
(2009) 10 AHC CK 0137

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 38808 of 2009

Mahendra Kumar Gupta and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-10-2009

Acts Referred:

Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 — Rule 10, 8

Citation : (2009) 10 AHC CK 0137

Hon'ble Judges : Arun Tandon, J

Final Decision : Disposed Of

Judgement

Arun Tandon, J.

Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Siddhartha Khare, learned counsel for the petitioners, Sri Vimal Chandra Mishra, learned counsel for respondent nos. 2 and 5 and Sri Mahesh Chandra Chaturvedi, learned Chief Standing Counsel for the Staterespondents.

With the consent of parties, this writ petition is being disposed of finally at this stage without calling for any further affidavit, specifically in view of the order proposed to be passed today.

Petitioners, who are six in number, claim to have been appointed in primary institutions in District Banda run by the Basic Shiksha Parishad, U.P. at Allahabad in the year 1997. The appointment on the post of Assistant Teachers in primary institutions run by the Basic Shiksha Parishad is regulated by the provisions of Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as the "Rules, 1981"). It is not in dispute that under Rule 8 of Rules, 1981 essential qualification proscribed for appointment on the post of Assistant Teachers amongst others, necessarily requires a Teachers Training Certificate, such as BTC, HTC or any other qualification declared equivalent thereto by the State Government. It is further not in dispute that the petitioners on the date of their appointment were untrained and therefore, they were granted fixed pay

only.

It is contended that under the Government Order dated 24th April, 2002, petitioners on completing five years of continuous service as untrained teachers, have been sanctioned trained grade in support thereof, reference has been made to the letter of the Basic Shiksha Adhikari, Banda dated 29th June, 2002. Some of the petitioners are possessed of a degree of C.P. Ed., which is not one of the essential qualification recognised under Rules, 1981.

The petitioners were sent for undergoing the Basic Training Course during service at District Institute of Education and Training, Shivrampur, Chitrakoot. Petitioners completed first six months of the said training course between 20th September, 2000 to 20th March, 2001 and the second six months of the training course between 14th December, 2001 to 13th June, 2002. Their examination in respect of first six months of training took place and the result was declared on 14th June, 2002. Petitioners claim to have passed the examination.. The second examination of training course has not taken place till date. Petitioners allege that default in that regard lies upon the authorities themselves. It is claimed that similarly situate other 60 candidates have been permitted to participate in both the aforesaid examinations after completing the training course and their names have also been included in the list of trained teachers for being considered for further promotion.

Petitioners nos. 1 to 5 in such circumstances filed Civil Misc. Writ Petition No. 6424 of 1997, which was decided under the order of this Court dated 7th February, 2007 permitting the petitioners to make a representation, ventilating all their grievances before the Registrar, Departmental Examinations, U.P. Allahabad, who inturn was required to decide the same within the time specified. Petitioner no.6 filed Civil Misc. Writ Petition No. 33060 of 2007, which was decided under judgment and order of this Court dated 24th July, 2007 on the same terms.

The Registrar, on receipt of the representations, passed an order dated 25th July, 2007 holding therein that the degree of C.P.Ed produced by petitioner nos. 1, 2, 3 and 5 were legal and valid while those produced by other applicants were from Maharani Laxmibai Vyayam Mandir, Vyayam College, Jhansi, which is not an approved institution. It has been further provided that the eligible petitioners shall be permitted to appear in the second examination of the basic training course qua which proceedings shall be completed within two months.

It may be recorded that the order dated 25th July, 2007 has not been challenged, in so far as it holds that except for petitioner nos. 1 to 3 and 5, other candidate are not eligible to appear in the second examination of the basic training course.

This Court at the very outset holds that so far as the petitioner nos. 4 and 6 are concerned, since they have not challenged the order of the Registrar passed on their representations refusing to grant permission to appear in the second

examination of the basic training course, the same has become final, and therefore, no relief as prayed for in the present writ petition is to be granted to petitioner nos.4 and 6. The writ petition at the behest of petitioner nos. 4 and 6 stands dismissed.

So far as the other petitioners are concerned, it is contended that on one hand more than two years have elapsed from the date the order of the Registrar i.e. 25th July, 2007 till date, the respondent authorities have not initiated the process for holding the second examination of the basic training course, on the other hand they are proceeding to make promotion on the post of Headmaster. The petitioners are not being considered as they are untrained. It is contended that such inaction on the part of the respondent authorities is patently arbitrary. They cannot be permitted to take benefit of their own wrong and therefore, a mandamus is prayed for a direction upon the respondents to treat the petitioners as trained assistant teachers from the date they have completed five years of continuous service as untrained assistant teacher, in the alternative, a command be issued to the respondents to hold second examination of the basic training course during service immediately and to consider the claim of the petitioners for promotion as Headmaster of Primary institution or assistant teacher of Junior High School along with other candidates in accordance with the provisions of Rules, 1981.

