

(1996) 01 AHC CK 0076

In the Allahabad High Court

Case No : Civil Miscellaneous W. P. No. 37691 of 1995

Mahendra Nath Mishra and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 23-01-1996

Acts Referred:

Constitution of India, 1950 — Article 16, 226

Citation : (1996) 01 AHC CK 0076

Hon'ble Judges : A.P. Singh, J

Final Decision : Dismissed

Judgement

A. P. Singh, J.—Mahendra Nath Misra, petitioner No. 1 with identically placed eighteen others joined together in this writ petition for seeking an order to virtually modify the requirements provided for appointment on the post of Assistant Teachers in Basic Schools of the District of Bhadohi which are being run by the Uttar Pradesh Basic Shiksha Parishad, U. P., Allahabad, a body constituted by U. P. Basic Shiksha Parishad Adhiniyam, 1972 and is entrusted with the responsibility of establishing and running junior basic and senior basic schools for imparting education respectively" upto Classes V and VIII in both rural and urban areas, a job which before the enforcement of the Act was being performed by local bodies known as Zila Parishads in rural area and City Boards, Municipal Boards and City Corporations in urban areas. The manner of appointment and educational qualifications of the teachers who are to be appointed in the basic junior schools and basic senior schools are prescribed in the Rules framed under the provisions of the 1972 Act.

2. In the present case, petitioners of this writ petition and several other persons who happen to be petitioners in many other writ petitions have approached this Court to compel the Basic Shiksha Adhikari to accept their candidature for appointment against the posts of Assistant Teachers in Bailie Primary Schools of District Bhadohi which were advertised by him on 14/11/1995 vide letter No. 92532/9596 for being filled up though petitioners do not possess the requisite

training qualification prescribed by Recruitment Rules and the qualification mentioned in the advertisement issued by the Basic Shiksha Adhikari. As per the Rules and the Advertisement issued on 14111995, a candidate must have Basic Training Certificate (B.T.C.) or its equivalent Training Examination for appointment on the post with minimum educational qualification whereas for the years of 1993 and 1994 B.A. or equivalent examination. So far educational qualification is concerned, all the petitioners possess the requisite educational qualification but they do not possess the requisite training qualification of B.T.C. or its equivalent examination such as C.P.Ed. All of them are possessed of B.Ed. (Bachelor of Education) which is also a teachers training qualification prescribed by U. P. Intermediate Education Act, 1921 for appointment of teachers of High School and Intermediate level which are recognised by Uttar Pradesh Board of High School and Intermediate Examination, U. P. Allahabad, constituted by 1921 Act. The District Basic Education Officer, Bhadohi did not call petitioners herein and many others for interview simply for the reason that none of them are possessed of the requisite training qualification which is required for appointment on the post in question. Petitioners, have therefore, sought order in the nature of mandamus from this Court for compelling the Basic Shiksha Adhikari, Bhadohi, respondent No. 2 herein to call them in the interview and accept their candidature for appointment on the post.

3. Petitioner's contention is that the B.Ed. Degree is something more than the training qualification of B.T.C. which is required for appointment on the post and in any case it is equivalent to B.T.C. and, therefore, they are entitled to be considered eligible for appointment, on the post, they have also, however, suggested that in any case, their case for appointment on the post may be considered after B.T.C. candidates are exhausted.

4. Article 226 of the Constitution empowers this Court to issue writs or orders in the nature of habeas corpus, prohibition, quowarranto, certiorari and mandamus. Writ of mandamus is issued at the stance of a person having legal right demanding performance of any thing as against the person against whom it is directed who must have the corresponding legal duty to perform that thing.

5. Mandamus literally is a command. It differs from certiorari and prohibition. It is issued by the Court against the State or its agencies or Court or Tribunal to compel it to act. An applicant seeking issue of an order in the nature of mandamus must satisfy the Court that he has a legal right to the performance of legal duty by respondents (the party against whom it is sought) and the legal duty performance where of is sought to be enforced must be one imposed on the respondent by the Constitution, any statutory provision, Rules or regulations framed under a statutory provision or by the Common Law which must have the force of law.

