. The criteria was quality point marks obtained in various examinations passed by the candidates to be determined in the manner given in the Government order. The selection was to be made on the basis of district wise merit list prepared on the basis of total quality point marks. Reservation was provided in accordance with the reservation made by the State Government. It was provided that care shall be taken that 50% candidates of the prescribed limit are selected from the science group and 50% marks from arts group, and besides 50% male and 50% female will be selected in the respective categories against the prescribed year. The maximum and minimum age was fixed at 35 and 18 years as on 1st July following the year of the Notification of vacancies by relaxation to reserved categories. By Government order dated 20.8.2001 a modification was made whereby candidates having C.P.Ed, D.P.Ed., B.P.Ed training as regular students from Universities Colleges and Training Colleges recognized and run by the State Government were also made eligible. The maximum age was substituted and fixed at 40 years retaining the relaxation.

8. It appears that on a reconsideration the State Government decided to prepare a merit list on State level and by Government order dated 14.9.2001 a merit list of all the applications received was to be prepared on the basis of quality point of education and other qualifications in accordance with the provisions given in the Government order at the State level, which was to be prepared for preparation for the total vacancies for training. However, on 31.10.2001 the State Government issued another Government order by which the earlier Government order dated 14.9.2001 was amended and once again the merit list of all the applications received was to be prepared at the district level. The selections were challenged by those candidates, whose names were in the Statewise list, after it was changed and prepared districtwise in pursuance of Government order dated 31.1.2001. The learned single Judge found that the procedure of selections was contrary to the U.P. Basic Education Act, 1972 and U.P. Basic Education (Teachers) Service

Rules, 1981. The selections were cancelled with the finding that changing the preparation of the merit list from State wise level to districtwise is arbitrary and illegal and contrary to the constitutional provisions and that the reservation of 50% for Arts and 50% for science group and 50% for male and 50% for female candidates cannot be made as these do not belong to backward class of citizens so as to entitle them for reservation under Articles 14, 15, 16 and 21 of the Constitution of India.

9. A Division Bench of this Court in *State of U.P. v. Anant Kumar Tiwari and Ors.*, 2003 (3) AWC 2060, repelled the arguments of maintainability of the writ petition on the ground that the selected candidates were not impleaded since some of the selected candidates were given leave to appeal and were heard. The plea of estoppel from challenging the advertisement and selections on the ground that the petitioners had appeared in the examination and had waived their individual rights as well as the plea of promissory estoppel were also rejected. On merits the Bench relied upon the judgment of Supreme Court in *Governor of Andhra Pradesh v. P.D. Vijai*, AIR 1995 SC 1948, that 50% reservation to women is a recognized method of overcoming the backwardness of women and is permissible under Article 15(3). The object of such kind of reservation is to strengthen and improve the status of women and to eliminate the social, economic backwardness of women and to empower them, in a manner that would bring about the effective equality between men and women. The Bench also repelled the challenge to 50% reservation to arts candidates and 50% to science candidates. The Bench, however, agreed with the learned single Judge that the district wise selection was not justified and resulted in discrimination. The action of the State Government in restoring the preparation of the merit list from State level to district level was found to be arbitrary and violative of Articles 15(1) and 16(2) of the Constitution of India. It was also found by the Division Bench in *Anant Kamar Tiwari's* case that the special B.T.C. training course was not recognized/approved by the National Council of Teacher's Education under the 1993 Act and was not a recognized teachers' training course. It was open to the State Government to declare only such course which has been recognized by the National Council of Teachers' Education as equivalent qualification for appointment on the post of Assistant Teachers/Assistant Mistress in Junior High Schools and to provide such practical

training for teaching in primary schools. In Union of India and Ors. v. Sant Goverdhan L. Kabra Teachers College, JT 2002 (8) SC 269, the Supreme Court held that National Council of Teachers' Education is an expert body created under the provisions of the Act of 1993 and Parliament has cast a duty upon such expert body to maintain the standards of education.

10. The State Government thereafter took up the matter with the National Council of Teacher's Education. The learned single Judge has discussed and considered the correspondence between the State Government and the National Council of Teacher's Education. The Council did not agree to any course shorter than six months duration to be conducted in recognized D.I.E.T. under the academic supervision and monitoring of SCERT. The conditions given in the letter of Council dated 24.7.2003 are quoted below :

'(i) The programme shall be run on full-time basis and be of six months duration.

