

(2018) 07 UK CK 0076

In the Uttarakhand High Court

Case No : Special Appeal No. 331 of 2018, 336 of 2018, 402 of 2018

Mohd. Anwer and others

APPELLANT

Vs

Uttarakhand State and others

RESPONDENT

Date of Decision : 16-07-2018

Acts Referred:

Uttar Pradesh Reorganization Act, 2000, — Section 2(f)
State Reorganisation Act, 2000, — Section 74
Constitution of India, 1950 — Article 309

Citation : (2018) 07 UK CK 0076

Hon'ble Judges : K.M. JOSEPH, C.J;SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : Vinay Kumar, Tapan Singh, Bhagwat Mehra, Vikas Pandey

Final Decision : Disposed Off

Judgement

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K.M. JOSEPH, C.J. (Oral)",

SHARAD KUMAR SHARMA, J.",

1. These three Appeals fall to be decided by us, which arise from judgment in one writ petition, namely, Writ Petition (S/S) No. 2324 of 2016. Special",

Appeal No. 331 of 2018 has been filed by the writ petitioner himself. Special Appeal No. 336 of 2018 has been filed by eight respondents and Special,

Appeal No. 402 of 2018 has been filed by the 10th respondent.,

2. Reliefs sought in the writ petition are as follows: ,

â??i) declare selection / appointment of Adeeb-E-Kamil certificate holders instead of B.A. (Urdu) degree holders as Assistant Teacher, Primary",

(Urdu), as arbitrary and illegal.",

ii) issue a writ, order or direction in the nature of certiorari calling for the record and for quashing the order of appointment issued in favour of",

candidates possessing Adeeb-E-Kamil certificate in place of B.A. (Urdu) degree holders on the post of Assistant Teacher, Primary (Urdu).",

iii) issue a writ, order or direction in the nature of mandamus commanding respondent no. 2 and 3 to appoint the petitioner as Assistant Teacher",

Primary (Urdu) from due date, i.e. date of appointment of other selected candidates, with all consequential benefits.â??",

3. The case as narrated in the writ petition is that an advertisement was issued on 17th February, 2016 calling for applications for filling up the posts of",

Assistant Teacher Government Primary School (Urdu). The qualification of the writ petitioner is mentioned in Paragraph 3 of the writ petition, which",

reads as follows:

â??3. That petitioner is a permanent resident of Jaspur, District Udham Singh Nagar who belongs to OBC category. Petitioner possesses B.A.",

degree from M.J.P. Ruhailkhand University Bareilly and he passed Graduation with Urdu as a single subject from Uttarakhand Open University,

Haldwani. Petitioner also possesses B.Ed. degree from Kumaon University Nainital. Petitioner passed TET-1 in 2011, therefore, he is eligible for",

appointments as Assistant Teacher (Urdu) in Government Primary Schools.â??,

4. In short, the case of the writ petitioner appears to be that the party respondents have been appointed to the said post illegally. This is for the reason",

that they are not possessed of the requisite qualifications as per the Rules applicable to the post of Assistant Teacher (Primary), i.e. Uttarakhand",

Government Elementary Education (Teacher) (Amendment) Service Rules, 2012 (hereinafter referred to as the 2012 Rules). In fact, in the writ",

petition, it is alleged that contrary to the prescription provided in the advertisement that the candidate should possess Graduation with Urdu as the main",

subject, party respondents possessed Adeeb-E-Kamil certificate. It is the case of the writ petitioner that this qualification is not one recognized as",

equivalent by the State of Uttarakhand, as contemplated under Rule 9 d (1) of the 2012 Rules and under Clause 1(1) ([k] of the Advertisement dated",

