
(2007) 10 AHC CK 0010
In the Allahabad High Court

Gyanendra Kumar Sharma and Others	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 03-10-2007

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 2008 All 77 : (2008) 1 AWC 292

Hon'ble Judges : H.L. Gokhale, C.J.;Anjani Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

H.L. Gokhale, C.J.—Heard Mr. Shashi Nandan with Abhishek Srivastava and Mr. M.D. Misra in support of these appeals. Mr. Abhinav Upadhyay, Mr. K.S. Kushwaha and Mr. G.C. Upadhyay, learned Standing Counsel appear for the State Government. Mr. Ajit Singh appears for the U.P. Rajarshi Tandon Open University. Indira Gandhi National Open University has been sewed.

2. Both these appeals raise an important question with respect to the interpretation of State Government Order dated 10.7.2007 as to whether thereunder the students who have taken the B.Ed. degrees by distant education from these open Universities (as against the face to face method) are eligible to be considered for the Special Basi Training Course, 2007 (Special R.T.C.), which is being conducted for enhancing the strength of the Primary Teachers in the State of U.P.

3. The appellants/petitioners are students of the above two Open Universities and have taken the B.Ed, degrees by distant education. Through their writ petitions, they sought a declaration that B.Ed. graduates like them are eligible for the said course under the Government Order dated 10.7.2007 and should be accorded consideration for admission to the Special B.T.C. Course, 2007. Their petitions have been dismissed by a Single Judge. Hence these appeals.

4. So far as this Government Order dated 10.7.2007 is concerned, it is one,

which contains a direction to the State Council for Education Research and Training. Clause 3(2) thereof (as translated from Hindi to English) provides that for the purpose of being selected to the Special B.T.C. Course, 2007, the following conditions will have to be fulfilled.

2. Only those students will be eligible for selection to the Special B.T.C. Course, 2007 who have the minimum educational qualification of graduation and they should also have the B.Ed, degree from the Recognized Colleges/Postgraduate Colleges/Training Colleges run by the State Government/Central Government which are recognized by the National Council for Teacher Education. The candidates must be "recognized institutional B.Ed. students". (The words used in Hindi are "Anumanya Sansthaagat B.Ed. Uttirna Abhyarthi")

5. The petition was heard by a learned Single Judge. It was contended on behalf of the State that the phrase "Anumanya Sansthaagat B.Ed. Uttirna Abhyarthi" implies the students who have passed their B.Ed. examinations from recognized institutions as regular students. The phrase was interpreted to mean "regular students passing from recognized institutions". The emphasis was on the method of the course undertaken, namely, that they should be face-to-face students. It was canvassed that they should be the students who have taken face-to-face training and not by distant education.

6. There is no dispute that the petitioners are the students who have taken their B.Ed, degree from the Universities, which are conducting the distant education.

7. The learned Single Judge compared these two courses and he noted that whereas the face-to-face B.Ed. students have to put in 200 hours in a year, those by distant education have to put in 300 hours in two years. Whereas those who are doing regular B.Ed. course are not employed, those taking distant education are normally employed. The regular B.Ed. course is full time training course whereas other is correspondence course. The regular B.Ed. course involves face-to-face training course, whereas the distant education is through print, non-print (multi media, audio-video electronics) and self-learning materials, For admission to B.Ed. by regular method, one who have 50% marks in Bachelor degree, whereas there is no such cut off marks for the correspondence course (or the distant education method).

8. The learned Single Judge took the view that it was open for the State Government to have such additional requirements. He referred to two judgments of the Apex Court in this behalf, i.e., State of T.N. and Another Vs. Adhiyaman Educational and Research Institute and Others, and State of Tamil Nadu and Another Vs. S.V. Bratheep (Minor) and Others, and emphasized the dicta in the later. The learned Single Judge, therefore, took the view that the students who have taken their B.Ed course from the correspondence course are not eligible and therefore dismissed the writ petitions. Being aggrieved by this judgment and order these appeals have been filed. Since the matter is of some urgent nature. they are heard finally at the admission stage.

9. A supplementary affidavit has been filed on behalf of the petitioners-appellants. We have heard learned Counsel for all the parties.