The programme shall be conducted in recognized DIETs under the academic supervision and monitoring of SCERT ;

The intake of candidates in this programme shall not exceed 100 in one batch in a DIET ;

The curriculum shall include educational theory and Internship, each being of three months' duration ;

The SCERT shall develop a detailed curriculum for the programme Including scheme of examination. For this purpose, they may adopt or adapt the curriculum framework developed by the NCTE ;

The SCERT shall be responsible for the conduct of final examination and issue of certificates to the successful candidates.

With regard to the second proposal of the State Government for increase in the intake capacity in DIETs as a long term plan, the State Government is hereby advised to direct the DIETs to apply to the Northern Regional Committee of NCTE, Jaipur along with essential documents.'

11. By this time the vacancies were worked out to 46,189 up to the year 2003... Having received the approval of the National Council of Teachers' Education, the State Government issued Government order dated 14.1.2004. The Rules of 1981 were also amended by U.P. Basic Education' (Teachers) Services (10th Amendment) Rules, 2004, by Notification dated 14.1.2004, amending Rule 8 (1) (ii) including Vishist Basic Teacher's Certificate B.T.C. qualifications along with other prescribed training qualifications. By this Government order the State Government has provided for special B.T.C. training. There is a marked difference between the objects of the Government order dated 3.8.2001 and the Government order dated 14.1.2004. Whereas the earlier Government order provided for approval of the Governor for appointment of Assistant Teachers from amongst the successful candidates in B.T.C. Training, there is no such requirement of approval in the Government order dated 14.1.2004. Clause 12 of the Government order dated 14.1.2004 provides only for training and that every candidate selected for special B.T.C. training shall be paid Rs. 2,500 as stipend and this stipend shall be paid until the candidate completes the required training in the order of merit and obtains the requisite certificate after being successful in written and practical examination conducted by the Registrar, Departmental Examination, U.P. under supervision of State Institute of Education and Training.

12. During the pendency of the writ petitions before the learned single Judge the Government order dated 14.1.2004 was amended by Government order dated 20.2.2004. The amendments made C.P.Ed., B.P.Ed and D.P.Ed qualified candidates to be eligible along with B.Ed. and L.T. candidates provided they have taken training as institutional candidates from recognized Universities and the State colleges/Training Colleges. The maximum age was extended to 40 years with exemption to reserved category candidates.

13. The selections are still under way and the select list has not been declared as yet. The learned single Judge did not find favour with the argument that the maximum age should be 45 years as provided in the 1998 selections of special B.T.C. and that those candidates who were eligible to appear in the 2001 selections should be given exemptions on the ground that National Council has not provided any restriction with regard to the maximum age while granting

approval to the said course. The learned single Judge has not accepted the argument that under the U.P. Public Services (Exemption of Age Limit for Recruitment) Rules, 1992 the State Government should have exercised the power of exemption to extend the age limit further. We agree with the view taken by the learned single Judge. This Court cannot increase the maximum age, nor can it hold that those who were within the age limit of 40 years in 2001 should be treated as eligible. In the G.O. dated 14.1.2004 as amended by G.O. dated 20.2.2004 it is mentioned that the candidate must be not more than 40 years of age on 1.7.2004. This Court cannot extend this age limit. The Court must maintain judicial restraint in such matters. Fixing the age limit is exclusively a matter for the concerned authorities to decide.

14. Learned counsel for appellants submits that preference in appointment should be given and the merit list should be arranged so as to provide yearwise list on the basis of the B.Ed, training course or the other training course, with which the appellants have acquired eligibility to appear for selections to the special B.T.C. Course 2004. The appellants have relied upon the provisions of Rule 14 (4) of the Rules of 1981 which provides for appointment to the candidates possessing the requisite teachers training qualification on the basis of yearwise training course passed by the candidates. It is also submitted that any other manner of selection for appointment will cause discrimination against the appellants. It is submitted that the learned single Judge has failed to decide the issue. It is submitted that there does not appear to be any reasonable basis for not adopting the procedure provided under the 1981 Rules. The same procedure was adopted in respect of appointments made in the districts which are now included in the State of Uttaranchal by the Director of Education (Basic) and Chairman of U.P. Basic Education Board in their letters addressed to District Basic Education Officer of these districts on 22.9.1995.

