
(2014) 01 AHC CK 0122
In the Allahabad High Court
Case No : Writ A. No. 52073 of 2013

Amit Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Right of Children to Free and Compulsory Education Act, 2009 — Section 23, 23(1), 23(2)

Citation : (2014) 3 ADJ 630 : (2014) 2 ALJ 509 : (2014) 2 AWC 1756 : (2014) 2 UPLBEC 976

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : Siddharth Khare and Ashok Khare, Advocate for the Appellant;
Virendra Chaubey, Advocate for the Respondent

Final Decision : Dismissed

Judgement

B. Amit Sthalekar, J.—By this writ petition, the petitioner is seeking quashing of the order dated 29.8.2013, whereby, the petitioner has been given appointment on a Class-IV post in the Prathmik Vidyalaya, Nagla Khepar Vikas Khand Jansath, District-Muzaffarnagar. The petitioner has further sought a direction to the respondents to consider his claim for appointment as Assistant Teacher in a Prathmik Vidyalaya on the basis of his educational qualification. From the averments made in the writ petition, it appears that the father of the petitioner late Kalu Ram was employed as a Permanent Assistant Teacher in the Senior Basic School ran by the Board of Basic Education, District-Muzaffarnagar and expired while still in service on 3.5.2012. The petitioner submitted his application for grant of compassionate appointment before the Basic Shiksha Adhikari, Muzaffarnagar on 19.5.2012. According to the petitioner his educational qualifications are B.Sc. with Mathematics, M.Sc. with Mathematics and B.Ed. Degree and even though as on 9.5.2012 his result of the B.Ed. Examination was still awaited the same was declared on 27.12.2012. The petitioner is also stated to have qualified the U.P. Teacher Eligibility Test, 2011 (Primary Level).

2. I have heard Sri. Ashok Khare, learned Senior Counsel assisted by Sri. Siddharth Khare, learned counsel for the petitioner and Sri. Virendra Chaube, learned counsel for the respondent No. 4 and the learned Standing Counsel representing the respondent Nos. 1 to 3.

3. The Principal objection raised by the petitioner to his appointment to the Class IV post of Assistant Teacher is that he possesses the requisite educational qualification entitling him to appointment on the post of Assistant Teacher and even though he may not have the Teachers Training Certificate the same can be undergone by him within six months on his appointment in terms of the National Council for Teacher Education Notification dated 23.8.2010.

4. Para 3 of the NCTE Notification dated 23.8.2010 reads as follows.

3. Training to be undergone; A person

(a) with BA/B.Sc. with at least 50% marks and B.Ed qualification shall also be eligible for appointment for class I to VIII up to 1st January, 2012, provided he undergoes, after appointment an NCTE recognized 6 month special programme Elementary Education.

5. It is submitted by Sri. Ashok Khare that although the cut-off date prescribed in para 3 was 1.1.2012 however the said date has subsequently been relaxed by the Ministry of Human Resource Development (Department of School Education and Literacy) Notification dated 10.9.2012 and relaxation has been granted up to 31.3.2014.

6. The submission of Sri. Ashok Khare further is that this relaxation extending the cutoff date from 1st January, 2012 up to 31-3-2014 was on the own request of the Government of Uttar Pradesh and therefore, even if the petitioner does not have the qualification of Special BTC, the same would not come in the way of appointment of the petitioner once relaxation has been extended up to 31.3.2014 and the petitioner in any case will have to undergo the six months special programme of Elementary Education in terms of para 3(A) of the NCTE Notification dated 23-8-2010. A reference in support of his submission has also been made to the observations of the Full Bench decision of this Court reported in Shiv Kumar Sharma and Others Vs. State of U.P. and Others, , wherein, the Full Bench referring to the provisions of Section 23(2) of the Right of Children to Free and Compulsory Education Act, 2009 (Act, 2009) has held that relaxation can be granted in a particular contingency subject to the condition where a State does not have adequate institutions offering courses or training in teacher education or unavailability of teachers possessing minimum qualifications.