17.02.2016.,

5. Pleadings were exchanged.,

6. The learned Single Judge has pronounced the following judgment:,

â??Mr. Alok Mahra, Advocate for the petitioner.",

Mr. K.N. Joshi, Dy. Advocate General for the State.",

Mr. Rakesh Thapliyal, Advocate for the respondent Nos.5 & 6.",

Mr. K.P. Upadhyay, Advocate for the respondent Nos.4,9,11 & 17.",

The respondents-State has issued an advertisement for filling up the post of Assistant Teacher, Primary (Urdu).",

The State Government has framed the rules called as â??Uttarakhand Government Elementary Education (Teacher) (Amendment) Service Rules",

2012â?. The minimum qualification for filling up the post is that the candidate should be Graduate from the University duly established under the Act,

and the candidate should have passed B.A. with Urdu as main subject.,

The State Government was directed to seek instruction, whether the Adeeb-E-Kamil, B.A. Urdu issued by Jamia Urdu, Aligarh was recognized or",

not. The supplementary affidavit has been filed. The State Government has sought information from the University Grant Commission (UGC),",

whether the degree awarded by Jamia Urdu, Aligarh is recognized or not. The UGC has informed the State Government vide letter dated 29. 09.2016",

that Jamia Urdu, Aligarh was not included in the UGC list of the Universities, thus, the Jamia Urdu, Aligarh is not duly recognized by the UGC list.",

Learned counsel appearing on behalf of private respondents has vehemently argued that as per Government Order No.4566/15-55-94- 208/94 dated,

13.09.1994, the State of U.P. has granted equivalence to Adeeb-E-Kamil, as B.A. Urdu. He has also relied upon Section 2(f) of the U.P.",

Reorganization Act, 2000. He has also made a submission that all the orders issued by State of U.P. would be applicable in the State of Uttarakhand.",

The State of Uttarakhand has now framed the Recruitment and Promotion Rules under Article 309 of the Constitution of India. They would hold the,

field and not any contrary instructions or Government orders issued granting equivalence by the State of U.P. Learned counsel for the private,

respondents has also argued that for promotion, the candidates should be Graduate with Urdu as the main subject or equivalent recognized by the",

State Government. We are not dealing with the aspect of promotion at this stage.,

The private respondents did not possess essential educational qualification as

prescribed under the Rules quoted hereinabove.,

Accordingly, the writ petition is allowed. The appointment of private respondent Nos. 4, 6 to 17 is quashed and set aside. It shall be open for the",

respondent-State to fill up the post(s) by issuing fresh advertisement in accordance with the Recruitment and Promotion Rules.â??,

7. As we have noticed, the party respondents have filed two Appeals, wherein they have challenged the judgment of the learned Single Judge holding",

that they are not possessed of the requisite qualifications. The Special Appeal filed by the writ petitioner is directed against the last portion of the,

judgment of the learned Single Judge, by which, after setting aside the appointment of the party respondents, the learned Single Judge has directed a",

fresh advertisement to be issued as per rules for holding fresh selection.,

8. We heard Mr. Tapan Singh, learned counsel for the appellants (party respondents) in Special Appeal No. 336 of 2018, Mr. Bhagwat Mehra,"

Name of the Certificate,Nature of Recognition

Adeeb Examination/ Standard,"Recognized for the purposes of employment to the posts which require knowledge of Urdu of High

School/ matriculation.

Adeeb-e-Mahir,"Recognized for the purposes of employment to the posts which require knowledge of Urdu of

Intermediate standard.

Adeeb-e-Kamil,"Recognized for the purposes of employment to the posts which require knowledge of Urdu of BA standard.

Moallim-e-Urdu,"Recognized for the purposes of employment to the posts which require a qualification for teaching Urdu language upto higher secondary standard.

