

(2011) 11 AHC CK 0463

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 63438 of 2011

Om Prakash Mishra and Another

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

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

Citation : (2011) 11 AHC CK 0463

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Dilip Gupta, J.—The petitioners, who had obtained less than 45% marks in the Graduate Examination, have sought the quashing of the Advertisement issued for the U.P. Teachers Eligibility Test 2011 to the extent it prohibits such candidates who have obtained less than 45% in the graduate examination from appearing at the said Test.

2. It is contended by learned counsel for the petitioners that the petitioners belong to the general category and passed the graduate examination in 1995 and 1997 with 43% and 42.6% marks respectively. Thereafter, they took admission to M.A. Course and also obtained the B.Ed. Degree as there was no restriction of obtaining 45% marks for admission to these courses. He, therefore, submits that the restriction of obtaining at least 45% in the graduate examination will make such candidates ineligible to appear at the test, even though they have obtained B.Ed. Degree. He, therefore, submits that the respondents should modify the condition imposed in the Advertisement.

3. It is the submission of the learned counsel for the respondents that the eligibility requirement is a matter within domain of the authority and the petitioners cannot be permitted to suggest their own conditions. It is also his submission that eligibility requirement of obtaining at least 45% marks in the

graduate examination is not arbitrary or whimsical.

4. I have considered the submissions advanced by the learned counsel for the parties.

5. The Advertisement dated 22nd September, 2011 issued by the Madhyamik Shiksha Parishad mentions that notification 23rd August, 2010 has been issued by the National Council for Teachers Education u/s 23 of the Right of Children to Free and Compulsory Education Act, 2009 laying down the minimum eligibility requirement of teachers of Classes I to VIII. It also provides that the teachers should clear the Teachers Eligibility Test. The minimum eligibility requirement for appearing at the Test has also been mentioned which includes that a candidate should have at least 45% marks in the graduate examination.

6. The contention of the learned counsel for the petitioners is that the requirement of obtaining of 45% marks at the graduate examination is not necessary as the candidates have obtained B.Ed. Degree.

7. It is not possible to accept the contention of the learned counsel for the petitioners. The Advertisement prescribes the requisite qualification for appearing at the Test and it cannot be said that the requirement of obtaining 45% marks at the graduate examination is arbitrary merely because the candidate has obtained the B.Ed. degree.

8. The scope of interference of the Court in such matters is very limited. In this connection, reference needs to be made to the decision of the Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, in which the Supreme Court examined the scope of interference by the Courts and observed

It would be wholly wrong for the court to substitute its own opinion for that of the legislature or its delegate as to what principle or policy would best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by the regulation-making body and declare a regulation to be ultra vires merely on the ground that, in the view of the Court, the impugned provisions will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rules or regulations acts within the scope of the authority conferred on it, in the sense that the rules or regulations made by it have a rational nexus with the object and purpose of the Statute, the court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the

provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy

because its scrutiny has to be limited to the question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the Statute.

The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.

(emphasis supplied)

9. The aforesaid decision of the Supreme Court in the case of Paritosh Bhupesh Kurmarsheth (*supra*) was followed subsequently in *Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission and Others*, and it was observed :

...There is no dispute that under the relevant rule of the Commission there is no provision entitling a candidate to have his answer-books re-evaluated. In such a situation, the prayer made by the appellant in the writ petition was wholly untenable and the learned single judge had clearly erred in having the answer-book of the appellant re-evaluated.

10. In *Ekta Shakti Foundation Vs. Govt. of NCT of Delhi*, 2006 AIR

SCW 3601 the Supreme Court observed as follows: While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. See *Asif Hameed and others Vs. State of Jammu and Kashmir and Others*, *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others*, The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

The Court should constantly remind itself of what the Supreme Court of the United States said in *Metropolis Theatre Company v. City of Chicago* (1912) 57 L Ed 730 . "The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. See : *State of Orissa and Others Vs. Gopinath Dash and Others*,

11. In *State of H.P. and Others Vs. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh*, the Supreme Court has also observed:

...Inasmuch as ultimately it is the responsibility of the State to provide good education, training and employment, it is best suited to frame a policy or either modify/alter a decision depending on the circumstance based on relevant and acceptable materials. The courts do not substitute their views in the decision of the State Government with regard to policy matters. In fact, the court must refuse to sit as appellate authority or super legislature to weigh the wisdom of legislation or policy decision of the Government unless it runs counter to the mandate of the Constitution.

12. In view of the decisions of the Supreme Court, it is not possible to interfere with the requirement contained in the Advertisement that only such candidates will be able to appear at the Teachers Eligibility Test who possess Graduate Degree with at least 45% marks.

13. Thus, for the reasons stated above, it is not possible to grant any relief to the petitioners.

14. The writ petition is, accordingly, dismissed.