

(2011) 11 AHC CK 0177
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 59542 of 2011 With Writ Petition No"s. 63183, 63322, 62230, 61638, 62229, 63112, 61912, 61896, 61894, 62101, 62104, 64030, 63521, 64055, 60329, 60332, 61102, 61108, 61112, 61115, 61155, 61170, 61639, 61641, 61567, 60

Ravi Prakash and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-11-2011

Acts Referred:

Right of Children to Free and Compulsory Education Act, 2009 — Section 2, 23(1)
Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 — Rule 14, 14(1), 14(3), 14(6), 15(2)

Citation : (2011) 11 AHC CK 0177

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Dilip Gupta, J.—These petitions have been filed by persons who are undergoing or have undergone the Basic Teacher Course (hereinafter referred to as the "B.T.C") or Special Basic Teacher Course (hereinafter referred to as the "Special B.T.C") for a direction upon the respondents to forthwith grant appointment to the petitioners as Assistant Teachers in Elementary Schools run by the Board of Basic Education U.P. Allahabad (hereinafter referred to as the "Basic Education Board") in different district of the State without requiring the petitioners to pass the U.P. Teachers Eligibility Test (hereinafter referred to as the "U.P-TET") to be conducted by the Board of High School and Intermediate Education (hereinafter referred to as the "Intermediate Education Board") as a condition for grant of appointment to the petitioners as Assistant Teachers.

2. It is stated that in exercise of the powers conferred by Section 23(1) of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the "Act") and in pursuance of the notification dated 31st March, 2010 issued by the Government of India, the National Council for Teacher

Education (hereinafter referred to as the "NCTE") issued a notification dated 23rd August, 2010 laying down the minimum qualifications for a person to be eligible for appointment as a teacher in Classes I to VIII in a School referred to in Section 2(n) of the Act, which amongst others, also provides that the person should pass the TET to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose. This notification dated 23rd August, 2010 was subsequently amended by the notification dated 29th July, 2011 which provides that where an advertisement to initiate the process of appointment of teachers has been issued prior to the date of the notification, then appointments could be made in accordance with the National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (hereinafter referred to as the "2001 NCTE Regulations") as amended from time to time. It is, therefore, stated that the petitioners are not required to appear at the U.P.TET because the advertisement to initiate process of appointment of the petitioners was issued prior to 23rd August, 2010 and the 2001 NCTE Regulations which will be applicable to the petitioners do not require a person to appear at any eligibility test. For this purpose it is pointed out that an advertisement had been issued for selection of candidates for admission to the B.T.C/Special B.T.C. Training Course and this is the relevant advertisement as the appointment of a candidate who has successfully completed the B.T.C/Special B.T.C. Training Course is automatically granted subject to only verification of his certificates and the U.P. Basic Education (Teachers), Service Rules, 1981 (hereinafter referred to as the "1981 Rules") do not envisage any process of selection from amongst the B.T.C/Special B.T.C. candidates for appointment as Assistant Teachers. It is also asserted that infact no advertisements have been issued in the State for the past several years under Rule 14 of the 1981 Rules and immediately after declaration of result appointment orders are issued to candidates who have successfully completed the B.T.C/Special B.T.C. Training.

3. It is for these reasons that Sri Ashok Khare, learned Senior Counsel appearing for the petitioners has submitted that it is not necessary for the petitioners to appear at the U.P.TET and they should be granted appointments as Assistant Teachers in Elementary Schools provided they satisfy the conditions stipulated in the 2001 NCTE Regulations. In this connection he has also pointed out that the State of Uttarakhand has correctly appreciated this position and has, accordingly, exempted the candidates who have successfully completed the B.T.C/Special B.T.C. Training Course. In respect of petitions dealing with B.T.C-2004 which comprised of two batches he has submitted that candidates of the First Batch who completed the Training in April, 2011 were granted appointment as Assistant Teachers on 1st July, 2011 even though they had not cleared the U.P.-TET but the candidates of Second Batch who completed their Training subsequently are being asked to clear the U.P.-TET. It is his submission that there cannot be any discrimination between the candidates of 2004 Batch.

