
(2006) 12 UK CK 0007
In the Uttarakhand High Court
Case No : Special Appeal No. 90 of 2006

Shailendra Singh and Others	Vs	APPELLANT
State of Uttaranchal and Others		RESPONDENT

Date of Decision : 18-12-2006

Acts Referred:

Constitution of India, 1950 — Article 142, 226, 227
Hindi Sahitya Sammelan Act, 1962 — Section 17

Citation : (2006) 12 UK CK 0007

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : S. Dhulia and D.S. Patni, for the Appellant; N.C. Gupta, for Respondent Nos. 1 to 5, M.C. Kandpal S.S. Chaudhary and Syed Naddim, for the Respondent

Final Decision : Allowed

Judgement

J.C.S. Rawat, J.—This special appeal under Rule 5 Chapter VIII of the High Court Rules has been filed against the judgment and order dated 19-06-2006 passed by the learned Single Judge of this Court in Writ Petition No. 51 (S/S)/2005, Munni Upreti Munni Pathak v. State of Uttaranchal and Ors. whereby the learned Single Judge has allowed the writ petition.

2. A writ petition bearing No. 51 of 2005 (S/S) was filed before the learned Single Judge by the writ Petitioner Munni Upreti for the following reliefs:

- i. To issue a writ order or direction in the nature of mandamus commanding and directing the Respondents to consider the candidature of the Petitioner for the training of Special B.T.C. course as she is the permanent resident of Uttaranchal and possessing the requisite qualification according to the advertisement dated 05-08-2004 (annexure No. 6).
- ii. To issue any writ order or direction which this Hon''ble Court may deem fit and proper to the facts and circumstances of this case.

iii. To award the cost in favour of the Petitioner.

3. The writ Petitioner Munni Upreti (Respondent No. 9 in this appeal) after completion of graduation and post graduation, passed Shiksha Visharad from Hindi Sahitya Sammelan, Allahabad (Hindi University) in the year 1993. It is alleged that the Shiksha Visharad is equivalent to B.Ed. Syllabus of the University. An advertisement was published in the newspaper on 05-08-2004 by the Respondent No. 4- Principal Zila Shiksha and Parshikshan Sansthan, Didihat, Pithoragarh inviting the applications for Special B.T.C. and the minimum qualification required for the B.T.C. is graduation degree with B.Ed./LT. Degree or B.Ed, by the correspondence from recognized university. The Petitioner fulfilled all the conditions required in the advertisement published in the newspaper. The Petitioner moved the application to the Respondent No. 4- the Principal Zila Shiksha and Parshikshan Sansthan, Didihat, Pithoragarh before the last date of submission of the application. But the Respondent No. 4- the Principal Zila Shiksha and Parshikshan Sansthan, Didihat, Pithoragarh did not consider the candidature of the writ Petitioner-Munni Upreti on the ground that she passed her Shiksha Visharad (B.Ed.) Examination from the Hindi Sahitya Sammelan, Allahabad. Feeling aggrieved by this, the Petitioner filed a writ petition before this Court.

4. A counter affidavit has been filed by the Respondents wherein it has been pleaded that Shiksha Visharad had not been recognized by the National Council for Teacher Education (hereinafter referred as NCTE), as such, the same cannot be termed as an equivalent qualification mentioned in the advertisement and the writ Petitioner Munni Upreti is not entitled to be selected in Special B.T.C.

5. After hearing the parties, the learned Single Judge allowed the petition on 19-09-2005 and held that the Petitioner is entitled to be considered for special B.T.C. course provided the recognition and verification is obtained from the concerned University/State Govt. or the institution concerned regarding her degree.

6. Feeling aggrieved by the judgment and order of the learned Single Judge, the present special appeal has been preferred by the Appellants.

7. Heard learned Counsel for the parties and perused the record.

8. The main controversy arises in this appeal as to whether the degree of Shiksha Visharad awarded by the Hindi Sahitya Sammelan, Allahabad is to be treated as B.Ed, degree for the admission in the B.T.C. Training Course.

