
(2016) 05 AHC CK 0214
In the Allahabad High Court
Case No : Special Appeal No. 274 of 2016

Jitendra Kumar Gautam and 50 Others	APPELLANT
Vs	
State of U.P. and 3 Others	RESPONDENT

Date of Decision : 02-05-2016

Acts Referred:

Constitution of India, 1950 — Article 16
Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 — Rule 8
Uttar Pradesh Basic Education Act, 1972 — Section 19

Citation : (2016) 4 AILLJ 56

Hon'ble Judges : V.K. Shukla and Umesh Chandra Srivastava, JJ.

Bench : Division Bench

Advocate : Shailesh Kumar Shukla, Advocate, for the Appellant; C.S.C., Ashok Kumar Yadav, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Jitendra Kumar Gautam and 50 others are before this Court, assailing the validity of the order dated 04.03.2016 passed by the learned Single Judge in Civil Misc. Writ Petition No. 19843 of 2015 (Jitendra Kumar Gautam and 108 others v. State of U.P. and 3 others), wherein learned Single Judge has proceeded to dismiss the writ petition preferred on behalf of the appellants.

2. Brief background of the case is that each one of the petitioners claim that they have been selected for Special B.T.C. Course conducted by the State Government for appointment of Assistant Teachers in Primary School in the year 2007 and 2008 through general selection. Petitioners submit that each one of the petitioners after being selected, got their training through respective District Institute of Education and Training (DIET) in a particular district. Petitioners submit that they have completed their training and were entitled for appointment and as during this interregnum period, Right to Children to Free and Compulsory Education Act, 2009 that provides for compulsory education to children from 6 to

14 years and under the aforementioned Act in question for being appointed as Assistant teacher, eligibility test was made mandatory. Petitioners submits that as far as they are concern, they have passed teacher eligibility test and their grievance is that as of now they are entitled for being offered appointment as Assistant Teacher in Primary School against the post which are duly recognised for the year 2007 and 2008 on the basis of their merit and on the basis of advertisement also made at the said point of time and other consequential benefit as admissible to Assistant Teachers of Primary School run and managed by Basic Shiksha Paishad U.P. at Allahabad.

3. The claim made by the petitioners has not found favour by the learned Single Judge and learned Single Judge in his turn rejected the claim of the petitioners, and same has impelled the petitioners to be before this Court.

4. Sri Shailesh Kumar Shukla, learned counsel for the petitioners/appellant contended that as far as petitioners/appellants are concern they are being discriminated whereas similarly situated incumbents have been offered appointment and petitioners/appellant are being forced to follow up different route for getting appointment and as such special appeal deserves to be allowed.

5. Submission made, has been resisted by learned Standing Counsel as well as Sri A.K. Yadav, Advocate by contending that petitioners/appellants are labouring under misconception, inasmuch as acquiring of training qualification is different concept and getting of appointment is governed by the different Rules, and in view of this, prayer made is totally misconceived and devoid of substance.

6. Before we proceed to examine the respective submissions, it is useful to refer to certain statutory provisions which are relevant in the present case. The U.P. Basic Education (Teachers Service) Rules, 1981 have been framed for recruitment and conditions of service of teachers in junior basic schools and senior basic schools. Rule 8 of the Rules provide for qualification of Assistant teachers in junior basic school and senior basic school. After amendments made in Rule 2004 special basic teacher certificate is also included in qualification. Rule 8 as amended is as follows:

"8. The essential qualifications of candidates for appointment to a post referred to in clause (a) of Rule 5 shall be as shown below against each:

Post

Academic Qualification

(i) Mistress of Nursery school Certificate of teaching (Nursery) from a recognised training institution in Uttar Pradesh or any other training qualification recognised by the Government as equivalent thereto

(ii) Assistant Master and Assistant Mistress of Junior Basic School A Bachelor's Degree from a University established by law in India or a Degree recognised by the Government as equivalent thereto together with the training qualification

consisting of a Basic Teacher's Certificate, Vishist Basic Teachers certificate (B.T.C.) two years BTC Urdu Special Training Course, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other training course recognised by the Government as equivalent thereto:

Provided that the essential qualification for a candidate who has passed the required training course shall be the same which was prescribed for admission to the said training course.

