
(1997) 04 AHC CK 0144

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4983 of 1997

B. Ed. Berozgar Sangh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 24-04-1997

Acts Referred:

Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 — Rule 8

Citation : (1997) 3 UPLBEC 1774

Hon'ble Judges : Alope Chakrabarti, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant; S.G. Hasnain and S.C., for the Respondent

Final Decision : Disposed Of

Judgement

Alope Chakrabarti, J.—This writ petition was heard along with Writ Petition No. 4985 of 1997, B. Ed. Prashikchit Berozgar Kalyan Samiti Children Academy and Ors. v. State of U.P. and Ors.

2. The petitioner No. 1, herein is Association of unemployed candidates having qualification of Bachelor of Education and petitioner Nos. 2 to 1 are members of the said Association, all having obtained their Bachelor of Education degree.

3. The claim made in the present writ petition is against limiting consideration to the candidates possessing B. T. C. qualification alone in respect of appointments of Basic Teachers and against the Government Order dated 9-9-1994 issued by the State Government and the Circular Letter dated 22-9-1995 issued by the Director of Education (Basic) in so far as they limit consideration of candidates possessing Bachelor of Education qualification to the hill districts only.

4. Heard Mr. Ashok Khare, learned counsel for the petitioners Mr. S. G. Hasnain, learned counsel for the respondents and considered the materials disclosed in the writ petition and its annexures and the counter affidavit and its annexures (complete counter affidavit with annexures have been filed in Civil Misc. Writ

Petition No. 4985/97) and relied upon by the learned counsel for the respondents in support of his contention both the writ petitions.

5. After hearing the learned counsel for the parties and perusing the materials available on record, I find that the relevant provisions of law providing for academic qualification for the purpose of appointment of teachers in Basic Schools, have been contained in Rule 8 of the U.P. Basic Education (Teachers) Service Rules 1981 which has been since amended by Notification dated 28-6-1993 which was published in U.P. Gazettee dated 21-8-1993. The requisite qualifications for such appointment as provided in Rule 8, as aforesaid, are that the Intermediate Examination of Board of High School and Intermediate Education Uttar Pradesh or any other examination recognised by the State Government as equivalent there to together with the training qualification consisting of Basic Teacher's certificate (B. T. C), Hindustani Teacher's certificate, Junior Teacher's Certificate, Certificate of teaching or any other training course recognised by the State Government as equivalent thereto.

6. The State Government also from time to time has issued Government Orders declaring its policy relating to such appointments and the relevant one is the Government Order dated 9-9-1994 which records a decision of the State Government in respect of basic institutions in districts of Uttara Khand declaring the qualification of B. Ed. or L. T. as a sufficient qualification within the meaning of said Rule 8 when sufficient candidates with B. T. C. qualification are not available for appointment in Junior Basic Schools in Uttara Khand run by the Basic Shiksha Parishad.

7. Learned counsel for the petitioners has contended on the basis of aforesaid materials that when the Government itself has issued the Government Order dated 9-9-1994 declaring B. Ed, and L. T. as equivalent qualification to B. T. C. in respect of appointment of teachers in Junior Basic Schools in Uttara Khand, there cannot be a different treatment in respect of other parts of the same State, where also same set of Rules, including same Rule 8, is applicable. Reliance has also been made by the learned counsel for the petitioners to some of the judgments of the Lucknow Bench of this Court, including the judgment dated 23-12-1992 in Writ Petition No. 2447 (S/S) of 1991 Triveni Prasad v. State of U.P. and Ors., wherein the candidates having B. Ed. qualification have been directed to be considered for appointment provided the sufficient number of B. T. C. candidates are not available for appointment as Basic School Teachers.

8. Law in this connection has also been considered in Civil Misc. Writ Petition No. 28243 of 1996, Nirmal Chandra Mishra and Ors. v. State of U.P. and Ors., decided on 29-10-1996 where in upon consideration of materials disclosed in the counter affidavit filed therein it was held that two qualifications B. Ed. and B. T. C. are for different types of children and B. Ed. is neither higher nor lower than B. T. C. and contention that they are equivalent, was rejected. But, in case of hill area permitting B. Ed. and L.T. qualified candidates for consideration was held to be reasonable classification therein.

9. A supplementary affidavit was filed by the petitioners disclosing that the qualification for teaching B. T. C. trainees is B.A. with B. Ed. qualification.

10. A counter affidavit has been filed by the respondents disclosing difference between the B. T. C. and B. Ed. and also disclosed the circumstance why Rule 3 was relaxed by the G. O. dated 9-9-1994.

11. The law in this connection has also been discussed and decided in the case of Mahendra Nath Mishra v. State of U.P. and Ors. reported in 1996 (2) Edu & SC 312.