9. Munni Upreti writ Petitioner (Respondent No. 9 in appeal) after passing the graduation and post graduation, passed Shiksha Visharad from Hindi Sahitya Sammelan, Allahabad before 1995. The impugned advertisement reads as follows:

? -

1. ? - ? ? ? ? |

2. ? : - ? / ? ? ? ? ? . . / ? ? ? . . ? | ? ? ? ? ? ? ? ? ? ? ?
| ? ? ? ? ? ? ? ? ? ? ? , ? ? ? . . . , . . . | ? ? ? (1997) ? ? ? |

3. ? : - ? 1 ? , 2004 18 ? 40 ? | ? ? ? ? ? ? ? ? ? ? |

4. ? ? : - ? / ? ? ? 100 / - (? ?) . . / . . ? . 40 / - (? ? ?) ? ? , ? ? ? , ? , ? ? ? |

5. ? : - ? ? ? ? , ? ? ? ? (25 ? 10) ? ? ? ? ? ? ? , ? ? ? ? ? ? ? ? 15 ? ? ? | ? ? ? ? ? |

10. Perusal of the aforesaid advertisement reveals that the candidates, who possessed B.Ed./L.T. degree or B.Ed degree by correspondence course from the recognized University of Uttaranchal or U.P., are eligible to get admission in the B.T.C. training course. The second academic qualification which has been incorporated in the advertisement also provides that the candidates who passed the degree of Shiksha Shastri (regular) from Sanskrit University are also eligible for the same. The third category of the candidates who possessed physical education training- B.P.Ed., D.P.Ed., C.P.Ed., recognized by the NCTE are also eligible. It was further provided that the aforesaid institution should have been recognized by the U.P. Govt. prior to 1997.

11. Learned Counsel for the Appellants contended that the degree of Shiksha Visharad given by the Hindi Sahitya Sammelan, Allahabad could not be treated to be a degree of B.Ed and such candidates are not eligible to seek admission in the B.T.C. course. It was contended on behalf of learned Counsel for the writ Petitioner Munni Upreti that Shiksha Visharad degree obtained from the Hindi Sahitya Sammelan, Allahabad is equivalent to the B.Ed, degree. The Hindi Sahitya Sammelan, Prayag was established in the year 1910 and it was registered in the year 1914 under the Societies Registration Act. The Parliament enacted an Act, i.e. the Hindi Sahitya Sammelan Act, 1962 in order to promote the Hindi for the special studies or research. The main purpose to enact the said legislation was only to promote the language of Hindi throughout the India. Later on, in the year 1971 the Constitution Bench of Hon"bleApex Court in Smt. Damyante Naranga v. The Union of India and Ors. and the Smt. Damyanti Naranga Vs. The Union of India (UOI) and Others, declared the said Act ultra vires to the Constitution. It was further pointed out by the learned Counsel for the writ Petitioner Munni Upreti that the Northern Zone in which Allahabad falls from where the degree had been awarded to the writ Petitioner Munni Upreti had not been recognized by the NCTE till today. It was also pointed out by the learned Counsel for the writ Petitioner Munni Upreti that such recognition had already been granted for the Southern Zone only for the one academic year. Thus it is apparent from the record that till today they have not obtained the recognition of the institution Hindi Sahitya Sammelan, Allahabad from NCTE. It is not disputed that the NCTE Act came into force in the year 1995 and the writ Petitioner-Munni Upreti had obtained the degree of Shiksha Visharad from Hindi Sahitya Sammelan, Allahabad prior to 1995. The aforesaid advertisement did not contain that the degree of Shiksha Visharad obtained from Hindi Sahitya

Sammelan, Allahabad is eligible to be admitted in the B.T.C. training course. If the advertisement did not indicate the aforesaid degree of Shiksha Visharad, the writ Petitioner-Munni Upreti cannot claim to be eligible for the same.

