
(2018) 07 UK CK 0139

In the Uttarakhand High Court

Case No : Special Appeal No. 261 of 2018, 259 of 2018

Bhagat Singh and others

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 26-07-2018

Acts Referred:

Uttar Pradesh Basic Education Act, 1972 — Section 19
Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and
Conditions of Service of Teachers) Rules, 1978 — Rule 4

Citation : (2018) 07 UK CK 0139

Hon'ble Judges : K.M. JOSEPH, C.J;SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : B.D. Upadhyaya, Naveen Tiwari, Vikas Pandey

Final Decision : Dismissed

Judgement

K.M. JOSEPH, C.J. (Oral)

SHARAD KUMAR SHARMA, J.

1. Appeals, being connected, we are disposing of the same by the following common judgment.

2. Appellants are the writ petitioners. Special Appeal No. 261 of 2018 is directed against the judgment passed in Writ Petition No. 1732 of 2014 (S/S)

and Special Appeal No. 259 of 2018 is directed against the judgment in Writ Petition No. 156 of 2010 (S/S). Both these writ petitions came to be

dismissed by the impugned common judgment dated 22.03.2018.

3. The reliefs sought in Writ Petition (S/S) No. 156 of 2010 are as follows :

â??I. Issue a writ, order or direction in the nature of certiorari quashing the impugned clauses no. 4 of the Government Order dated 27-11-2006

issued by respondents and contained as ANNEXURE NO. 1 to this writ petition.

II. Issue a writ, order or direction in the nature of mandamus commanding the respondents to treat the petitioners duly qualified for appointment as

Assistant Teacher in Government Schools.â??

4. The reliefs sought in Writ Petition No. 1732 of 2014 (S/S) are as follows :

â??I. Issue writ, order or direction in the nature of certiorari quash the condition in para â??4â?? of impugned G.O. dated 27.11.2006 passed by

respondent No. 2 and Annexed in the writ petition as Annexure No.4.

II. Issue writ order or direction in the nature of mandamus directing the respondent to delete the remarks from the mark sheets of the petitioners and

issued them fresh mark sheets.

III. Issue writ order or direction in the nature of mandamus directing the respondent to provide the appointment to the petitioners on the post of

assistant teachers in govt. primary schools according the rules applicable at the relevant time when the petitioners have completed their

correspondence B.T.C. training 2008 in compliance of the court order.â??

4. We take Writ Petition No. 156 of 2010 (S/S) as the leading case.

5. Briefly put, the case of the writ petitioners is as follows :

Petitioners were appointed on different dates as Assistant Teachers in Un-aided Primary Schools / Junior High Schools in different Districts of

Uttarakhand, which were recognized by Board of Basic Education, U.P. The Institutions, in which, the petitioners were working were not receiving

any aid from the Government and they were receiving nominal payment by Management of the Schools. At the time of respective appointment of the

petitioners, they all were untrained Teachers and were not having the B.T.C. Certificate. On 06.09.1994, the Government of undivided State of Uttar

Pradesh, issued a Government Order which provided for two years training to Assistant Teachers, who were untrained and who were working in

recognized educational institutions, subject to the following conditions:

a) Those untrained Teachers who had completed ten years of service as on 01.09.1994 and only two years service is left for retirement, will be

exempted from undergoing training.

b) Those teachers who have passed L.T. or B.Ed. examination will be allowed for 20-20 days training.

c) Rest of the untrained teachers would be imparted two years correspondence

training course and after completing the requisite training would be entitled to receive salary applicable to the trained teachers.

It is stated that the writ petitioners are fully covered by the said Clause (3) of the Government Order dated 06.09.1994. It was pleaded that they had

applied before the Basic Shiksha Adhikari through the Management for sending them for training for the aforesaid two years correspondence

course. The Basic Shiksha Adhikari, it is alleged, after considering the applications of the writ petitioners, found that the applications of the writ

petitioners are in conformity with the Government Order dated 06.09.1994, and forwarded their names to District Institute of Education and Training.

