

Hari Om and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : May-25-1998

Reported in : (1998)3UPLBEC2366

Judge : Sudhir Narain, J.

Acts : Uttar Pradesh Basic Education (Teachers Service) Rules, 1981 - Rule 8;
Uttar Pradesh Basic Education (Teachers Service) (Amendment) Rules, 1983;
[Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petition No. 33490 of 1997

Appellant : Hari Om and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : Sudhakar Upadhyay and ;B.P. Singh, Advs.

Advocate for Pet/Ap. : V.K. Singh and ;G.K. Singh, Advs.

Disposition : Petition dismissed

Judgement :

Sudhir Narain, J.

1. The petitioners seek writ of mandamus commanding the respondents to consider the case of the petitioner for appointment to the post of Assistant Teacher

in Junior Basic Schools run and managed by the U.P. Basic Education Board in case sufficient candidates having Basic Teacher's Certificate (In short B.T.C.) qualification are not available in respect of the selection process commenced in pursuance of the advertisement dated 18th August, 1997.

2. The petitioners claim that they should be permitted to appear for the selection for the post of Assistant Teacher in Junior Basic Schools run by the U.P. Basic Education Board in pursuance of the advertisement made by the Basic Shiksha Adhikari, Bulandshar on 18th August. 1997 whereby the candidates possessing Basic Teacher's Certificate (B.T.C), Hindustani Teacher's Certificate (H.T.C), Junior Teacher's Certificate (J.T.C.) or any other training course recognised by the State Government equivalent thereto, were made eligible for applying for the post of Assistant Teacher in Junior Basic Schools run by the U.P. Education Board. The petitioners do not possess any of these certificates but they have obtained B.Ed, degree which is not equivalent to B.T.C. H.T.C, J.T.C. or any other certificate equivalent thereto recognised by the U.P. Education Board. The qualification for appointment is contained under Rule 8 of the Uttar Pradesh Basic Education (Teachers Service) Rules, 1981 which is quoted below :-

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

:

Academic

Qualification

Mistress of Nursery Schools Certificate of Teaching (Nursery) form recognized training institution in Uttar Pradesh or any other training qualification recognised by the State Government as equivalent thereto. (ii) Assistant Master and High School Examination of Assistant Mistress of Junior Basic the Board of High School and Schools. Intermediate Education, Uttar Pradesh or any other qualification recognized as equivalent thereto by the State Government together with the training qualification consisting of a Basic Teachers Certificate, Hindustani Teacher's Certificate, Junior Teacher's Certificate of Teaching or any other training course recognised by the State Government as

equivalent thereto.'

The B.Ed, degree is not included in the qualifications mentioned for appointment to the post Assistant Masters of the Junior Basic Schools. In U.P. the education has been categories in three parts -

'(i) Basic Education; (ii) Secondary Education, and (iii) Higher Education. The Basic Education is further categories in three parts- (i) Nursery Schools; (ii) Junior Basic Schools, and (iii) Senior Basic Schools. The qualification for teaching in Nursery Schools is Certificate of Teaching (Nursery) from recognised Training Institution in Uttar Pradesh or any other Training qualification recognised by the State Government as equivalent thereto. The qualification for the post of Assistant Master is besides other qualification. B.T.C. H.T.C. to J.T.C. or any other training course recognised by the State Government equivalent thereto. For the Senior Basic Schools for teaching Science, Mathematics (Craft) or other language other than Hindi, additional qualification have been prescribed. B.Ed, degree has not been recognised by the State Government as equivalent to B.T.C, H.T.C. and J.T.C. The secondary education is imparted to the students of High School and Intermediate. The teachers appointed to teach High School and Intermediate are required to obtain B.Ed. Degree is one of the qualifications for their appointment. Both the said training qualifications, are meant for different purpose at difference educational level. A teacher, appointed to teach students of Nursery school, is required to have a different training than a teacher who is to teach in Junior Basic Schools or Senior Basic Schools.