12. It is not disputed that the said advertisement had been challenged before the learned Single Judge. If the advertisement is found valid according to the provisions of the law, it cannot be held that Shiksha Visharad conferred by the Hindi Sahitya Sammelan, Allahabad deemed to have been included in the said advertisement. It is presumed that the Government has considered all the aspects at the time of issuance of the advertisement. The appointment of the basic teacher in the basic schools is an important matter. If the education of children is not imparted by the duly experienced and good hands, the career of the children would be sealed in future. The State have been conferred a duty to impart the education to the wards of the people. So the Government, while framing the rules and the issuance of the advertisement keeps in mind to maintain the standard of education, particularly in relation to the teachers' education. Education is the backbone of every society and in deterioration in the standard of teaching in B.T.C. course would ultimately produce sub-standard prospective teachers who would be teaching in the schools throughout the State and on whose efficiency the future of the State would depend. If the teacher himself had received a sub-standard education, it is difficult to expect from him a higher standard of teaching to the students of the schools or the institutions. In this backdrop, it is also pertinent to mention that Hindi Sahitya Sammelan, Allahabad had not received the recognition from the NCTE till today. NCTE had been conferred a duty to maintain the standard of the education and as such, a provision has been enacted after 1995 that the courses recognized by the NCTE to be considered for the admission of the teachers for imparting the education to the wards of the citizen. The Hindi Sahitya Sammelan, Allahabad, Northern Zone could not receive the recognition till today. The learned Counsel for the writ Petitioner-Munni Upreti could not demonstrate us that the NCTE had recognized the Shiksha Visharad degree conferred by Hindi Sahitya Sammelan, Allahabad in the Northern Zone. It has been categorically mentioned in the affidavit filed in the special appeal by the writ Petitioner/Munni Upreti at para 13 that the NCTE, Southern Zone have given recognition to the Shiksha Visharad course for one year with some condition imposed upon it but this course has not been given by the Northern Zone Committee of the NCTE. The copy of the recognition by the Southern Committee of NCTE has been annexed with this affidavit as Annexure-6 which shows that the NCTE had given the conditional recognition for one year, 1999-2000 to Hindi Pracharak Kendra Shiksha Visharada Training College, Kodungallur Post-680664, Tichur District, Kerala to Shiksha Visharada. This letter does not indicate anywhere that Shiksha Visharad conferred by the Hindi Sahitya Sammelan, Allahabad has been recognized for the Southern Zone. The contents of the letter is placed hereunder:

F/SRO/NCTE/1999-2000/9829 Date: 17-7-99

TO BE PUBLISHED IN GAZETTE OF INDIA-PART III SECTION 4.

In exercise of the authority vested under NCTE Act, the Southern Regional Committee after considering the application for grant of recognition, decided to accord conditional recognition for one year (1999-2000) to Hindi Pracharak Kendra Shiksha Visharada Training College, Kodungallur Post-680664, Tichur District, Kerala to Shiksha Visharada course of duration one year.

The conditional recognition accorded is subjected to setting right the following deficiencies:

1. It has been noted out of 6,3 are not qualified. The unqualified staff should acquire M.Ed, qualification with 2 years as per NCTE norms.
2. Equipment for all the labs should be provided as per para 4 of NCTE norms.
3. Educational/professional journals should be subscribed as per NCTE norms.
4. Furniture has to be provided for all the rooms as per NCTE norms.
5. Accommodation for Class rooms, labs and library has to be provided as per NCTE norms.

The institution should send a Compliance Report for having set right the above deficiencies to the Regional Committee by 31-12-1999.

By orders,

Regional Director

To,

The Principal

Hindi Pracharak Kendra Shiksha Visharada

Training College, Kodungallur Post-680664

Tichur District, Kerala.

13. Thus even if it is treated as a recognition for one year, the fact remains that as till date the Hindi Sahitya Sammelan, Allahabad had not been recognized by the NCTE, it leads to take an inference that the quality of the education which is being imparted by it is not up to the mark and it is sub-standard.

14. It is also pertinent to mention here that the Government framed the policy that Vaidyas should also be qualified in respect of their profession and the Indian Medical Council Act, 1976 was enacted in which it was provided that the Vaidya Visharad and Vidya Rattan degrees conferred from 1931 to 1967 would only be recognized for the purposes of the practice and for other purposes. Likewise, the Government in the year 1995 enacted the NCTE Act. If the intention of the Legislature would have been to include Shiksha Visharad awarded by Hindi Sahitya Sammelan, Allahabad, they could have recognized the said degree in the

Act itself or the Committee constituted under the Act would have considered this aspect and could have recognized its Shiksha Visharad degree from the back date. The Act provides the provision to seek recognition of the institution from the Committee constituted under the Act. But in the instant case, the Hindi Sahitya Sammelan, Allahabad had failed to obtain the recognition in respect of its degree of Shiksha Visharad.

