

Furqan Ali and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Nov-05-2009

Reported in : 2010(1)AWC412

Judge : Arun Tandon, J.

Appellant : Furqan Ali and ors.

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Sri. Shailendra

Judgement :

Arun Tandon, J.

1. Heard Sri Shailendra, learned Counsel for the petitioners and learned standing counsel for the respondents.

2. Petitioners before this Court have obtained a teaching diploma from Aligarh Muslim University known as 'Diploma in Teaching'. It is not in dispute that said diploma course is of two years duration and that it stands recognized by the National Council for Teachers Education under the National Council for Teachers Education Act, 1993 (hereinafter referred to as N.C.T.E. and N.C.T.E. Act respectively), as a qualification for appointment as teacher in Basic School. The State Government vide order dated 26.9.1994 has provided equivalence to the

aforesaid diploma to the teaching certificate required under Rule 8(4) of the U.P. Basic Education Teachers Services Rules, 1981 (hereinafter referred to as the 'Rules, 1981') for appointment on the post of Assistant Teacher for teaching Urdu language in Basic Schools run by Basic Shiksha Parishad (hereinafter referred to as 'Basic Schools'). On the strength of the Government order dated 26.9.1994, petitioners have set up a claim for being considered for appointment against existing vacancies of Assistant Teachers in Basic Schools to be appointed for teaching Urdu language (hereinafter referred to as 'Urdu teachers').

3. It is stated that an earlier writ petition was filed by the petitioners being Writ Petition No. 32760 of 2001 wherein a specific stand was taken in the counter-affidavit filed by the authorities in paragraphs No. 13, 15, 23 and 24 to the effect that as and when vacancies for Urdu teachers in basic institutions are advertised, the claim of the petitioners shall be considered. Contrary to the stand so taken, the respondents have proceeded to publish an advertisement dated 11.9.2006 for admission of 5,000 candidates to B.T.C. Training Course (Urdu) on the plea that qualified teachers for imparting education in Urdu language in basic institutions of the Parishad are not available. It is stated that on the strength of the Advertisement of 2006 pertaining to selection for B.T.C. Training Course (Urdu), appointments have been offered to the candidates who have been successful in the said course as Assistant Teachers (Urdu) in various Parishadiya Vidyalayas. Reference in that regard is made to the notification of the appointments dated 21.11.2008. It is contended that such appointment of the candidates who have completed B.T.C. Training Course (Urdu) as teachers for teaching Urdu language (Urdu Teachers) covered by Rule 8(4) of 1981 Rules is patently illegal and an attempt to overreach the judgment of the Division Bench of this Court in the case of State of U.P. through Secretary, Basic Education, Zila Shiksha Avam Prashikshan Sansthan through its Principal and District Magistrate v. Km. Sumbul Naqvi passed in Special Appeal No. 1330 of 2007 decided on 28.11.2007 as well as in the case of Qambar Raza v. State of U.P. and Ors. passed in Civil Appeal No. 1294 of 2007 decided on 12.12.2007 as also to the stand which was taken by the Advocate General before the Division Bench of this Court qua the purpose of B.T.C. Training Course (Urdu) started with the permission of N.C.T.E., i.e., for appointment of Primary Teachers who may teach primary students of Parishadiya

institutions through the medium of Urdu. The petitioner have, therefore, prayed for quashing the appointment notification dated 21.11.2008 as well as for a mandamus commanding the State respondents to offer appointment to the person like the petitioners on the post of Assistant Teachers for teaching Urdu language (Urdu teacher) covered by Rule 8(4) of the 1981 Rules. It is contended that impugned appointments virtually amount to negating the right of the petitioners for being considered for appointment as Urdu Teacher in Basic Schools as was assured under the counter-affidavit filed earlier.