10. Before we proceed to examine the rival submissions it is to be noted that the Special B.T.C. course which the State Government is initiating was approved by the N.C.T.E. The State Government wrote to the N.C.T.E. vide its letter dated 22nd June, 2006 and in that letter it was pointed out that in the State of U.P., some 75,163 primary teachers' posts are vacant. Some 10,000 retirements take place every year and hence minimum 60,000 teachers are required for fulfilling the objectives of "Sarva Shiksha Abhiyan".

11. It was further pointed out that now in the State, there are some 70 District Institutes of Education and Training institutes, from where only 9,999 B.T.C. trained teachers become available per year. It is on this background that the State Government laid down the requirements. In Clause-A of this letter, it was stated that B.Ed./L.T students and additionally those students who have done their graduation and have B.P.Ed, C.P.Ed and D.P.Ed degrees (i.e. degrees in Physical Education) will also be eligible for this Special B.T.C. Course 2007. provided they have obtained their degrees/certificates/education from institution" which are run in the State and which are recognized by the State Government and such persons concerned must be institutional candidates (Sansthaगत अभ्यर्थी).

12. The N.C.T.E. in its letter of approval dated 27th June. 2007, recorded that as per proposal submitted by the Government, it has been informed that admission will be granted in this special B.E.C. course of six months duration only to those candidates who are already B.E.d.

13. As far as the State Government is concerned, it came out with an advertisement thereafter and in that advertisement it laid down that as far as educational qualification is concerned, the candidates must be graduates from the Universities established in India by law and recognized by the University Grants Commission and they must be institutional candidates who have done their B.Ed, course from an institution recognized by the N.C.T.E.

14. It is material to note that contrary to its original proposal the Government advertisement initially confined the course to B.Ed. students only. It has subsequently been extended to those who have their B.P.Ed. C.P.Ed. and D.P.Ed. certificates in view of the orders of the Court in another writ petition.

15. In these circumstances, the counsel for the appellants have placed before us two letters forwarded by the N.C.T.E to the Indira Gandhi National Open University as well as to the U.P. Rajarshi Tandon Open University. One of them is a letter dated 9th August, 2007 addressed to the Principal Secretary Basic Education), a copy whereof has been endorsed to Prof V.N. Rajasekharan Pillai, Vice-Chancellor, IGNOU. In paragraph 3 of this letter it is stated on behalf of the N.C.T.E. as follows:

You may kindly recall that while giving approval to Govt. of U.P. for conduct of Special BTC we have allowed all B.Eds to be eligible for the above, course as requested by Govt. of U.P. No difference was made regarding B.Ed. (Face-to-face) and B.Ed. (Distance Mode). As such the degree awarded by IGNOU, a Central University and institution/university recognized by the NCTF cannot be treated as inferior to other B.Eds.

16. On this background, learned Counsel for the appellant submitted that there is no distinction between the students who have done their B.Ed. either by face-to-face or by distance education. The purpose of the State Government is to have more teachers considering the fact that there are some lacs of students who are not going to Primary Schools. The teachers are not available. Those who have done their B.Ed. or those who have obtained their training in Physical Education are qualified to teach otherwise to the High School students or are supposed to impart Physical Training. Even such teachers are being drafted into Primary Education because we need larger number of Primary Teachers for the objectives of "Sarva Shiksha Abhiyan". They have to be given the special raining for primary education and, therefore, this six months" training course has been started. It is submitted that if those who have done their Physical Training course are to be permitted to take this course, there is no reason why those who have done their B.Ed. by distant education should be excluded. Besides they are otherwise eligible for one year's B.T.C course.

17. That apart, it is submitted that the term "Sansthatagat Abhyarthi" can only be read as meaning "institutional candidates" and it does not indicate any preference for any method of training. The advertisement given by the State Government and the Government Order has to be read in the context in which it has been given and if it is so read, the term "Sansthatagat Abhyarthi" will have to be read to mean "institutional candidates" only and noting else it is submitted that the learned Single Judge has erred in giving a narrow interpretation to the term.

