
(2012) 01 AHC CK 0589
In the Allahabad High Court
Case No : Writ Petition No. 22943 of 1996

Bhagirath Arya and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 09-01-2012

Acts Referred:

Uttar Pradesh Basic Education Act, 1972 — Section 19(1)
Uttar Pradesh Recognized Basic School (Recruitment and Conditions of Service of Teachers and Other Conditions) Rules, 1975 — Rule 9

Citation : (2012) 2 ADJ 3

Hon'ble Judges : Sunita Agrawal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Mrs. Sunita Agrawal, J.—Heard Sri Anirudha Sharma, Advocate, holding brief for Sri H.N. Sharma, learned counsel for the petitioners and Sri A.K. Upadhyaya and Sri K.K. Chand, learned Standing Counsel for the respondent Nos. 1 to 6.

2. By means of the present writ petition the petitioners, who are 79 in number, seek to challenge the circular dated 17.1.1996 issued by the Director of Education (Basic) U.P. Lucknow and Government Order dated 18/23.3.1996 annexed as Annexures 12 and 13 to the writ petition; respectively.

3. The case of the petitioners is that they were appointed as Assistant Teachers (untrained) in different recognized basic schools of District Rampur at fixed pay scale on different dates mentioned in their letters of appointment. The Institutions in which the petitioners were appointed are recognized basic schools, however, they were not receiving any aid from the U.P. Basic Education Board. The service condition of the petitioners are governed by U.P. Basic Education (Teachers) Service Rules, 1981 framed in exercise of powers conferred by Section 19(1) of the U.P. Basic Education Act, 1972.

4. Further case of the petitioners is that there was no restriction on the appointment of untrained teachers in the recognized basic schools wherever trained teachers are not available. The State Government, vide Government Order dated 6.9.1994, introduced a policy for providing training to these untrained teachers of junior and higher basic schools. Under clause 1(3) of the Government Order dated 6.9.1994, it was provided that all the untrained teachers working in the Institutions under the control of U.P. Basic Education Board would be imparted two years training through correspondence course and after completion of the said training, they would have to undergo a written examination. After being successful in the said examination, they would be provided facilities of trained teachers. Another Government Order dated 21.10.1994 was issued whereby clause 1(1) of the earlier Government Order dated 6.9.1994 was amended. However, insofar as clauses (2) and (3) of the earlier Government Order dated 6.9.1994, they remained the same. Meaning thereby that the petitioners have pleaded that by the two Government Orders dated 6.9.1994 and 21.10.1994, the State Government provided facility of training through correspondence course to the untrained teachers working in all the Institutions which are being run under the control of the U.P. Basic Education Board.

5. The petitioners further submitted that on 1.12.1995 they were admitted for practical training alongwith other candidates. First phase of ten days training from 1.12.1995 to 10.12.1995 and the second phase of ten days training from 4.9.1996 to 13.1.1996 were completed by them. They are relying upon a certificate issued by the Principal of District Education and Training Institution, Rampur which has been annexed as Annexure 11 to the writ petition. After completion of the practical training, further training was required to be imparted by correspondence course and thereafter a written examination was to be held in the month of April, 1996.

6. After having attended the practical training course, while the petitioners were undergoing the correspondence course, they were informed on 10.4.1996 about circular dated 17.1.1996 issued by the Director of Education (Basic) U.P. to the effect that they cannot be allowed to further participate in the training through correspondence course and the said facility was only meant for untrained teachers appointed under the Dying-in-Harness Rules and Urdu Teachers in the schools run by the U.P. Basic Education Board and not for other untrained teachers appointed in unaided recognized schools.

7. Thereafter a Government Order dated 18/23.3.1996 was issued whereby amendment has been made in clause 1(3) of the Government Order dated 6.9.1994 and wherein a provision has been made that the B.T.C. Training Course through correspondence were available only to those untrained teachers who were appointed in recognized non-Governmental Institutions and further whose appointment has been made under orders of the State Government or the Department with approval of the Basic Education Officer. The petitioners further

submitted that the State Government could not have deprived them from training and could not have reviewed the earlier Government Order dated 6.9.1994 in such an arbitrary manner. More so, when they have completed their first and second phases of practical training and were to undergo the training through correspondence course.