7. Sri Ashok Khare, learned counsel for the petitioner further submitted that the candidature of the petitioner for appointment on compassionate ground as Assistant Teacher has been deliberately overlooked by the respondent No. 4 in view of the State Government Notification dated 15-2-2013, wherein, among the guidelines for appointment of teachers on compassionate ground laid down, the

Training Certificate of BTC or Special BTC as a requisite qualification has also been insisted upon.

8. Sri Virendra Chaube, learned counsel representing the Basic Shiksha Adhikari, respondent No. 4, on the other hand submitted that the family of the petitioner was paid Rs. 7 lacs by way of terminal benefits and Rs. 17,000/- is being paid as family pension to the widow and if the petitioner accepts the Class IV employment offered to him he would also get monthly salary of Rs. 13,500/- which would bring home a total salary of Rs. 30,500/- which is enough to mitigate any financial hardships otherwise being faced by the family on account of the death of the breadwinner of the family.

9. Learned counsel for the respondent further referred to the provisions of Rule 8 of the U.P. Basic Education (Teachers) Service Rules, 1981 which provides academic qualifications for appointment of Assistant Masters or Assistant Mistresses of a Junior High School, wherein, Basic Teachers Certificate BTC, two years BTC (Urdu) Special BTC and passing Teachers Eligibility Test along with Bachelors Degree from a University established by law or Degree recognised by the Government have been prescribed as the requisite qualification. Reference has also been made to the letter of the Secretary, Uttar Pradesh Basic Shiksha Parishad, Allahabad dated 12-6-2012, wherein, the passing of the TET has been held to be compulsory in addition to the qualifications otherwise provided in the 1981 Rules. Reliance has also been placed on the judgment of the Supreme Court reported in Umesh Kumar Nagpal Vs. State of Haryana and Others, .

10. I have heard the learned counsel for the parties and perused the documents on record.

11. Before coming to the fundamental question regarding grant of relaxation in terms of the order of the Ministry of Human Resource Development (Department of School Education and Literacy) Notification dated 10-9-2012 it would be necessary to refer to the other objection raised by the respondents based upon the judgment of the Umesh Kumar Nagpal Vs. State of Haryana and Others, , wherein the Supreme Court has held that the object of granting compassionate appointment is to enable the family of the deceased employee to tide over the sudden crises arising out of the death of the sole bread winner and while granting such appointment the Government or the Public Authority concerned has to examine the financial condition of the family of the deceased. Object of granting compassionate appointment is to give relief to the family of the deceased employee to meet immediate financial crises and from the immediate threat of destitution.

12. Although in the counter-affidavit of the respondents, it has been stated that the terminal benefits paid to the family would be about Rs. 7 lacs and family pension of the widow would be about 17,000/- even so the concerned authority thought it a fit case for granting appointment to the petitioner on compassionate grounds even though it was aware that the petitioner would also draw a salary of

Rs. 13,500/- as a Class IV employee and that the total monthly income of the family therefore, would be 30,500/- as stated in para 6 of the counter affidavit. That being the factual position it is not for the court to examine as to whether the benefit of the judgment of Umesh Kumar Nagpal Vs. State of Haryana and Others, was rightly given to the petitioner or not, the Competent Authority in this regard having already taken a decision to do so.

13. It is also not a case where the petitioner is claiming the post of Assistant Teacher solely on the ground that his father was also an Assistant Teacher. Rather the claim for the Class III post of Assistant Teacher is being based on the educational qualifications which the petitioner claims to possess which entitle him to stake a claim to the class III post of Assistant Teacher therefore, now the Court has to examine as to whether the petitioner indeed possesses the requisite qualification for appointment on the Class III post of Assistant Teacher on compassionate ground.