4. Sri K.S. Kushwaha, learned Standing Counsel appearing for the State as also

the Board and Sri R.A. Akhtar and Sri Rajiv Joshi learned counsel appearing for the NCTE have, however, contended that the appointment of Assistant Teachers in Junior Basic Schools Classes (I to V) or Senior Basic Schools Classes (VI to VIII) are made in accordance with the procedure prescribed under the 1981 Rules and, therefore, the candidates who complete the B.T.C/Special B.T.C. Training Course cannot automatically claim appointment. It is their contention that the petitioners will have to clear the U.P-TET since paragraph 5(a) of the notification issued by the NCTE on 23rd August, 2010 provides that it is only when an advertisement has been issued to initiate the process of appointment of teachers prior to the date of the notification that appointments could be made in accordance with the NCTE Regulations-2001 as amended from time to time and even according to the petitioners advertisement as provided for under Rule 14 of the 1981 Rules has not been issued for appointment of Assistant Teachers. It is their submission that the process of appointment is initiated by issuance of an advertisement under Rule 14 of the 1981 Rules and the advertisement issued for the purpose of inviting applications from candidates for admission to B.T.C/Special B.T.C. Training cannot be treated as an advertisement for the purposes of Rule 14 of the 1981 Rules. It is also their submission that no benefit will accrue to the petitioners even if in the past certain appointments had been made without insisting upon the requirement of clearing the U.P.-TET.

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

6. It is seen from the records of the writ petitions that the petitioners have either completed or are undergoing the B.T.C/Special B.T.C. Training. The training courses which are involved in the writ petitions are B.T.C-2004, B.T.C-2010, B.T.C (Urdu)-2010 and Special B.T.C.-2008. The B.T.C. Training is of two years duration while the Special B.T.C. Training Course is of six months duration. Admission to such training course is made by issuance of advertisement which advertisement in all the writ petitions was issued prior to 23rd August, 2010.

7. The contention of learned Senior Counsel for the petitioners is that in view of the provisions of paragraph 5(a) of the notification issued by the NCTE on 23rd August, 2010 as amended by the notification dated 29th July, 2011 the petitioners do not have to appear at the U.P.-TET since the appointments have to be made in accordance with 2001 NCTE Regulations which do not require holding of the Teachers Eligibility Test.

8. The contention of learned counsel for the respondents is that the appointments of the petitioners will be governed by the notification dated 23rd August, 2010 issued by the NCTE and not by the 2001 NCTE Regulations since the advertisement to initiate the process of appointment of teachers has not been issued.

9. In order to appreciate the contentions advanced by learned counsel for the parties it will be necessary to refer to the relevant provisions of the Act, the 1981 Rules and the notifications issued by the Central Government and the NCTE.

10. Section 23(1) of the Act deals with the qualification for appointment and terms and conditions of service of teachers and is as follows:-

23. Qualification for appointment and terms and conditions of service of teachers.--(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

11. Elementary Education has been defined u/s 2(f) of the Act while a School has been defined u/s 2(n) of the Act and the definitions are as follows:

2(f). "elementary education" means the education from first class to eight class;

(n) "school" means any recognised school imparting elementary education and includes-

(i) a school established owned or controlled by the appropriate Government or a local authority;

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;

12. The Central Government, by means of the notification dated 31st March, 2010 which was published in the Official Gazette dated 5th April, 2010, has authorised the NCTE as the "academic authority" to prescribe the minimum qualifications which notification is as follows:

NOTIFICATION

New Delhi, the 31st March, 2010

S.O. 750(E).--In exercise of the powers conferred by sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009, the Central Government hereby authorises the National Council for Teacher Education as the academic authority to lay down the minimum qualifications for a person to be eligible for appointment as a teacher.

13. The NCTE, accordingly, issued the notification dated 23rd August, 2010 which was published in the Gazette of India dated 25th August, 2010. The said notification lays down the minimum qualification for a person to be eligible for appointment as a teacher in Classes I to VIII in a school referred to in Section 2(n) of the Act, with effect from the date of the notification. However, another notification dated 29th July, 2011 was published in the Gazette India dated 2nd August, 2011. This notification made certain amendments to the notification dated 23rd August, 2010 published in the Gazette of India dated 25th August, 2010. The minimum qualifications prescribed in the Notification after the

amendment for a person to be eligible for appointment as a teacher are as follows:

1. Minimum Qualifications.-

(i) Classes I-V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Elementary Education (by whatever name known).