4. The contention raised on behalf of learned Counsel for the petitioners is opposed by Sri K.S. Kushwaha, learned standing counsel on behalf of respondents and it is submitted that under the Government order dated 11.8.1997 the equivalence provided to Diploma in Teaching has been withdrawn and therefore, petitioners cannot be said to be possessed of the prescribed qualification as per Rule 8(4) for the post. It is stated that under the Government order dated 5.9.2006, copy whereof is enclosed as Annexure-18 to the writ petition as well as under the advertisement published on 11.10.2006 enclosed as Annexure-19 to the writ petition, it is apparently clear that the selections are being made for admission of 5,000 students to B.T.C. Course (Urdu), 2006 for the purposes of appointment as primary teachers for teaching primary students through the medium of Urdu qua which amendment by adding Rule 8(5) to the 1981 Rules have been made. He submits that distinction between primary teachers to be appointed for teaching Urdu language (Urdu teachers) in primary institutions and the primary teachers to be appointed in primary institutions for imparting education to the students through the medium of Urdu has been examined and explained by the Division Bench of this Court in the case of Qambar Raza (supra). He further submits that the petitioners are not eligible to apply for admission to B.T.C. Training Course (Urdu), 2006. The appointment made of the successful candidates as Assistant Teachers in Parishadiya Vidyalaya under notification dated 21.11.2008 as Assistant Teacher (Urdu) is on the post covered by Rule 8(5), i.e., for imparting education in primary school through the medium of Urdu,

5. Counsel for the petitioners in rejoinder with reference to the advertisement published by the B.S.A. annexed at Page No. 63 to the writ petition contends that such Diploma in Teaching stands recognised even today. He submits that under the Government order dated 11.8.1997, the equivalence provided earlier to 'Diploma in Teaching' as per the Government order dated 26.9.1994 has not been withdrawn. It is explained that Government order dated 11.8.1997 pertains to equivalence granted in respect of other training certificates qua teachers to be appointed in Basic Schools, i.e., other than those to be appointed for teaching Urdu language. Teachers to be appointed in Basic Schools for teaching Urdu language from a different class having regard to the qualifications prescribed. The Government order dated 11.8.1997 applies to equivalence provided to other courses and not to that provided with reference to Rule 8(4) of the Rules, 1981, Therefore, the Government order dated 26.9.1994 which was in respect of Urdu language teachers only still holds the field.

6. Lastly it is contended that in view of the judgment of this Court in the case of Upendra Rai v. State of U.P. : (2000) 2 UPLBEC 1340 : 2000 (1) AWC 570, provisions of N.C.T.E. Act shall prevail over any State law and since N.C.T.E. has declared the Diploma in Teaching provided by the Aligarh Muslim University to be a valid qualification for appointment as Assistant teachers in basic schools, the State Government cannot frame any statutory provision to the contrary.

7. The Court may examine the last contention raised by the petitioner first. The judgment of this Court in the case of Upendra Rai (supra) has since been overruled by the Hon'ble Supreme Court in the case of U.P. Basic Education Board v. Upendra Rai : 2008 (2) SCC 479. It has been held that the provisions of N.C.T.E. Act and those of U.P. Basic Education Act are not overlapping. Consequently, the rules framed under U.P. Basic Education Act are not superseded or nullified because of the provision of N.C.T.E, Act. Accordingly the issue is answered against the petitioners.

8. Rule 8(4) of the Rules, 1981 provides for the essential qualifications for appointment as Assistant Teachers to impart education of Urdu language in Basic Schools as : Bachelors Degree with Urdu as a subject and Basic Teacher's

Certificate from the training centres established by the Government of U.P. at Lucknow, Agra, Mawana and Sakaldeha for imparting training for teaching Urdu or must have any other training qualification recognized by the State Government as equivalent thereto. Equivalence to Diploma in Teaching offered by Aligarh Muslim University for the purpose under Government order dated 26.9.1994 is not in dispute.

9. The issue which is up for consideration before this Court is as to whether the Government order dated 26.9.1994 granting equivalence to the Diploma in Teaching offered by the Aligarh Muslim University, Aligarh (Urdu) for appointment as Assistant teachers in Basic institution for imparting education of Urdu language under Rule 8(4) of the Rules, 1981 stands withdrawn under the Government order dated 11.8.1997 as contended on behalf of the State respondents or not.

