

(2014) 01 UK CK 0013
In the Uttarakhand High Court
Case No : Writ Petition No. 2034 of 2013

Nisha Rani and Another

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 02-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Right of Children to Free and Compulsory Education Act, 2009 — Section 23

Citation : (2014) LabIC 997

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : S.K. Mandal, Advocate for the Appellant; H.M. Raturi, Addl. C.S.C., T.A. Khan, Sr. Advocate and Aditya Kumar Arya, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Alok Singh, J.—The grievance of the petitioners is that both the petitioners are post graduate and B.Ed. Both of them intend to appear in UPET-II examination, however, as per the advertisement, annexure No. 10 to the writ petition, only those candidates can appear in the UPET-II examination, who have secured minimum 45% marks in graduation along with B.Ed./L.T./Shiksha Shastra. The contention of the petitioners is that at the time of taking admission in the B.Ed./L.T./Shiksha Shastra courses, there was no requirement to secure 45% marks in graduation, therefore, at this stage, fixation of 45% marks in graduation is arbitrary.

2. Learned counsel for the petitioners, while placing reliance on the judgment passed by the Co-ordinate Bench of this Court dated 28.08.2012 in Writ Petition No. 772 (SS) of 2011, Baldev Singh and others v. State of Uttarakhand and others and in the connected writ petitions, has contended that imposition of minimum 45% and 50% marks in graduation as the case may be held to be in violation of Article 14 of the Constitution of India and judgment passed by the Co-ordinate Bench of this Court dated 28.08.2012 Baldev Singh (supra) was upheld

in Special Appeal No. 286 of 2013 decided on 04.09.2013.

3. Learned counsel for the petitioners further contends that this Court has also followed judgment of Co-ordinate Bench of this Court in the case of Baldev Singh (supra) in Writ Petition No. 1660 (SS) of 2013, Km. Jyoti Deopa v. Uttarakhand Board of School Education and other connected writ petitions, therefore, respondents be directed to issue corrigendum deleting the requirement of minimum 45% or 50% marks as the case may be in the graduation as required by annexure No. 10 to the writ petition.

4. As per Section 23 of the Right of Children to Free and Compulsory Education Act, 2009, minimum qualification can be fixed for the appointment of a teacher and a teacher appointed prior to the commencement of the Act, has to acquire such qualification within a period of five years. Section 23 of the Act is sufficient to demonstrate that to maintain the standard of teaching and education, minimum qualification must be fixed. In the humble opinion of this Court, term "minimum qualification" includes minimum percentage of marks in the degree or course required. Therefore, fixation of 45% or 50% marks in graduation level seems to be reasonable classification. It does not violate Article 14 of the Constitution of India. Moreover, argument of the learned Counsel for the petitioner that since no minimum percentage was fixed at the graduation level to secure admission in B.Ed./L.T./and other courses, therefore, for the appointment such percentage cannot be fixed does not hold water. Fixation of minimum marks in graduation degree to take admission in B.Ed. is different to the appointment. Employer is always at liberty to select best qualified employees. In the further opinion of this Court, Writ Court, ordinarily, should not interfere in the policy decision of the State, unless, of course, same is found to be arbitrary, unjustified or in violation of Fundamental Rights as conferred by our Constitution.

5. Mr. T.A. Khan, learned Senior Counsel and Mr. H.M. Raturi, learned Addl. C.S.C. appearing for respondent Nos. 1 and 2 contended before me that Special Appeal filed against the judgment of Baldev Singh (supra) was dismissed for non prosecution and appropriate steps may be taken to get it restored.

6. However, fact remains that Co-ordinate Bench of this Court has taken a view contrary to the view expressed hereinbefore and Special Appeal was also dismissed, therefore, judicial discipline binds me to follow the judgment passed by the Co-ordinate Bench of this Court. Therefore, present petition stands disposed of in the terms of the judgment passed by the Co-ordinate Bench of this Court in the case of Baldev Singh (supra).