
(2018) 07 UK CK 0086
In the Uttarakhand High Court
Case No : Special Appeal No. 323 of 2016

Poonamlata

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 17-07-2018

Acts Referred:

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

Citation : (2018) 07 UK CK 0086

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

Bench : Division Bench

Advocate : Dinesh Gahtori, Pradeep Joshi, Anil Kumar Bisht

Final Decision : Partly Allowed

Judgement

K.M. JOSEPH, C.J. (ORAL)

SHARAD KUMAR SHARMA, J.

1. Appellant is the writ petitioner. The following relief was sought in the writ petition:

â??i) issue a writ, order or direction in the nature of mandamus directing the respondents to proceed with the result dated 18-02-2013 (contained as annexure no. 3 to the writ petition) and further be pleased to direct the respondents to provide appointment to the petitioner who stood first in the final merit list dated 18-02-2013.â??

2. Facts of the case as pleaded are that on 27.05.2012, an Advertisement was issued by the Manager of the fourth respondent College, which is an aided Institution under the Uttarakhand School Education Act, for filling-up several posts, including the posts of Assistant Teacher (LT Grade) English with which we are concerned. Appellant applied for the same. Her application

was processed. On culmination of selection, she secured 73.25% quality point marks and her name figured at the second place in the list. A call letter was issued to the appellant vide Annexure No. 2 dated 02.02.2013. She underwent the interview, which was held on 18.02.2013. She got the highest quality point marks among the interviewed candidates (87.73 quality point marks). Annexure No. 3 purports to be the select list.

3. A writ petition was filed by one Rajbir Singh being Writ Petition (S/S) No. 230 of 2013, wherein he challenged selection of Assistant Teacher (English). The same was allowed by Annexure No. 4 judgment dated 30.04.2013 rendered by the learned Single Judge and the selection of the appellant too was set aside by the learned Single Judge. Appellant filed a special appeal being Special Appeal No. 146 of 2013. The same was allowed vide judgment dated 21.05.2013 and the writ petition was dismissed. Consequently, the select list, by legal implication, stood revived by the judgment of the Division Bench.

4. It is the complaint of the appellant, however, that the respondents, till date, have not issued an appointment order, in spite of the fact that there is no dispute regarding the selection process, which was upheld by the Division Bench judgment dated 21.05.2013. Approval was sought for appointment of the appellant. It is stated that the appellant stood first in the merit list and has a right to be appointed on the basis of result dated 18.02.2013.

5. In the counter affidavit filed on behalf of respondent Nos. 2 & 3 (Director, School Education and Chief Education Officer, District Pauri Garhwal, respectively), the case, which is set-up, is as follows inter alia:

The case of the respondents is that NCTE vide letter dated 10.04.2013 directed that all those trained teachers, who have to teach classes 6 to 8 also along with classes 9 & 10, which they are otherwise to teach, will have to qualify TET-II mandatorily. The same was communicated to the

Government by the Director and the Government, vide letter dated 13.05.2013, directed that the trained teachers appointed to teach classes 9 & 10, and who would also be required to teach classes 6 to 8 also, will have to qualify TET-II. In compliance of the direction, the Director issued Annexure No. CA3 dated 17.05.2013 stating as aforesaid. It is stated that the Director, School Education, had called for a report from all the Chief Education

Officers in regard to the items therein, i.e. the post (only of LT Grade) advertised before 23.08.2010, the number of posts of Assistant Teacher (LT

Grade) whose papers are presented for approval advertised prior to 23.08.2010 and number of Assistant Teachers (LT Grade) appointed after

approval of the Chief Education Officer against the posts advertised prior to 23.08.2010.

There is further reference to order dated 29.05.2013 by the Additional Director, Secondary Education, Garhwal Region based on letter dated

17.05.2013 (Annexure No. CA3) to comply directions given therein to all Chief Education Officers calling report from them in the prescribed format

about appointments prior to 23.08.2010. It is further stated that, on 04.03.2013, the Director, Secondary Education, had issued direction that no

approval to the advertisement and also to the appointments on the posts of Assistant Teacher and Assistant Teacher (LT Grade) in aided Government

Colleges would be accorded till the directions of the State Government and, as evident, NCTE, vide letter dated 10.04.2013, has been

pleased to hold that the trained teachers, who have to teach classes 6 to 8 also, besides classes 9 & 10, have to qualify TET-II examination.