Hindi version of the same reads as under: ,

â??mnwZ& Hkkjr esa fof/k }kjk LFkkfir fdlh foâ??ofok; ls mnZw fo""k; ds lkFk",

Lukrd dh mikf/k ;k jkT; ljdkj }kjk mlds led{k ekU;rk izkIr dksbZ vU; ijh{kk ,d foâ??k; ds :i",

esa mnwZ ds lkFk mRrh.kZ%,

ijUrq ;g fd ;fn dksbZ vH;FkhZ mnwZ esa mi;ZqDr vgZrk ugha j[krk gS] izksUufr fd fy,"

ik= gksxk] ;fn og mnwZ foâ??k; esa LukrdksRrj mikf/k j[krk gks%â??,

16. Though the petitioner in the writ petition builds up the case around the absence of any equivalence granted to the qualification of Adeeb-E-Kamil,

possessed by the appellants (party respondents), in the pleading in response to the counter affidavit, the case set up is that they do not possess the",

qualification, which is actually prescribed. Therefore, we will have to examine, whether the party respondents are justified in laying store by the",

doctrine of equivalent qualifications. In the Rules, which we have extracted, in relation to the post, with which we are concerned, it is clear that it does",

not contemplate an equivalent qualification. When a qualification is prescribed by a Statute or by a Government order for that matter, it is not part of",

the jurisdiction of the Court to go on a roving expedition and to find out whether any other qualification would suffice as being equivalent. The,

qualification, which is prescribed, must be taken as it is (See in this regard, our judgment in the case of Honâ??ble High Court of Uttarakhand vs.",

Man Mohan Tripathi reported in 2018 (1) UD 686, where we have discussed the entire case-law on this point, which is the view also taken by the",

Honâ??ble Apex Court in the case of State of Punjab and others vs. Anita and others reported in (2015) 2 SCC 170).,

17. We are fortified in this view of ours as in the Rules, the law-giver had deemed it fit to provide for equivalent qualification where they thought it",

necessary. In the qualification prescribed for the posts of Assistant Teacher (Senior Basic School), the rule-maker has categorically provided for an",

equivalent qualification. Therefore, there can be no matter of doubt that the case of the appellants (party respondents) based on recognition of the",

qualification, which they possess, namely, Adeeb-E-Kamil, by the former undivided State of Uttar Pradesh in the order in the year 1994 cannot avail",

them, as correctly found by the learned Single Judge; G.O. of 1994 stands overtaken by the enactment of the Rules in the year 2012 by the State of",

Uttarakhand. The advertisement in this case has been issued pursuant to the said statutory Rule made by the State of Uttarakhand in 2012. The,

advertisement was issued on 17.02.2016, which was in terms of the 2012 Rules. In such circumstances, we are not shown any basis for relying on the",

Government Order of the former undivided State of Uttar Pradesh issued in the year 1994, though we notice that an attempt is made to contend that it",

would be law within the meaning of the State Reorganisation Act. Having regard to the fact that the Rules have been made in the year 2012, it is the",

Rules, which must hold the field and would have an overriding effect, as the Rules itself have superseded all existing Rules and orders, when new",

Rules of 2012 were framed under Article 309 of the Constitution. There can also be no scope for applying Section 74 of the State Reorganisation Act,"

2000, nor is there made any attempt in this regard."

18. An attempt was made by Mr. Tapan Singh to contend that Jamia Urdu is declared to be a minority institution. Mere fact that it is declared as a,

minority institution would not make it a recognized University within the meaning of law, which brings us to the next question as to whether Jamia",

Urdu can be treated as a University. A university can be established by an enactment of the State or of the Parliament. Appellants have failed to bring,

on record any such enactment to establish that Jamia Urdu was a creation of the Act, giving it a status of University. In this regard, it would be",

profitable if we refer to the definition of the "University" as contemplated in the University Grants Commission Act, 1956. The same reads as",

under:

"University" means a University established or incorporated by or under a Central Act, a Provincial Act or a State Act, and includes any such",

institution as may, in consultation with the University concerned, be recognized by the Commission in accordance with the regulations made in this",

behalf under the Act."