18. As against this submission of the appellant, it is submitted by Mr. Abhinav Upadhyay, learned Standing Counsel for the State that it is for the body or the organization, which is employing the personnel to decide as to what should be the qualifications. It is for the State Government to decide and the State Government has made a distinction between the students who have taken the distant education and those who have taken face-to-face training. The State Government has therefore used the word "Sansthatagat Abhyarthi" or institutional candidates and according to them, the only interpretation of this term will have to be "regular students". Mr. Upadhyay for the State has relied upon KAMAL'S Advanced ustrated Hindi-English Dictionary. Firstly he relied upon the term "Sansthatagat" It has been translated into English as "institutional" and "Sansthatagat Abhyarthi"" as "regular student" He has then drawn our attention to the Administrative Dictionary published by the State Government wherein the word "regular" has been translated into Hindi as "Niyamit" and regular in the

context of education to mean Santhagat. The emphasis of Mr. Upadhyay is that under the advertisement, the student concerned, must be a regular student

19. As far as the submission of Mr. Upadhyay on the right of the employer-State is concerned, there cannot be two views about the same. There cannot be also any dispute with respect to the proposition laid down by the Apex Court in the judgment rendered in the case of *State of Tamil Nadu v. S.V. Bratheep* (Supra). It is undoubtedly open for the State government to lay down higher requirements. The question is whether in the instant case, any such requirements had been laid down and whether we can read them either from the text or from the context.

20. As we have referred to the Government Order as well as the advertisement, the word used is "Santhagat Abhyarth". At the highest, it can be read to mean "institutional students" or a "regular students". However, being the "institutional student" or being a "regular student" does not indicate any method of training. We are concerned with two groups of students, one who have taken their training by what is known as face-to-face method and the others who have taken by the distant education.

21. When the State Government wrote to N.C.T.E. seeking the clearance for the Special B.T.C. Course, it pointed out its difficulties and obtained this special permission to start this course as a crash programme so that a larger number of teachers become available for Primary Education. Considering these difficulties which have been pointed out by the State Government, the N.C.T.E. granted the approval to the course which the State Government had proposed. The clarification by the N.C.T.E. later-on in its letter dated 9.8.2007, therefore, becomes relevant and cannot be brushed aside.

22. What we have to keep in mind is as to what was the proposal of the State Government and what was the approval given by the N.C.T.E. In its letter, the N.C.T.E. has itself clarified that it has allowed all B.Ed. graduates for the above course and no difference was made between B.Ed. (face-to-face) and B.Ed. (Distant Mode).

23. Thus as far as the context is concerned, it is clear that it is on this background that a large number of teachers have been permitted by the N.C.T.E. for this Special B.T.C. course squarely.

24. In so far as the text of the Government order as well as the Government advertisement are concerned, they did not specifically provide for any particular mode of training to be the necessary requirement. Nothing prevented the State Government from making such provision when it came with its advertisement or issued the Government order.

25. It is again material to note that when the Government sent its proposal on the first occasion on 22nd June, 2006, it proposed that those who have done their B.P.Ed., C.P.Ed. and D.P.Ed. be also permitted for this training. N.C.T.E.

having given the clearance. Government went for excluding these categories. Later on they were permitted under High Court order.

26. Thus, the intention of the Government was to cover these categories in this course. It is therefore to be seen in the proper perspective. Those who have taken training for physical education are permitted to take this course. Thus if the physical teachers are to be permitted to take this course, there was no reason for exclusion of those who have done the B.Ed. course by a distant mode. It will amount to exclude those who are similarly situated and include those who are dissimilar for the object to be achieved. The interpretation by the Government Counsel will, therefore, make the Government Order violative of Article 14 of the Constitution of India.

27. We cannot find any such intention of the State Government. The correct course is to read it properly and a proper reading of the advertisement and the Government order is indicative of the fact that it covers the institutional students, or the regular students but there is no special preference for any particular mode of training that they should be the students who have taken face-to-face training. There is no such specific provision nor can it be read by implication.

28. In these circumstances, the judgment rendered by the learned Single Judge has to be interfered with and it is, therefore, set aside. The appeals and the petitions will stand allowed. The Government order dated 10.7.2007 will have to be read as including those students who have done their B.Ed course by the distant education method under these two Universities. Both the appeals are allowed, accordingly

29. We are told that the last date for forwarding the applications was 7.9.2007. Inasmuch as this date has expired during the pendency of these appeals, we direct the State Government to extend the date for receiving the applications for the students of these two Universities. The State will extend it until 31st October, 2007. The State Government will issue the necessary advertisements in leading Newspapers having wide circulation in all Divisional Head Offices.