Although in the writ petition there is no specific averment that the petitioners have been offered compassionate appointment nor the details of the predecessors who were employed and had expired during harness have been furnished. Learned Senior Counsel for the petitioners contended that infact petitioners have been appointed on compassionate ground. Accordingly this Court is proceeding on the ground that the petitioners have been appointed on compassionate ground as untrained assistant teachers in Parishidiya Vidyalayas in the year 1997 in terms of the Government Order applicable.

So far as the first prayer qua the petitioners being treated to be trained on completing five years of continuous service is concerned, learned Senior Counsel for the petitioners has placed reliance upon Rule 10 of Rules, 1981, with reference to provisions contained therein permitting the State Government to grant relaxation in the qualifications qua appointment of assistant teachers, it is submitted that since the petitioners have been appointed as untrained teachers and under Government Order applicable they shall be treated to have been granted relaxation from training and in any case from the date they have been granted trained grade. The State Government is deemed to have exercised powers under Rule 10 of Rules, 1981 granting relaxation from essential qualifications and therefore, petitioners be deemed to be appointed as assistant teachers for the purposes of determination of their seniority under Rules, 1981 from the date they have completed five years of continuous service as untrained teacher i.e. the date from which they have been granted trained grade.

For the purposes of appreciating the contention raised, it would be worthwhile to

reproduce Rule 10 of Rules, 1981, which is being quoted herein below:

"10. Relaxation for exservicemen and certain other categories. Relaxation, if any, from the maximum age limit, educational qualifications or/and any procedural requirements of recruitment in favour of the exservicemen, disabled military personnel, dependants of military personnel dying in action, dependants of board's servants dying in harness and sportsmen shall be in accordance with the general rules or orders of the Government in this behalf in force at the time of recruitment."

From a bare reading of the aforesaid Rule, it will be apparently clear that it permits grant of relaxation from maximum age limit, educational qualifications and or any procedural requirements of recruitment only.

So far as the essential qualifications are concerned, the same are provided under Rule 8. It will be seen that qualifications are in two parts, first pertaining to educational degree, namely, Bachelors Degree from a University established by law in India and the teachers training qualification.

For ready reference Rules 8 (1) (i), 8 (1) (ii) and 8 (2) are being quoted herein below:

"8. (1) 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.

(2) The essential qualification of candidates for appointment to a post referred to in subclause (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."

In the opinion of the Court no relaxation from any training qualification is contemplated by Rule 10 of Rules, 1981.

Even otherwise from language of Rule 10, it will be seen that such relaxation from the qualifications is to be provided in accordance with the general rules or orders of the Government in this behalf in force at the time of recruitment. In the facts of the present case, no such relaxation in the qualification was provided under any general rules or orders of the Government. The Government Order providing for compassionate appointment of untrained dependants provided for such appointees as untrained assistant teachers, with the condition that they will draw fixed salary. The issuance of the Government Order permitting payment of salary in trained grade on completing five years of continuous service as untrained assistant teachers is subsequent in point of time and even otherwise only for the purposes of conferring certain monetary benefits only. It cannot be read as an order under Rule 10 of Rules, 1971. This Court therefore, holds that plea has only been stated to be rejected.

This Court may also record that such plea was never raised in the earlier writ petition filed in the year 2007 by the petitioners, as there would have been no occasion for the petitioners to seek any direction upon the respondent authorities to hold the second examination of basic training course. This Court finds that the plea based on Rule 10 is clearly an afterthought. It is held that the petitioners are not trained teachers and they do not come within the cadre of assistant teachers appointed on cadre posts under Rules, 1981. Petitioners are not within the zone of consideration for promotion to next higher post under Rules, 1981.

Mere grant of trained grade will not amount to treating the petitioners as trained. It is needless to emphasise that for appointment as Headmaster of primary school/assistant teacher of junior high school, teacher's training certificate is one of the essential qualifications prescribed. Petitioners are still untrained, therefore, not eligible for promotion on the post of Headmaster of primary school/assistant teacher of junior high school under Rules, 1981. They can have no right to be considered for promotion as such.