19. No doubt, there can be a deemed University as contemplated in the said Act, if the University stands recognized in terms of the Regulations made",

under the UGC Act. There is no such case pleaded or established by the appellants that Jamia Urdu is a deemed University. A doubt arose before the,

learned Single Judge as to whether it is a University and clarification was sought in this regard.,

20. UGC in its correspondence dated 29.09.2016 has made it very clear that the Institution of Jamia Urdu, from which the appellants (party",

respondents) have obtained the qualification of Adeeb-E-Kamil is not one among the list of the Universities, which is maintained by UGC and no",

information in this regard is available with UGC. No Enactment is pointed out to us, under which, it could be said that Jamia Urdu Institution was",

made. It is quite clear that there is no Enactment. If there is no Enactment, we would think that the Institution in question, i.e. Jamia Urdu, from which,"

the appellants (party respondents) have obtained Adeeb-E-Kamil cannot be treated as a University established by law. The requirement under the,

Rules is that the Degree in Graduation must be from a University established by law. Since it is not established by any law and as apparently is,

reported by UGC also that it is not a University, which is recognized by the UGC list, it is quite clear that Jamia Urdu is not a University. Therefore,"

the qualification of Adeeb-E-Kamil cannot be treated as one, which is issued by a University established under law. We have also held that the",

concept of equivalence has no place in our discussion relating to this controversy. The result is that there is no merit in the contentions raised by the,

appellants (party respondents). We agree with the learned Single Judge that the appellants (party respondents) cannot be treated as possessed of the,

requisite statutorily prescribed qualification. This must result in dismissal of Special Appeals filed by the appellants (party respondents), namely,"

Special Appeal No. 336 of 2018 and Special Appeal No. 402 of 2018.,

21. We must deal with the argument advanced by Mr. Bhagwat Mehra, learned counsel that the writ petitioner cannot be permitted to gain anything",

from the writ petition for the reason that he passed B.A. in 2010, and, therefore, he would have passed B.Ed. only thereafter and, therefore, the case",

based on his having a right with reference to possessing B.Ed. Certificate in the year 2008 cannot stand. In this regard, we have already noticed the",

qualification, which has been pleaded by the writ petitioner in Paragraph No. 3 of the writ petition.",

22. Mr. Vinay Kumar, learned counsel for the appellant (writ petitioner) confronted with this would actually submit that the petitioner had obtained",

Graduation Degree in the year 2006. In support of this, he made available to us, no doubt (without support of any pleading) the application, which he",

had submitted for the post in question, wherein, it has been indicated that he has passed Graduation in the year 2006. It is his further case that he was",

able to pass B.Ed. in the year 2008 and still later on, he claimed to have obtained the Graduation Degree, which is the Degree, which is actually the",

subject matter of pleadings. The case of his being Graduate in the year 2006 has not been pleaded. The petitioner undoubtedly has pleaded about his,

B.Ed. Degree in Paragraph No. 3 of the writ petition. No doubt, it is true that the fact that he had obtained a degree in Graduate course in the year",

2006 is not specifically pleaded, but we cannot over look the fact that he has pleaded that he has obtained B.Ed. Degree in the year 2008. B.Ed.",

cannot ordinarily be granted without graduation. Therefore, we may not be justified in laying store by this aspect, but having regard to what we may",

say in the Appeal filed by the appellant (writ petitioner), we would think that it would work as sufficient safeguard so that no illegality is committed.",

23. Taking us to the Appeal filed by the appellant (writ petitioner), it is to be noticed that in the reliefs, which have been sought by the writ petitioner,"

he has not laid any challenge to the advertisement. In fact, there is no lacuna in the advertisement. What went wrong is illegality committed in",

permitting the party respondents to the writ petition being considered even though they did not possess the requisite qualification of Graduation with,