10. The Court vide order dated 27.7.2009 required the Secretary, Basic Education to take a categorical stand in the matter. Accordingly an affidavit has been filed on behalf of the Secretary (Basic Education) dated 7.8.2009 and in paragraphs 3 and 4 of the affidavit it has been stated as follows:

That Diploma in Teaching provided by Aligarh Muslim University, Aligarh was declared/recognized as equivalent to B.T.C. (Urdu) Training Certificate. Similarly by Government order dated 13.9.1994, certificate of Muallim-e-Urdu of Jamia Urdu, Aligarh was also declared/recognized as equivalent to B.T.C. (Urdu) Training Certificate. Apart from those, certain other certificates/diploma known as B.T.C. (Correspondence), Buniyadi Shiksha Visharad and Diploma in Education etc. were declared/recognized as equivalent to B.T.C. training.

That it is submitted that all the equivalencies/recognition provided to certain certificates/diplomas including that of Diploma in teaching and Muallim-e-Urdu by various Government orders, were withdrawn by means of Government order dated 11.8.1997.

In view of the stand so taken this Court may examine the Government order dated 26.9.1994 which provided the equivalence and which is quoted hereinbelow:

Shasnadesh Sankhya 2791/15-1131-94-14991931/94 Dinank 13.9.1994 Mein Tumse Mujhe Yah Kahne Ka Nirdesh Hua Hai Ki Aligarh Muslim Universities Ki Diploma In Teaching Ke Upadhikon B.T.C. Prapatra Ki Samkakshta Diye Jane Ka Prakaran Shasan Ke Samaksh Kafi Lambi Avadhi Se Vicharadheen Hai. Shasan Ne Vicharoprant Yah Nirnaya Liya Hai Ki In Upadhi Ko B.T.C. Urdu Prashikshan Ki Samkakshta Pradan Kar Di Jaye. Atah Shri Rajyapal Dwara Aligarh Muslim University Ki Diploma In Teaching Ki Upadhee Ki Junior/Senior Basic Vidyalayon Mein Urdu Bhasha Padhane Ke Liye Sahayak Adhyapak Ke Pad Per Niyukti Ke Prayojnarth B.T.C. Urdu Prashikshan Pathayakram Ke Samkaksh Mane Jane Ki Swakriti Pradan Ki Jai (sic).

The equivalence so provided is stated to have been withdrawn vide Government order dated 11.8.1997 which reads as follows:

Upyukt Vishyak Aapke Ardhshaskiya Patra Sankhya Basic Shiksha Patra 537/97-98 dated 14.4.1997 Ki Ore Aapka Dhyan Akarshit Karte Hue Mujhe Yah Kahne Ka Nirdesh Hua Hai Ki B.T.C. Ke Samkaksh Mante Hue Katipay Shasnadeshon Ke Dwara Sanchalit Vidyalayon Se Sahayak Adhyapak Ke Pad Per Niyukti Hetu Aharya Mane Gaya Hai. Parishadiya Vidyalayon Mein Bhari Sankhya Mein Riktiyon Tatha Pradesh Mein Uplabdh B.T.C. Prashikshan Abhyarthiyon Ko Dhyan Mein Rakhte Hue Uttar Pradesh Basic Shiksha Parishad Adhyapak Sewa Niyamawali Mein Satven Sanshodhan Dwara Niyukti Ki Prakriya Me Katipay Sanshodhan Kiye Gaye Hain. Varsh 1995 Se Rashtriya Adhyapak Shiksha Parishad Dwara Vibhinn Prashikshan Sansthanon Ko Manyata Pradan Karne Ke Sambandh Me Vistrit Disha Nirdesh Nirgat Kiye Gaye Hain Jine Aalok Mein Aab Vibhinn Shikshak Prashikshan Ahartayon Ke Sambandh Mein The Punarvichar Ki Avashyakta Ho Gayi Hain.'