6. The learned Single Judge dismissed the writ petition taking the following view:

7. There may be two situations. The first is where Class VI, VII and VIII in a school which is only a Junior High School i.e. which runs from

Class I to Class VIII only the second situation would be that Classes VI, VII and VIII are in a school, which is part of a larger institution, which runs

from Class VI to Class XII. In both cases, however, such teachers, who impart education to Classes VI, VII and VIII i.e at senior elementary level

must be qualified teachers as mandated by the notification dated 23.08.2010, where inter alia TET-II is a necessary qualification.

8. The State Government has also annexed a letter dated 10.04.2013, which is actually a part of the letter of the NCTE, which clarifies this position

that such teachers who are imparting education to Classes VI, VII and VIII apart from taking classes of IX and X must have TET- II. This being the

mandate of law, no concession can be given to the petitioner and denial of approval for appointment of the petitioner is perfectly justified as it is the

view of this Court that the petitioner does not fulfill the minimum eligibility qualification for appointment as Assistant Teacher LT Grade.

7. Though reference was made by the learned Single Judge to Notification dated 12.11.2014, which was relied upon by the petitioner / appellant to

establish the qualification as fixed by NCTE as to be minimum qualification provided in clause (4); but, the learned Single Judge took the view that it is

not applicable and took the view that the said notification does not provide exemption from TET-II to those Assistant Teachers, who teach classes 6 to

8.

8. We have heard Mr. Dinesh Gahtori, learned counsel for the appellant; Mr. Pradeep Joshi, learned Standing Counsel for the State; and Mr. Anil

Kumar Bisht, learned counsel for the fourth respondent.

9. Mr. Dinesh Gahtori would submit that the post in question for which selection was held is that of Assistant Teacher (LT Grade). When the

Advertisement was issued, there was no reference that candidate was required to have the qualification of TET. The matter is governed by the 2006

Rules. In the 2006 Rules too, there is no reference to TET as far as Assistant Teachers (LT Grade) are concerned. Therefore, appellant having stood

first, in fact, there is no obstacle in her path being considered. Mr. Dinesh Gahtori would also rely on the Rules of the year 2014 and would submit

that, in 2014, by the Rules, it has been made clear that those, who are appointed as Assistant Teacher (LT Grade) and who have to take classes for 6

to 8, have to possess the qualification of TET. Therefore, he would submit that the said Rules will make it clear that such a requirement was not there

as far as the selection of the appellant as Assistant Teacher (LT Grade) is concerned.

10. We had passed an order asking the Standing Counsel to ascertain whether there is any rule or order, under which, persons appointed as Assistant

Teacher (LT Grade) have to take classes for 6 to 8. The learned Standing Counsel would, in fact, when queried, submit that, invariably in all

Government schools, all the teachers, who are being appointed as Assistant Teacher (LT Grade), are taking classes for 6 to 8 also. When the learned

counsel for the fourth respondent is also asked, as to whether appellant will, actually, be asked to take classes for 6 to 8, he too, without a

momentâ??s hesitation, would submit that the appellant would have to take classes for 6 to 8 on being appointed as Assistant Teacher (LT Grade).

11. Having heard the learned counsel for the parties, we must notice certain

aspects. It is, undoubtedly, true that the matter relates to qualification for teachers, who are discharging duties as teachers as part of elementary education (meaning, from classes 1 to 8). It is subject matter of central enactment in view of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the "Act"). Therein, Section 23 provides that the specified authority (NCTE) will specify the qualifications to be possessed by the teachers. Notification dated 23.08.2010 has been issued. A perusal of the same would show that, for classes 1 to 5 & 6 to 8, teachers must possess, among other qualifications, the qualification of TET-I and TET-II respectively. In the 2006 Rules framed by the Uttarakhand State, the qualification of TET is not specifically enumerated or incorporated following the notification of 2010; but, if a person is being appointed as teacher to take classes for 1 to 5 or 6 to 8, we would think that, having regard to the central Legislation and the notification issued fixing the qualification, it may not be proper to contend that a person, without possessing the qualification as fixed under notification dated 23.08.2010 issued under the Act, can take classes for 1 to 5 or 6 to 8.

