courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 15/09/2026

(2015) 04 AHC CK 0162

In the Allahabad High Court

Case No : Special Appeal No. 250 of 2015

Kaplana Chauhan — APPELLANT

Vs

State of Uttar Pradesh and Others — RESPONDENT

Date of Decision : 29-04-2015

Acts Referred:
Constitution of India, 1950 — Article 14
National Council For Teacher Education Act, 1993 — Section 14, 14(1)

Citation : (2015) 111 ALR 680

Hon'ble Judges : D.Y. Chandrachud, C.J;Manoj Kumar Gupta, J

Bench : Division Bench

Advocate : P.K. Dwivedi, for the Appellant; Neeraj Tiwari and R.A. Akhtar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Dr. D.Y. Chandrachud, C.J—The appellant filed a writ petition seeking a mandamus to the State to grant permission to undergo the Special BTC Training Course-2004. The appellant also sought to question the legality of an order dated 22 February, 2007 passed by the Director, State Council of Educational Research and Training, UP, Lucknow (SCERT). The case of the appellant is that she was selected for Special BTC Training Course-2004 and was placed at Serial No. 132 in the merit list of selected candidates. The appellant states that she is an OBC candidate having secured 292.30 marks as against the last selected candidate who had secured 203.58 marks. When the appellant appeared for counselling, her name did not find place in the select list which was published on 19 July, 2004 and she was informed that her candidature had been rejected on the ground that she had completed her B Ed degree course from a college affiliated to Bundelkhand University, Jhansi which had not obtained requisite permission from the National Council for Teacher Education 2 for the said course. The appellant filed a writ petition in which an order was passed that the appellant shall not be deprived from being sent for training for Special BTC Training Course-2004 provided, inter alia, that the B Ed degree course obtained by the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kaplana-chauhan-appellant-hash-…

appellant had been recognized by the NCTE. On 30 October, 2004, an order was passed by the Director, SCERT, holding that the appellant was not qualified for Special BTC Training Course-2004 as the recognition of NCTE had not been obtained by the institution for the B Ed degree course. In the meantime, a Division Bench of this Court rendered its judgment on 9 December, 2005 in Ekta Shukla v. State of U. P., Special Appeal No. 630 of 2005, decided alongwith connected appeals. The writ petition filed by the appellant was disposed of by directing the authorities to consider the case of the appellant having due regard to the judgment in Ekta Shukla (supra). Eventually, an order was passed by the second respondent on 22 February, 2007 distinguishing Ekta Shukla''s case and holding that in the present case, the appellant had passed her B Ed degree course in 1997 from Shri Guru Harikishan Degree College, Jhansi. It was stated that the institution had applied for recognition to NCTE on 26 December, 2003 for academic session 2004-05 and recognition was granted only on 5 November, 2004. In these circumstances, it was held that the appellant having a B. Ed. degree of 1997 was ineligible since the institution was not recognized from the NCTE in 1997.

2. Section 14 of the National Council for Teacher Education Act, 1993 (NCTE Act), provides as follows:

"14. Recognition of institutions offering course or training in teacher education.--(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations:

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee."

3. Under the substantive part of section 14(1), an institution offering or intending to offer a course or training in teacher education on or after the appointed day, has to make an application to the Regional Committee for the grant of recognition. The appointed day for the purposes of the Act is 17 August, 1995. Under the proviso to section 14(1), a special provision was made in respect of institutions which were offering courses or training in teacher education immediately before the appointed day. In respect of those institutions, it was provided that they would be entitled to continue such course or training for a period of six months, subject to the condition that they had made applications for recognition within the said period. In such a situation, if an institution had made an application for recognition within the said period of six months, the institution was entitled to continue such course or training until the disposal of the application for recognition by the Regional Committee.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kaplana-chauhan-appellant-hash-…