8. The relief sought by the petitioners in the writ petition are that they should be allowed to undergo B.T.C. Correspondence Training Course at District Institute of Education and Training, Rampur and permit them to appear in the examination and their results may be declared accordingly.

9. The writ petition was heard on 25.7.1996 and was directed to be connected alongwith Writ Petition No. 15052 of 1996. In the meantime, an interim protection to the following effect was granted;

In the meantime petitioners may be permitted to appear in the examination provided they are already pursuing the said course but the result of the examination shall, however, be subject to the result of the writ petition.

10. When the matter came up for hearing on 15.12.2011, the Court during the course of hearing directed the counsel for the petitioners and respondents to inquire about the status of the Writ Petition No. 15052 of 1996 and it was then transpired that the said writ petition has been dismissed as infructuous on 4.2.2011. The order dated 4.2.2011 passed by this Court is being quoted below :

Nobody is present to press the writ petition even in the revised reading of the cause list. It appears that the writ petition has become infructuous by passage of time.

Accordingly, the writ petition is dismissed as infructuous.

Interim order, if any stands discharged.

11. However, in my opinion, in view of the interim order dated 25.7.1996 whereby the petitioners were provisionally permitted to pursue the correspondence course and the declaration of their result of examination was subjected to result of the writ petition, the present writ petition survives and hearing is, therefore, proceeded.

12. The learned counsel for the petitioners and also the learned Standing Counsel appearing on behalf of the respondents brought forward various Judgments of this Court which have already dealt with the issue relating to the circular dated 17.1.1996 and the Government Order dated 18/23.3.1996 which are under challenge in the present petition.

13. Learned counsel for the petitioners placed reliance on a judgment dated 29.12.1996 passed by this Court in Writ Petition No. 10161 of 1996 (Rekha Devi and others v. State of U.P. and others, 1997(1) ESC 255) wherein it has been held that those untrained teachers of recognized Institutions who were sent for B.T.C. Training prior to 18.3.1996 may complete their training and appear in the

examination but no untrained teachers, who were sent for B.T.C. training on or after 18.3.1996, will be allowed to complete their training unless they come within the purview of the Government Order dated 18.3.1996. It was further clarified that untrained teachers, who were teaching in unrecognized educational Institutions, will not get the benefit of the Government Order dated 6.9.1994. With these observations, the writ petition was finally disposed of.

14. Learned counsel for the petitioners further placed reliance upon a Judgment passed by the Hon"ble Bhagwan Deen, J. in Writ Petition No. 7260 of 1996 "Alp Narayan v. State of U.P." dated 6.3.2000 wherein the learned Single Judge relied upon the Judgment in the case of Rekha Devi (supra) and granted the same relief to the petitioners in the aforesaid writ petition. The learned counsel for the petitioners submitted that petitioners are entitled for the same relief as was granted by this Court earlier.

15. The learned Standing Counsel brought forth subsequent orders of this Court, Judgment dated 14.8.2002 passed by this Court in Writ Petition No. 18463 of 2000 "Shailesh Kumar Dwivedi and others v. State of U.P. and others" and also the Judgment of Division Bench in Special Appeal No. 10 of 2007 "State of U.P. and others v. Shailesh Kumar Dwivedi and others" arising out of the said writ petition.

16. The entire record of Special Appeal No. 10 of 2007 was called for.

17. A perusal of the these two Judgments of learned Single Judge and Division indicates that the controversy with regard to the circular dated 17.1.1996 and the Government Order dated 18/23.3.1996 has been set at rest. It is further necessary to bring on record few facts of the Writ Petition No. 18463 of 2000, Shailesh Kumar Dwivedi and others (supra).

18. The Writ Petition No. 18463 of 2000 was filed by petitioners, who were 161 in number, seeking the following reliefs :

(a) a writ, order or direction in the nature of certiorari quashing the order dated 7.1.2000 passed by the Registrar, Departmental Examination, U.P., Allahabad (Annexure 10 to this writ petition).

(b) a writ, order or direction of a suitable nature "commanding the respondents to forthwith declare the result of the examination of the first year course of the two years correspondence B.T.C. Training Course in which the petitioners had already appeared in October, 1996 within a period to be specified by this Hon"ble Court.