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor of Elementary Education (B.El. Ed.).

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education).

OR

Graduation and two year Diploma in Elementary Education (by whatever name known)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

(ii) Classes VI-VIII

(a) Graduation and 2-year Diploma in Elementary Education (by whatever name known)

OR

Graduation with at least 50% marks and 1-year Bachelor in Education (B.Ed.)

OR

Graduation with at least 45% marks and 1-year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year

Bachelor in Elementary Education (B.El.Ed)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year BA/B.Sc. Ed. or B.A. Ed./B.Sc. Ed.

OR

Graduation with at least 50% marks and 1-year B.Ed. (Special Education)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

2. Diploma/Degree Course in Teacher Education.-

For the purpose of this Notification, a diploma/degree course in teacher education recognised by the National Council for Teacher Education (NCTE) only shall be considered. However, in case of Diploma in Education (Special Education) and B.Ed. (Special Education), a course recognised by the Rehabilitation Council of India (RCI) only shall be considered.

3. Training to be undergone.- A person -

(a) with Graduation with at least 50% marks and B.Ed. qualification or with at least 45% marks and 1-year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard shall also be eligible for appointment for Class I to V upto 1st January, 2012, provided he/she undergoes, after appointment, an NCTE recognised 6-month Special Programme in Elementary Education.

(b) with D.Ed. (Special Education) or B.Ed. (Special Education) qualification shall undergo, after appointment, an NCTE recognised 6-month Special Programme in Elementary Education.

4. Teacher appointed before the date of this Notification.-The following categories of teachers appointed for classes I to VIII prior to date of this Notification need not acquire the minimum qualifications specified in Para (1) above,

(a) A teacher appointed on or after the 3rd September, 2001, i.e. the date on which the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in School) Regulation, 2001 (as amended from time to time) came into force, in accordance with that Regulation.

Provided that a teacher of class I to V possessing B.Ed. qualification, or a teacher possessing B.Ed. (Special Education) or D.Ed. (Special Education) qualification shall undergo an NCTE recognised 6-month special programme on elementary education.

(b) A teacher of class I to V with B.Ed. qualification who has completed a 6-month Special Basic Teacher Course (Special BTC) approved by the NCTE;

(c) A teacher appointed before the 3rd September, 2001, in accordance with the prevalent Recruitment Rules.

5.(a) Teacher appointed after the date of this notification in certain cases:

Where an appropriate Government or local authority or a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of this Notification such appointments may be made in accordance with the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time).

(b) The minimum qualification norms referred to in this notification apply to teachers of Languages, Social Studies, Mathematics, Science, etc. In respect of teachers for Physical Education, the minimum qualification norms for Physical Education teachers referred to in NCTE Regulation dated 3rd November, 2001 (as amended from time to time) shall be applicable. For teachers of Art Education, Craft Education, Home Science, Work Education, etc. the existing eligibility norms prescribed by the State Governments and other school managements shall be applicable till such time the NCTE lays down the minimum qualifications in respect of such teachers.

14. It is stated by learned counsel for the NCTE that 3rd November, 2001 in paragraph 5(b) of the said notification had been wrongly mentioned and the date should be 3rd September, 2001.

15. Much emphasis has been placed by the learned counsel for the parties on the phrase "prior to the date of this notification" occurring in paragraph 5(a) of the notification dated 23rd August, 2010.

16. According to the learned Senior Counsel for the petitioners it is 23rd August, 2010 which is the date when the first notification was issued whereas according to the learned counsel for the respondents it is 29th July, 2011 when the amended notification was issued containing paragraphs 5(a) and 5(b).

17. The notification dated 29th July, 2011 amends the earlier notification dated 23rd August, 2010. Clause (IV) of the notification dated 29th July, 2011 substitutes paragraph 5 contained in the notification dated 23rd August, 2010. Paragraph 5 of the notification dated 23rd August, 2010 stands deleted and has been substituted by paragraphs 5(a) and 5(b). Thus, "the date of this notification" is clearly referable to 23rd August, 2010. It is also pertinent to notice that paragraph 5 of the notification dated 23rd August, 2010 and paragraph 5(a) of the notification dated 29th July, 2011 are identical.

18. What has, therefore, to be seen is whether an advertisement to initiate the process of appointment of teachers was issued prior to 23rd August, 2010 because it is only in such circumstances that the appointments of teachers will

have to be made in accordance with the NCTE-2001 Regulations.