4. In Ekta Shukla''s case, a Division Bench of this Court noted that initially, NCTE extended the last date for submission of applications by existing institutions until August, 1997 and thereafter until 31 March, 1999. In fact, NCTE issued a public notice stating that while more than 90 percent of the existing institutions had submitted their applications to the Regional Committee during the previous three years, a small number of institutions had still not done so. On this basis, by an administrative order, time for submission of the application for recognition was extended until 31 March, 1999, with a clarification that an institution approaching the Regional Committee for affiliation after that day, would not be treated as an existing institution and would have to fulfill the requirements as a new institution under the NCTE regulations including the submission of a No Objection from the concerned State or Union Territory. Subsequently, by a Gazette Notification dated 11 September, 2006, the National Council for Teacher Education (Amendment and Validation) Ordinance, 2006 was notified in which Chapter IV-A was introduced into the NCTE Act, providing for temporary provisions for recognition of certain institutions. Section 18-G provided that the Chapter would remain in force for a period of six months from the specified date, but saved the operation of actions taken or done during the aforesaid period. Section 18-B, as introduced by the Ordinance, provided as follows:

"18-B. Recognition of certain institutions.--(1) Where an institution, offering a course or training in teacher education before the specified date, failed to make an application under sub-section (1) of section 14, but an examining body granted affiliation to, and held examination for a course or training in teacher education conducted by such institution, or such examination was due, before the specified date, the provisions of this Chapter shall apply in respect of such institution.

(2) An institution falling under sub-section (1) may make an application to the Regional Committee concerned in such form and within such period and alongwith such fee, as may be prescribed.

(3) An application under sub-section (2) shall be dealt with in such manner as may be prescribed.

(4) An order granting recognition to an institution on its application under sub-section (2) shall be deemed to be effective from the date of grant of affiliation to it or holding of examination for a course or training conducted by it for the first time, whichever is earlier."

5. In Ekta Shukla''s case, applications for recognition were submitted by Sampurnand Sanskrit University, Varanasi. The applications for recognition were made between August and December, 1997, some of them being delayed only by a few days. All the applications were allowed sometimes in the month of July, 2000. Having regard to this background, the Division Bench declared that the degrees for academic years 1996-97, 1997-98 and 1998-99 and for all academic years pursued either in the faculty of education of the University or in any of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kaplana-chauhan-appellant-hash-…

affiliated colleges were valid and those qualifications shall be treated as valid for pursuing the Special BTC Course. On 29 October, 2010, the Supreme Court rendered a judgment in State of U.P. v. Bhupendra Nath Tripathi, Civil Appeal No. nil of 2010, arising out of SLP (C) 4854-4856 of 2009. The decision arose out of a judgment of a Full Bench of this Court which had held that the Government Order dated 10 July, 2007, which limited eligibility to apply for Special Basic Training Course-2007 only to those candidates who had passed B.Ed courses from institutions recognized by NCTE, was arbitrary and unreasonable. The Full Bench held that:

"(a) The candidates who have B. Ed. degree obtained from an institution or University during the period when the application of the institution or the University for grant of recognition under section 14 of the National Council for Teacher Education Act, 1993 was pending, are eligible for Special BTC Course 2007 as laid down by the Division Bench in Ekta Shukla''s case (supra).

(b) The proviso to section 14(1) recognizes continuance of the course, which was being run immediately before the appointed day provided application is submitted within the continuance of such course is deemed recognition of such course and degree awarded therein by express provisions of proviso to section 14(1) of National Council for Teacher Education Act, 1993.

(c) The exclusion of the candidates from the field of eligibility for Special BTC Course 2007 who have obtained B. Ed. degree prior to the enforcement of NCTE Act, 1993 or after the enforcement of the said Act during the period when the application of the institution or University was pending consideration is arbitrary, unreasonable and violative of Article 14 of the Constitution. The above two categories of candidates are also eligible to participate in Special BTC Course 2007."

6. The issue which fell for consideration before the Supreme Court was, whether only B. Ed. candidates who had obtained a degree after the grant of recognition by NCTE could join the Special BTC Course or whether those candidates who had obtained degrees when the application of the institution for recognition was pending or those candidates who had obtained B. Ed. degrees prior to the commencement of the Act, would also be eligible. In this context, the Supreme Court held as follows:

"...The NCTE Act in no manner makes any distinction between the degrees granted by the Universities or authorized bodies recognized by the University Grants Commission prior to the enactment of the Act and the degrees granted by the recognized institutions after the Act has come into force. NCTE Act provides for the recognition of the institution offering course or training in teacher education and does not speak about recognition of the degrees granted by the institution prior to the Act coming into force. Thus, degrees granted by the institutions already in existence offering a course or training in teacher education shall be deemed to be at par with the degrees or certificates granted by the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kaplana-chauhan-appellant-hash-…

recognized institutions after the commencement of the Act provided those institutions in existence offering the course also received recognition under the Act.