19. The learned Single Judge taking into consideration of the directions of this Court in earlier writ petitions filed by Sri Shailesh Kumar Dwivedi and others (supra) passed the following order :

Having heard the learned counsel for the parties, I find that in the earlier writ petitions filed by the petitioners this Court had given the following directions :

In my opinion, the Director of Education is subordinate to the Secretary, Education, U.P. Government, hence, he cannot override the Government order dated 6.9.1994 Annexure-2 to the writ petition issued by the Secretary, Education. The Secretary to the Government is a higher authority than the Director and hence the Director cannot supersede the order of the Secretary, Education, U.P. Government. Annexure CA-1 to the counter-affidavit is a letter of the Secretary dated 18.3.1996 by which the order dated 6.9.1994 has been modified. However, in my opinion, the order dated 18.3.1996 is prospective in nature and not retrospective. Hence, the order dated 18.3.1996 cannot be applied to untrained teachers, who had been sent for training prior to the said order dated 18.3.96. Hence, these untrained teachers of recognized institutions, who were sent for training for B.T.C. prior to 18.3.1996 may complete their training and given their examination, but no untrained teachers, who are sent for B.T.C. training on and after 18.3.1996 will be allowed to complete the training unless they come within the purview of the Government Order dated 18.3.1996. Sri K.S. Shukla submitted that those teachers who had been sent for B.T.C. Training prior to 18.3.1996 but who are not entitled to have been sent should also not be allowed to complete their training. In my opinion, if any untrained teacher was teaching in a recognized educational institution and he was sent for training before 18.3.96 then he is entitled to the benefit of the Government Order dated 6.9.94. Hence, I further clarify that untrained teachers who were teaching in unrecognized educational institutions will not get the benefit of the Government Order dated 6.9.1994.

With these observations, the writ petition is finally disposed of.

In view of the aforesaid specific directions given by this Court, which is not being disputed by the learned Standing Counsel, the case of the petitioners has to be considered only on the following two grounds:

(I) Whether they are teaching in a recognized education institution or not?

(II) Whether they have been sent for training prior to 18.3.1996?

The other Government Orders cannot be pressed into service for denying the training of the petitioners.

The Registrar, Departmental Examinations had declared all the petitioners to be ineligible for training on wholly irrelevant considerations without adverting to the earlier orders passed by this Court in this writ petitions. Thus, the impugned order cannot be sustained.

In view of the foregoing discussions, the writ petition succeeds and is allowed. The order dated 7.1.2000 passed by the Registrar, Departmental Examination, U.P. at Allahabad, in so far as it relates to the petitioners stands quashed. The Registrar, Departmental Examination, U.P. at Allahabad, respondent No. 3, is directed to consider the case of the petitioners strictly in the light of the observations made above and if he finds that all the petitioners or some of them

fulfil the above two requirements declare their results and if they have passed the first year training course, they may be permitted to attend the second year course. The whole exercise shall be done by the respondent No. 3 within one month from the date a certified copy of this order is filed before him.

20. The respondent-State of U.P. filed Special Appeal No. 10 of 2007 challenging the Judgment and order dated 14.8.2002 passed in Writ Petition No. 18463 of 2000 on the ground that no untrained person shall be appointed as teacher as condition for appointment has been given in U.P. Recognized Basic School (Recruitment and Conditions of Service of Teachers and other Conditions) Rules 1975. According to Rule 9 of said Rules, without prior approval of the District Basic Education Officer no teacher can be appointed. Further the appointment requires advertisement of vacancies in two newspapers. The said procedure has not been followed by the Committee while making appointments of the petitioners. In fact stress was laid upon the validity of the appointment of the petitioners and it was asserted that none of the Government Orders either of the year 1994 or that of 1996 made recommendations for appointment of the persons, who were not validly appointed.