15. The power of the court under Article 226 of the Constitution is only limited to have judicial review of the matter. The court while exercise the jurisdiction under Article 226 of the Constitution cannot legislate the law. The court can only interpret the law and cannot legislate the law by adding a degree which has not been prescribed by the Government after considering all the aspects of the matter. The Hon"ble Apex Court under Article 142 of the Constitution can supplement the existing legal framework to do complete justice between the parties, whereas such power has not been conferred upon under Article 226 of the Constitution to the High Court. There is no challenge before us with regard to the rule and the advertisement issued there under if the rules and advertisement are not declared ultra vires to the Act, the court cannot supplement the provisions of the rule by adding a degree of its own which is not available in the rules or the advertisement.

16. It is pertinent to mention here that Hindi Sahitya Sammelan, Allahabad also awards the degrees of Vaidya Visharad and Ayurveda Ratna. The case of Vaidya Visharad and Ayurveda Ratna would also be relevant for the purpose of this case because the same degrees had been awarded by the Hindi Sahitya Sammelan, Allahabad. Keeping in view of the above background the degrees awarded by the Hindi Sahitya Sammelan, Allahabad were de-recognized under the Indian Medical Central Council Act, 1970. It only recognizes the Vaidya Visharad and Ayurveda Ratna which were awarded in the year 1931 to 1967 alone. The matter came up before the Apex Court in Dr. Ravinder Nath Vs. State of H.P. and others, . In this case the Petitioners acquired Visharad and Ayurveda Ratna in the year 1974 from Hindi Sahitya Sammelan, Allahabad and they claimed promotion to the post of Vaidya in the State of Himachal Pradesh in which the rule provides that the essential qualification for the promotion to the post of Vaidya is Vaidya Visharad diploma course with 7 years experience or Ayurveda Ratna which is a degree from the recognized institution. The Petitioners' claim were rejected by the D.P.C. on the ground that they do not possess the requisite qualifications. The Petitioners preferred petition before the Tribunal and the Tribunal allowed the petition and directed the State Government to convene a fresh D.P.C. to consider the case of the Petitioners for their suitability for promotion to the post of Vaidya and to treat their promotion to the said post from the date their juniors were promoted to the post of Vaidya. Feeling aggrieved by the said decision, the State Government as well as the promotees preferred the appeals before the Hon"ble Apex Court. The Hon"ble Apex Court allowing the appeal held that the Respondents do not claim that they have qualifications included in the Third or Fourth Schedule of the Act. Their case is that they possessed qualifications

required by the State since they hold diplomas/degree from the H.S.S., Allahabad which is mentioned at serial number 105 in that Schedule. The remark in column 4 of the Schedule against that entry, however, shows that diploma/degree given by H.S.S., Prayag from 1931 to 1967 alone are recognized u/s 17. Hence the D.P.C. could not have, on that day, recognized the qualifications of the Respondents which were admittedly obtained in 1974. On this ground the writ petition filed by the Respondents was dismissed.

17. Thereafter the matter again came up before the Apex Court in the case of Delhi Pradesh Registered Medical Practitioners v. Director of Health Delhi Admn. Services and Ors. and Delhi Pradesh Registered Medical Practitioners Vs. Delhi Admn. Director of Health Services and Others, . Notice was issued by the Director, Health Services, Delhi Administration indicating that the Indian Medicine Central Council had recognized Ayurveda Ratna and Vaid Visharada degrees awarded by the Hindi Sahitya Sammelan, Prayag, Allahabad only up to 1967 and the certificate of Ayurveda Ratna and Vaid Visharad given by the said organization after 1967 not being recognized under the said Act, registration obtained by any person as a medication practitioner on the basis of such degrees therefore would not be recognized and any person having such qualification would not be entitled to practice in Delhi are impugned in these appeals. It was also indicated in the said public notice that no Indian University or Board conducts one year's course for giving the bachelor's degree in Ayurvedic Medicine or through correspondence course no M.D. Degree in Ayurveda was conferred by any University or Board. The public at large was cautioned by the said public notice published in the newspaper. The Delhi Pradesh Registered Medical Practitioners Association moved a writ petition before the Delhi High Court challenging the validity of the said public notice issued by the Health Services, Delhi Administration. The writ petitions were dismissed by the Division Bench of the Delhi High Court by indicating that as in the Indian Medicine Central Council Act, 1970 the said degrees has not been recognized after 1967 and the writ Petitioners before the High Court had obtained such degrees from the said Hindi Sahitya Sammelan, Prayag long after the said Indian Medicine Central Council Act, 1970 was enforced they were not entitled to practice on the basis of the degrees obtained from the said Hindi Sahitya Sammelan, Prayag. Therefore, there was no occasion to interfere with the direction contained in the public notice and the petitions were dismissed. It is also held by the Apex Court that there is also no challenge as to the validity of the said Central Act, 1970. The decision of the Delhi High Court, therefore, cannot be assailed by the Appellants. It was also held that proper consideration had not been given to the standard of education imparted by the said Hindi Sahitya Sammelan, Prayag and expertise acquired by the holders of the aforesaid degrees awarded by the said institution. In any event, when proper medical facilities have not been made available to a large number of poorer sections of society, the ban imposed on the practitioners like the Petitioners rendering useful service to the needy and poor people was wholly unjustified. It was further held that it is not necessary for this Court to