Ukt Ke Alok Mein Shasan Dwara Samyak Vicharoparant Yah Nirnaya Liya Gaya Hai Ki Aab Pradesh Ke Parishadiya Prathmiki Vidyalayon Mein Sahayak Adhyapak Ke Padon Per Niyukti Hetu Uttar Pradesh Basic Shiksha (Adhyapak) Sewa Niyamawali, 1981 Ke Pravidhanon Ke Anusar Uttar Pradesh Sarkar Dwara Sanchalit Sansthanon Se Prashikshit B.T.C. Tatha Hindustani Adhyapak Praman Patra, Junior Adhyapak Praman Patra Evam Adhyapak Praman Patra Prapt

Abhyarthiyon Se Hi Bhara Jaye Tatha B.T.C. Ke Saman Anya Prashikshan Pathyakramon Evam Upadhiyon Ko Pradan Ki Gayi Samkakshtayen Tatkalik Prabhav Se Nirast Kar Di Jaye.

11. This Court may also refer to the statutory provision which regulate appointment of Assistant teachers for imparting education in Basic Schools as contained in various clauses of Rule 8 of 1981 Rules. For ready reference the same is quoted hereinbelow:

8. (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 School Certificate of Teaching (Nursery) from arecognised training institution in UttarPradesh or any other training qualificationrecognised by the Government as equivalentthereto.(ii) Assistant Master and A Bachelor's Degree from a UniversityAssistant Mistress of Junior established by law in India or a DegreeBasic School recognised by the Government asequivalent thereto together with thetraining qualification consisting of a BasicTeacher's Certificate, Vishist BasicTeachers Certificate (B.T.C.) two yearsB.T.C. Urdu Special Training Course,Hindustani Teacher's Certificate, JuniorTeacher's Certificate, Certificate ofTeaching or any other training courserrecognised by the Government asequivalent 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.

(2) The essential qualification of candidates for appointment to a post referred to in sub-clauses (iii) and (iv) of clause (h) of Rule 5 far teaching Science, Mathematics, Craft or any language other than Hindi and Urdu shall be as follows:

(i) A Bachelor's Degree from a University established by Law in India or a Degree recognized by the Government as equivalent thereto with Science, Mathematics, Craft or particular language, as the case may be, as one of the subjects, and

(ii) Training qualification consisting of a Basic Teacher's Certificate, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of teaching or any

other training course recognized by the Government as equivalent thereto.

(3) The minimum experience of candidates for promotion to a post referred to in Clause (b) of Rule 5 shall be as shown below against each:

Post Experience (i) Headmistress of Nursery At least five years' teaching experience as School permanent Mistress of Nursery School. (ii) Headmaster or Head- At least five years' teaching experience as mistress of Junior Basic permanent Assistant Mistress or Assistant School and Assistant Master or Master of Junior Basic School, Assistant Assistant Mistress of Senior Master or Assistant Mistress of Senior Basic School, and Basic School. (iii) Headmaster or Head- At least three years' experience as mistress for Senior Basic permanent Headmaster or permanent School Assistant Master or Assistant Mistress of Senior Basic School, as the case may be : Provided that if sufficient number of suitable or eligible candidates are not available for promotion to the posts mentioned at serial numbers (ii) or (iii) the field of eligibility may be extended by the Board by giving relaxation in the period of experience.

(4) The essential qualification of candidates for appointment to the posts referred to in clause (a) and Sub-clauses (iii) and (iv) of Clause (b) of Rule 5 for teaching Urdu language shall be as follows:

(i) A Bachelor's Degree from a University established by Law in India or a Degree recognized by the Government as equivalent thereto with Urdu as one of the subjects.

(ii) Basic Teacher's Certificate from any of the training centres in Lucknow, Agra, Mawana in district Meerut and Sakaldiha in district Chandauli established by the Government for imparting training for teaching Urdu or any other training qualification recognized by the Government as equivalent thereto.

(5) The essential qualifications of candidates having proficiency in Urdu for appointment to the posts referred to in Sub-clause (ii) of Clause (a) of Rule 5 for teaching in Urdu medium. shall be as follows:

(i) A Bachelor's Degree from a University established by Law in India or a Degree recognized by the Government as equivalent thereto. The qualifications for proficiency in Urdu will be such as may be prescribed from time to time by the Government.

(ii) Training Qualification of two years B.T.C. Urdu special training course.

12. It will be seen that four categories of post are contemplated by Rule 8, namely:

(a) Teachers for general subject (Rule 8(1)).

