
(2002) 02 AHC CK 0055
In the Allahabad High Court
Case No : C.M.W.P. No. 32826 of 1997

Indra Kumar Shukla and Others

APPELLANT

Vs

Zila Basic Shiksha Adhikari, Jaunpur and Others

RESPONDENT

Date of Decision : 11-02-2002

Acts Referred:

Uttar Pradesh Basic Education Act, 1972 — Section 19(1)

Citation : (2002) 2 AWC 999

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : P.K. Mishra and S.P. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

R.B. Misra, J.—By the present writ petition, the petitioners have sought directions in the nature of mandamus commanding the Zila Basic Shiksha Adhikari, Jaunpur (respondent No. 1) to consider the petitioners' candidature to the post of Assistant Teachers in response to the advertisement published in daily Hindi newspaper "Dainik Jagran" dated 19.8.1997 issued by the respondent and to issue appointment letters to the said post as per Service Rules of 1981. The petitioners have further sought direction to treat postgraduate diploma certificate issued by the Purvanchal University, Jaunpur, to be equivalent to the B.T.C. certificate and consider the petitioners' candidature to the post of Assistant Teacher as made in an advertisement (Annexure-1 to the writ petition) published for the recruitment to the post of Assistant Teachers to the Primary Schools in which the requirements to the post of teacher is Intermediate or any other qualifications recognised by the State Government as equivalent together with training consisting of B.T.C. certificate, Hindustani Teaching Certificate, Junior Teaching Certificate, Certificate of Teaching or in relation to the course recognised by the State Government as equivalent thereto.

2. I have heard Sri S. P. Singh, learned counsel for the petitioners as well as learned counsel for the respondents.

3. The relevant facts for adjudication of the present writ petition are that according to the petitioners, they have passed the Post Graduate Diploma in Nursery Education by the Purvanchal University. Jaunpur, in the year 1995 which is no way inferior to B.T.C, (Basic Training Certificate) in respect of training and course and brochures which are similar to that of B.T.C. training, however, in the advertisement in question, the emphasis has only been given to B.T.C. training certificate, this does not mean that the kind of training certificate possessed by the petitioners though superior and having been awarded to them not by a training school governed by the State of U. P, but by an institution recognised by the University of U. P. could at least be considered and treated as equivalent to B.T.C. training certificate, as such the candidatures of the petitioner cannot be refused on the ground of not having the B.T.C. certificate. By virtue of having post graduate diploma in Nursery the petitioners are entitled to be considered in response to the advertisement dated 19.8.1997 to the post of Assistant Teachers are illegal.

4. It has been submitted on behalf of the petitioners through their written statement as follows :

(i) Purvanchal University. Jaunpur, in its calendar published for the award of degree and diplomas illustrated number of subject such as B.A., B.Sc., M.A., M.Sc., including Post Graduate Diploma in Nursery Education. The minimum qualification for getting admission in Post Graduate Diploma in Nursery Education in B.A./B.Sc./B.Sc.Ag. or any other degree equivalent to the aforesaid degree.

(ii) The appointment on the post of Assistant Teacher in Basic Primary Schools are governed by Uttar Pradesh Basic Teachers Service Rules. 1981, framed under Sub-section (1) of Section 19 of Uttar Pradesh Basic Education Act. 1992, in para No. 7 of the writ petition, the petitioners have given in detail the academic qualification mentioned in the rules.

(iii) Though unsupported by documents, however, has been pointed out that in the brochure of Purvanchal University, Jaunpur, it has been contemplated that the candidate having the diploma of Post Graduate Nursery Education will be entitled to be appointed as Assistant Teachers in Nursery Primary and Purv Madhyamik Schools.

(iv) The higher qualification is not disqualification.

(v) Similar controversies were raised by Basic Education Officers whether the candidate duly trained other than B.T.C. holders would be considered for appointment or not and the then Director of Education. U. P., issued orders on 18.9.1986 stating clearly that candidate having enrolled in Minima Test Correspondence Course are also entitled for appointment as an Assistant Teachers. On 20.5.1992 another order was issued by the Director Education that C.T. Nursery, C.T. Home Science and C.T. General are also equivalent to B.T.C. for the purpose of appointment on- the post of Assistant Teachers in Basic Primary Schools.

