

(2011) 11 AHC CK 0335
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 58165 of 2011 with Writ Petition No's. 57701 of 2011, 59246 of 2011, 59714 of 2011, 59731 of 2011, 62235 of 2011, 59686 of 2011, 63246 of 2011, 62669 of 2011, 63340 of 2011, 58920 of 2011, 59752 of 2011, 61298 of 201

Abhishek Kumar Pandey and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 11-11-2011

Acts Referred:

Right of Children to Free and Compulsory Education Act, 2009 — Section 2, 23, 23(1)
Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 — Rule 8
Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Services of Teachers) Rules, 1978 — Rule 4, 5

Citation : (2011) 10 ADJ 200

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Dilip Gupta, J.—The petitioners, who possess Bachelor of Physical Education Degree (hereinafter referred to as the "B.P.Ed") or the Diploma in Physical Education (hereinafter referred to as the "D.P.Ed") have filed these petitions for quashing the Notification dated 23rd August, 2010 issued by the National Council for Teacher Education (hereinafter referred to as the "NCTE") which lays down the minimum qualifications for a person to be eligible for appointment as a teacher in Class I to VIII. The petitioner have also sought the quashing of the advertisement dated 22nd September, 2011 issued by the Board of High School and Intermediate Education, Uttar Pradesh, Allahabad (hereinafter referred to as the "Intermediate Education Board") which has been authorised to hold the Teachers" Eligibility Test (hereinafter referred to as the "TET") to the extent it does not permit the candidates who possess B.P.Ed./D.P.Ed. from appearing at the said test.

2. It is stated that in exercise of the powers conferred by Section 23(1) of the

Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the "Act") and in pursuance of the Notification dated 31st March, 2010 issued by the Government of India, the NCTE issued the Notification dated 23rd August, 2010 laying down the minimum qualifications for a person to be eligible for appointment as a teacher in Classes I to VIII in a School referred to in Section 2(n) of the Act, which amongst others, provides that the person should pass the TET to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose. The Intermediate Education Board, which has been authorised by the State Government to hold such a test, issued the advertisement dated 22nd September, 2011 inviting applications from the eligible candidates for appearing in the UP-TET but persons with B.P.Ed./D.P.Ed. have not been included. They cannot, therefore, appear in the test. It is, therefore, asserted that the petitioners, who have obtained B.P.Ed./D.P.Ed., stand excluded from appointment in Classes I to VIII since a person who has cleared the TET is only considered eligible for appointment. In this connection, it is further stated that physical education and games are essential requirements for students and even the State Government recognised this aspect when it issued the Government Order dated 5th April, 2004 by which Physical Education and Sports was made a compulsory subject in the State. Thus, in order to give effect to the aforesaid requirement, it was necessary for the State to have created posts of teachers in Physical Education and Sports in the Schools but the order dated 5th April, 2004 permits appointment of a sports teacher from amongst the teaching staff of the School after he is given the required training.

3. It is submitted by Sri Ashok Khare, learned Senior Counsel appearing for the petitioners that the Notification dated 23rd August, 2010 provides for minimum qualifications for a person to be eligible for appointment as a teacher in Classes I to VIII and passing TET is considered to be an essential requirement but in respect of teachers for physical education, such requirement has been waived under Clause 5(b) of the Notification dated 23rd August, 2010 as amended by the Notification dated 29th July, 2011 and it is provided that the minimum qualification norms for physical education teachers shall be such as provided in National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulation, 2001 (hereinafter referred to as the "2001 NCTE Regulations") as amended from time to time. It is his submission that when under the aforesaid 2001 NCTE Regulations, it is provided that for recruitment of teachers of physical education, the minimum academic and professional qualification for elementary schools shall be Senior Secondary School Certificate or Intermediate or its equivalent and Certificate in Physical Education (C.P.Ed.) of a duration of not less than two years or its equivalent, it was incumbent upon the State to have created posts of physical education in the Schools so that the teachers with such qualifications could be appointed but the Government Order dated 5th April, 2004 permits appointment of sports teacher from amongst the teaching staff of the school after he is given training for a certain period. It is also his contention that persons possessing B.P.Ed./D.P.Ed.

should be permitted to appear at the forthcoming UP-TET to be held on 13th November, 2011 so that they can be considered for appointment as teachers.