12. After considering the aforesaid materials and respective contentions of the parties, I find that in the case of Nirmal Chandra Mishra, (supra) the nature of two qualifications namely B. Ed. and B. T. C. were considered and finding was based on the materials disclosed in the counter affidavit in the said proceeding. In the present case also in the counter affidavit the materials have been disclosed showing a difference between two qualifications B. Ed and B. T. C. and the difference in the two training courses On behalf of the petitioners in the writ petition no material has been disclosed enabling this court to come to a conclusion contrary to the findings in the case of Nirmal Chandra Misr (supra) as regards said qualifications B. Ed. and B. T. C. Similar was the finding in the case of Mahendra Nath Mishra (supra). But, the judgments referred to in the cases before the Lucknow Bench (some of them have been annexed to the writ petition) do not show any consideration and a comparison between the said two qualifications. The said judgments proceeded on a conclusion that the qualification of B. Ed. is a higher qualification than the B. T. C. But no material has been discussed in the judgment showing the basis of such conclusion. In such circumstances, I find that the said judgments are not the law decided on such question and the judgment in the case of Nirmal Chandra Mishra (supra) deal with the said question in details and apparently on the materials disclosed in the counter affidavit came to a conclusion. The materials disclosed in the present writ petition also do not in any manner justify a contrary conclusion. In such circumstance in view of the law laid down in the said case of Nirmal Chandra Mishra (supra) as also the materials disclosed herein, I also hold that the two qualifications B. Ed. and B. T. C. are different in nature and B. Ed. is neither higher nor lower than B. T. C.

13. With regard to Government Order dated 9-9-1994. I find that the judgment in the case of Nirmal Chandra Misra did not consider the effect of the same. None of the other cases referred to by the parties also discussed or considered the scope and effect of the said Government Order.

14. At the time of hearing, reference was also made to the documents dated 6-1-1995, 22-11-1995 and 30-11-1995 for the purpose of ascertaining the scope of the Government Policy relating to the aforesaid aspect.

15. Considering the contents of the aforesaid documents and the contents of counter affidavit filed herein, I find that the Government was proceeding on the

basis of requirement districtwise and considering the candidates also districtwise. It also appears that there was dearth in availability of candidates having requisite training qualification which were recognised under Rule 8 and to meet such contingency policies were introduced for considering either candidates having training qualification not recognised under Rule 8 by the Government and some of such qualifications were not treated as training for such purpose and the candidates having those qualifications were appointed as untrained teachers. Some qualifications were treated as sufficient qualification within Rule 8 and these included B. Ed. and L.T. It also appears that the Government Order was issued earlier for a particular period to meet the exigency occurred due to non availability of candidates having recognised training qualification as per requirement of the vacancies in the district. For some time Government was proceeding district-wise and thereafter policy was changed accepting mobility of candidates of different districts.

16. Upon giving anxious consideration to the aforesaid aspect, I do not find any justification for consideration district-wise in respect of appointments of teachers in junior Basic Schools in the State. No reason has been disclosed for such restriction. The language of the said Rule 8 also does not justify or authorise the State Government to recognise a qualification for a particular district or districts resulting in a discrimination but the Government has admittedly changed the policy and has started acting in accordance with the Rules by allowing so called mobility. The position, according to the Rules, seems to be clear that the persons having B.T.C. qualification throughout the State are entitled to participate in the selection process in any part of the State.

17. Now coming to the consideration of the candidates having training qualification not recognised under Rule 8, I find that the Government is following a policy for recognising B. Ed. and L.T. as proper qualification under Rule 8 by issuing Government Order but this has been restricted to some districts in the hill areas. The reason disclosed is one only for such policy and such reason is apparent from the documents referred to herein above including the Government Order 9-9-1994. This reason is non-availability of sufficient number of B. T. C. candidates. If that be so, undoubtedly, the Rule 8 permits the Government to recognise a particular training qualification as equivalent to B.T.C. and for the said purpose the Government is entitled to take action in accordance with law. But, the State Government cannot act in a different manner in different parts of the State unless there is a proper reason justifying a classification. If non-availability of B.T.C. qualified candidates is a reason for treating the candidates having B. Ed. or L. T. qualification as eligible candidate for consideration in some districts, the same is also to be followed throughout the State whenever no sufficient number of candidates are available with B. T. C, qualification.

18. 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 a dearth of sufficient number of candidates having B. T. C. qualification.)

19. Learned Counsel for the respondents contended that with the introduction of mobility there is no requirement of considering the candidates having B. T. C. qualification as there is no dearth of sufficient candidates having B. T. C. qualification. But the facts and figures disclosed in the counter affidavit do not give a clear picture in respect of different selection process in different parts of the State which are being undertaken from time to time. I hold that in such circumstances, if the Government allows any other qualification to be treated as a proper qualification whenever candidates With B. T. C. qualification are not available in sufficient number, the same policy is to be applied throughout the State in every selection process. I make it clear that this does not mean that on the present materials, the qualification of B. Ed. or L. T. is to be treated as equivalent to B. T.C. particularly when the Government has not recognised the same as equivalent and only in case when candidates with B.T.C. are not available, the candidates with B. Ed. or L. T. qualification are being considered

20. In the aforesaid circumstances, this writ petition is disposed of finally directing the respondents to follow the same principle in every case and consider the case of the petitioners having B. Ed. or L. T. qualification if no sufficient candidates with B. T. C. qualification are available in respect of the selection process involved in this writ petition. But, if sufficient candidates with B. T. C. qualification are available the respondents are at liberty to appoint them in accordance with law.