(b) Teacher of Science, Maths, Craft or any other language other than Hindi and Urdu (Rule 8(2)).

(c) Teacher for teaching Urdu language (Rule 8(4)).

(d) Teacher for teaching various subjects through Urdu medium (Rule 8(5)).

13. Qualifications for each category of teachers are different and are of two type (a) academic and (b) training qualification. In this case we are concerned with training qualifications and, therefore, reference hereunder is in that respect only. In each of the Sub-rules 8(1) to 8(2) and 8(4) a separate clause conferring power upon the State to declare any other training qualification/course as equivalent to one prescribed has been provided but no such power has been given under Rule 8(5) meaning thereby that Assistant teachers to be appointed for teaching through the medium of Urdu must have to their credit 2 years' B.T.C. Urdu Special teaching course.

14. For teachers covered by Rule 8(4), i.e., for teaching Urdu language in Basic Schools, it is necessary to possess a Basic Teacher's Certificate for teaching Urdu from 4 training centres established by Government situate in Lucknow, Agra, Mawana and Sakaldiha alone or else a training qualification recognized by the State Government as equivalent thereto.

15. This Court has no hesitation to record that equivalence which is to be granted by the State Government to B.T.C. Training Course referable to other category of Assistant Teacher under Rule 8(1), 8(2) are distinct in nature vis-a-vis to be

granted under Rule 8(4). Further the State Government has not been granted any power to grant equivalence to teaching certificate qua the one provided under Rule 8(5), i.e., B.T.C. (Urdu) Special Training Course. Therefore there cannot be a general order of the State 'Government granting equivalence in respect of different qualifications contemplated under the different clauses of Rule 8, i.e., 8(1), 8(2), 8(4) and 8(5). It is for this purposes that the rule making authority has deliberately provided the power to grant equivalence in respect of each category of post covered by Rule 8(1), 8(2) and 8(4) separately upon the State Government. The grant of equivalence to Teachers Training Diploma offered by Aligarh Muslim University for teaching Urdu language in Parishadiya Vidyalaya under Government order dated 26.9.1994 is therefore, referable to Clause 8(4) of Rules of 1981 and is not. referable to the power under Rule 8(1), 8(2) of 1981 Rules.

16. The State Government vide Government order dated 11.8.1997 while withdrawing the equivalence provided under various Government orders, qua equivalence to General B.T.C. certificates, only refers to the equivalence referable to posts covered by Rule 8(1) and 8(2). The Government order dated 11.8.1997 has no application so far as the equivalence granted to Diploma in Teaching offered by Aligarh Muslim University qua posts of Assistant Teachers (Urdu) covered by Rule 8(4). The equivalence granted under the Government order dated 26.9.1994 qua teachers to be appointed for teaching Urdu language in Parishadiya Vidyalaya was distinct in nature and cannot be said to have been withdrawn under the Government order dated 11.8.1997 which applies to equivalence to general B.T.C. only. The Government order dated 11.8.1997 has to be read as a whole and from a reading of the same the Court finds that it does not refer to the equivalence earlier granted to Diploma in Teaching for the purposes of appointment as Assistant Teacher for imparting education of Urdu language in Parishadiya Vidyalaya referable to Rule 8(4) of 1981 Rules. This also follows from the following reasons also.

17. The Court may record that under the letter of the Secretary (Basic Education) dated 16.2.2005 and dated 12.4.2005 enclosed as Annexures 13 and 14 respectively to the writ petition, it has been admitted that the Basic Teacher's Certificate at the training centres established by the State Government in

Lucknow, Agra, Mawana in district Meerut and Sakaldiha in district Chandauli for imparting training for teaching Urdu have been closed since the year 1997-98. It is thus an admitted position that the training centres referred to in Rule 8(4). for appointment as teachers for imparting education in Urdu language are not functional since 1997-98. Under the Rules of 1981 teachers in primary institutions for teaching Urdu language are therefore, not being trained at the said centres since 1997-98. Therefore, the recital in the Government order dated 11.8.1997 that there are surplus qualified candidates available for the post of Assistant Teachers is not in respect of the posts covered by Rule 8(4) of 1981 Rules as the shortage of such qualified persons is also admitted under letters of the Secretary dated 16.2.2005 and dated 12.4.2005.