6. In this background of the basic requirements of mandamus, it is now to be examined as to whether in the present case petitioners have a legal right to be called in the interview for appointment on the post in question and respondents

including the Basic Shiksha Adhikari, Bhadohi has a corresponding legal duty to call them in the interview.

7. Unfortunately, the writ petition is totally bereft of any material indicating any legal right in favour of petitioners and the corresponding legal duty as against respondents. Though before seeking issue of writ of mandamus or an order of that nature, it is the duty of the applicant to disclose in the petition itself that he is possessed of a legal right performance whereof is enjoined by law upon respondents but no material has either been disclosed by petitioners herein either in the writ petition or by their learned counsel, Sri S. S. Chauhan who has argued the case on their behalf, at the time of his oral submissions in the Court from which any legal right of appointment of petitioners on the post in question could be established. Normally, the writ petition should be rejected for this brief reason but looking to the fact that many jobless young aspirants seeking employment have approached this Court with the hope of getting appointment on the post in question, I have decided to examine their entitlement for appointment on the post in the context of the provisions of U. P. Basic Shiksha Adhiniyam and the Rules framed thereunder.

8. Section 6 of U. P. Basic Education Act, 1972 inter alia empowers the Basic Shiksha Parishad to appoint employees and teachers for the purposes of running its institutions. Section 19 of the Act empowers the State Government to frame Rules inter alia laying down the norms for recruitment and appointment on the posts of teachers in Basic Schools and also for providing conditions of their services.

9. State Government framed Uttar Pradesh Karmchari Varg Niyamawali, 1973 (hereinafter referred to as "the Rules") in exercise of its power under Section 19(2)(a) of the Act which inter alia provides the minimum requirements for appointment on posts including the post of Assistant Teachers in educational institutions run by the Basic Shiksha Parishad. Rule 13 of the Rules in so far as appointment on the post of Assistant Teachers in Junior Basic Schools are concerned, requires that a candidate must possess minimum educational qualification of High School or some equivalent examination duly approved by the State Government alongwith Basic Teaching Certificate (B. T. C.) or Hindustani Teacher Certificate (H.T.C.) or Junior Teacher Certificate (J.T.C.) or Teaching Certificate or some other teaching certificate duly approved by State Government to be equivalent to either of them. Similarly, Rule 8 of U. P. Basic Education (Teacher) Service Rules, 1981 (hereinafter referred to as 1981 Rules") lays down identical educational and training qualifications as a prerequisite for appointment on the post of Assistant Teacher in a Junior Primary Schools of the Basic Shiksha Parishad.

10. Having seen the statutory provisions in the matter of appointment of Assistant Teachers in Junior Basic Schools run by the Basic Shiksha Parishad it is now necessary to test the contention advanced by Sri S. S. Chauhan, the learned counsel for petitioners. According to him, since petitioners possess higher

training certificate of B.Ed., therefore, they must be deemed qualified and possessed of the requisite qualification for appointment on the post in question.

11. Rule 13 of 1973 Rules and Rule 8 of 1981 Rules, both of which lay down the educational qualification for appointment on the post in question, do not however give any licence to justify the contention of the learned counsel. In so far as educational qualification is concerned, the words used in both the Rules reads as under :

Rule 8 of 1981 Rules lays down verbatim the same requirements with the same language.

12. In view of the words used in 1981 and 1973 Rules, there is no scope to entertain applications for appointment on the post in question from candidates who do not possess the qualifications referred to above. None of the two Rules leave any room to enable the Basic Shiksha Adhikari to accept applications for appointment from those who are not possessed of any of the teachers training certificate which are enumerated in the Rules or some other teaching certificate which may have been approved by the State Government as an equivalent certificate. The teaching certificate referred to in these rules are primary teaching certificates whereas the B.Ed, degree is a higher teaching certificate which is required for teaching in High School and Intermediate classes. The technique of teaching in Nursery classes. Junior and Senior basic classes and High School and Intermediate classes is quite different. A person having B.ed. or M.Ed, degree or L.T. degree will not be fit for teaching nursery and primary and junior class students. It is for this reason that the different statutes provide different education as well as teaching qualifications for different grade of studies. In Rule 13 of 1973 Rules and also in Rule 8 of 1981 Rules, the teaching certificate required for appointment of teacher in Nursery Schools (classes below class 1) is wholly different from the one required for appointment of Assistant Teacher in Junior Basic School. For Nursery School teachers the teaching certificate required is as follows ;

The teaching qualification required by the Rules are specific and not general. These rules do not admit of any compromise in so far as teaching certificate is concerned.

