

(2010) 07 AHC CK 0397
In the Allahabad High Court

Mohd. Mustakeem Mansoori and Others	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Constitution of India, 1950 — Article 21A, 350A

Citation : (2010) 07 AHC CK 0397

Hon'ble Judges : R.K. Agrawal, J;Anil Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard.
2. In view of the controversy which is involved in the present case and keeping in view the judgment and order dated 28.11.2007 passed in Special Appeal No. 1330 of 2007, State of U.P. And Ors. v. Km. Sumbul Naqvi.
3. Appellants are permitted to challenge the order dated 14.9.2007 passed by Hon"ble Mr. Justice Arun Tandon in Writ Petition No. 47044 of 2006, Smt. Reshma and Ors. v. State of U.P. and Ors. by means of the present Special Appeal.
4. For the foregoing reasons, the application is allowed.
5. By means of the present Special Appeal, the judgement and order dated 14.9.2007 passed by Hon"ble Mr. Justice Arun Tandon in Writ Petition No. 47044 of 2006, Smt. Reshma and Ors. v. State of U.P. is under challenge.
6. We have heard the learned Counsel for the parties and perused the record.
7. The controversy involved in the present case is that the State of U.P. On 26.2.2005 had taken a decision to conduct two years Special B.T.C. Training Urdu, for appointment of Assistant Teachers Urdu against 3000 posts lying vacant in various institutions situated throughout the State of U.P. Under the

control of Basic Shiksha Parishad U.P. Allahabad.

8. For the said purpose, an advertisement was published by various District Authorities of the State of U.P. Inviting applications from the prospective candidates for being enrolled for admission to Special B.T.C. Training Course. The qualification prescribed for being admitted to the said course, where prescribed as graduate, with Urdu as one of the Subject in Intermediate and High School Examination or a graduate degree from recognized University established by law in India with High School and Intermediate without Urdu but having passed the said examinations in Urdu as additional subject or any other examination in Urdu declared equivalent thereto.

9. The said advertisement was challenged by the respondent-appellant. The grounds of challenge are summarized in nut shell as under:

(a) Qualified teachers are available for appointment against the existing vacancies and therefore the process of direct recruitment through Special B.T.C. Training Course (Urdu) as initiated under the advertisement is totally uncalled for.

(b) the qualification mentioned in the advertisement for being admitted to special B.T.C. Training Course Urdu and thereafter appointment as Urdu Teachers are contrary to the statutory provisions regulating the appointment of Urdu Teachers in the institutions established by the Basic Shiksha Parishad U.P. Allahabad namely, U.P. Basic Education Teachers (Service) Rules, 1978.

(c) Persons (like some of the petitioners), who are graduate with Urdu but had passed High School and Intermediate Examinations without Urdu as one of the subject, cannot apply in pursuance to the said advertisement, which according to petitioners is legally not sustainable in view of statutory Rules of 1978.

(d) Degree of Adhikari from Gurukul Vishwavidyalaya, Vrindavan, which is claimed to be equivalent to graduation and therefore such candidates must also be permitted to apply for the Special B.T.C. Course, have been denied.

(e) Certificate of Munshi obtained from Arabi Farsi Madarsa Board cannot be treated to be equivalent to High School and therefore the stipulation to that effect as mentioned in the advertisement is illegal.

(f) The certificates of Darul Ulum and Nawatul Ulum from Lucknow should be treated to be an equivalent qualification for applying for admission to the Special B.T.C. Course Urdu the issue whereof is already under challenge before this Court.

(g) Holder of Diploma in Teacher's education from Aligarh Muslim University, is equivalent to B.T.C. as per the Government Order dated 26.9.1994 as also in view of the Judgment dated 17.1.2006 passed in Writ Petition No. 32760 of 2001 and therefore they challenged the advertisement on the ground that persons like the petitioners are entitled to be appointed against the post of Assistant Teachers Urdu available in recognized institutions before any process for Special B.T.C. Training Course could be started.

10. Further after exchange of pleadings between the parties by means of the judgement and order dated 14.9.2007, learned Single Judge disposed of the the matter in controversy alongwith connected matters with certain directions in which identical and similar dispute was involved.

11. Aggrieved by the said order dated 14.9.2007 passed by learned Single Judge, the present Special Appeals have been filed by the State of U.P. and others.

12. At the outset, it is mentioned at the bar that the controversy which is involved in the present special appeal, is squarely covered by the Judgment and order dated 28.11.2007 passed in Special Appeal No. 1330 of 2007, State of U.P. and Ors. v. Km. Sunbul Naqvi, allowed with the following directions:

Para-16. We have considered these submission of both the learned Counsel. The material on record clearly shows that there is a serious backlog as far as imparting the primary education through Urdu is concerned, more than 25500 schools require Urdu teachers. The Training Schools, which were set up for providing training and were existing at places like Varanasi, Lucknow, Agra and Meerut have been closed down from 1997-98. A reference is also made to the Sachher Committee Report on Minorities. The primary education is a concern of the State Government and of the Society at large. All that the State Government has done is to make training available to certain number of candidates, who will have this additional qualification. It cannot be said to be a diversion or denial of opportunity to the others. Similarly, as far as the requirement of clearance from NCTE is concerned, inasmuch as Urdu was also a subject sanctioned and the course, which is to be imparted is one and the same the NCTE itself has stated in its letter that no separate clearance was required. There is a clear error on the part of the learned Single Judge in understanding the contents of the correspondence. It is also material to note that the State Government has amended the U.P. Basic Education (Teachers) Services Rules, 1981 and has included Special BTC Urdu as one of the permissible qualification.

Para-17. In this connection, we cannot ignore that it is the mandate of the Constitution under Article 350A, that every State and every local authority has to make an endeavour to provide adequate facilities for instructions in the mother tongue at the primary level of education to the children belonging to linguistic minority groups. Now, the Constitution has been further amended by inserting Article 21A, that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, be law, determine. The State has made arrangement to provide training to make available primary teachers, who will teach through Urdu Medium. The Scheme made by the State Government will have to be looked at in the light of these two Articles now.

Para-18. In the circumstances, the appeal will have to be allowed. All these observations of the learned Single Judge and his findings will have to be set

aside and they are hereby set aside. The State Government will be permitted to proceed to complete the course of earlier batches and to proceed with the 3rd batch for which the advertisement has been given on 10.9.2006. It will be open to the State Government to proceed to declare the results of the earlier batches and continue the training programme.

13. In view of the above said facts, the appellant is also entitled for the same relief as given by order dated 28.11.2007 passed in Special Appeal No. 1330 of 2007.

14. For the foregoing reasons, the present Special Appeal is allowed in term of the judgement and order 28.11.2007 passed in Special Appeal No. 1330 of 2007, State of U.P. and Ors. v. Km. Sumbul Naqvi.