7. The essential qualification of candidates for appointment to a post referred to in sub-clause (iii) and (iv) of clause (h) of Rule 5 for teaching Science, Mathematics, Craft or any language other than Hindi and Urdu shall be as follows:

(i) A Bachelor's Degree from a University established by law in India or a Degree recognised by the Government as equivalent thereto with Science, Mathematics, Craft or particular language, as the case may be, as one of the subjects, and

(ii) Training qualification consisting of a Basic Teacher's Certificate, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other training course recognised by the Government as equivalent thereto.

8. The minimum experience of candidates for appointment to a post referred to in clause (b) of Rule 5 shall be as shown below against each:

(i) Head Mistress of Nursery School

At least five years' teaching experience as permanent Mistress of Nursery School

(ii) Headmaster or Head Mistress of Junior Basic School and Assistant Master or Assistant Mistress of Senior Basic School

At least five years' teaching experience as permanent Assistant Mistress or Assistant Master of Junior Basic School, Assistant Master or Assistant Mistress of Junior Basic School and Assistant Master or Assistant Mistress of Senior Basic School.

(iii) Head Master or Head Mistress for Senior Basic School

At least three years' experience as permanent Head Master or Head Mistress of Junior Basic School or permanent Assistant Master or Assistant Mistress of Senior Basic School, as the case may be:

Provided that if sufficient number of suitable or eligible candidates are not available for promotion to the posts mentioned at serial numbers (ii) or (iii) the field of eligibility may be extended by the Board by giving relaxation in the period of experience.

9. The essential qualifications of candidates for appointment to the posts referred to in clause (a) and sub-clauses (iii) and (iv) of clause (b) of Rule 5 for teaching Urdu language shall be as follows-

(i) A Bachelor's Degree from a University established by law in India or a Degree recognised by the Government as equivalent thereto with Urdu as one of the subjects.

Note: A candidate who does not possess the aforesaid qualification in Urdu, shall be eligible for appointment, if he possesses a Master's Degree in Urdu.

(ii) Basic Teacher's Certificate from any of the training centres in Lucknow, Agra, Mawana in district Meerut and Sakaldiha in district Chandauli established by the Government for imparting training for teaching Urdu or any other training qualification recognised by the Government as equivalent thereto.

10. The essential qualifications of candidates having proficiency in Urdu for appointment to the posts referred to in sub-clause (ii) of clause (a) of rule 5 for teaching in urdu medium shall be as follows-

(i) A Bachelor's Degree from a University established by law in India or a Degree recognised by the Government as equivalent thereto. The qualifications for proficiency in Urdu will be such as may be prescribed from time to time by the Government.

(ii) Training qualification of two years B.T.C. Urdu special training course."

11. Rule 14 of the aforesaid Rules provides for determination of vacancies and preparation of list. Rule 14 is quoted as below:

"14. Determination of vacancies and preparation of list.- (1) In respect of appointment, by direct recruitment to the post of Mistress of Nursery Schools and Assistant Master or Assistant Mistress of Junior Basic Schools under clause (a) of Rule 5, the appointing authority shall determine the number of vacancies as also the number of vacancies to be reserved for candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, dependants of freedom fighters and other categories under Rule 9 and notify the vacancies to the Employment Exchange and in at least two newspapers having adequate circulation in the State as well as in the concerned district inviting applications from candidates possessing prescribed training qualification from the district concerned.

(2) The appointing authority shall scrutinise the applications received in pursuance of the advertisement and the names of candidates received from the Employment Exchange and prepare a list of such persons as appear to possess the prescribed academic qualifications and be eligible for appointment."

12. National Council For Teacher Education Act, 1993 was enacted by Parliament with object to provide for the establishment of a National Council for Teacher Education with a view to achieve planned and coordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith. Regulations were framed by the National Council

For Teacher Education namely National Council For Teacher Education (Determination of Minimum Qualification for Recruitment of Teachers in Schools) Regulations, 2001 providing for minimum qualifications for recruitment of teachers. All institutions imparting training were required to obtain permission from National Council For Teacher Education for running any teachers' training course. The Parliament enacted Right of Children to Free and Compulsory Education Act, 2009 to provide free and compulsory education to children of 6 to 14 years. Section 2(n) defines "school". Section 23 provided for qualifications for appointment and terms and conditions of service of teachers. Section 23 of the Act is quoted below:

"23. Qualifications 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.