The writ petitioners were registered for two years training. There is a reference to another G.O. dated 21.10.1994, which altered the decision in the

sense that all the untrained teachers, who had completed ten years of service are entitled to get the exemption from possessing training. It is submitted

that Clause (3) of the G.O. dated 21.10.1994 remained intact. Annexure No. 4 is the Circular dated 17.01.1996. Some additional conditions were

engrafted thereunder for undergoing training course of untrained Teachers. Still later, another order

dated 18.03.1996 was issued. Therein, the facility of correspondence course was made available only to two categories, namely: (i) Untrained

teachers of schools run by Board of Basic Education who were granted appointment on compassionate basis as dependent of persons

dying in harness and; (ii) Untrained teachers of privately managed recognized schools, who were appointed under some order of the State

Government or Department after the approval of the Basic Shiksha Adhikari. There is reference to Annexure-6, which is the judgment of the learned

Single Judge. In the said judgment, the learned Single Judge has proceeded to take the view that G.O. dated 18.03.1996 was prospective in nature and

it will not apply to those untrained Teachers who had been sent for training prior 18.03.1996, provided they are teaching in Schools, which are

recognized. Vide G.O. dated 27.03.1998, State of U.P. decided to discontinue the correspondence training. There is a reference to order dated

27.02.2004, which followed the judgment of the Allahabad High Court. On 09.11.2000, it is alleged that there was reorganization and State of

Uttarakhand was formed. It is profitable to refer to paragraph No. 14 of the writ

petition. The same reads as under:

That in the meantime on 9-11-2000 the State of U.P. has been reorganized and a new State of Uttarakhand has been created. Since the G.O.

issued by State of U.P. has no application in the State of Uttarakhand though the controversy is same and is a pre reorganization dispute the request to

extend the benefit as granted by State of U.P. were made by the Association before State Government and the State Government after due

deliberation has been pleased to issue the G.O. dated 27-11-2006 whereby it was provided that the candidates who have been admitted for training

prior to 18-03-1996 and who are serving in a recognized institute be allowed to complete their training and the candidates who has already appeared in

the written examination of first year their result be declared.

In paragraph 15, it is averred that availing the benefit of the said Government Order, the writ petitioners have completed the said training and they are

fully qualified to be appointed as Assistant Teachers in Government Primary Schools. It is there that they have carved out the case that Clause (4) of

G.O. dated 27.11.2006, which is what is impugned in the writ petitions came in the way. Clause (4) of the Government Order dated 27.11.2006 reads

as under :

BU I=KPKJ CHVHLH IZF{KR VH;FFKZ;KSA DKS JKTDH; LSOKVKSA ESA FU;KSFTR UGHA FD;K TK;SXKA D;KSAFD

LACAF/KR LSOKFU;EKOYH ESA BL IZDKJ DK IZKFO/KKU UGHA GSA D`I;K MIJKSDRKUQLKJ VKO;D VXZSRRJ DK;ZOKGH

DJUK LQFUF{FPR DJSAA

Reference is made to the Uttar Pradesh Basic Education Act, 1972. Under the Act of 1972, the Rule making power is available under Section 19 of

the said Act of 1972, the Act being adopted by the State of Uttarakhand by Adaptation and Modification Order, 2002. It is stated that Rules were

made in 1978 by the State of Uttar Pradesh invoking Section 19 of the Act, and it provided for the minimum qualification of the Teachers in

recognized Schools. The qualifications, INTER ALIA, included in it the Basic Teachers Certificate or Certificate of Training. Under the impugned

Clause (4) of the Government Order dated 27.11.2006, persons who were sent for training, in short, in terms of the Orders dated 06.09.1994 and

21.10.1994 are not considered eligible for appointment in government service,

i.e. Assistant Teachers in Government Primary School. The said Clause further elucidates the rationale for providing so. The reason is that under the Rules, such persons holding correspondence B.T.C. certificate are not considered eligible for appointment as Assistant Teacher in Government Primary Schools. Writ Petitioners also made reference to the decision of the Sub-Committee of the Cabinet, which has recommended the deletion of Clause (4) of the G.O. dated 27.11.2006. In the grounds argued, what is alleged is that there is unreasonable classification made in the G.O. dated 27.11.2006 and it is contrary to the 1978 Rules. The 1978 Rules, it is averred in ground â??Aâ?®, do not differentiate between the B.T.C. course and B.T.C. course conducted through correspondence.

