

(2010) 09 AHC CK 0293
In the Allahabad High Court

Kiran Yadav and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Citation : (2010) 09 AHC CK 0293

Hon'ble Judges : V.K.Shukla, J

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—In both these writ petitions, petitioners have approached this Court, requesting therein for calling of the records and quashing notice dated 09.09.2010 issued by District Basic Education Officer, Etawah.

2. Petitioners of writ petition No.58029 of 2010 had applied for consideration of their candidature for B.T.C. Course2007 in pursuance of advertisement dated 17.07.2007 and the petitioners of writ petition No.58026 of 2010 had applied for consideration of their candidature for Special B.T.C. Course2008 in pursuance of advertisement dated 19.01.2009. Petitioners claim that they were duly selected and sent for training and after successfully completing training, certificates were issued to them and they have been appointed as Assistant Teachers in primary schools. Each one of the petitioners had been selected based on the disability certificate issued from the office of the Chief Medical Officer, Etawah. Petitioners have stated that Special Secretary, Basic Education, Government of U.P. Lucknow issued letter to the Director of Education (Basic) for constituting Medical Board for verification of the documents of B.T.C. Selected candidates in respect of their physical disability; thereafter on 15.07.209, Director of Education (Basic), Lucknow issued letter addressed to the Special Secretary, Shiksha Anubhag11, U.P. Government, Lucknow, and therein he has given reasons for not constituting Medical Board at State level for verification of physical disability of the Special B.T.C. and B.T.C. Selected incumbents, as for this purpose Medical Board is constituted at district level in the respective districts. Petitioners have stated that on 16.11.2009, Chief Medical Officer, Lucknow constituted Medical Board on the

basis of letter issued by the Health Department dated 03.11.2009, and thereafter on 15.07.2010, Director, State Council for Research and Training issued letters to all the Principals of District Institutes of Education and Training in U.P. to send the candidates selected for Special B.T.C. 2007, 2008 and B.T.C.2010 under physically handicapped quota, for verification at Balrampur Hospital, Lucknow. Petitioners have stated that pursuant to said direction, they appeared before the Medical Board and submitted their physical disability certificates before the Medical Board; there they were not subjected to any medical examination and their physical capacity was not tested; petitioners were only observed and not examined by the Medical Board. Petitioners have contended that based on the report, impugned show cause notices have been issued. At this juncture, present writ petitions have been filed.

3. Sri Manish Goel, learned counsel for the petitioners, contended with vehemence that in the present case language of show cause notice clearly shows that the authorities concerned have already taken decision in the matter and the notices are mere formality, and as such entire exercise being undertaken is unjustifiable exercise, and is not at all free, fair and transparent, as such based on the same no action can be taken.

4. Countering the said submissions, learned standing counsel, Sri K.K. Chand, on the other hand, has contended that the Medical Board constituted by Chief Medical Officer, Lucknow got verification proceedings done of disability certificate visavis physical disability of the candidates, and in verification physical disability has not been substantiated, in such a situation and in this background, show cause notices have been issued to the petitioners, asking them to appear along with documentary evidence, and whatever petitioners want to say, they should say at the first instance before the authority concerned, as such there is no occasion for this Court to interfere with the impugned show cause notices.

5. After respective arguments have been advanced, factual position which emerges, is that each one of the petitioners, had applied for admission to Special B.T.C.2007 and B.T.C.2008 under physically handicapped quota; they have been selected and offered appointment; thereafter, State Government in its wisdom has chosen to undertake verification proceedings. Said verification policy had been subject matter of challenge before this Court in writ petition No.53152 of 2010 Ravindra Kumar Sharma and others Versus State of U.P. and others, decided on 31.08.2010, wherein this Court has taken the view that the State Government has every right to get the verification proceedings done. Against the said order of Single Bench, Special Appeal No.811 of 2010 had been preferred, which has been disposed of by Division Bench with certain observations. Operative portion of the judgment of Special Appeal Bench is being quoted below:

"7. We may clarify that the process adopted by the State Government for physical verification is for the limited purpose to ascertain the genuineness of the candidates and the certificates, which have been so issued. In our opinion, the candidates cannot be subjected to a further medical examination for the purpose

of issuance of a certificate.