19. There is a dispute between the parties on this issue also. According to the learned Senior Counsel for the petitioners, the date of issuance of the advertisement referred to in paragraph 5(a) is the date of the advertisement issued for inviting applications for B.T.C/Special B.T.C. course, while according to the learned counsel for the respondents it is the date when an advertisement is issued under Rule 14(1) of the 1981 Rules.

20. The contention of learned Senior Counsel for the petitioners is that the Basic Education Board has not been issuing any advertisement under Rule 14(1) of the 1981 Rules and appointments to the post of Assistant Teachers are being directly made when candidates complete the B.T.C/Special B.T.C. and, therefore, the date of advertisement referred to in paragraph 5(a) is the date of the advertisement issued for the purposes of admitting candidates to B.T.C/Special B.T.C.

21. In order to appreciate the contention of learned counsel for the parties it will be appropriate to refer to Rules 14 and 17 of the 1981 Rules which deal with determination of vacancies and preparation of list and the procedure for direct recruitment to a post for teaching a language. The same is as follows:

14. Determination of vacancies and preparation of list.-

(1) In respect of appointment, by direct recruitment to the post of Mistress of Nursery Schools and Assistant Master or Assistant Mistress of Junior Basic Schools under clause (a) of Rule 5, the appointing authority shall determine the number of vacancies as also the number of vacancies to be reserved for candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, dependants of freedom fighters and other categories under Rule 9 and notify the vacancies to the Employment Exchange and in at least two newspapers having adequate circulation in the State as well as in the concerned district inviting applications from candidates possessing prescribed training qualification from the district concerned.

(2) The appointing authority shall scrutinise the applications received in pursuance of the advertisement and the names of candidates received from the Employment Exchange and prepare a list of such persons as appear to possess the prescribed academic qualifications and be eligible for appointment.

(3) The Regional Assistant Director of Education (Basic) may, on the application of a candidate, and for reasons to be recorded, direct that his name be included at the bottom of the list prepared under sub-rule(2).

(4) The names of candidates in the list prepared under sub-rule (2) shall then be arranged in such manner that the candidates who have passed the required training course earlier in point of time shall be placed higher than those who have passed the said training course later and the candidates who have passed the training course in a particular year shall be arranged in accordance with the quality points specified in the Appendix.

(5) No person shall be eligible for appointment unless his or her name is included in the list prepared under sub-rule (2).

(6) The list prepared under sub-rule (2) and arranged in accordance with sub-rule (4) shall be forwarded by the appointing authority to the Selection Committee.

17. Procedure for direct recruitment to a post for teaching a language.-

(1) The Selection Committee shall require the candidates mentioned in the lists referred to in sub-rule (6) of Rule 14, sub-rule (2) of Rule 15, as the case may be, to appear at a written examination which shall be of one hundred marks.

(2) In the written examination under sub-rule (1), the candidates will be required to write an essay on a current topic in the language in respect of which the post is to be filled. A candidate who obtains less than fifty marks in the written examination shall be disqualified for appointment.

(3) The marks obtained by a candidate, who is not disqualified under sub-rule (2) in the written examination shall be added to his quality points awarded in accordance with the Appendix.

(4) The Selection Committee shall prepare a list of candidates who have qualified in the written examination under sub-rule (2) in such manner that the candidates who have passed the required training course earlier in point of time shall be placed higher than those who have passed the said training course later and the candidates who have passed the training course in a particular year shall be arranged in accordance with the aggregate of marks obtained by the said candidates in the written examination and quality points. If two or more such candidates obtain equal marks, the candidate senior in age shall be placed higher in the list. The number of names in the list shall be larger (but not larger by more than twenty-five per cent) than the number of vacancies. The Selection Committee shall forward the list to the appointing authority.

(5) The list prepared under sub-rule (4) shall remain valid for one year from the date of its preparation.

