
(2012) 07 AHC CK 0193

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 40841 of 2009

Sarfaraz Ahmad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 03-07-2012

Acts Referred:

Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 — Rule 8(1)(ii)

Citation : (2012) 07 AHC CK 0193

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard Sri Ashok Khare, Senior Advocate assisted by Sri Sunil Kumar Srivastava, Advocate for the petitioner and learned Standing Counsel for the respondents.

2. The writ petition is directed against the order dated 22.7.2009 passed by Principal, District Institute of Education and Training, Muzaffarnagar (hereinafter referred to as "DIET") whereby she has cancelled the candidature/selection of petitioner in Special B.T.C. Training 2007 on the ground that he did not possess requisite eligibility qualification and therefore should also refund the amount received towards honorarium; and, consequential order dated 23.7.2009 of District Basic Education Officer, Muzaffarnagar (hereinafter referred to as "DBEO") revoking appointment order dated 4.7.2009 of petitioner made on the post of Assistant Teacher in Primary School, Mathura, Vikas Kshetra Charthawal.

3. The admitted facts, in brief, giving rise to the present dispute, are that petitioner obtained Fazil certificate in the year 1989 from Al Jamaitul Islamia Darul Uloom, Deoband. He passed Senior School Certificate Examination in 1991 vide certificate dated 4.10.1993; graduation in 1992 vide degree dated 2.7.1997; and, also, Bachelor of Education in 1997 from Jamia Millia Islamia, New Delhi. The copies of certificates of these examinations are on record.

4. Besides above, he passed High School from National Institute of Open

Schooling in the year 2005 vide pass certificate dated 18.6.2005 (Annexure 4 to the writ petition). The aforesaid examination was passed by the petitioner in the subjects Urdu, Economics, Social Science, Business Studies and Hindi.

5. The respondents held selection for giving admission in Special B.T.C. Course, 2007 vide G.O. dated 10.7.2007 wherein minimum qualification prescribed was graduation from recognized College/University and also a degree in B.Ed. from the institutions recognized by National Council for Teacher's Education (hereinafter referred to as "NCTE"). The process of selection is provided in para 17 of Government Order dated 10.7.2007 which provided that a merit list shall be prepared on the basis of marks obtained in High School, Intermediate, Graduation and B.Ed and thereafter selection shall be made.

6. The petitioner applied for the aforesaid special B.T.C. Course 2007 and was selected. He was given admission in DIET, Muzaffarnagar and after completion of training, passed out his examination in 2009 vide certificate dated 28.5.2009 (Annexure 10 to the writ petition). A letter of appointment was also issued by DBEO on 4.7.2009 appointing petitioner as Assistant Teacher in Primary School Mathura, Charthawal Development Area, pursuant where to he joined on 8.7.2009. However, within a fortnight, he received two letters simultaneously, one is dated 22.7.2009 of Principal, DIET, Muzaffarnagar canceling his selection in Special B.T.C. Course 2007 on the ground that his qualification of Fazil was not recognized at all and therefore petitioner lacked eligibility qualification and consequential order dated 23.7.2009 passed by DBEO, canceling appointment letter dated 4.7.2009 of the petitioner.

7. Sri Ashok Khare has assailed the impugned orders dated 22.7.2009 and 23.7.2009 mainly on the ground that the same have been passed without affording any opportunity of hearing to petitioner, inasmuch as, no show cause notice was ever issued and abruptly, in a wholly ex parte manner, impugned orders have been passed. He further contended that petitioner's eligibility qualifications were never doubted, inasmuch as, he had passed B.A. and B.Ed from Jamia Millia Islamia, New Delhi, which is an institution duly recognized by U.G.C. and NCTE also, and, there is no dispute about it. The cancellation of his selection/appointment, therefore, on the ground that petitioner did not fulfill eligibility qualification is wholly misconceived. It is said that for the purpose of admission in Special B.T.C. Course 2007, it was not provided in the Government Order that High School Examination should have been passed from an institution recognized by the Board of High School and Intermediate, U.P. or by the State of U.P. and only then a person would be eligible for appointment in Special B.T.C. Course 2007. The petitioner did not play any fraud or misrepresentation in obtaining admission and appointment. For the purpose of Senior School Certificate and Graduation, Jamia Millia Islamia University has recognized Fazil certificate of Al Jamaitul Islamia Darul Uloom Deoband institution, hence when subsequent graduation qualifications of petitioner are not invalid, mere fact that Fazil certificate of Al Jamaitul Islamia Darul Uloom Deoband is not recognized by