consider such submissions because the same remains in the realm of policy decision of other constitutional functionaries. It was also held that what constitutes proper education and requisite expertise for practitioners in Indian Medicine, must be left to the proper authority having requisite knowledge in the subject. As the decision of the Delhi High Court is justified on the fact of legal position flowing from the said Central Act of 1970, the Apex Court did not interfere in the matter. The Apex Court, therefore, dismissed the appeals.

18. The matter again came up before the Apex Court in the case of State of Rajasthan and Others Vs. Lata Arun, . The question which arises for determination in this case is whether the Respondent had the eligibility qualification for admission in General Nursing and Midwifery and Staff Nurse Course commencing in the year 1990 The Director, Medical and Health Services had invited applications for the admission of Nursing Course in which the eligibility of the candidates was determined that the candidates must have possess first year of Three Years" Degree Course (TDC) or 10+2; and that the candidates with science subjects (Biology, Chemistry and Physics) will be given preference. During the period the Indian Nursing Council had issued a set of Syllabi and Regulations for course in General Nursing and Midwifery in which the prescribed minimum educational qualification for the candidates was 12th class pass or its equivalent preferably with science subjects. The Petitioner possesses the Madhyama Certificate issued by the Hindi Sahitya Sammelan, Allahabad in 1984. This Certificate was previously recognized as equivalent to a degree in Hindi. The said recognition had ceased to be operative with effect from 01-04-1985. The Petitioner was given provisional admission in the Nursing Course which was subsequently cancelled that the writ Petitioner had not the educational qualification prescribed for the said course. The Rajasthan High Court allowed the writ petition. The Hon"ble Apex Court while allowing the appeal relied upon the judgment of Apex Court Delhi Pradesh Registered Medical Practitioners (Supra) and Dr. Ravinder Nath (Supra) and held that the writ Petitioner was not eligible to the admission as the Degree of Madhyama was de-recognized by the State of Rajasthan. The Hon"ble Apex Court held that there are two questions involved in this appeal. One relates to the prescription of minimum educational qualification for admission to the course and the second relates to recognition of the Madhyama Certificate issued by the Hindi Sahitya Sammelan, Allahabad as equivalent to or higher than 10 + 2 or 1st year of TDC for the purpose of admission. Both these points relate to the matters in the realm of policy decision to be taken by the State Government or the authority vested with power under any statute. It is not for Courts to determine whether a particular educational qualification possessed by a candidate should or should not be recognized as equivalent to the prescribed qualification in the case. The Apex Court further held that the prescribed eligibility qualification for admission to a particular course or for recruitment to or promotion in services are matters to be considered by the appropriate authority. It is not for the Courts to decide whether a particular educational qualification should or should not be accepted

as equivalent to the qualification prescribed by the authority. The order of the Rajasthan High Court was set aside.

19. The Apex Court in the above case observed as follows:

12. From the ratio of the decision noted above it is clear that the prescribed eligibility qualification for admission to a course or for recruitment to or promotion in service are matters to be considered by the appropriate authority. It is not for Courts to decide whether a particular educational qualification should or should not be accepted as equivalent to the qualification prescribed by the authority.