3. Similarly a teacher who is to teach High School and Intermediate Students is required to have a different training qualification. The mere fact that a person holds a higher training qualification that what is required by the Rules does not entitle him to be treated as qualified for teaching in Junior Basic Schools where a different kind of training is required. It is in the backdrop of the understanding the psychology of the students, their behaviour, attitude and the capacity to understand the things thought to them, the qualification for appointment has been laid down. The Course of study in B.T.C, H.T.C. and J.T.C. are different from that of B.Ed. Similarly, the teachers who are appointed to teach in Nursery Schools,

their training qualification is Certificate of Teaching Nursery. The candidates who have B.T.C. H.T.C. and J.T.C. shall not be eligible for appointment to teach the students of Nursery Schools. This aspect was considered in Mahendra Nath Mishra v. State of U.P. and Anr., 1996 (2) ESC 312, unreported decision in Civil Misc. Writ Petition No. 28243 of 1996, Nirmal Chandra Mishra and Ors. v. State of U.P. and Ors. and B.Ed. Berozgar Sangh, Sonbhadra and Ors. v. State of U.P. and Ors., 1997 (3) UPLBEC 1774, where it was held that the candidates who have obtained B.Ed. Degree cannot be treated as possessing required qualification as contemplated under Rule 8 of U.P. Basic Education (Teachers Service) Rules, 1981, for appointment to the post of Assistant Teachers in Junior Basic Schools.

4. The contention of learned Counsel for the petitioners is that in case sufficient numbers of candidates having B.T.C, J.T.C. and H.T.C. qualification are not available the petitioners may be considered for appointment to such post. In this respect learned Counsel for the petitioners had placed reliance upon the Circular dated 22.9.1995 issued by the Director of Education (Basic) to the Basic Shiksha Adhikari of Puri, Tehri, Chamoli, Uttarakashi, Dehradun, Nainital, Pithoragarh, Almora (Uttarakhand Region) whereby he instructed that in case if after selection of B.T.C. candidates any post remains vacant then the candidates having C.P.Ed, training may be considered for selection and still after any vacancy remains to be filled the candidates possessing B.Ed, and L.T. may be considered for selection.

5. In the case of Nirmal Chand Mishra (supra), it was contended before the Court that if the candidates possessing degree of B.Ed, and L.T. are being permitted to teach in Junior Basic Schools, in Hill areas of the State of Uttar Pradesh, the similar principle be made applicable in other parts of State. This contention was rejected with the following observations :-

'It is then urged by learned Counsel in some of the connected writ petition that in Uttarakhand area teachers having Bachelor of Education and L.T. are being permitted to teach in Junior Basic Schools. In my opinion, this is a reasonable classification and hence Article 14 cannot be said to have been violated. It is well known that the Hill areas have special problems, and hence they cannot be equated to the conditions in the plains. Hence there is no discrimination.'

6. In B.Ed. Berozagar Sangh, Sonbhadra and Ors. v. State of U.P. and Ors., (1997) 3 UPLBEC 1774, the learned Single Judge held that in view of the Government Order dated 9.9.1994 and the Circular issued by the Director of Basic Education has permitted in the Hill areas the candidates possessing B.Ed. or L.T. degree to appear for selection on the ground that sufficient number of candidates are not available, the same principle can be applied in respect of other parts of the State and made the following observations :-

'If there are different situations prevailing in different parts of the State, the Government may in appropriate case exercise some power restricting it to a part of the State. But, when want of sufficient number of candidates with B.T.C qualification is the sole reason for considering candidates with B.Ed. or L.T. degrees then the same policy is to be applied in the entire State of Uttar Pradesh whenever similar such contingency occurs namely there occurs dearth of sufficient number of candidates having B.T.C. qualification.'

The Circular dated 22.9.1995 provides the manner in which the selection for the post of Assistant Teacher in the Hill Region is to be followed. The vacancy has to be filled up by the candidates possessing, B.T.C. H.T.C. and J.T.C. or equivalent degree thereto and if after the selection the post remained vacant then by the candidates possessing C.P.Ed, degree can be considered and if still the post remains vacant then it is to be filled up by the candidates possessing L.T., B.Ed, degree. The selection is not to take place along with all the candidates who possess B.T.C, H.T.C. and J.T.C. or any other qualification/degree equivalent thereto. It can be done only when separate advertisement holding separate selection are done, one in respect of selection of candidates possessing B.T.C, H.T.C. and J.T.C. or qualification equivalent thereto second, regarding candidates possessing C.P.Ed, and third in respect of candidates having B.Ed, or L.T. If this procedure is not to be followed there will be discrimination amongst other candidates who possess B.Ed, degree or L.T. It is not that only such candidates who file writ petition in this Court and obtain an order by which they are permitted to appear for the selection getting opportunity to appear in the selection but in case the advertisement is made inviting applications for such posts which remain unfilled by the B.T.C, J.T.C. and H.T.C. or any other degree equivalent thereto, all

the candidates possessing B.Ed, and L.T. can apply for the post and they can be considered for the same.