6. The learned Single Judge in the impugned judgment refers to impugned Rule 4 of U.P. Recognized Basic Schools (Junior High Schools)

(Recruitment and Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as the â??1978 Rulesâ??. It INTER ALIA provides for the

qualification, as noticed, of the Basic Teacher Training Certificate. The learned Single Judge further noticed that the writ petitioners have obtained

their B.T.C. Course through correspondence, under the G.O. dated 06.09.1994, which cannot have equivalence of regular B.T.C. which is the

qualification prescribed under the Rules. The learned Single Judge understood the purport of the Government Order relied on by the writ petitioners to

be that it only deals with untrained teachers, who were already appointed in unaided Primary Schools but did not possess the B.T.C. course and they

were given salary after putting two years training. The Government Orders dated 06.09.1994 and 13.06.1995 were found to be modified by order

dated 27.03.1998, whereby, a decision was taken to do away with the correspondence BTC Course. It is found that the writ petitioners have not

placed this document on record (Be it noted in this regard that though the order dated 27.03.1998 is not produced in Writ Petition No. 1732 of 2014

(S/S), it has, in fact, been produced in Writ Petition No. 156 of 2010 (S/S). It is found that it is clarified by the letter dated 18.03.1996 that the facility

with correspondence B.T.C. training was admissible only to the untrained teachers appointed on compassionate ground as being dependent of the

deceased. Paragraph 9 of the judgment of the learned Single Judge reads as under :-

9. The petitioners must possess minimum essential educational qualification prescribed under the Rules. The candidate must possess regular BTC certificate. The correspondence course cannot be read into the Rules. The State of U.P. has also done away with the BTC correspondence course vide order dated 27.03.1998. The State of U.P. has taken a decision to impart the training to the teachers who were untrained but they were appointed after approval of District Education Officer. According to Government Order dated 27.11.2006 only those candidates would be considered eligible for appointment who were sent for training on 18.03.1996. There is no illegality in the condition No.4 of the letter dated 27.11.2006. The petitioners cannot be treated as duly qualified for appointment as Assistant Teacher in Government Schools since they lack the minimum basic essential educational qualification laid down under the Rules. The petitioners have concealed letter dated 27.03.1998 issued by Government of U.P. The petitioners cannot choose the facts according to their own convenience. and the writ petition was dismissed.

7. We heard Shri B.D. Upadhyaya, learned Senior Counsel assisted by Mr. Naveen Tiwari, Advocate on behalf of the appellants and also Shri Vikas Pandey, learned Standing Counsel on behalf of the State / respondents.

8. Shri B.D. Upadhyaya, learned Senior Counsel for the appellants would submit that in the light of the Government Orders dated 18.03.1996 and 27.03.1998, which were challenged before the Allahabad High Court, the matter ultimately culminated in the order of the Hon^{ble} Apex Court.

The learned Senior Counsel drew our attention to the order passed by the Hon^{ble} Apex Court, which reads as follows :

Upon hearing counsel the Court made the following.

Order

We find no reason to interfere as the High Court has merely added one condition to the two conditions added by the learned Single Judge of the High

Court. The three conditions to be fulfilled therefore, are (1) the teachers should have been teaching in recognized education institution (2) they should

have been went for training before 18.03.1996 and (3) their names should be found in the list sent by the school at the time of recognition. If the

petitioner complied with these conditions, they will be entitled to the relief as per the decision of the High Court.

The Special Leave Petition is therefore dismissed.â??

He would submit that the writ petitioners fulfilled all the requirements. They were sent for training and they could not complete the training, but

apparently they have completed the training in terms of the G.O. dated 06.09.1994 as well as G.O. dated on 27.11.2006 issued by the State of

Uttarakhand. After they completed the training, they could not be denied the benefit of appointment, based on the fact that they are holders of

correspondence training certificate. He further submits that even in the Rules all that is required is that a person should possess the qualification of

B.T.C. under the Rules of 1978. It is not specified clearly that for appointment as Assistant Teachers, B.T.C. training must be under a regular

programme. In other words, it is not that correspondence courses are prohibited. Once correspondence courses are not prohibited, it cannot be said

that the writ petitioners, who have completed the B.T.C. training on the basis of the order dated 06.09.1994 and as declared by the Honâ??ble Apex

Court, and apparently, in terms of the order dated 27.11.2006 issued by the State of Uttarakhand (permitting persons like the appellants to continue

with the training), cannot be treated as qualified to be appointed in Government Primary Schools.