14. The submission of the learned counsel for the petitioner is that the NCTE notification dated 23.8.2010 which has also been upheld by the Full Bench in the case of Shiv Kumar Sharma and Others Vs. State of U.P. and Others, training to be undergone as prescribed in para 3-A is that a person with a B.A./B. Sc with at least 50% marks and B.Ed qualification shall also be eligible for appointment provided he undergoes after appointment an NCTE recognised six months special programme of Elementary Education the only irretant (sic) in the implementation of this Government Notification in the case of the petitioner is the cut off date prescribed therein of 1-1 -2012 for grant of such appointment. However, it is noticed that subsequently the Ministry of Human Resource Development (Department of School Education and Literacy) issued Notification dated 10-9-2012 whereby relaxation in the cut off date in para 3-A of the NCTE Notification dated 23.8.2010 has been granted for a period up to 31.3.2014. This relaxation was granted on the own request of the State Government of Uttar Pradesh made through its letter dated 26.7.2012 the only rider being that the State Government shall conduct the Teacher Eligibility Test. It is not disputed between the parties that the petitioner is a B.Sc. with Mathematics, M.Sc. with Mathematics and possess B.Ed. Degree and has also qualified the U.P. Teacher Eligibility Test-2011 (Primary Level), but as objected by the respondents, he does not have the qualification of B.T.C. or Special B.T.C.. The Full Bench in the case of Shiv Kumar (supra) in para 37 has held that sub-section (2) of Section 23 of the Act, 2009 gives power to the Central Government to relax the minimum qualifications required for appointment as a teacher for a period not exceeding five years. This relaxation is in a particular contingency subject to the condition where a State Government does not have adequate institutions offering courses or training in teacher education or unavailability of teachers possessing the minimum qualifications.

15. Para-37 of the said judgment reads as follows--

37. Sub-section (2) of Section 23 gives power to the Central Government to

relax the minimum qualifications required for appointment as a teacher for a period not exceeding five years, which appears to have been made with the object that such teachers who on the commencement of the Act do not have the minimum qualification, may acquire the same within a period of five years. Relaxation therefore is in a particular contingency subject to the condition where a State does not have adequate institutions offering courses or training in teacher education or unavailability of teachers possessing minimum qualifications.

16. The Full Bench has, while approving the Division Bench decision in the case of Prabhakar Singh and Others Vs. State of U.P. and Others, , has held that after coming into force of the Act, 2009 and the prescription of qualifications thereunder through Academic Authority, the State is not a free agent. Every rule of the State Government for qualification has to abide by the qualification prescribed before making any appointment after the issuance of the Notification dated 23-8-2010.

17. Paras 86,87 and 88 of the said judgment read as follow:--

86. We fully approve the view of the Division Bench in Prabhakar Singh's case confirming the authority of the Central Government and the NCTE to prescribe the qualifications as detailed in Paras 52 and 53 of the reported judgment. We are also in complete agreement with the Division Bench that after the coming into force of the 2009 Act and the prescription of qualifications thereunder through the Academic Authority the State is not a free agent as held in para 51 thereof. The failure of the State Government to timely implement the qualifications prescribed before making any appointment after 23.8.2010 will not dilute or take away the impact of the notification which is mandatory. Every rule of the State Government for qualification has to be abide by the same by virtue of the force of Section 23(1) of the 2009 Act.

87. The legislative competence and the intent therefore lead to the conclusion that the Central Government has authorised the National Council for Teacher Education to make provisions and which have been carefully engrafted in the Notification dated 23.8.2010. The State Government has followed suit. However, the State Government delayed the incorporation as the Rules were framed by it later on in 2011 and the 1981 Rules were amended much later. The 12th, 13th, 14th, 15th and 16th amendment in the 1981 Rules were brought at a later period. In our opinion, however, merely because the State incorporated these provisions in its rules later on would not take away the impact of the norms prescribed by the National Council for Teacher Education that stood enforced w.e.f. 23.8.2010. The delegated legislation of the State Government was subject to the primary legislation of the Central Government. The framing of rules as a subordinate legislation is subservient to the provisions framed by the Central Government. The notification dated 23.8.2010 therefore has an overriding effect and it could not have been ignored. If the State Government has proceeded to make appointments after 23-8-2010 without complying with the provisions of teacher eligibility test then such appointments would be deficient in such

qualification.