7. Secondly, unless the government itself makes a clear policy in respect of a district or Region, the District Basic Education Officer will be free to determine, the persons to whom he may permit for the selection possessing B.Ed, or L.T. The Government has not issued any order or the Director of Education (Basic) any circular laying down the guidelines for selection when in a district the post of teacher in Junior Basic School remains unfilled on account of non-availability of the candidates possessing required qualifications as prescribed under Rule 8 and the number of vacancies remained unfilled. The District Basic Education Officer is also not required to prepare one list of candidates applying having required qualification as prescribed under Rule 8 and another at of candidates who have obtained B.Ed, or L.T. In absence of such guidelines the selection process will be irregular, which is unwarranted by law.

8. Thirdly, the selection of the candidates is to be made in accordance with Rules 14 and 15 of the Rules, Sub-rule (4) of Rule 14 provides that the candidates having passed the required training course earlier shall have precedence over the candidates having passed the same course later and the candidates having passed the required training course in a particular year shall be appointed in accordance with the merit attained by them in that particular year. Sub-rule (2) of Rule 15 provides that the Appointing Authority shall scrutinise the applications received in pursuance of the Advertisement and the names of the candidates received from the Employment Exchange in pursuance of the vacancy notified under sub-rule (1) and shall thereafter, prepare a list of such persons who appear to have possessed the prescribed educational qualification and are eligible for appointment. The Appendix attached prescribing required qualification provides the manner in which the marks will be allotted to a candidate who possess B.T.C., J.T.C., H.T.C. or qualification equivalent thereto. The course of B.T.C. etc. is two years cross and B.Ed, and L.T. are on year course. It will be difficult to award the marks to the candidates who passed B.Ed, or L.T. along with candidates who possess B.T.C, J.T.C., H.T.C. or qualification equivalent thereto.

9. It is for the State Government to recognise other qualifications equivalent to B.T.C, H.T.C. or J.T.C. The Government issued G.O. dated 9th September, 1994 providing that for Uttarakhand Region for appointment to the post of Assistant Teacher in Junior Basic School the candidates possessing B.Ed, or L.T. shall be treated to have equivalent qualification to B.T.C. etc. as provided in Rule 8 of Uttar Pradesh Basic Education.(Teacher Service)Rules, 1981 as amended by Fifth Amendment Rules 1983. This Government Order has not been challenged in the present writ petition. The petitioner has to establish as a fact that the Government is discrimination the candidates who apply for the post of Assistant Teacher in Junior Basic School in the Hill Areas. The situations there are different as the persons may not apply for appointment in those Regions as they have to live in difficult mountains. The persons living in the same Region may not be in such sufficient numbers who have obtained B.T.C, J.T.C, H.T.C. or qualification equivalent thereto.

10. Considering the situation it is open to the Government to make appointment after the vacancy remains unfilled after selection by making fresh advertisement in that Region. As held in Nirmal Chandra Mishra's case (supra), such action of the State Government will not be discriminatory. It is for the petitioners to establish that the action of the State Government is discriminatory and hit by Article 14 of the Constitution.

11. The petitioners have not stated anywhere that after the selection the post had remained unfilled because of the non-availability of the candidates possessing B.T.C, J.T.C. H.T.C. for equivalent qualification thereto. The advertisement had been made on 18th August, 1997 notifying the vacancies for those persons who possess the qualification as required under Rule 8 of 1981 Rules. The petitioner, on the basis of this advertisement, are not entitled to apply for selection to the posts on the assumption that sufficient number of candidates are not available for appointment to the posts advertised.

12. Further the position has also changed in view of the letter of the Secretary, U.P. Basic Education, U.P. Government, vide G.O. No. 2657-15- 5-97-127/9 issued on 11.8.1998 which clarified the position that the certificate equivalent to

B.T.C. has been recognised by the State Government with immediate effect.

13. In view of the above the writ petition is dismissed.

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