
(2014) 11 PAT CK 0066
In the Patna High Court
Case No : C.W.J.C. No. 866 of 2013

Anwar Ali Ansari and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Right of Children to Free and Compulsory Education Act, 2009 — Section 12(c)(d), 23, 32, 4

Citation : (2015) 1 PLJR 634

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Advocate : Nikhil Agrawal, Advocates for the Appellant; Kumari Amrita, Advocates for the Respondent

Judgement

Ajay Kumar Tripathi, J.—A large number of petitioners in the present writ application have jointly filed the writ application for a mandamus or direction upon the respondent-authorities to exempt them from qualifying in what is known as Bihar Secondary/Senior Secondary Teachers Eligibility Test for the purposes of appointment as school teachers in such schools in the State of Bihar. Subsequently, an Interlocutory Application, namely, I.A. No. 4493 of 2014, was filed for a declaration that Rule 6(ii)(ka) of the Bihar Zila Parishad Secondary and Senior Secondary Teachers (Appointment and Service Condition) Rules, 2006, including the amendment of 2012, as also Rule 6(ii)(ka) of Bihar Nagar Nikay Secondary and Senior Secondary Teachers (Appointment and Service Condition) Rules, 2006 and its amendment to be bad and illegal, if not inconsistent, with the provisions of National Council for Teachers Education Act, 1993 (hereinafter referred to as the "NCTE Act" for short).

2. Interlocutory Application is allowed.

3. The reason for seeking such a relief or declaration is that these petitioners claim themselves to have B.Ed. qualification, which is the eligibility laid down by

NCTE for appointment on the post of teachers in the Secondary or Senior Secondary School. Since the petitioners have the eligibility there is no occasion for them to acquire another eligibility over and above the statute by sitting in Teachers Eligibility Test (TET).

4. Learned Sr. Counsel for the petitioners has taken this Court through the detailed provisions both of the Rules under challenge as well as the National Council for Teachers Education Act and the regulation made by the said body. According to him, since the NCTE Act of 1993 is an enactment of Parliament and "Education" comes under List 3 of the Seventh Schedule of the Constitution of India, therefore, the State Government cannot make any provision, contrary to the said statute or mandate, as laid down under Section 12(c)(d), read with Section 32 of the Act. Since the State enactment is in conflict with the Central enactment, it is required to be declared ultra vires to the extent of its conflict.

5. It is also urged that such rule or provision thereof violates Articles 14 and 16 of the Constitution. These petitioners cannot be treated in the same class as those persons who do not possess the requisite qualification like B.Ed. Since the petitioners have requisite degree of Bachelor of Education, they are entitled for appointment directly on the basis of their qualification.

6. By way of emphasis, the learned Sr. Counsel further submits that if the various provisions like the NCTE Act, the 2001 Regulation as well as Right of Children to Free and Compulsory Education Act, 2009 (RTE Act, 2009) do not provide for teachers eligibility test, the State Government lacks necessary power to make provision in this regard, contrary to the above Central enactment or legislations.

7. The State of Bihar had issued Advertisement No. 36 of 2011, which came to be published on 28.2.2011. The advertisement permitted persons having qualification of graduation, post-graduation as well as B.Ed, to appear in what is known as Teachers Eligibility Test, 2011. These petitioners appeared and participated and were unsuccessful in the eligibility test. This is the reason for them to build up a case for striking down the provision for the TET, so that they can overcome their failure to qualify and claim appointment as a matter of right.

8. The State of Bihar has very clearly stated in the counter affidavit that their action and decision has nothing to do with any kind of breach or violation of any of the Acts or Regulations, which have been pressed into service. The State in order to augment the standard and improve the quality of education in the secondary and senior secondary school felt the necessity for screening a large number of candidates to ensure that only competent and meritorious teachers are appointed after proving their worth and not on the basis of a degree obtained by any means or source.

9. A technical plea is also taken by the State that both the category of candidates, who either qualified the examination, who are said to be four in number in the present writ application or those who became unsuccessful,

cannot challenge the said action in view of the Principle of Estoppel by conduct as was laid down by the Hon''ble Supreme Court in the case of Ramesh Chandra Shah v. Anil Joshi in the Civil Appeal Nos. 2802-2804 of 2013. A copy of the said decision of the Hon''ble Apex Court is annexed as Annexure-A and paragraph 24 of the said decision has been relied upon and is reproduced hereinbelow:--

"In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."

10. Additional plea which has been taken on behalf of the State is that the NCTE issued a notification, dated 29th of July, 2011. The notification reads as under:--

"F. No. 61-1/2011/NCTE (N&S).--In exercise of the powers conferred by sub-section (1) of the Section 23 of Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009) and in pursuance of the Notification No. S.O. 750(E) dated 31st March, 2010 issued by the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, the National Council for Teachers Education (NCTE) hereby makes the following amendments to the Notification No. 215, dated 25th August, 2010 published in the gazette of India, Extraordinary, Part-III, Section 4 vide F. No. 61-1/2011-NCTE (N&S), dated the 23rd August, 2010, laying down the minimum qualifications for a person to be eligible for appointment as a teacher (hereby referred to as the Principal Notification), namely:--"

11. In the above background and the provisions, NCTE itself introduced the concept of Teachers Eligibility Test, which was required to be conducted by appropriate Governments with the guidelines or frame works of National Council for Teachers Education.

12. The State of Bihar, therefore, formulated the rules and conducted the examination as part and parcel of the said directive and there is no innovation or breach of law committed by them in asking such teachers to sit for teacher's eligibility test (TET).

13. Learned Senior Counsel to further re-emphasize the proposition about the conflict between the rules and the central enactment, i.e., the NCTE Act and Regulations relies on a decision rendered in the case of Offshore Holdings Pvt. Ltd. Vs. Bangalore Development Authority and Others, , emphasis is on paragraphs 90, 92, 94 etc.

14. The reliance or the proposition laid down by the Hon''ble Apex Court has no correlation with the dispute in the present factual matrix. This Court after extensively going through the propositions and the provisions of the enactments

and questions as well as the central enactments, does come to a considered opinion that nothing has been done by the State of Bihar in conflict or in derogation of the provision of the Acts and the Regulations. In fact, the advertisement and the requirements for passing of TET examination is part and parcel of the notification, dated 29th of July, 2011, which was brought into effect and notified by NCTE themselves.

15. This Court also further emphasize that these days when obtaining a degree is the easiest thing in this country without the requisite knowledge and experience behind the said degree, having an eligibility test to find out the worth of the degree cannot be said to be an arbitrary or illegal decision of the State authorities. The quality of education and the quality of teachers are a matter of serious concern since the future of generation next is dependant upon the quality of education imparted. Education is now a fundamental and constitutional right. If the teachers do not have the requisite knowledge and experience behind their degree which they have obtained from various institutions, some of them even dubious, there is a requirement which even National Council of Teachers Education has felt the need for and recommended for holding eligibility test. The Court opines that it is laudatory step taken to weed out the phony degree holders from those who have qualitative knowledge and experience behind the degree.

16. In view of the above, the writ application merits no consideration. The high sounding propositions of law formulated and pressed into service, have no correlation with the actual state of affairs and there is no case made out for either quashing or declaring the impugned rules under challenge in the IA application to be violative of the law in question. Writ application, therefore, is dismissed being devoid of merit.