8. There is a presumption of validity of a certificate issued in accordance with the Rules, 1996 so long as nothing to the contrary is detected and established. There cannot be a permission in law to make a fishing and roving enquiry for subjecting a candidate to repetitive medical tests unless there is any genuine suspected or detected fraud or misrepresentation perceived by the authority. There may be cases of gross irregularities in certification against the norms prescribed for assessing physical disability, but it has to be on the basis of a bona fide approach and not an attempt to simply reopen the medical certification that has been carried out as envisaged under the Rules.

9. If however, upon a physical verification, the authorities come to the conclusion that the candidate has not been genuinely issued a certificate of disability or otherwise or that he does not suffer from any disability so certified, which entitles him to such a certificate, then and in that event only, a candidate can be subjected to a fresh Medical Board and not otherwise.

10. The appellants, therefore, cannot resist the physical verification as directed by the respondents and, we accordingly, hold that the direction dated 15th of July, 2010 would be construed as indicated hereinabove.

11. The respondents would, therefore, initially limit the enquiry of physical verification to the extent indicated above, and in case, any error or fraud or misrepresentation or gross irregularity is detected, then the candidates could be subjected to a fresh Medical Board or any other enquiry, as may be permissible under the rules. To that extent, the communication dated 15th of July, 2010 read with the Government Order dated 3rd of November, 2009 stands explained and the judgment and order of the learned Single Judge dated 31st of August, 2010 stands modified, accordingly.

12. The appeal stands disposed of subject to the observations made hereinabove. No order as to costs."

6. In the present case, accepted position is that the petitioners have not been subjected to further medical examination for the purpose of issuance of certificate, rather notices have been issued for the purpose of physical verification of disability visavis disability mentioned in the certificate. Said exercise has been carried out, and in the said exercise so undertaken out of 309 candidates who appeared for verification, qua 53 incumbents their disability did not at all matched with the disability recorded in the certificate, and petitioners fall in the category of those 53 incumbents, whose disability had not matched with the disability shown in the certificate, and then based on the said report Secretary, Basic Shiksha Parishad, U.P. at Allahabad has asked the District Basic Education Officer to take action based on the report, after affording opportunity of hearing to each of the incumbents. The Secretary has also mentioned qua the action to be taken, and has also mentioned that entire records be kept intact and action be taken strictly in accordance with law, as the certificate in question are

not at all tallying with the physical disability of the candidates; in such a situation and in this background show cause notices have been issued. Once said show cause notice has been issued then whatever, the petitioners are contending before this Court, all such issues can be raised by them before the authority concerned, inasmuch as the order passed by the District Basic Education proceeds to mention that the petitioners can appear before the District Basic Education Officer along with all evidence in the said direction. It is only when incumbents will not appear on the date fixed along with documentary evidence, then in that event *ex parte* decision would be taken for dispensing with the services of petitioners and for recovery for the amount paid. Position has been made clear that such decision would be taken only in the event of nonappearance of the incumbents along with documentary evidence. In case precise grievance of the petitioners is that copy of the opinion which has been formed, has not been supplied to them, then their remedy is to make application before the District Basic Education Officer, Etawah, and ask for supplying the copy of the same, and the District Basic Education Officer would be under obligation to supply the copy of such opinion of the Medical Board, so that in case petitioners have to say something, they could say so, but the petitioners cannot be permitted to rush to this Court without first approaching the District Basic Education Officer. In such a situation and in this background, this Court refuses to interfere with the impugned show cause notices at this stage of the proceedings.

7. Consequently, present writ petition is dismissed.