18. From the document which has been brought on record as Annexure-6 to the writ petition which is the copy of a notification issued by the Secretary, Basic Shiksha Parishad, U.P., Allahabad as published in newspaper Amar Ujala dated 12.9.2002 (a copy whereof has also been filed alongwith supplementary affidavit by the District Basic Education Officer, Bulandshahr) the Court finds that a list of training qualification which had been granted equivalence earlier and had been withdrawn under Government order dated 11.8.1997 is disclosed and thereafter is mentioned that such qualifications as detailed in the list ceases to be valid qualification for appointment in Parishadiya Vidyalaya. The list appended thereto consist of as many as 27 items. This list does not include Diploma in Teaching of Aligarh Muslim University. However at Item No. 25 of the said list it has been mentioned as follows:

25- dsfUnz; ;k jkT; fo/kku e.My ds fdlh vf/kfu;e }kjk fu;fer Hkkjr ds fo'ofokj; }kjk iznku dh fMxzh;ksa rFkk fMlyksekvks dks jkT; ljdkj ds v/khu lsok ;kstu ds iz;kstuksa ds fy;s ekU;rk nsus ds okLrs ljdkj ds vkSipkfjd vkns'kksa dh vko;'drk ugha g SA os Lor% ekU; g SA yksd lsok vk;ksx ls ijke'kZ djds ;g Hkh fu'p; fd;k x;k gS fd ;qfuoflZVh xzk.V~l deh'ku ,DV] 1956 dh /kkjk 3 ds v/khu fo'ofokj; le>h tkus okyh laLFkkvksa iznku dh x;h fMxzh;ksa rFkk fMlyksekvksa dk Hkh jkT; ljdkj ds v/khu lsokvksa rFkk inkSa ij HkrhZ ds fy;s Lor% ekU; le>k tk;s A

jkTkKk la;k 14@8&66&fu;qfDr [k&fnukad; 29 vxLr] 1996

19. Two facts therefore, emerge from the aforesaid letter:

(a) the teaching diploma granted by Aligarh Muslim University is not mentioned as the qualification, equivalence whereof has been withdrawn.

(b) Under Item No. 25 as quoted above, with reference to the Government order dated 29.8.1996 it has been clarified that if under any Central Act or under any State Act any Degree/Diploma granted by any University has been granted recognition then no formal orders from the State Government qua such Degrees/Diploma being recognized for the purposes of appointment in the services of the State was necessary and that the same shall be deemed to be the necessary qualification for appointment in the State services.

20. Admittedly the Diploma in Teaching offered by Aligarh Muslim University, a Central University established under an Act of Parliament has been recognized as a valid qualification for appointment of Basic Teachers in Basic Schools by N.C.T.E., therefore, no formal recognition/equivalence to such Diploma in Teaching for such appointment from the State Government is required.

21. Lastly if the stand taken by the respondents, i.e., the equivalence provided to Diploma in Teaching has been withdrawn under Government order dated 11.8.1997 is accepted then what will follow is that appointments against post covered by Rule 8(4) cannot be made as (a) Training in four centres established by Government mentioned in Rule 8(4) has stopped functioning since 1997-98 as per letter of Secretary dated 16.2.2005 and 12.4.2005. (b) No Government order providing equivalence to any other course as per Rule 8(4) survives after 11.8.1997. Such a situation cannot be comprehended by any reasonable man.

22. Both on the strength of the equivalence granted vide Government order dated 26.9.1994 as also on the strength of the Government order dated 29.8.1996 read with notification published on 12.9.2002, it is held that the petitioners are possessed of the prescribed minimum qualification for appointment as teachers for imparting education in Urdu language covered by Rule 8(4) of 1981 Rules.

23. Now turning to the issue as to whether the appointment made under notification dated 21.11.2008 of candidates who have completed B.T.C. Training Course (Urdu), 2006 as Assistant Teachers (Urdu) in Parishadiya Vidyalaya is in accordance with law or not.