Urdu as the main subject. It is quite clear from the stand taken in the counter affidavit by the official respondents that they have permitted them to,

also pass muster on the basis of the recognition granted to their course by the former undivided State of Uttar Pradesh, but this cannot be for the",

reason that the Rules have been framed by the competent body after the State of Uttarakhand came into being and the advertisement has been issued,

under the 2012 Rules. Therefore, after the learned Single Judge found that the appointments of the party respondents were illegal, the contention of",

the appellant (writ petitioner) appears to be that the learned Single Judge should have moulded the relief instead of directing that a fresh advertisement,

be issued. We must notice the following stand taken by the writ petitioner in the rejoinder affidavit to the counter affidavit filed on behalf of respondent,

nos. 2 & 3:

4. That the contents of para no. 3 of the counter affidavit as stated are erroneous and misconceived, which are emphatically denied.",

Petitioner's grievance is that out of 14 candidates who were offered appointment as Assistant Teacher (Urdu) in the selection in question, only",

one Shri Farman Ali, S/o Shri Akbar Ali was eligible and possessed the qualification specified in the advertisement. The remaining 13 candidates were",

ineligible as they do not possess Bachelor's degree or Post Graduate degree in Urdu, instead all of them possess a certified issued by Jamia Urdu,"

Aligarh, which is known as Adeeb-E-Kamil which is not equivalent to B.A./M.A. (Urdu), Jamia Urdu Aligarh is not a University, therefore, not",

competent to award any degree. UGC has informed petitioner under RTI that Jamia Urdu Aligarh is not included in the list of Universities.,

The advertisement dated 17-02-2016 lays down the qualification for the post of Assistant Teacher (Urdu), therefore, anyone who does not possess the",

prescribed qualification, is ineligible. This is the only ground of challenge in the writ petition, however, respondent no. 2 and 3 have given strange",

explanation in the paragraph under reply. It appears that the authorities have no defence to offer, therefore, they have avoided giving answers to the",

core issue involved in the writ petition.â??,

24. Then Mr. Vinay Kumar, learned counsel for the appellant (writ petitioner) would submit that he is concerned only with 14 vacancies in respect of",

which, appointments have been set aside. Even there, no doubt a question would arise, what would happen to the merit list already prepared and how",

is it to be worked out in the light of the relief, which already stands granted by the learned Single Judge to the writ petitioner.",

25. As we have noticed that as there is no challenge to the advertisement, there is no need to issue a fresh advertisement as no one has alleged any",

anomaly in the advertisement. In fact, even as things stand against the judgment of the learned Single Judge, there is no appeal filed by anyone else",

except the party respondents. Therefore, we would think that the interest of justice would be better sub-served if we substitute the last portion of the",

direction with the direction that the matter be worked out (Shri Vinay Kumar submits that no appointments have been made after the judgment of the,

learned Single Judge) on the basis of the qualification, which we have found, holds the field. No doubt, at that stage, the question relating to whether",

the appellants had the requisite qualification must also be gone into in the light of the arguments advanced by Mr. Bhagwat Mehra, learned counsel for",

the appellant that the appellant (writ petitioner) claims to have obtained B.Ed. degree in the year 2008; whereas he has done graduation in the year,

2010. This is a matter, which must necessarily be gone into by the Authorities.",

26. Following the aforesaid discussion, we dispose of the Appeals as follows:",

Special Appeal Nos. 402 of 2018 and 336 of 2018 will stand dismissed.,

No order as to costs.,

Special Appeal No. 331 of 2018 will stand partly allowed. We modify the judgment of the learned Single Judge and delete the direction that "It shall,

be open for the respondent-State to fill up the post(s) by issuing fresh advertisement in accordance with the Recruitment and Promotion Rules.",

Instead, we direct that respondent no. 3 will proceed to process the applications in accordance with the law. In this regard, we direct that respondent",

No. 3 will consider, whether the claim of the writ petitioner that he had done graduation in the year 2006 before he obtained B.Ed. is correct and",

borne out by the documents. Respondent No. 3 will thereafter process the matter strictly in accordance with law and on the basis of the findings as to,

qualifications, which have been made by the learned Single Judge, which we have upheld. This process will be completed by the 3rd respondent within",

two months from the date of the receipt of the judgment.,

No order as to costs.,