(2) Where a State does not have adequate institutions offering courses for training in teacher education or teachers possessing minimum qualifications as laid down under subsection (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification.

Provided that a teacher who at the commencement of this Act, does not possess minimum qualification as laid down under sub-section (1), shall acquire such minimum qualification within a period of five years.

(3) The salary and allowances payable to, and the terms and conditions of service of teachers shall be such as may be prescribed".

13. The Central Government authorised National Council For Teacher Education as an academic authority within the meaning of 2009 Act. National Council For Teacher Education as the academic authority laid down the minimum qualifications for a person to be eligible for appointment as a teacher for teaching classes I to VIII. The entire notification dated 23.8.2010 being relevant for the present case is quoted below:

"National Council for Teacher Education Notification

New Delhi, the 23rd August, 2010

F.No. 61-03/20/2010/NCTE/(N&S).- 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 (35 of 2009), and in pursuance of Notification No. S.O. 750 (E) dated 31st March, 2010 issued by the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, the National Council for Teacher Education (NCTE) hereby lays down the following minimum qualifications for a person to be eligible for appointment as a teacher in class I to VIII in a school referred to in clause (n) of Section 2 of the Right of

Children to Free and Compulsory Education Act, 2009, with effect from the date of this notification:-

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)

AND

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

(ii) Classes VI-VIII

(a) B.A/B.Sc and 2 year Diploma in Elementary Education (by whatever name known)

OR

B.A/B.Sc. with at least 50% marks and 1 year Bachelor in Education (B.Ed.)

OR

B.A/B.Sc 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.

OR

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

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year BA/

B.Sc. Ed or B.A.Ed./B.Sc. Ed.

OR

B.A./B.Sc. with at least 50% marks and 1 year B.Ed. (Special Education)

AND

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

2. Diploma/Degree Course in Teacher Education:- For the purposes of this Notification, a diploma/degree course in teacher education recognised by the National Council for Teacher Education (NCTE) only shall be considered. However, in case of Diploma in Education (Special Education) and B.Ed (Special Education), a course recognised by the Rehabilitation Council of India (RCI) only shall be considered.

3. Training to be undergone :- A person (a) with B.A/B.Sc with at least 50% marks and B.Ed qualification shall also be eligible for appointment for class I to V upto 1st January,2012, provided he undergoes, after appointment, an NCTE recognised 6 month special programme in Elementary Education.

(b) with D.Ed (Special Education) or B.Ed (Special Education) qualification shall undergo, after appointment, an NCTE recognised 6 month special programme in Elementary Education.

4. Teacher appointed before the date of this Notification:- The following categories of teachers appointed for classes I to VIII prior to date of this Notification need not acquire the minimum qualifications specified in Para (1) above,

(a) A teacher appointed on or after the 3rd September, 2001 i.e. the date on which the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time) came into force, in accordance with that Regulation. Provided that a teacher class I to V possessing B.Ed qualification, or a teacher possessing B.Ed (Special Education) or D.Ed (Special Education) qualification shall undergo an NCTE recognised 6 month special programme on elementary education.

(b) A teacher of class I to V with B.Ed qualification who has completed a 6 month Special Basic Teacher Course (Special BTC) approved by the NCTE;

(c) A teacher appointed before the 3rd September, 2001, in accordance with the prevalent Recruitment Rules.

5. Teacher appointed after the date of this Notification in certain cases:- Where an appropriate Government, or local authority or a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of this Notification, such appointments may be made in accordance with the

NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time)."