22. In our considered view, the State Government cannot make any distinction between the degrees obtained from the existing institutions prior to the Act coming into force but received recognition after the commencement of the Act and the degrees obtained from the recognized institutions after the Act coming into force. It is not shown how such a classification is based on an intelligible differentia and on a rational consideration and further how it bears a nexus to the purpose and object thereof. The impugned action of the State results in the classification or division of members of a homogeneous group and subjecting them to differential treatment without any rhyme or reason."

7. In the present case, the second respondent has made a distinction from the situation which obtained in Ekta Shukla''s case, on the ground that the application for recognition had been submitted on 26 December, 2003 for 2004-05 and the order of recognition was passed on 5 November, 2004. The case of the appellant is clearly not of that category where a degree had been obtained prior to the enforcement of the provisions of the Act, and nor is the case in that category where a degree had been obtained when the application for recognition was pending consideration before the NCTE. From the facts which have been indicated in the order passed by the second respondent, it appears that the college applied for recognition only on 26 December, 2003 and recognition was granted on 5 November, 2004.

8. The learned Single Judge has dismissed the writ petition only with the observation that the learned Counsel for the appellant could not place anything on record to indicate that the college was recognized under the NCTE and that the B. Ed degree obtained by the appellant was also validly recognized. Ex facie, a reading of the impugned order would indicate that all the relevant materials, including the decisions in Ekta Shukla (supra) by the Division Bench and in Bhupendra Nath Tripathi (supra) by the Supreme Court, have not been considered nor have the provisions of the NCTE Act been considered. We also find from the record that though the NCTE had filed a counter-affidavit before the learned Single Judge, the precise facts relating to the actual recognition of the institution have not been elucidated. The counter filed by the NCTE is silent on whether the recognition which was granted to the institution was as an existing institution or on the basis that it was a fresh recognition granted for the first time for academic session 2004-05. We also find from the record that in the supplementary affidavit which was filed on behalf of the appellant, it was sought to be contended that the appellant had, in fact, not studied in an affiliated college as such, but was a student of Bundelkhand University itself. We are not enquiring into these aspects since these are matters which have not been considered by the learned Single Judge in the impugned judgment and order. For the sake of record, we may, however, note that on 23 December, 2010, a

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kaplana-chauhan-appellant-hash-…

communication was issued by the Bundelkhand University, stating that Guru Harikishan College, Jhansi was established on 1 July, 1993 and was affiliated on a permanent basis on 1 July, 2006. The communication records that for the academic session 1996-97, in the absence of recognition from NCTE the B. Ed degree programme has been closed. All these aspects should, in our view, be duly looked into by the learned Single Judge. Since any decision on the writ petition which has been filed albeit by the appellant in his personal capacity would affect a large number of similarly situated persons, it would be appropriate if the judgment and order of the learned Single Judge dated 22 May, 2014 is set aside and in Writ-A No. 24621 of 2008 is restored to the file of the learned Single Judge for disposal afresh.

9. In the meantime, we would direct that a counter-affidavit be filed by NCTE within a period of six weeks from today, specifically dealing with the issues which have been raised and in regard to the status of the institution in question and the basis on which it was granted recognition.

10. In order to facilitate this exercise, we allow the special appeal, set aside the impugned judgment and order of the learned Single Judge dated 22 May 2014 in Writ-A No. 24621 of 2008 and restore the proceedings to the file of the learned Single Judge for disposal afresh in the light of this judgment.

11 While doing so, we have indicated the broad contours of the controversy but we hasten to clarify that all the rights and contentions are kept open for fresh evaluation by the learned Single Judge. The writ petition is, accordingly, disposed of. There shall be no order as to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/kaplana-chauhan-appellant-hash-…