88. It may be emphasised that there is no challenge raised to such appointments against rules, but the law is certain that appointment dehors the rules cannot be said to be valid. After the enforcement of the notification dated 23.8.2010 every candidate aspiring to become a teacher of elementary education in any of the institutions defined under the 2009 Act has to be possessed of the qualifications prescribed therein. The intention therefore of the legislature is clear that no teacher without such a qualification can be allowed to continue as a teacher in the institution. We wish to clarify that the binding effect of the notifications and the guidelines is such that the weightage which is contemplated under the guidelines dated 11th February, 2011 cannot be ignored. The minimum score that is required of a candidate is 60% to pass the teacher eligibility test. A concession of 5% has been made in favour of the reserved category candidates including the physically challenged and disabled persons. This norm therefore cannot be diluted. Apart from this, the State Government has to take notice of the fact that weightage has to be given in the recruitment process as well. It is for the State Government to suitably adopt the said guidelines and we do not wish to add anything further at this stage as we are only concerned with the essentiality of the qualification of the teacher eligibility test to be possessed by any candidate aspiring to be appointed as a teacher.

18. Therefore, although the provisions laying down the essential eligibility qualifications in the NCTE Notification dated 23-8-2010 cannot be diluted by the State Government, it does not necessarily mean that the State Government cannot prescribe necessary additional qualifications, which are otherwise not in conflict with those already prescribed in the Notification dated 23-8-2010, for appointment on the post of the Assistant Teacher.

19. The U.P. Basic Education (Teachers) Service Rules, 1981 as amended on 9-11-2011 (12th Amendment) has made amendments to Rule 8, which provides for the academic qualifications for appointment as Assistant Teacher. The amended Rule 8 reads as follows:

20. The Rules relating to compassionate appointment are contained in the Government Order dated 4.9.2000. Relevant portion of which reads as follows:

(Vernacular matter omitted....Ed.)

21. This GO. itself provides that a person seeking appointment on compassionate ground but does not fulfil the requisite educational qualification can move an application before the Competent Authority and thereafter appointment can be offered to such a candidate, who would be sent for training of B.T.C. course in the respective District Institutes of Education and Training and after they have successfully completed the training, they would be offered appointment on regular basis. However, if the candidate after appointment fails to clear the B.T.C. Training Course/Examination, his candidature would automatically stand cancelled. In such an eventuality he could be offered appointment on a class IV

post.

22. The Government Order dated 4-9-2000, however, stands superseded by implication by GO. dated 15-2-2013 which was issued by the State Government wherein in para-3 it has specifically been provided that appointment on compassionate ground can be given only if the candidate possesses the requisite qualification as laid down in the Rules including training course (B.T.C. or Special B.T.C.) and if he does not possess these qualifications, such appointment should not be made. The Notification dated 15-2-2013, which is also under challenge in the present writ petition, does not provide for any such relaxation as earlier provided under the GO. dated 4-9-2000 where appointment could be made but the candidate would be required to clear B.T.C. Training/Examination and only then regular appointment could be given. However, the GO. of 15.2.2013 in my opinion is in no way in conflict with the Ministry of Human Resource Development (Department of School Education and Literacy) Notification dated 10-9--2012 which provides for relaxation in the cut of date on 1.1.2012 prescribed in the GO. dated 23.8.2010 which date has now been relaxed and extended to 31.3.2014 on the request letter of Government of Uttar Pradesh dated 26-7-2012.

23. In my opinion, the impact of the G.O. dated 15.2.2013 does not in any manner dilute the rigour of the NCTE Notification dated 23.8.2010 and therefore, the Government Notification dated 15.2.2013 cannot be said to be in conflict with the N.C.T.E. Notification dated 23.8.2010 as relaxed by the Notification dated 10.9.2012. However, since the petitioner admittedly has neither done her BTC or Special BTC course. The benefit of the GO. dated 10.9.2012 cannot be extended to her. For reasons stated above, I do not find any merit in the writ petition and the same is accordingly dismissed. There shall be no order, as to cost.