14. The recruitment of teachers in basic schools run by Uttar Pradesh Board of Basic Education is governed by statutory rules, namely, Uttar Pradesh Basic Education Teachers Service Rules, 1981 which provides recruitment, qualification and other conditions of service. Rule 8, as quoted above, provides for qualification to be possessed for appointment as Assistant Teacher in basic schools, Rule 14 provides for determination of vacancy and preparation of list for the post of Mistress of Nursery Schools and Assistant Master or Assistant Mistress of Junior Basic Schools and Rule 15 provides for notification of vacancies and preparation of list for certain posts of Assistant Masters of Senior Basic School and Mistress of Senior Basic Schools. Rule 16 provides for constitution of Selection Committee, Rule 17 provides for procedure for direct recruitment to post of teaching a language and Rule 17A provides procedure for direct recruitment to a post other than languages. There has been shortage of teachers in primary schools due to non availability of candidates possessing teachers training qualification as prescribed under Rule 8. The State of U.P. issued various Government orders from time to time, initiating process for imparting special basic teachers training to large number of candidates and also imparted the same. In this context references are made to Special B.T.C. 1998, 2004, 2007-08 and 2010.

15. Petitioners claim is that once they have pursued, Special B.T.C. Course and have passed Teacher Eligibility Test, then in all eventuality they should be offered appointment referable to the vacancies against which they have received training for Special B.T.C. Course 2007 and 2008.

16. Issue that is being raised by the petitioners/appellant has no substance for the simple reason that identical challenge pertaining to Special B.T.C. 2004 has been repelled by the Apex Court in the case of Devendra Singh and others v. State of U.P. and others (2007) 9 SCC 491 by following order.

"In order to resolve the controversy it is just and necessary to notice the salient features of the policy decision of the Government of Uttar Pradesh dated 14.1.2004. It is clear from a bare reading of the policy that the Government had resolved to arrange the Special BTC Training Course spread over a period of six months to all those 46,189 B.Ed./L.T. qualified candidates. The selection is for the purposes of imparting training and not recruitment into any service as such. Only such candidates who completed their training of B.Ed./L.T. as regular students in universities recognised by the National Teachers Education Board, recognised colleges and training institutes conducted by the State Government/ Central Government alone were eligible for the selection into the course. The policy provides the age of the applicant must be minimum of 16 years and not more than 35 years as on 1st July, 2004. However, some relaxation has been made in favour of scheduled caste, scheduled tribe, backward class candidates and others with which we are not concerned in this case. The most important

feature of the policy is that a State level merit list is required to be prepared on the basis of percentage of marks obtained in High School considering the rules regarding reservation. The policy directs the payment of stipend of Rs. 2500/- per month to the selected candidates for the special BTC training until "he is duly appointed on the post of Assistant Teacher in the basic school after passing the written and practical examinations conducted by the Registrar, Departmental Examinations, Uttar Pradesh and obtaining the required certificate, under the control of State Council for Education Research and Training, on completing the required training in the merit process."

"10. The learned counsel for the appellants relying upon the statement made in the counter affidavit filed in these appeals wherein it is conceded that sub-rules (3) to (6) of Rule 14 are not deleted submitted that the matter should be sent back for reconsideration of the High Court by duly applying the effect of sub-rules (3) to 6 of Rule 14 of the Rules. The submission was that the merit list is required to be prepared in accordance with sub-rules (3) to (6) of Rule 14 of the Rules. The submission in our considered opinion is totally misconceived. We have already noticed that the U.P. Basic Education (Teachers) Service Rules, 1981 deal with the post training scenario. The Rules deal with the selection and appointment of teachers from amongst the candidates already possessing the training qualifications. The Rules do not deal with the selection of the candidates into Basic Training Course. The reliance placed upon the said Rules by the appellants in support of their contention is totally untenable and unsustainable. These Rules do not have any bearing in the matter of selection of candidates into Basic Training Course, 2004. The policy decision of the Government dated 14.1.2004 deals with the arrangement of the Special BTC Training Course for the period of six months for those 46,189 B.Ed./L.T. qualified candidates. The process of selection of the candidates for the said training and the arrangement of the training is required to be conducted in accordance with the guidelines, directions, conditions and restrictions incorporated thereunder. None of the appellants qualified themselves for undergoing the said training course inasmuch as they were not selected as they were not found meritorious or over aged as the case may be. It is not demonstrated as to how the appellants were entitled for selection to undergo Special BTC Training Course, 2004. The validity of the policy decision dated 14.1.2004 is not impugned in these appeals."