13. In the matter of teaching qualification there is no digression in the advertisement which has been issued by respondents. It is on the same lines as is the requirement of Rule 13 of 1973 Rules and Rule 8 of 1981 Rules.

14. Petitioners have not been able to show any order from the State Government as contemplated by the Rules to the effect that B.Ed. Examination has been declared by the State Government to be equivalent to B.T.C., H.T.C., J.T.C. etc, ; it is most improbable too ; that is why petitioners have not made a plea to that effect.

15. In absence of an order from the State Government declaring B.Ed.

Examination being equivalent to B.T.C. etc., it is not possible to hold that petitioners are possessed of minimum training qualification for appointment on the post which has been laid down by the Rules which are mandatory in nature and do not even authorise the State Government or the Selection Committee to relax the requirements in case a candidate is found possessed of higher qualifications than those which are required. In view of this legal position, it is obvious that the Basic Shiksha Adhikari organising the recruitment has no power or authority to call for interview those candidates who have applied for appointment on the post in question but are not possessed of the essential training qualification provided by Rules as a precondition for appointment. Petitioners too have no legal right to be considered for appointment on the post in question because they do not possess the requisite training qualification which is a prerequisite for appointment on the post.

16. Petitioners' demand that although they may not be holding the requisite training qualification for appointment on the post in question but still because they hold higher training qualification than what is required by the Rules, they should in any case be called for interview so that if some post remains unfilled from the candidates who are possessed of the requisite training qualification, their case may also be considered for appointment as against the remainder of the posts.

17. This contention advanced on behalf of petitioners, in my opinion, too has no substance. Posts under the Basic Shiksha Parishad are office under the State. Such posts can be filled only in the manner which is provided for appointment on the post in the Recruitment Rules and not otherwise. If offices under the State are filled by making appointment of persons who are not possessed of the requisite qualifications and in making appointment against such posts recruitment rules are not complied, the appointment becomes vitiated on account of the breach of Article 16 of the Constitution as also of the relevant recruitment Rules.

18. Article 16 of the Constitution of India guarantees equality of opportunity for citizens in the matter of appointment to an office under the State. The guarantee of employment and appointment in this Article includes the guarantee that the appointment and employment shall be made available to the citizen strictly in accordance with the Recruitment Rules and not otherwise. If persons not possessed of requisite qualifications are employed in public offices then such an appointment will be discriminatory as against persons who are possessed of the requisite qualification prescribed by Rules for appointment to that office. There would be no rule of law at all if appointment in public offices is given to persons who are not possessed of the requisite qualifications. Article 14 of the Constitution is the key provision which guarantees Rule of Law in the country ; Article 16 which happens to be a limb of Article 14 guarantees Rule of Law in the matter of appointment and employment in public offices under the State. Therefore, if any impermissible diversion from a recruitment rule is made in the

matter of appointment to a public office under the State such an appointment apart from being bad for the breach of that Rule, it will also be violative of the equality clause which is guaranteed by Article 16 of the Constitution. This Court, therefore, cannot be a party to compel respondents to appoint petitioners on the post of Assistant Teachers although the petitioners do not possess the qualification which is provided by Rules as a prerequisite for making appointment on the post.

19. I, therefore, find no force in any of the contentions advanced on behalf of petitioners. In my opinion, petitioners are not entitled for being considered as a candidate for appointment on the post in question as they lack the essential training qualification prescribed by the Service Rules (Rule 13 of 1973 Rules and Rule 8 of 1981 Rules) as also in the advertisement inviting applications for appointment on the post, therefore, their prayer that the respondents may be directed to interview them, cannot be allowed.

20. In view of the above discussion, the writ petition has no merit and is accordingly dismissed.

S. P. Srivastava, J. Judgment pronounced in open Court under Chapter VII, Rule 1(3) of the Rules of the Court.