

(2011) 11 AHC CK 0208

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 60185 of 2011

Chandra Prabha Singh and Others

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 11-11-2011

Acts Referred:

Right of Children to Free and Compulsory Education Act, 2009 — Section 2, 23, 23(1)
Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 — Rule 8

Citation : (2011) 10 ADJ 227 : (2012) 2 AWC 1437

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. The petitioners, who have passed the Intermediate Examination or who have obtained the B.T.C. Training from outside the State of Uttar Pradesh, have filed this petition for quashing the minimum eligibility qualifications for appointment of teachers in Class I to V stipulated in the advertisement dated 22nd September, 2011 issued by the Board of High School and Intermediate Education, Allahabad (hereinafter referred to as the "Intermediate Education Board") and for issuance of a fresh advertisement prescribing the same minimum eligibility qualifications as have been laid down by the National Council for Teacher Education (hereinafter referred to as the "NCTE") in its notification dated 23rd August, 2010.

2. It is stated that in exercise of the powers conferred by Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the "Act") and in pursuance of the Notification dated 31st March, 2010 issued by the Government of India, the NCTE issued the Notification dated 23rd August, 2010 laying down the minimum qualifications for a person to be eligible for appointment as a teacher in Classes I to VIII in a School referred to in Section 2(n) of the Act.

3. It is stated that though the minimum qualifications have been prescribed by

the NCTE in its Notification dated 23rd August, 2010 for Classes I to V but the Intermediate Education Board has prescribed higher qualifications for appointment of teachers in Classes I to V.

4. It is the submission of the learned counsel for the petitioners that the Intermediate Education Board was not competent to modify the eligibility requirement prescribed by the NCTE for appointment of teachers to Classes I to V and it had necessarily to abide by the conditions prescribed by the NCTE in its Notification dated 23rd August, 2010 and if the qualifications prescribed by the NCTE are adhered to, then the petitioners will be eligible to appear at the forthcoming UP-TET scheduled to be held on 13th November, 2011.

5. Sri K.S. Kushwaha, learned Standing Counsel appearing for the State as also the Intermediate Education Board has, however, submitted that the NCTE in its Notification dated 23rd August, 2010 has only prescribed the minimum qualification for appointment of the teachers and, therefore, it is open to the State to prescribe higher qualifications. In this connection he has placed reliance upon the decisions of the Supreme Court in *Dr Preeti Srivastava and Another Vs. State of M.P. and Others*, and *State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others*, It is also his submission that these qualifications have been prescribed by the Intermediate Education Board keeping in mind the essential qualifications prescribed for appointment of Assistant Teachers contained in Rule 8 of the Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as the "1981 Rules").

6. I have considered the submissions advanced by the learned counsel for the parties.

7. In order to appreciate the controversy involved in these petitions, it will be necessary to refer to various provisions of the Act and the Notifications.

8. Section 23(1) of the Act deals with the qualification for appointment and terms and conditions of service of teachers and is as follows:-

23. Qualification for appointment and terms and conditions of service of teachers.--(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

9. Elementary Education has been defined u/s 2(f) of the Act while a School has been defined u/s 2(n) of the Act and the definitions are as follows:

2(f). "elementary education" means the education from first class to eight class;...

(n) "school" means any recognised school imparting elementary education and includes-

(i) a school established owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;

10. The Central Government, by means of the Notification dated 31st March, 2010 which was published in the Official Gazette dated 5th April, 2010, has authorised the NCTE as the "academic authority" to prescribe the minimum qualifications which notification is as follows:

NOTIFICATION

New Delhi, the 31st March, 2010

S.O. 750(E).--In exercise of the powers conferred by sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009, the Central Government hereby authorises the National Council for Teacher Education as the academic authority to lay down the minimum qualifications for a person to be eligible for appointment as a teacher.

11. The NCTE, accordingly, issued the Notification dated 23rd August, 2010 which was published in the Gazette of India dated 25th August, 2010. The said Notification lays down the minimum qualification for a person to be eligible for appointment as a teacher in Classes I to VIII in a school referred to in Section 2(n) of the Act with effect from the date of the notification. However, another Notification dated 29th July, 2011 was published in the Gazette of India dated 2nd August, 2011. This Notification made certain amendments to the Notification dated 23rd August, 2010 published in the Gazette of India dated 25th August, 2010. The minimum qualifications prescribed in the Notification after the amendment for a person to be considered eligible for appointment as a teacher are as follows:

1. Minimum Qualifications. (i) Classes I-V (a) Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Elementary Education (by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor of Elementary Education (B.El. Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education)

OR

Graduation and two year Diploma in Elementary Education (by whatever name known)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

12. The qualifications prescribed by the Intermediate Education Board in its advertisement for Classes I to V are as follows:

1. Graduation and two year BTC/CT(Nursery)/NTT in elementary education from an institution affiliated to the State Government and approved by NCTE.

OR

Graduation and Special BTC Training conducted by the State of U.P. approved by the NCTE.

OR

A person with Graduation with at least 50% marks and B.Ed. qualification or with at least 45% marks and 1-year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard shall also be eligible for appointment for Class I to V upto 1st January, 2012, subject to completion of an NCTE recognised 6-month Special Programme in Elementary Education after appointment.

OR

Graduation and Muallim-e-Urdu Degree holder before 11.8.97 (for Urdu Teacher)

OR

Graduation and Diploma in Teaching Degree holders from Aligarh Muslim University (for Urdu teacher)

13. It is, therefore, clear that the persons who have passed Intermediate or its equivalent examination or who have obtained the B.T.C. Training from outside the State of Uttar Pradesh are not eligible to be appointed as teachers.

14. The question that arises for consideration is whether it was open to the Intermediate Education Board to prescribe higher qualifications than the minimum qualifications prescribed by the NCTE.