22. A perusal of Rule 14(1) clearly shows that the Appointing Authority has to determine the number of vacancies and then notify the vacancies to the Employment Exchange and in at least two newspapers having adequate circulation in the State inviting applications from candidates possessing prescribed training qualification. The applications are then scrutinized and the list is prepared which is then forwarded by the Appointing Authority to the Selection Committee. The constitution of the Selection Committee is provided for in Rule 16 and a detailed procedure for making appointments by direct recruitment to a post for teaching a language and for teaching subjects other than languages is provided in Rules 17 and 17-A of the 1981 Rules. It cannot, therefore, be said that the advertisement referred to in paragraph 5(a) of the notification dated 23rd August, 2010 is referable to the advertisement issued for the purpose of

admission to B.T.C./Special B.T.C. The advertisement is clearly referable to the advertisement to be issued under the 1981 Rules for making appointment of teachers.

23. It also needs to be noticed that the selection for B.T.C./Special B.T.C. course is for imparting training to such candidates and is not a recruitment to any service. The 1981 Rules, on the other hand, deal with the selection and appointment of teachers from amongst the candidates already possessing the training qualifications. This is what has also been observed by the Supreme Court in *Devendra Singh and Others Vs. State of U.P. and Others*,

In order to resolve the controversy it is just and necessary to notice the salient features of the policy decision of the Government of Uttar Pradesh dated 14-1-2004. It is clear from a bare reading of the policy that the Government had resolved to arrange the Special BTC Training Course spread over a period of six months to all those 46,189 BED/LT qualified candidates. The selection is for the purposes of imparting training and not recruitment into any service as such.....

The most important feature of the policy is that a State-level merit list is required to be prepared on the basis of percentage of marks obtained in High School considering the rules regarding reservation. The policy directs the payment of stipend of Rs.2500 per month to the selected candidates for the Special BTC training until "he is duly appointed on the post of Assistant Teacher in the basic school after passing the written and practical examinations conducted by the Registrar, Departmental Examinations, Uttar Pradesh and obtaining the required certificate, under the control of the State Council for Education, Research and Training, on completing the required training in the merit process".

The learned counsel for the appellants relying upon the statement made in the counter-affidavit filed in these appeals wherein it is conceded that sub-rules (3) to (6) of Rule 14 are not deleted, submitted that the matter should be sent back for reconsideration of the High Court by duly applying the effect of sub-rules (3) to (6) of Rule 14 of the Rules. The submission was that the merit list is required to be prepared in accordance with sub-rules(3) to (6) of Rule 14 of the Rules. The submission in our considered opinion is totally misconceived. We have already noticed that the U.P. Basic Education (Teachers) Service Rules, 1981 deal with the post-training scenario. The Rules deal with the selection and appointment of teachers from amongst the candidates already possessing the training qualifications. The Rules do not deal with the selection of the candidates into Basic Training Course. The reliance placed upon the said Rules by the appellants in support of their contention is totally untenable and unsustainable. These Rules do not have any bearing in the matter of selection of candidates into Basic Training Course, 2004.

(emphasis supplied)

24. Earlier, appointments of teachers may have been made without following the procedure prescribed under the 1981 Rules but that does not mean that the advertisement issued for the purpose of admission to B.T.C./Special B.T.C. course should be taken to be the advertisement issued for initiating the process of appointment of teachers. The 1981 Rules have to be strictly followed and any deviation made in the past will not confer a right upon the petitioners to claim that it should be continued by the Basic Education Board while appointing them on the post of Assistant Teachers. The plea of discrimination between the 2004 B.T.C. candidates cannot, therefore, be accepted.

25. In this connection reference needs to be made to the decision of the Supreme Court in Yogesh Kumar and Others Vs. Government of NCT, Delhi and Others,

This last argument advanced also does not impress us at all. Recruitment to Public Services should be held strictly in accordance with the terms of advertisement and the recruitment rules, if any. Deviation from the Rules allows entry to ineligible persons and deprives many others who could have competed for the post. Merely because in the past some deviation and departure was made in considering the B.Ed., candidates and we are told that was so done because of the paucity of TTC candidates, we cannot allow a patent illegality to continue.

(emphasis supplied)

26. The appointment of the petitioners as teachers in Elementary Schools will have to be considered on the basis of the minimum qualifications prescribed in the notification dated 23rd August, 2010 and not by the NCTE-2001 Regulations and such being the position, the petitioners have necessarily to pass the U.P.-TET before they are appointed as it is an essential requirement.

27. The petitioners are, therefore, not entitled to the reliefs claimed.

28. The writ petitions are, accordingly, dismissed.