4. Sri K.S. Kushwaha, learned Standing Counsel appearing for the State and the Intermediate Education Board and Sri R.A. Akhtar and Sri Rajiv Joshi, learned counsel appearing for the NCTE have contended that the reliefs claimed in these petitions cannot be granted to the petitioners. It is their submission that in terms of paragraph 5(b) of the Notification dated 23rd August, 2010, the petitioners are not required to appear at the UP-TET and for them the 2001 NCTE Regulations shall apply which prescribe the minimum academic qualification as Senior Secondary School Certificate or Intermediate and Certificate of Physical Education (C.P.Ed.) or its equivalent. It is also pointed out by Sri K.S. Kushwaha that in the Schools run by the Basic Education Board or recognised by the Basic Education Board, post of teacher in physical education has not been created in the State. In this connection he has also placed Regulation I of Chapter II of the U.P. Intermediate Education Act, 1921 which provides that B.P. Ed. Degree holders are eligible for appointment on the post of Assistant Teacher (Physical Education) in Intermediate Colleges (Class XI to XII) and has, therefore, submitted that the petitioners can be considered for appointment on this post. It is also his submission that it is for this reason that Rule 8 of the U.P. Basic Education (Teachers) Service Rules, 1981 and Rules 4 and 5 of the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Condition of Service of Teachers) Rules, 1978 do not provide for qualification for the said post of Assistant Teacher in Physical Education in elementary schools. It is also his contention that the petitioners have not assailed the 2001 NCTE Regulations and, therefore, the writ petitions challenging the consequential Notification dated 23rd August, 2010 and the advertisement dated 22nd September, 2011 is not maintainable in view of the decision of the Supreme Court in Rupa Rani Rakshit and Others Vs. Jharkhand Gramin Bank and Others,

5. I have considered the submissions advanced by the learned counsel for the parties.

6. The petitioners, who claim to be B.P.Ed./D.P.Ed., are desirous of appearing at the UP-TET conducted by the Intermediate Education Board so that they possess the minimum qualification for a person to be considered eligible for appointment as a teacher in Classes I to VIII in a school referred to in Section 2(n) of the Act.

7. In order to appreciate the controversy involved in these petitions, it will be necessary to refer to various provisions of the Act and the Notifications.

8. Section 23(1) of the Act deals with the qualification for appointment and terms and conditions of service of teachers and is as follows:

23. Qualification for appointment and terms and conditions of service of teachers.--(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

Elementary Education has been defined u/s 2(f) of the Act while a School has been defined u/s 2(n) of the Act and the definitions are as follows:

2(f). "elementary education" means the education from first class to eight class;"....

(n) "school" means any recognised school imparting elementary education and includes

(i) a school established owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;

9. The Central Government, by means of the Notification dated 31st March, 2010 which was published in the Official Gazette dated 5th April, 2010, has authorised the NCTE as the "academic authority" to prescribe the minimum qualifications which notification is as follows:

Notification New Delhi, the 31st March, 2010

S.O. 750(E).--In exercise of the powers conferred by sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009, the Central Government hereby authorises the National Council for Teacher Education as the academic authority to lay down the minimum qualifications for a person to be eligible for appointment as a teacher.

10. The NCTE, accordingly, issued the Notification dated 23rd August, 2010 which was published in the Gazette of India dated 25th August, 2010. The said Notification lays down the minimum qualification for a person to be eligible for appointment as a teacher in Classes I to VIII in a school referred to in Section 2(n) of the Act with effect from the date of the notification. However, another Notification dated 29th July, 2011 was published in the Gazette of India dated 2nd August, 2011. This Notification made certain amendments to the Notification dated 23rd August, 2010 published in the Gazette of India dated 25th August, 2010. The minimum qualifications prescribed in the Notification after the amendment for a person to be considered eligible for appointment as a teacher are as follows:

1. Minimum Qualifications.

(i) Classes I-V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Elementary Education (by whatever name known).

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor of Elementary Education (B.El. Ed.).

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education).

OR

Graduation and two year Diploma in Elementary Education (by whatever name known)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

(ii) Classes VI-VIII

(a) Graduation and 2-year Diploma in Elementary Education (by whatever name known)

OR

Graduation with at least 50% marks and 1-year Bachelor in Education (B.Ed.)

OR

Graduation with at least 45% marks and 1-year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor in Elementary Education (B.El.Ed)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year BA/ B.Sc. Ed. or B.A. Ed./B.Sc. Ed.

OR

Graduation with at least 50% marks and 1-year B.Ed. (Special Education)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

2. Diploma/Degree Course in Teacher Education.

For the purpose of this Notification, a diploma/degree course in teacher education recognised by the National Council for Teacher Education (NCTE) only shall be considered. However, in case of Diploma in Education (Special Education) and B.Ed. (Special Education), a course recognised by the Rehabilitation Council of India (RCI) only shall be considered.

3. Training to be undergone.-A person -

(a) with Graduation with at least 50% marks and B.Ed. qualification or with at least 45% marks and 1-year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard shall also be eligible for appointment for Class I to V upto 1st January, 2012, provided he/she undergoes, after appointment, an NCTE recognised 6-month Special Programme in Elementary Education.

(b) with D.Ed. (Special Education) or B.Ed. (Special Education) qualification shall undergo, after appointment, an NCTE recognised 6-month Special Programme in Elementary Education.

4. Teacher appointed before the date of this Notification.-The following categories of teachers appointed for classes I to VIII prior to date of this Notification need not acquire the minimum qualifications specified in Para (1) above,

(a) A teacher appointed on or after the 3rd September, 2001, i.e. the date on which the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in School) Regulation, 2001 (as amended from time to time) came into force, in accordance with that Regulation.