The Apex Court in the said judgement laid down that 1981 Rules deals with post-training scenario. The Apex Court thus clearly distinguished in the said judgement the two different process and held that appointment is to be regulated by the 1981 Rules.

17. View to the similar effect has been expressed in the case of Prabhakar Singh v. State of U.P. 2013(1) ADJ 651, wherein a Division Bench of our Court has been dealing with Special B.T.C. Training Course, 2007 imparted in two batches, wherein training of first batch was completed in April, 2011 and of second batch in September, 2011 as well as with Special B.T.C. Course 2008. In the case of

Prabhakar Singh two main issues were raised. Same are as follows:-

"(i) Whether for the candidates who have passed BTC/special B.T.C. after the notification dated 23.08.2010 issued under Section 23 of the 2009 Act, the selection process shall be treated to have commenced from the date of issuance of advertisement by DIET/Director, SCERT inviting applications for selection to BTC/Special BTC so as to make them eligible for appointment under Paragraph 5 of the notification dated 23.08.20120.

(ii) Whether the candidates who are BA/BSc with at least 50% marks and possesses B.Ed qualification are eligible for appointment as Assistant Teacher to teach Class 1 to V as per clause 3 of the notification dated 23.08.2010 without they having passed Teacher Eligibility Test (TET).

Said issues have been answered in the case of Prabhakar Singh as follows:-

(i) The appellants/other eligible candidates who have passed BA/B.Sc. with 50% and are B.Ed being fully eligible for appointment as Assistant Teacher to teach Classes I to V as per Clause 3 of the notification dated 23rd August, 2010, as amended from time to time, are entitled for consideration for their appointment on vacant posts of Assistant Teachers in Classes I to V. The State authorities including the concerned District Basic Education Officers are directed to consider the claim of such persons while considering the appointment on the post of Assistant Teacher in institutions to teach Classes I to V.

(ii) The State is directed to issue a corrigendum so that all eligible candidates as per clause 3 of the notification dated 23.8.2010 as amended i.e. candidates having 50% marks in B.A./B.Sc. with B.Ed. should also be permitted to participate in the ongoing process of appointment of trainee teachers. At least 15 days time be allowed to submit applications by above mentioned candidates.

(iii) The prayer of the appellants possessing BTC/Special BTC qualifications obtained after 23.8.2010 to issue direction to appoint them giving benefit of paragraph 5 of the notification dated 23rd August, 2010 cannot be accepted.

18. Judgement in the case of Prabhakar Singh to a limited extent has been doubted, and on reference being made, a full Bench of our Court, in the case of Shiv Kumar Sharma v. State of U.P. 2013(6) ADJ 310, has approved the judgement of Prabhakar Singh to the extent of laying down the interpretation of commencement of recruitment process under Clause-5 of notification dated 23.08.2010 but has disapproved and overruled the ratio of said decision in relation to grant of exemption and relaxation from Teacher Eligibility Test and Teacher Eligibility Test is mandatory to be acquired for candidates referred to in Clause 1 and Clause 3(a).

19. Once law on the subject is clear that 1981 Rules deals with post-training scenario and acquiring of B.T.C. qualification is altogether different concept as by that time person is still acquiring qualification for post. Petitioners certainly have completed the process of acquiring training qualification, but at the point of time,

when appointment is to be offered, then certainly appointment has to be undertaken in consonance with the provision as contained in 1981 Rules. Only when candidates acquire training qualification and possess to their credit Teacher Eligibility Test qualification along with other eligibility criteria prescribed under 1981 Rules, then only as per the provision contained in 1981 Rules, candidature of the candidate has to be considered and merely because candidate has proceeded to complete Training Course, same ipso-facto cannot be construed as a guarantee of ensuring appointment. When a person has been in the process of acquiring qualification, it cannot be said that selection process has commenced.

20. Much emphasis has been laid on the fact, that various incumbents along with completion of training course have been offered appointment in their respective District. We have examined the claim of petitioners-appellants, and same has no leg to stand, then selection process would commence, once process of selection is undertaken, as is envisaged under 1981 Rules and not at all prior to it, if some incumbents in some District have been offered appointment, same cannot be a ground to act contrary to law.

21. With the above, present Special Appeal stands dismissed.