13. Testing the facts of the case in hand on the touchstone of the principles it is clear that on the date of submission of the application for joining the course the Respondent did not possess the prescribed qualification of 10 + 2 or 1st year TDC from a recognized institution. The Madhyama Certificate from Hindi Sahitya Sammelan Prayag, Allahabad had been deleted from the recognized qualification by the notification dated 28-06-1985. The Respondent submitted the application for admission to the course in December, 1989. In the circumstances the High Court was in error in issuing a direction to the Appellants to treat the Respondent as a candidate possessed of the prescribed educational qualification and to declare her result on that basis.

20. In the case of Uma Kant Tiwari and Others reported in [(2003) 2 UPLBEC 1613], the writ Petitioners were medical practitioners in Ayurvedic System of Indian Medicine and some of them have degrees of Ayurved Ratna or Vaid Visharad from Hindi Sahitya Sammelan, Allahabad or Hindi Sahitya Sammelan, Prayag from the year 1982 onwards. The Petitioners moved application for Registration as Medical Practitioners but the Registrar refused to do so on the ground that the Petitioners claimed to do medical practice on the basis of the Certificate/Degrees granted by Hindi Sahitya Sammelan, Allahabad/Prayag. The Allahabad High Court in relying the case of Dr. Vijay Kumar Gupta and Ors. v. State of U.P. and Ors. (1999) 2 UPLBEC 1063 (DB) held that degrees from Hindi Sahitya Sammelan, Prayag acquired after 1967 were not recognized and hence those who obtained the same were not entitled to practice the Indian Medicine. The Division Bench of Allahabad High Court while dismissing the petition held as under:

On the facts of the case we are of the opinion that the Hindi Sahitya Sammelan, Allahabad is a fake institution whereas Hindi Sahitya Sammelan, Prayag was a recognized only from 1931 to 1967.

21. In the case in hand the advertisement for the appointment of B.T.C. teachers clearly provides that the candidates who had graduation with B.Ed./L.T. or B.Ed, from correspondence course from the recognized University are eligible for such admission. The learned Counsel for the writ Petitioner, Respondent No. 9- Munni Upreti pointed out that Shiksha Visharad degree issued by the Hindi Sahitya Sammelan, Allahabad is equivalent to B.Ed. Now the question arises if the

framers of the rule and the employer or the competent authority had decided to make only those persons eligible to get the admission in B.T.C. training course who had completed their qualification with B.Ed./L.T., can the court legislate in the order under Article 226 of the Constitution to include the Shiksha Visharad in their advertisement. It is also settled position of law that such matters relate in the realm of policy decision to be taken by the State Government or the authority vested with the power under the statute. It is not for the court to determine whether particular educational qualification possessed by the candidates should or should not be included. The learned Single Judge had erred in holding that the Petitioners are allowed to get admission in the B.T.C. training course and further holding that degree of Shiksha Visharad is equivalent to B.Ed. If the authority who issued the advertisement had an intention to include Shiksha Visharad from Hindi Sahitya Sammelan, Allahabad, they could have expressly mentioned in the advertisement as they have mentioned for the other qualification given by the institutions for eligibility of the candidates. It was further pointed out by the learned Counsel for the writ Petitioner/Respondent No. 9 - Munni Upreti that the University Grants Commission had given recognition to the degree of Shiksha Visharad awarded by Hindi Sahitya Sammelan, Allahabad. It was further pointed out that the syllabus of Hindi Sahitya Sammelan, Allahabad is equivalent to B.Ed, syllabus of the other Universities so the dispute raised by the Appellants is vague and misleading. Learned Counsel for the Appellants refuted the contention and contended that the University Grants Commission had not recognized the said degrees of Hindi Sahitya Sammelan, Allahabad. He further contended that the advertisement provides that the candidates possessing B.Ed./L.T. or B.Ed, degree by correspondence course from the recognized University from U.P. and Uttaranchal are eligible to get admission in B.T.C. Training Course. It was further contended by the learned Counsel for the Appellants that the said advisements did not provide that any candidate possessing the B.Ed and L.T. degree equivalent thereof by the recognized University or institution. It was contended that the Court has erred in holding that Shiksha Visharad by Hindi Sahitya Sammelan, Allahabad is equivalent to B.Ed and L.T. degree. Perusal of the said advertisement clearly reveals that it has specifically mentioned the name of the degrees and the diplomas obtained from the different institutions. But the advertisement did not contain that any equivalent degree thereof would be in the eligibility criteria for being considered for the admission to the B.T.C. Training Course. Thus, we are completely in agreement with the contention of the learned Counsel for the Appellants. It was further pointed out that the syllabus of B.Ed and Shiksha Visharad are similar. The Court has to see the advertisement. The Court cannot go beyond the advertisement to investigate whether the act of the authorities concerned while publishing the advertisement was correct or not, especially when the advertisement had not been challenged before us. If the competent authority had decided only to take the candidates holding B.Ed./L.T. for the special B.T.C. Training Course, the court cannot hold that a particular degree which is not included in the advertisement should be treated equivalent to B.Ed, course. In