24. It is the case of both the parties before this Court that B.T.C. Training Course (Urdu), 2006 was started for the purposes of appointment of teachers who would be required to teach primary students through the medium of Urdu. The distinction between the teachers to be appointed for imparting education through the medium of Urdu language and the Assistant Teacher to be appointed for imparting education in Urdu language has been examined by the Division Bench of this Court in the case of Qambar Raza (supra). Paras 5 and 6 of the judgment of the Division Bench of this Court in the case of Qambar Raza (supra) which reads as follows:

5. Mr. Arora, Additional Advocate General, submitted that the appellants are confusing between two types of courses. One is for appointment as Teachers of Urdu Language in Junior Section Basic Schools and the other is for primary teachers on the basis of Urdu B.T.C. course. As far as appointment as Urdu Language Teacher is concerned that is a different aspect. The objective of the B.T.C. (Urdu) Course by the State Government is to have sufficient number of primary teachers as part of the Sarva Shiksha Abhiyan. This is a course to bring out primary teachers who may teach primary students through the medium of Urdu as against other primary teachers who are teaching primary students through the medium of Hindi.

6. Mr. Arora submits that to be a primary teacher, the candidate concerned has to be a graduate and he ought to do a course in teacher's education from an institution which is recognized by the N.C.T.E. The rejoinder affidavit by the appellant contains a letter from Jamia Urdu, Aligarh dated 23rd November, 2007. It records in paragraph 2 that Mauallim-e-Urdu Educational Course is conducted all over India and outside India but (say in Saudi Arabia). The letter gives the number of students who have taken the course. For example in the session 1996-97, the number given is 17,039. However, so far the recognition from N.C.T.E. is

concerned, in paragraph 5 of this letter, it is clearly stated that the process for recognition from N.C.T.E. is going on. Thus, it is clear that this course and the certificate of Mauallim-e-Urdu is not a certificate recognized by the N.C.T.E. That is why, the appellant-petitioner cannot claim having a degree equivalent to B.T.C. since his degree is not recognized by the N.C.T.E.

The candidates cannot seek admission to B.T.C. Urdu Course on the basis of their degree also since it is specified in the Government advertisement that they must have a degree from an institution recognized by the N.C.T.E. as has been held by the Apex Court in Civil Appeal No. 3879 of 2001, Yogesh Kumar and Ors. v. Government of N.T.C. Delhi and Ors. : JT 2003 (2) SC 453 : 2003 (3) AWC 1823 (SC), It is for the employer to consider and decide as to what qualification a person ought to have for joining employment. In the instant case, after B.T.C. course the persons passing out with the certificate will be eligible for applying and have very good chances of employment. This being so, the qualification possessed by the appellants is not such which can get them an admission for this course. Hence no writ can be issued, as prayed by the appellants through prayer Clause (iii) also which is for any other appropriate order.

25. The petitioners had not applied in response to the Advertisement of 2006 nor there was any occasion for them to apply. The petitioners cannot claim appointment on the post which are covered by Rule 8(5) and qua which the B.T.C. Training Course (Urdu), 2006 has been started. They can have no grievance in that regard. The issue however remains as to whether the State respondents are making efforts to offer appointment on the post covered under Rule 8(4) to the candidates who have cleared the B.T.C. Training Course (Urdu), 2006 or not.

26. This Court may record that in view of the provisions of Rule 8(5) of 1981 Rules, the categorical stand taken by the State Government, as well as in view of the Division Bench judgments of this Court in the case of Qambar Raza (supra) and State of U.P. v. Sumbul Naqvi (supra) it cannot be disputed that the candidates who are successful in B.T.C. Training Course (Urdu), 2006 can be offered appointment against the post covered by Rule 8(5) of 1981 Rules only and not against the post covered by Rule 8(4), i.e., of Assistant teachers to be

appointed for teaching Urdu language qua which the petitioners claim a right. It is needless to emphasize that Rule 8(5) of the 1981 Rules was added only in the year 2007 so as to explain the necessity and purpose of B.T.C. Training Course (Urdu) 2006. This Court has no hesitation to record that any candidate who has passed B.T.C. Training Course (Urdu), 2006 or similar B.T.C. Special Training Course (Urdu) cannot be appointed on the post of Assistant Teachers covered by Rule 8(4), i.e., as Assistant teacher for teaching Urdu language qua which the petitioners claim to be eligible.