State of U.P. as equivalent to Class 10 examination of U.P.Board of High School and Intermediate, that by itself will not deprive the petitioner benefit of his further qualifications i.e. B.A. & B.Ed., which he possess and which are admittedly valid for all purposes.

8. The writ petition has been opposed by respondents. A counter affidavit has been filed by Principal, DIET (respondent No.4). It says that petitioner's Fazil certificate is not equivalent to Intermediate hence petitioner lacked requisite qualification for admission in Special B.T.C. Course 2007. Reliance is also placed on a letter dated 13.8.2009 of Additional Secretary (Board) informing learned Standing Counsel that Fazil examination conducted by Al Jamaitul Islamia Darul Uloom Deoband is not equivalent to any examination of U.P. High School and Intermediate Board.

9. A separate counter affidavit has been filed by Deputy Secretary, Madhyamik Shiksha Parishad, Allahabad stating that Fazil certificate issued by Al Jamaitul Islamia Darul Uloom Deoband is not equivalent to High School examination conducted by Madhyamik Shiksha Parishad.

10. The petitioner in the rejoinder affidavit has reiterated what he has stated in the writ petition.

11. The short question is, whether petitioner fulfill eligibility qualification for admission in Special B.T.C. Course 2007 or not.

12. The Government Order dated 10.7.2007, copy whereof has been filed as Annexure 1 to the writ petition, provides eligibility qualification in para 3 (2) which read as under:

"Bachelor's degree will be the minimum educational qualification for selection to Special B.T.C. 2007 and only the candidates having passed regular B.Ed. recognized by National Council for Teachers' Education (NCTE) from recognized Degree Colleges and from the Degree Colleges/Training Colleges run by the State Government/Central Government will be eligible, if they fulfill all other eligibilities.

(English Translation by the Court)

13. The aforesaid clause requires only two qualifications namely graduation from recognized institution, and B.Ed., which should also be recognized by NCTE.

14. Learned Standing Counsel did not dispute that both these qualifications are possessed by the petitioner. There is no dispute at all to this extent. He, however, submitted that since initial qualification of Fazil is not recognized by the Board of Secondary Education, U.P. Allahabad, therefore, petitioner was not eligible for admission in Special B.T.C. Course 2007. He however could not show any condition in the entire Government Order dated 10.7.2007 which requires that candidate must have passed High School or Intermediate Examination or any other, which is equivalent to High School or Intermediate of U.P. Board of High School and Intermediate or as such recognized by the said Board or otherwise,

even if, higher degree obtained by such candidate is valid and genuine, yet he would be disqualified for such admission. In absence of any such condition, to my mind, the petitioner could not be held ineligible for admission in Special B.T.C. Course 2007.

15. Once the qualifications prescribed in the advertisement being eligibility qualifications are possessed by a candidate and no infirmity is found therein, the invalidity cannot be attached to those very qualifications indirectly by disputing or raising a doubt on the initial qualifications possessed by such candidate. It may be that for obtaining higher education in a particular territory or area. The basic qualification of other place is not recognised or declared equivalent though it is so recognized elsewhere but once higher qualification obtained by a candidate in the institution and from the institution concerned cannot be said to be wrong or invalid for any reason whatsoever, no finger can be raised on the initial or earlier qualification of such a candidate particularly in absence of any such condition in the advertisement. The respondent authorities cannot introduce something on their own or on the basis of their own understanding which has not been so provided by competent authority in the relevant Government Order on the basis whereof selection process has been initiated or in the advertisement based on such Government Order. The kind of discovery by Principal DIET and DIOS in this case, to my mind, is patently illegal and without jurisdiction.