view of this, we are not agreeable to the contention raised by the learned Counsel for the writ Petitioner/Respondent No. 9- Munni Upreti. Court has to go in between the lines of the advertisement and also the intention of the State Government or the authority vested with powers under the law to issue the advertisement. The Court had no power to impose any condition by its own in the said advertisement. Thus the learned Single Judge has erred by including the Shiksha Visharad in the said category.

22. Learned Counsel for the writ Petitioner/Respondent No. 9- Munni Upreti contended that the Appellants are not competent to maintain this appeal because they are not a person aggrieved by the judgment of the High Court. It was further emphasized that they were not party to the lis before the learned Single Judge nor they participated in the said writ petition. It was further contended that the main contest was only between the writ Petitioner/Respondent No. 9 - Munni Upreti and the other Respondents. It was further contended that since the Appellants could not be said to be a party adversely affected by the judgment of the High Court, they had no locus standi to prefer the appeal. Learned Counsel for the Appellants contended that it is, however, fundamental in view of the very nature of the things that an appeal should lie only at the instance of a person who may be aggrieved by the judgment sought to be appealed against. A party who would get the benefit from change in the judgment would have an appealable interest. It was further contended that a person filing the appeal must have a legal grievance against a decision which had wrongly deprived him of something or affects his right to something. It was further pointed out by the learned Counsel for the writ Petitioner/Respondent No. 9 - Munni Upreti that he had filed a petition before the learned Single Judge only to issue a mandamus directing the Respondents to consider the candidature of the Petitioner for training Special B.T.C. course in pursuance of the advertisement issued by the State of Uttaranchal on 05-08-2004. The main challenge before the learned Single Judge was as to whether the degree of Shiksha Visharad obtained from Hindi Sahitya Sammelan, Allahabad by writ Petitioner/Respondent No. 9-Munni Upreti is equivalent to the B.Ed. In other words, it was also pleaded in the writ petition that the said Shiksha Visharad degree should be included in the said advertisement. The learned Single Judge allowed the writ petition and directed the Respondents to allow the Petitioner to appear in the said B.T.C. course. Learned Counsel for the Appellants further contended that the degree of Shiksha Visharad had not been included in the advertisement dated 10-07-2006 by which the applications were invited for the special B.T.C. course. The learned Single Judge erred in ignoring the intention of the authority who issued the advertisement and further erred in holding that Shiksha Visharad degree by Hindi Sahitya Sammelan, Allahabad is equivalent to B.Ed, degree in the said advertisement. In case, Shiksha Visharad is included in the advertisement and such candidates are found eligible, the Appellants would be adversely affected in the selection to the special B.T.C. course in the future. If the Shiksha Visharad degree holders would be included for the admission of the B.T.C. course the

Appellants having the B.Ed, degree from the recognized university would not be able to get admission to the B.T.C. Course and their chances to get admission would be reduced. It was further contended that the Appellants had been adversely affected by the said order.

23. Chapter VIII, Rule 5 of the High Court Rules provides as under:

5. Special appeal.- An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by the Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction [or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award - (a) or a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge.]

24. Chapter IX, Rule 10 of the High Court Rules provides as under:

10. Special Appeal.- (i) A person desiring to prefer a Special Appeal from the judgment of one Judge passed in the exercise of original jurisdiction shall present a duly stamped memorandum of appeal accompanied by a copy of the judgment appealed from within [thirty] days from the date of the judgment. The time requisite for obtaining [the copy] shall be excluded in computing the said period of [thirty] days.