15. It needs to be noticed that the NCTE has only prescribed the minimum qualifications. The Intermediate Education Board, in its wisdom, could, therefore,

prescribe qualifications higher than the qualifications prescribed by the NCTE but certainly could not have prescribed lower qualifications. Such a controversy has been decided by the Supreme Court in *State of Tamil Nadu & Anr. (supra)*, following its earlier decision in *Dr. Preeti Srivastava (supra)* and the observations are:

... The appellant in the present case prescribed the qualification of having secured certain percentage of marks in the related subjects which is higher than the minimum in the qualifying examination in order to be eligible for admission. If higher minimum is prescribed by the State Government than what had been prescribed by the AICTE, can it be said that it is in any manner adverse to the standards fixed by the AICTE or reduces the standards fixed by it? In our opinion, it does not. On the other hand, if we proceed on the basis that the norms fixed by the AICTE would allow admission only on the basis of the marks obtained in the qualifying examination the additional test made applicable is the common entrance test by the State Government. If we proceed to take the standard fixed by the AICTE to be the common entrance test then the prescription made by the State Government of having obtained certain marks higher than the minimum in the qualifying examination in order to be eligible to participate in the common entrance test is in addition to the common entrance test. In either event, the streams proposed by the AICTE are not belittled in any manner. The manner in which the High Court has proceeded is that what has been prescribed by the AICTE is inexorable and that that minimum alone should be taken into consideration and no other standard could be fixed even the higher as stated by this Court in *Dr. Preeti Srivastava's* case. It is no doubt true as noticed by this Court in *Adhiyaman's* case that there may be situations when a large number of seats may fall vacant on account of the higher standards fixed. The standards fixed should always be realistic which are attainable and are within the reach of the candidates. It cannot be said that the prescriptions by the State Government in addition to those of AICTE in the present case are such which are not attainable or which are not within the reach of the candidates who seek admission for engineering colleges. It is not very high percentage of marks that has been prescribed as minimum of 60% downwards, but definitely higher than the mere pass marks. Excellence in higher education is always insisted upon by series of decisions of this Court including *Dr. Preeti Srivastava's* case. If higher minimum marks have been prescribed, it would certainly add to the excellence in the matter of admission of the students in higher education.

Arguments advanced on behalf of the respondents is that the purpose of fixing norms by the AICTE is to ensure uniformity with extended access of educational opportunity and such norms should not be tinkered with by the State in any manner. We are afraid, this argument ignores the view taken by this Court in several decisions including *Dr. Preeti Srivastava's* case that the State can always fix a further qualification or additional qualification to what has been prescribed by the AICTE and that proposition is indisputable. The mere fact that there are vacancies in the colleges would not be a matter, which would go into the question

of fixing the standard of education. Therefore, it is difficult to subscribe to the view that once they are qualified under the criteria fixed by the AICTE they should be admitted even if they fall short of the criteria prescribed by the State...

(emphasis supplied)

16. Thus, the Intermediate Education Board could have prescribed higher qualifications than the minimum qualifications prescribed by the NCTE in its Notification dated 23rd August, 2010.

17. It is also seen that the Intermediate Education Board has, while prescribing the qualifications, kept in mind the 1981 Rules.

18. The next issue that arises for consideration is whether the Courts would be justified in interfering in such a decision taken by the academic body.

19. The scope of interference of the Court in such matters is very limited. In this connection, reference needs to be made to the decision of the Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, in which the Supreme Court examined the scope of interference by the Courts and observed :

It would be wholly wrong for the court to substitute its own opinion for that of the legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the Statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the Statute.

...

...

The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in

effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.

(emphasis supplied)

20. The aforesaid decision of the Supreme Court in Paritosh Bhupesh Kurmarsheth (supra) was followed by the Supreme Court in Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission, Patna & Ors., JT 2004 (6) SC 380 and it was observed :-

...There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned single judge had clearly erred in having the answer-book of the appellant re-evaluated.

21. In Ekta Shakti Foundation Vs. Govt. of NCT of Delhi, AIR 2006 SCW 3601 the Supreme Court also observed :-

While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See Asif Hameed and others Vs. State of Jammu and Kashmir and Others, M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others, The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

The Court should constantly remind itself of what the Supreme Court of the United States said in *Metropolis Theatre Company v. City of Chicago* (1912) 57 L Ed 730 . "The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review.(See: *State of Orissa and Others Vs. Gopinath Dash and Others*,

(emphasis supplied)

22. In *State of H.P. and Others Vs. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh*, the Supreme Court has also observed:

...Inasmuch as ultimately it is the responsibility of the State to provide good education, training and employment, it is best suited to frame a policy or either modify/alter a decision depending on the circumstance based on relevant and acceptable materials. The courts do not substitute their views in the decision of the State Government with regard to policy matters. In fact, the court must refuse to sit as appellate authority or super legislature to weigh the wisdom of legislation or policy decision of the Government unless it runs counter to the mandate of the Constitution.

23. What, therefore, transpires from the aforesaid decisions of the Supreme Court is that the Court should not substitute its own opinion for that of the body which is entrusted with the work to find out as to what principle or policy would best serve the objects and purposes of the examination and nor should the Courts sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the academic body. It is exclusively within the domain of the academic body to determine, as a matter of policy, what measures should be incorporated for the efficient holding of the examination.

24. In view of the aforesaid decisions of the Supreme Court, it is not possible to interfere with the policy decision taken by the Intermediate Education Board in prescribing the qualifications for appointment of teachers in Class I to V.

25. Learned counsel for the petitioners has not raised any submission with regard to the obtaining of the B.T.C. certificate from outside the State of U.P. and, therefore, it is not necessary to deal with this issue.

26. The writ petition is, accordingly, dismissed.