9. Shri Vikas Pandey, learned Standing Counsel, on the other hand, would point out that it is clear that correspondence course is not treated as

sufficient and it is not recognized by the State of Uttarakhand as the qualification, which will entitle a person to be appointed. Once in the Rules, if it

provides for B.T.C. certificate, it would always denote to regular B.T.C. and non reference to correspondence B.T.C., automatically stands excluded

from the eligible qualification provided under the Rules. The purpose of the order dated 06.09.1994 was only to permit the person, who did possess the

qualification and who were working in recognized Schools to undergo correspondence course and to allow them to put themselves at par with

qualification of regular teacher so as to maintain the quality of education imparted in Private Educational Institutions and to continue them but would

not entitle them to apply for getting appointment in the Government Schools. It is that, which is made the condition in the order dated 27.11.2006.

10. We noticed that going by the statement of facts narrated in the writ petition, that the writ petitioners may not fulfill the qualifications as to age for

being appointed in Government service. The case of the writ petitioners appears to be that they were in service in recognized schools and they were sent for training prior to 18.03.1996. We also had a look at the affidavit filed, which indicates the age of the deponent of the affidavit to be 47 years. In fact, at this stage, the learned Senior Counsel himself would submit that writ petitioners may be age barred to secure any employment in Government Schools on the basis of holding correspondence B.T.C. under G.O. dated 06.09.1994. He presses another development before us. He submits that the institutions, in which the writ petitioners are working, are under the cloud of likelihood of being provincialization and they apprehend that the impugned Clause may stand in the way of their getting absorbed.

11. As far as the judgment of the learned Single is concerned, it may be that, we may not be inclined to agree with the entirety of it. It is to be noted that in the narrative, which we have rendered hereinbefore, we have adverted to the first order dated 06.09.1994. Therein, after exempting teachers, who have rendered 10 years of service and who have two years to retire, those other teachers working in recognized schools, who were not having training were enabled to go for training, provided they were working in recognized schools. By the Government Order dated 27.10.1994, it was further made clear that those who have ten years of service were exempted from going to training. Thereafter, a circular followed and still further the order dated 18.03.1996 was issued. In the order dated 18.03.1996, the former State of U.P. ordered that the facility of going in for B.T.C. training through the correspondence mode was restricted to two categories only. Firstly, those person employees/teachers, who were appointed under the dying in harness scheme. Secondly, the facility was made limited to those persons, who were appointed under Government order and whose appointment was approved by the District Shiksha Adhikari. This order dated 18.03.1996, however, upon challenge being laid against it, the Court (Annexure 5 in the writ petition No. 156 of 2010) came to take the view that it can have only prospective operation. Resultantly, it was ordered that those teachers, who were working in the recognized Schools and who were sent for training prior to 18.03.1996 could continue and complete the training. It is, however, made clear by the learned Judge, as His Lordship then was, that those, who were working in unrecognized schools could not get benefit of the G.O.

dated 06.09.1994. It is sufficient for us to advert to the result of the litigation before the Apex Court which we have already adverted to and extracted.

Three conditions have been mentioned therein for a teacher to enable him/her or avail the benefit of training through correspondence course, namely,

(a) teachers must have been working in the recognized schools; (b) he/she should have been sent for training before 18.03.1996 and finally (c) the

names of the teachers should be found in the list sent by the Schools at the time of its recognition. It is not very clear from the averments in the writ

petition that all these conditions are as such satisfied by the petitioners. Therefore, the learned Single Judge may not have been fully justified in taking

the view that order dated 18.03.1996 was clarified that it is available only in case of persons being appointed as dependent of the deceased. The

substance of the matter is that said Government Order was held to be prospective and it could not affect the rights of persons, who have been sent for

training of B.T.C. earlier to the order dated 18.03.1996. Therefore, the appellants since are persons, who were sent for training of B.T.C. prior to

18.03.1996 and they were working in the recognized schools and their names also found mention in the list, which was sent by the Schools for

recognition, in which they were working, perhaps they would be entitled to the order of the Apex Court, which only modified the order of the High

Court in this regard by addition of the conditions, as mentioned. It is, undoubtedly, true that on 27.03.1998, the State of U.P. itself has discontinued the

practice of the B.T.C. through correspondence Course but the said order possibly could have only prospective operation.