21. The intra Court appeal (supra) was heard and disposed of, vide Judgment and order dated 17.12.2008 passed by the Division Bench whereby the Judgment of the learned Single Judge dated 14.8.2000 was modified to some extent. The Division Bench has further placed reliance upon another Division Bench Judgment of this Court in the case, of "Kali Charan Singh Arya and another v. The Registrar, Departmental Examinations, U.P. Allahabad" in Special Appeal No. 731 of 2002. The contention raised by the appellants that besides two conditions laid down by the learned Single Judge in its Judgment and order dated 14.10.2000 the case of the petitioners-respondents may also be examined in the light of directions issued by the Division Bench in the, case of Kali Charan Singh Arya and another (supra). The appeal was disposed of with the following directions:

In view thereof, this appeal is disposed of directing the competent authority to consider the case of the petitioners-respondents in the light of two conditions provided in the Judgment of the Hon"ble Single Judge, impugned in this appeal, as well as in the light of the conditions provided by the Division Bench in its Judgment in the case of Kali Charan Singh Arya (supra). Further, if the petitioners have been appointed after the enforcement of 1975 Rules of 1970 Rules in Junior Primary School or Junior High School, as the case may be, in violation of the provisions thereof and without possessing training qualification, such petitioners cannot be allowed to undergo training pursuant to the Government Order dated 6.9.1994. Thus, only those petitioners-respondents, who fulfill all the aforesaid requirement and directions, shall be allowed to compete their training and their result shall also be declared.

We accordingly modify the Judgment of the Hon"ble Single Judge to the aforesaid extent and dispose of the special appeal as well as the writ petition

accordingly.

22. It may be pointed out that against the order dated 17.12.2008, a recall application was also filed which was rejected by the Division Bench of this Court by detailed Judgment dated 4.9.2009. It further appears that against the Judgment and order dated 17.12.2008, a SLP No. 2061 of 2009 was filed which has also been dismissed by the Apex Court on 17.12.2009. A reference of the aforesaid fact has come up in the Judgment of this Court in Writ Petition No. 4137 of 2010 Ayaz Ahmad and others v. State of U.P. and others, decided on 29.1.2010. This Court relied upon the law laid down in the case of Shailesh Kumar Dwivedi (*supra*).

23. The case of Ayaz Ahmad and others (*supra*) relates to the petitioners who claimed that their appointment in the primary school was governed by U.P. Basic Education (Service) Rules, 1981 (hereinafter referred to as the 1981 Rules). The petitioners, in the aforesaid writ petitions were also untrained teachers. The Court while dismissing the writ petition has held that the law laid down in Special Appeal No. 10 of 2007 though relates to 1975 Rules and 1978 Rules yet the expositions of law is fully applicable to the case of untrained teachers whose appointment is governed by 1981 Rules.

24. Having heard the learned counsel for the parties and perused the Division Bench Judgments of this Court I find that it has been held that the provisions of providing training subsequently shall apply only to those teachers who were appointed as untrained teachers and the teachers who were appointed prior to enforcement of 1975 Rules and 1978 Rules in Junior Primary School or Junior High School, as the case may be. But those teachers who were appointed after the enforcement of the Recruitment Rules in violation thereof, having not possessed training qualification, they could not be sent for training as their appointment itself was illegal. Said teachers cannot be allowed to get the benefit of the Government Order dated 6.9.1994.

25. In the present case, the petitioners though have stated in paragraph 2 of the writ petition that they were appointed in different recognized Basic Schools of District Rampur on different dates mentioned in the letters of appointments and certificates issued to them, yet no copy of the appointment letter has been annexed by them. Thus the date of appointments of the petitioners and the manner in which they were appointed is not on record.

26. In view of the above discussions, I am of the considered opinion that the dispute can be decided in view of the settled law laid down by this Court. The case of the petitioners has to be considered on the following grounds:

(1) Whether the appointments of the petitioners have been made after the enforcement of 1975 Rules, 1978 Rules and 1981 Rules, as the case may be, and if so, as to whether the same have been made in accordance with the provisions of the said Rules and whether they possess training qualification;

(2) Whether they are teaching in a recognized educational institution or not;

(3) Whether they were sent for training prior to 18.3.1996.

27. Thus only those petitioners who fulfil all the aforesaid requirements and directions shall be allowed benefit of the Government Order dated 6.9.1994 to complete their training and further to undertake written examinations for B.T.C. Training Course, if not allowed on account of non-completion of training course.

28. The petitioners who have undertaken examination in pursuance to the interim order dated 25.9.1996, their results shall also be declared.

29. The competent authority is directed to examine the case of the petitioners strictly in the light of the observations and directions made above and the whole exercise shall be completed within a period of one month from the date a certified copy of this order is produced before him.

30. With the aforesaid observations/directions, the writ petition is allowed.