(vi) The syllabus of B.T.C., B.Ed. and Post Graduate Diploma in Nursery Education shall demonstrate that all subject of B.T.C., B.Ed, are included in the training qualification of Post Graduate Diploma in Nursery Education.

(vii) Since 1996, large number of vacancy on the post of Assistant Teachers are still lying unfilled. Recently, advertisement appeared in the year 2001 and for the same the State Government evolved out a course in the name and style of special B.T.C. Course for the appointment of Assistant Teachers in Basic Primary Schools where the qualification has been mentioned as B.Ed./ L.T.C.P.Ed./ B.P.Ed./ D.P.Ed. Such degree holders will be given special training for few months. The petitioners are also entitled to come under this category in Special Course.

5. The counter-affidavit has been filed on behalf of the respondents. In para 4 of the counter-affidavit the contents of item 2 (k) has been reproduced as below :

"2 (k) Shaikshik Avam Prashikshan Yogyata. -- U.P. SARKAR DWARA SANCHALIT SANSTHAO MAIN PRASHIKSHIT B.T.C. TATHA HINDUSTANI ADHYAPAK PRAMAN PATRA, JUNIOR ADHYAPAK PRAMAN PATRA AVAM ADHYAPAN PRAMAN PATRA KE SATH MADHYAMIC SHIKSHA PARISHAD, U. P. KI INTERMEDIATE PARIKSHA YA SARKAR DWARA ISKE SAMKAKSHA MANYATA PRAPTA ANYA SHAIKSHIK AHARTA.

It has been submitted on behalf of the respondents that the essential qualification has already been indicated in the advertisement in question. In para 5 of the counter-affidavit, it has been submitted that the post graduate diploma in nursery education is neither requisite nor specified qualification for the post of primary school teacher run by Basic Education Board. In para 6, it has been, submitted that the alleged training qualification, i.e., post graduate diploma in nursery education has never been recognised by the State Government equivalent to B.T.C., H.C.T. or J.T.C. hence, the petitioners are neither qualified nor eligible to the post of Assistant Teacher in primary schools.

6. In the rejoinder-affidavit filed by the petitioners, assertions made by the respondent have not been properly met.

7. During the course of argument, the judgment dated 12.4.1999 passed by this Court in Writ Petition Wo. 11474 of 1999. Krishna Murari and others v. State of U. P. and others, have been brought to my notice. This judgment is relevant and shall also the controversy Involved in the present writ petition at rest. The relevant extract from the above judgment are as below :

"Therefore, admittedly, certain training qualifications have been mentioned in the said Rule as recognised training qualification. According to the said rule other training course recognised by the Government as equivalent also will create a right. It also appears that for the said purpose from time to time Government orders have been issued recognising certain training qualifications. Therefore, no contention can be advanced that a particular training qualification though not recognised for Rule 8, is equivalent to B.T.C. and entitles holders thereof to

appointment. A reference in the certificate that the same is equivalent to B.T.C. will not make the same a sufficient qualification for the purpose of Rule 8 unless the said qualification is referred to specifically in the Government order which prevails at the relevant point of time, as a qualification required for a particular teaching as a technical matter and ordinarily it is not for the Court to prescribe such qualification. In the present case it appears that the Legislature categorically gave power to Government to recognise training courses as required for such appointments and admittedly in exercise of such power Government has issued from time to time recognising some training courses. When the diploma itself is not recognised by the State Government for the very purpose, the recognition of the University which issued the diploma cannot support the claim of the petitioner. Therefore, there is no further opportunity of presuming any qualification as equivalent to B.T.C. when Government did not recognise such qualification as equivalent to B.T.C. for the purpose of Rule 8."

8. In the light of the above judgment, I find, it is not the Court to consider the relevance of qualification and eligibility prescribed for various posts to be filled up through an advertisement and there is no scope of judicial review in such situation. In view of the above observation and in view of the order dated 12.4.1999 passed in Writ Petition No. 11474 of 1999, the writ petition is liable to be dismissed. Therefore, the writ petition is dismissed without costs.