Learned Chief Standing Counsel is justified in pointing out that seniority is to be determined from the date of substantive appointment under Rule 22 of Rules, 1981. Since the petitioners are not possessed of the essential qualifications

prescribed for the post of Assistant Teachers as per Rule 8 of Rules, 1981 they do not fall within the cadre of substantively appointed assistant teachers covered by Rules, 1981 and therefore, entire case pleaded by the petitioners for being included in the zone of consideration for promotion is totally misconceived.

It is no doubt true that compassionate appointments are also substantive appointment, provided the candidate concerned is appointed to a cadre post and that the candidate concerned is possessed of the statutory prescribed minimum qualification. As is admitted on record, they have not been appointed on any post covered by the Rules, 1981, they were appointed as untrained assistant teachers on fixed pay under the Government Order issued for the purpose.

The Hon^{ble} Supreme Court of India in the case of U.P. Basic Shiksha Parishad & Anr. vs. Hari Deo Mani Tripathi & Ors. and Director of Basic Education, U.P. & Ors. vs. Raghunanand & Ors, reported in (1996) 9 SCC 623, specifically paragraph 25 has held as follows:

"Thus the respondents, untrained teachers, are of a different class and cannot rely upon the service as untrained Assistant Teachers in the lower grade with the trained Assistant Teachers drawing higher grade of pay."

This Court may also refer to the judgement of this Court dated 13th August, 2009 passed in Civil Misc. Writ Petition No. 41465 of 2009 (Smt. Nigar Khanam Ansari vs. State of U.P. & Ors.), wherein it has been held as follows:

"This Court has no hesitation to record that unless a teacher is trained, he/she cannot be considered for promotion on the post of Headmaster and the Government Order issued qua exemption from training for the purposes of grant of trained grade to the teacher concerned, will not in any way have the affect to treat the teacher as eligible for the purposes of promotion. Therefore, it is not necessary for this Court to enter into the issue as to whether Government Order dated 24th April, 2002 would be applicable to the writ petitioner or not.

This Court may further record that while granting relaxation from training to the teacher concerned for the purposes of grant of trained grade a specific provision has been made in the Government Order that all such teachers will be required to undergo training provided therefor, meaning thereby even after granting relaxation from training qua grant of trained grade, the requirement of training has not dispensed with and exemption from training is only for the purposes of monetary benefit i.e. fixation of salary in the trained grade. For promotion on the post of Headmaster the petitioner is ineligible being untrained."

Now coming to the alternative prayer made by the learned counsel for the petitioner that the respondent authorities may be directed to hold second examination of basic training course. Learned Chief Standing Counsel for the State has brought to the notice of the Court that the teachers of the same institution, who were untrained and had undergone similar training, have been permitted to appear in the second examination of basic training course and have

also been successful. Necessary information in that regard was to be supplied to the petitioners for their appearance in the said examination by the principal of the college. He, however, submits that Registrar shall ensure that second examination of the six months basic training course is held immediately with a further direction that if the petitioners are successful, they shall be assigned suitable place in the seniority list of trained assistant teachers from the date they clears the examination.

In the facts of the present case this Court finds that under order dated 25th July, 2007 passed by the Registrar, Departmental Examinations, U.P. At Allahabad, while deciding the representations of the petitioners, it was assured that the second examination of basic training course of the petitioners shall be held within two months, more than two years have elapsed, examination has not taken place. There is nothing on record to establish that any information was ever forwarded to the petitioners to participate in the second examination of the basic training course. Only oral statement has been made by the learned Chief Standing Counsel that such information was forwarded to the Principal of the college.

Be that it may, the Registrar, Departmental Examinations, U.P. Lucknow must ensure that second examination of the basic training course of the petitioner is held within three months from the date a certified copy of this order is filed before him and petitioners will be at liberty to appear in the said examination.

However, it is provided that in case it is found that between the period after completion of second six months of basic training course by the petitioners till holding of the examination as indicated above, such examination did take place and information was not supplied to the petitioners by the person responsible, for appearing in the said examinations, the Registrar shall also proceed to pass an order declaring the petitioners to have passed the examination from the date similarly situate persons have cleared the examination subsequent to 2007. For the purpose, liberty is reserved in favour of the petitioners to make a representation, ventilating all their grievances before Registrar, Departmental Examination, within four weeks from today, along with a certified copy of this order. On such representation being made, Registrar shall examine the same after summoning report from the institution concerned and shall pass a reasoned speaking order.

The writ petition at the behest of petitioners nos. 1,2,3, and 5 stands disposed of accordingly.