12. In this case, the Advertisement was issued, as we have noticed, on 27.05.2012. The post advertised, with which we are concerned, is the post of Assistant Teacher (LT Grade). On being queried, the learned Standing Counsel does not dispute the fact that, under prevalent law, an Assistant Teacher (LT Grade) is actually appointed to take classes for 9 & 10. The designation of a teacher, who is to take classes for 6 to 8, is Assistant Teacher (Junior High School). If one goes by the qualification for the post of Assistant Teacher (LT Grade), who is to take classes for 9 & 10, the appeal of the appellant is only to be allowed, as she does have the qualifications to be appointed as Assistant Teacher (LT Grade) and she was selected by a selection committee having secured the higher marks for the said class of Assistant Teacher only.

13. It is here that the controversy is introduced. The controversy consists of the ground reality that, both, in aided schools and even in Government schools, though appointment made is with the designation of Assistant Teacher (LT Grade) and they are, under law, meant to take classes only for 9 & 10, such teachers, after being appointed, take classes not only for 9 & 10, but also for 6 to 8. This fact is established, as exposed by the submissions

made, both, by the learned Standing Counsel and also by Mr. Anil Kumar Bisht, learned counsel appearing on behalf of the fourth respondent. NCTE, apparently, has also taken a stand and it has expressed its view in the communication produced as Annexure No. CA1 dated 10.04.2013, which we have referred to. Following the same, there have been communications addressed by the State Government, the Director and the Additional Director. It is in the light of the same that the appellant's appointment has been held-up. In the communication by the NCTE, it has been stated that, even though if a person is appointed as Assistant Teacher (LT Grade), apparently for taking classes for 9 & 10, and if he / she also takes classes for 6 to 8, such person should possess TET-II. Undoubtedly, if a person takes classes for 6 to 8, then there can be no dispute that he / she must possess TET-II as provided under notification dated 23.08.2010; but, here, the appointment of the appellant is not for taking classes for 6 to 8. In that sense, on the face of it, appellant's contention appears to be prima facie well justified; but, when there are orders, which have been issued and where there has been communication issued by the NCTE, which are in the knowledge of the appellant, we must immediately notice the relief, which has been sought by the appellant. There is no challenge to the same. Even proceeding on the basis that it is void or illegal, if it stands in the way of a party securing relief, it is settled law that it must be put to challenge because the orders have to be adjudged void or illegal. A question may arise, in regard to the communication by the NCTE, whether NCTE was having any authority in law to issue such a communication. Whether the said communication, which was issued in the year 2013, and the communications which followed the same can be applied to the case of the appellant, as the Advertisement in respect of the appellant was issued much before the said communication. All these questions could be gone into, if there is a proper challenge to the same. In such circumstances, we would think that interest of justice would require that the appellant should be given an opportunity to call in question the communications, acting on the basis of which, appointment of the appellant has not been processed and, in that sense, it is the said communications which constitute stumbling block to the grant of relief to the appellant.

14. Accordingly, the appeal is allowed partly; the judgment passed by the learned Single Judge will stand set aside; and the matter is remitted back to

the learned Single Judge. Appellant is free to seek amendment of the writ petition. It will also be open to the respondents to exchange pleadings. The case will stand listed before the learned Single Judge on 30 th July, 2018 in the Daily Cause List. If the appellant moves an application for amendment on or before that date and if the said application is allowed, we direct that the respondents will file their pleadings within a period of two weeks from 30th July, 2018. Thereafter, the case will stand listed before the learned Single Judge on 13th August, 2018 in the Daily Cause List and we request the learned Single Judge to dispose of the writ petition at the earliest as the writ petition is of the year 2013.