16. Further, there is another aspect. Though admission in Special B.T.C. Course 2007 is not governed by provisions of U.P. Basic Education Act, 1972 and the Rules framed thereunder but since in the present case, petitioner was also appointed as Assistant Teacher after passing Special B.T.C. Course 2007, it would be appropriate to refer to the qualifications prescribed for appointment as Assistant Teacher in a Primary School under the statutory rules namely Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as "Rules 1981"). The qualification specified in Rule 8(1)(ii) of Rules 1981 reads as under:

(ii) Assistant Master and Assistant Mistress of Junior Basic School

A Bachelor's Degree from a University established by law in India or a Degree recognized by the Government as equivalent thereto together with the training qualification consisting of a Basic Teacher's Certificate, Vishist Basic Teacher's Certificate (B.T.C.) two years BTC Urdu Special Training Course, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other training course recognised by the Government as equivalent thereto:

Provided that the essential qualification for a candidate who has passed the required training course shall be the same which was prescribed for admission to the said training course.

17. Here also the Court do not find any requirement of obtaining High School or Intermediate or other qualification which is recognized as such by U.P. Board of High School and Intermediate i.e. U.P. Secondary Education Board. On the

contrary, the only qualification prescribed in Rule 8(1)(ii) is a Bachelor degree from an University established by law in India or a degree recognized by Government as equivalent thereto as also training qualification, which included Special B.T.C. Course 2007. The petitioner's degree is admittedly from a University established by law in India i.e. by Central Legislature and there is no dispute about it. Therefore under Rules 1981 also it cannot be said that petitioner lacked requisite qualification for appointment.

18. In absence of any specific condition in the Government Order dated 10.7.2007 with reference to High School or Intermediate qualification being the eligibility qualification for the purpose of admission in Special B.T.C. or under Rule 8(1) for the purpose of appointment as Assistant Teacher, no such innovation is permissible on the part of respondents on their own so as to add something which is not otherwise existing for the purpose of either admission in Special B.T.C. Course 2007 or appointment as Assistant Teacher. The respondent authorities have clearly misdirected themselves by looking to certain aspects of the matter which was not provided either in the Government Order or in the statutory Rules.

19. Moreover, respondents also failed to realize that petitioner having already successfully passed out training qualification, has been appointed on the post of Assistant Teacher. There is no allegation of fraud or misrepresentation. The petitioner thus could not have been made to suffer by injurious and adverse orders without complying with minimal procedural requirement of principles of natural justice. He could not have been condemned unheard. The respondents have clearly erred in law in passing the impugned orders without giving any show cause notice to the petitioner and without giving him an opportunity of hearing particularly in a case where there was a scope for explanation of entire facts. It is not a case where only one view was possible hence compliance of principles of natural justice would have been an empty formality. The petitioner has been made to suffer by wholly illegal orders passed by the respondents without any fault on his part. He is therefore entitled for all consequential benefits, including cost of this writ petition.

20. It the result, the writ petition is allowed. The impugned orders dated 22.7.2009 and 23.7.2009 (Annexures No.12 & 13 to the writ petition) are hereby quashed. The respondents are directed to treat the petitioner continuing in service with all consequential benefits including arrears of salary. He shall also be entitled to cost, which I quantify to Rs.5,000/.

21. It is however made clear that respondent No.1 shall be entitled to recover the amount of salary paid to the petitioner for the period he was prohibited illegally from discharge of duties by unmindful act of respondents No.3 and 4 as also the cost of writ petition, as awarded above, from the officials who passed the orders dated 22.7.2009 and 23.7.2009 after making such enquiry, as permissible in law.