27. It is not necessary for the Court to enter into the issue as to whether the appointment as notified on 18.11.2008 are in respect of the post covered by Rule 8(4) or those covered by Rule 8(5) at this stage, as the Court expects that the respondents in the petition shall having regard to the law as explained, will ensure that no appointment of candidates who are successful in B.T.C. Training Course (Urdu), 2006 or any other such B.T.C. Special Training Course (Urdu) are appointed on the post of Assistant Teachers in primary institutions for teaching Urdu language covered by Rule 8(4). For the purposes the Secretary, Basic Shiksha Parishad, U.P., Allahabad is directed to issue necessary orders to all District Basic Education Officers and to see that if any appointments have been made on the post covered by Rule 8(4) from candidates who have passed B.T.C. Training Course (Urdu), 2006 or similar course, such orders are recalled and the candidates are appointed only against posts covered by Rule 8(5) in the institution where teaching through the medium of Urdu is undertaken.

28. In view of the aforesaid this Court hold that the Government order dated 26.9.2004 still continues to hold the field and candidates possessed of the qualifications equivalence whereof has been granted by the State Government for appointment as Assistant Teachers in primary institutions for teaching Urdu language like the petitioner are available for the purpose. The State Government cannot make appointments on posts covered by Rule 8(4) from candidates who are successful in Special B.T.C. Training Course Urdu which is for appointment of teachers to be appointed under Rule 8(5), i.e., having proficiency in Urdu for teaching other subjects through medium of Urdu,

29. Consequently the petitioners are entitled for a writ of mandamus commanding the State respondents to consider the claim of the petitioners for appointment in Parishadiya Vidyalayas for imparting education in Urdu language.

30. The Court may now refer to the judgment of the Hon'ble single Judge in the case of Mushir Ahmed Indrees and Ors. v. State of U.P. and Ors. alongwith other connected matters, Writ Petition No. 10815 of 2006 (S/S) decided on 4.1.2007 heavily relied upon by Shri K.S. Kushwaha, advocate. The said judgment has not taken note of any of the legal aspects of the matter nor the controversy which is up for consideration herein was subject-matter of consideration therein. The Hon'ble Supreme Court in the case of Bhavnagar University v. Palitana Sugar Mills (Pvt.) Ltd. and Ors. 2003 (2) SCC 111, has held as follows:

It is well-settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

31. The said judgement has been followed in the recent judgment of the Hon'ble Supreme Court in the case of Dr. Rajbir Singh Dalai v. Chaudhari Devi Lal University, Sirsa and Anr. 2008 AIR SCW 5817 : 2008 (6) AWC 6578 (SC).

32. Writ petition is allowed and the respondents are commanded to consider the claim of the petitioners and such other candidates possessed of Diploma in Teaching granted by the Aligarh Muslim University provided they satisfy all other conditions for appointment as Assistant Teachers in Basic. School against the posts covered by Rule 8(4) of 1981 Rules. The respondents are further directed not to make appointment on the posts covered by Rule 8(4) of 1981 Rules from the candidates who have or who may obtain training under the Special B.T.C. Training (Urdu).

33. In the facts of this case it is further necessary to direct the State respondents to initiate proceedings for appointment of Assistant Teachers in primary institutions for teaching Urdu language qua posts covered by Rule 8 (4) inasmuch as it is admitted to the State Government that large number of such posts are lying vacant as per the letters dated 16.2.2005 and 12.4.2005 on record, of the Secretary of the Department. It is to be noted that these letters were written prior to addition of Rule

8(5) to 1981 Rules and, therefore, posts referred to as Urdu teachers therein, are those covered by Rule 8(4) only. The petitioners will be at liberty to apply.

Let the entire exercise as indicated above qua both the directions be completed by the respondents concerned from the date a certified copy of this order is filed.

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