12. As far as the appellants are concerned, we must move further and consider the effect of the State of Uttarakhand being formed; order dated

27.11.2006, being passed and the legislation, which is made in this field and which continues to hold the field. On 27.11.2006, the State of Uttarakhand

apparently heeding the demands by the Association, to which the appellants belong, brought out the order providing that those who fulfill the conditions

in order 06.09.1994 and also order dated 27.10.1994, namely, those who were working in recognized schools and who have been sent for training

before 18.03.1996, were allowed to complete the training. Going by the averments, which we have already referred to, apparently, the appellants

completed their training after the order dated 27.10.2006. Though, it is their claim they have been sent for training initially prior to 18.03.1996 and it is

in the very same G.O. dated 27.10.2006 under which they derived the benefit of completing the training that the impugned Clause (4) was engrafted

namely that after completing the training under G.O. dated 27.10.2006 would not entitle them to enter into public employment. Though number of

grounds relating to the validity of the Clause (4) is seen to be taken as such in the writ petition, arguments which were addressed before us do not

pertain to those grounds. So we are freed from the obligation to consider the availability of those grounds. What is referred to is, of course, the history,

which we already recounted.

13. The purport of the G.O. dated 06.09.1994, going by what Shri Vikas Pandey, learned Standing Counsel would tell us, is that it was intended to

cater the need of those untrained teachers, who were working in unrecognized schools so that they could, while in service, acquire the requisite

qualification of training. It is, in this regard, that apparently order dated 27.11.2006 was also issued. In that sense, it may be true that acting on the

basis of the said order, the writ petitioners have completed the training. But the moot question is whether they have been in a position to establish that

the Clause (4) in the order dated 27.11.2006 is vulnerable to any other grounds available in law. In point of fact, none of those grounds taken in the

writ petitions are pressed before us.

14. What is contended, however, is that under the Rules, which have been framed by the State of Uttarakhand also, it does not contemplate that the

B.T.C. must be obtained after a regular course and not through correspondence course. No doubt, Shri Vikas Pandey, learned Standing Counsel

would contend that having regard to the qualifications fixed, qualification of B.T.C. acquired through correspondence is not recognized. In absence of

reference to correspondence B.T.C., it will lead to its exclusion as essential qualification. Nothing is brought to our notice, which could show that the

correspondence course is recognized as sufficient for the purpose of qualification of B.T.C. Apparently, order dated 06.09.1994 and 27.09.1994 stand

overridden by the order dated 27.03.1998, which of course, we have pointed out may only have prospective operation.

15. We have noticed at the beginning of the judgment that the apprehension of the writ petitioners is primarily harboured with reference to their

possible ouster in the aftermath of the scheme of provincialization of schools, in

which, they are working. In fact, the grounds relating to qualifications by correspondence course being sufficient is not what is actually projected in writ petitions. We would think that though not on the same reasoning as adopted by the learned Single Judge, but on the ground that no basis is laid for quashing the Clause (4) of G.O. dated 27.11.2006 in the impugned order, we would affirm the judgment of the learned Single Judge. At the same time, we would think that interest of justice would require that we make it clear that the impugned Clause (4) of G.O. dated 27.11.2006 is possibly perhaps susceptible to the interpretation that it may not debar Teachers already employed in recognized schools and who are being absorbed. We would think that we need not pronounce on the said issue and we can leave it open to the appellants to raise this issue, in case, if need arises.

16. We cannot entirely be oblivious to the fact that the actual purpose of the Government Order dated 06.09.1994 was to equip the teachers with the qualifications relating to training, who are working in the recognized schools (It is, no doubt, true that the learned Senior Counsel would submit before us that in the State of U.P. such teachers have also been given opportunity of appointment in Government Schools), but, it is with the intention of, apparently, equipping such teachers, who are working in the recognized schools, that the State of Uttarakhand has been persuaded to bring out the Government Order dated 27.11.2006.

17. In such circumstances, we are of the view that the Appeals are to be dismissed. We do so. No order as to costs.