15. Rule 14 of the Rules of 1981 provides for determination of vacancies and preparation of the list for appointment by direct recruitment to the post of Mistress of Nursery Schools and Assistant Master or Assistant Mistress of Junior Basic Schools. Rule 14 was substituted by Notification dated 28.6.1993. Sub-rule (4) of the Rule 14 as it stood prior to its substitution by this Notification provided that the

names of candidates in the list prepared under Sub-rule (2) shall be arranged in such manner that the candidates who have passed the required training course earlier in point of time shall be placed higher than those who have passed the said training course later, and the candidates who have passed the training course shall be arranged in accordance with the quality point marks specified in the Appendix. In this sub-section, the training course refers to the training qualification in Rule 8. Rule 14 was substituted by Notification No. 2729/XV-5-97-127/97, dated 6.8.1997. The new Rule provides for notification of vacancies to the Employment Exchange and In at least two newspapers having wide circulation in the State as well as in the concerned districts inviting applications from the candidates possessing the prescribed training qualifications from the districts concerned. Sub-rule (2) provides for scrutinizing the applications by the Appointing Authority and preparing the list of such persons as appear to possess the prescribed academic qualifications and are eligible for appointment. Sub-rules (3) to (6) were deleted by this Notification dated 6.8.1997. These amended Rules do not provide for any exemption, and the selections are now based only upon the training qualification. The Government was conscious of the fact that there are a large number of vacancies far above the trained persons, and that all the trained graduates should be offered appointment immediately after completing the training. Thus, there is now no question of arranging them yearwise and giving preference to those who are trained earlier and for this reason no written examination was provided. The amended Rule 14 as introduced in 1997 has changed the legal position which prevailed earlier.

16. The prescribed academic qualifications provided in Rule 14 (2) refers to the academic qualifications in Rule 8 and these academic qualifications for the posts of Assistant Master and Assistant Mistress of Junior Basic Schools consists of Basic Teachers Certificate, Hindustani Teachers' Certificate, Junior Teachers' Certificate, Certificate of Vishist Teaching and any other training course recognized by the Government as equivalent thereto. This does not refer to B.Ed./L.T. or any other training qualification. The appellants are seeking admission to special B.T.C. Course 2004, as they do not have the essential training qualification for appointment. The higher training qualification held by them is not equivalent to Basic Teachers Certificate and other equivalent qualifications in Rule

8 (1) (ii) and thus the claim of the appellants to give them yearwise preference on the basis of their B.Ed/L.T. qualification has no substance.

17. The scheme of the Special B.T.C. Programme provided in the Government order dated 14.1.2004 and 20.2.2004 mentioned about a special training programme of six months including three months in theory and three months in practical. After the required training the candidates shall have to appear in a written and practical examination, in accordance with their merit position, held by the Registrar, Departmental Examination, U.P. under the supervision of State Institution of Education and Training and thereafter they will be eligible for appointment and till then the State Government has provided for stipend of Rs. 2,500 per month.

18. In view of the above, we uphold the impugned judgment of the learned single Judge.

19. Before we part with the appeal, we recommend that the State Government should review the sanctioned strength of the teachers in basic schools and the number of vacancies which are likely to arise in future, and to increase the capacity of the District Institutes of Education and Training, to avoid any special course. The National Council of Teachers' Education has given approval for special B.T.C. Course as a special case. This ad hoc practice of emergent training and recruitment should give way to a careful and long term planning. The State Government must ascertain the vacancies which are going to fall vacant every year and take steps to provide Infrastructure for basic teachers training in future. The children under the age of 14 years have a fundamental right to free and compulsory education. The Directives Principles under Article 45 of the Constitution of India, have been upheld by the Supreme Court as one of the Fundamental rights of the children of the country under the age of 14 years and has been read into Articles 14 and 21 of the Constitution of India. This right cannot be fulfilled unless there are adequate number of schools in the villages and near the homes of these children providing quality education, adequate infrastructure and number of qualified and trained teachers. A school without infrastructure and trained teachers cannot fulfil the constitutional mandate and the fundamental rights

of the children. We have large number of unemployed educated young men and women In the State, eligible and eager to undergo basic teachers training. The present capacity of the District Institutes of Education and Training in the two year regular B.T.C. course is hardly adequate. A proper and periodical review must be made and the intake capacity should be increased for avoiding such emergent situation which arose in the past years.

20. Let a copy of this judgment be sent by the Registrar General of this Court to the Chief Secretary and Secretary, Basic Education, U.P. forthwith.

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