Provided that a teacher of class I to V possessing B.Ed. qualification, or a teacher possessing B.Ed. (Special Education) or D.Ed. (Special Education) qualification shall undergo an NCTE recognised 6-month special programme on elementary education.

(b) A teacher of class I to V with B.Ed. qualification who has completed a 6-month Special Basic Teacher Course (Special BTC) approved by the NCTE;

(c) A teacher appointed before the 3rd September, 2001, in accordance with the prevalent Recruitment Rules.

5.(a) Teacher appointed after the date of this notification in certain cases: Where an appropriate Government or local authority or a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of this Notification such appointments may be made in accordance with the NCTE

(Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time).

(b) The minimum qualification norms referred to in this notification apply to teachers of Languages, Social Studies, Mathematics, Science, etc. In respect of teachers for Physical Education, the minimum qualification norms for Physical Education teachers referred to in NCTE Regulation dated 3rd November, 2001 (as amended from time to time) shall be applicable. For teachers of Art Education, Craft Education, Home Science, Work Education, etc. the existing eligibility norms prescribed by the State Governments and other school managements shall be applicable till such time the NCTE lays down the minimum qualifications in respect of such teachers.

11. It is stated by learned counsel for the NCTE that 3rd November, 2001 in paragraph 5(b) of the said notification had been wrongly mentioned and the date should be 3rd September, 2001.

12. It is, therefore, clear that in respect of teachers for physical education, the minimum qualification norms which will be applicable are the 2001 NCTE Regulations dated 3rd September, 2001. These Regulations do not provide for clearing the TET. In fact for elementary schools, all that is provided is that the persons should have the minimum academic and professional qualification as Senior Secondary School Certificate or Intermediate or its equivalent and Certificate in Physical Education (C.P.Ed.) of a duration of not less than two years or its equivalent. It is, however, stated by Sri Kushwaha, learned counsel appearing for the State that Certificate of C.P.Ed. is not being awarded in the State after 1997.

13. According to Sri Kushwaha, learned Standing Counsel appearing for the State and the Board, not a single post of Assistant Teacher (Physical Education) has been created in the Basic Education Department till date and it is for this reason that 1981 Rules or 1978 Rules do not provide for the qualification of the said post of Assistant Teacher (Physical Education). The petitioners, at best, can be considered for appointment in Intermediate Colleges as they claim to be possessing graduation degree with Bachelor of Physical Education (B.P.Ed.) Degree.

14. The relief claimed in these petitions is to quash the Notification dated 23rd August, 2010 and suitably amend the advertisement so as to permit the petitioners to appear at the forthcoming UP-TET to be held on 13th November, 2011. There is no submission that paragraph 5(b) of the notification is bad in law or that the NCTE was not competent to provide the minimum qualifications. As noticed hereinabove, Section 23(1) of the Act confers powers on the academic authority authorised by the Central Government to prescribe the minimum qualification for a person to be eligible for appointment as a teacher and the Central Government has by the Notification dated 31st March, 2010 authorised the NCTE to lay down the minimum qualifications. The NCTE has, accordingly,

issued the Notifications dated 23rd August, 2011 and 29th July, 2011 and under paragraph 5(b), the minimum qualifications for Physical Education Teachers are the qualifications contained in 2001 NCTE Regulations. These Regulations do not provide for holding a TET. There is no challenge to the 2001 NCTE Regulations. In such circumstances, the relief claimed for by the petitioners for permitting them to appear at the UP-TET so that they can be considered for appointment cannot be granted. The petitioners cannot, accordingly, be permitted to assail the advertisement to the extent it does not permit them from appearing at the UP-TET.

15. The NCTE 2001 Regulations may provide for the minimum qualifications for teachers in elementary schools as the post of Physical Education Teacher may be existing in other States but merely because such minimum qualifications have been prescribed by the NCTE does not mean that it is obligatory for the State to create posts of Assistant Teachers (Physical Education) in the Schools run by the Basic Education Board or recognised by the Basic Education Board. The State may have realised the importance of physical education and for that purpose has made it a compulsory subject in Classes I to VIII but as pointed out by Sri K.S. Kushwaha, such training is imparted to candidates undergoing the BTC Training Course so that when they are appointed to teach other subjects, they can also teach this compulsory subject for which the only requirement is to pass and the marks are not added to the final result.

16. This apart, a direction cannot be issued to the respondents to create posts of Assistant Teachers (Physical Education) in elementary schools run by the Basic Education Board or recognised by the Basic Education Board so that the petitioners can be considered for appointment. There is no categorical averment in the petitions that the post of Assistant Teacher (Physical Education) in elementary school exists in the other two categories of Institutions referred to in Section 2(n) of the Act.

17. The petitioners are, therefore, not entitled to any relief.

18. The writ petitions are, accordingly, dismissed.