[(ii) Where a Special Appeal is presented after the expiry of the period mentioned in Clause (i) the memorandum of appeal shall be accompanied by an affidavit explaining the cause of delay and it shall be rejected unless the Appellant satisfies the Court that he had sufficient cause for not preferring the appeal within the aforesaid time.

(iii) The memorandum of appeal shall be drawn up so far as maybe in accordance with Rules 1, 6 and 7 of this Chapter.]

[(iv) The memorandum of appeal shall be accompanied by an affidavit of services stating that on the date specked a copy of the memorandum and summons has been served on the counsel who had in the Court of Single Judge appeared for the Respondents; and also stating that a copy and the summons has on the date specified, been sent by registered acknowledgment due post to each of the Respondents at his registered address (except those who were represented by the Standing Counsel of the Union of India or of the State Government and also those who were unrepresented by counsel). The summons served on the Respondents of the counsel shall be in Form No. 18-A.]

(v) If the Appellant desires to file an application for interim orders he shall alongwith the application file an affidavit of service of a copy of the application on the counsel who appeared for the opposite parties in the Court of the Single Judge and stating that the date and time of the filing of the application has been intimated to him and also stating that a copy has, on the date specified therein, been sent by registered acknowledgment due post to each of the Respondents (except those represented by the Standing Counsel of the Union of India or of the State Government and except those who were unrepresented).

(vi) The date to be entered in the summons of the appeal for appearance shall be the working day next after the expiry of six weeks of the date of filing of the appeal.

(vii) The copy of the memorandum of appeal or application, the summons and the requisite registered postage for service on unrepresented Respondents or opposite parties, as the case may be, shall be filed alongwith the appeal.

(viii) In case more than one counsel had appeared for the same party, the copy shall be served on the junior of them.

(ix) The counsel who appeared for the Respondent before the Single Judge, shall not refuse to accept the copy under sub-rules (iv) and (v).

(x) Service of the copy on the counsel or his registered clerk under sub-rules (iv) and (v) shall deem sufficient notice.

(xi) "Copy" means and include all accompaniment or annexure of the memorandum of appeal or application.

(xii) The appeal shall be listed for hearing on the working day immediately after the expiry of six weeks of the institution, unless the Bench directs otherwise:

Provided that where an application for an interim relief is filed the Bench may, after hearing the Counsel, dismiss the appeal itself or dispose of the application.

Note Where the application is filed subsequent to the filing of the appeal, it shall unless the Bench otherwise directs, be put up with the appeal for orders.

(xiii) Defective appeals (e.g. deficiently stamped or barred by time or those accompanied by an application for leave to appeal as pauper etc.) shall be listed for orders within a week of their institution.

(xiv) The Bench may in any case direct that the summons of the appeal or application be served afresh on the Respondents or any of them.

(xv) The Bench shall pass final orders on the application for interim orders.

(xvi) If the Respondent to an application for interim orders has not been heard when orders were passed under Sub-rule (xv), he shall be at liberty to make an application for the vacation or modification of the interim order.

(xvii) Service of the copy on the counsel shall be effected by tendering it to him or to his registered clerk and obtaining on the original memorandum of appeal or the application an endorsement in that regard and in case of refusal, by sending it to the counsel by registered acknowledgment due post.

25. Perusal of the rules clearly reveals that a special appeal shall lie from the judgment passed by the learned Single Judge excepting those orders which have been referred in the said rule. These rules do not prescribe whose instance such appeal shall lie. It is however a general rule that an appeal should lie only at the instance of a person who may be aggrieved by the judgment sought to be appealed against. A party who would get benefit from the change in the judgment, would have an appealable interest. Chapter VIII, Rule 5 of the High Court Rules provides the right of appeal to a person and Chapter IX Rule 10 of the aforesaid Rules prescribes the procedure for the same. In the case in hand, the Appellants have been deprived of their valuable right if the Shiksha Visharad degree shall be included in the advertisement. It would definitely deprive the Appellants in near future to undertake B.T.C. training. Shiksha Visharad obtained from Hindi Sahitya Sammelan, Allahabad would definitely reduce the possibility of being included the Appellants in the B.T.C. course. Thus the persons, who had possessed Shiksha Visharad from Hindi Sahitya Sammelan, Allahabad are found eligible for B.T.C. Training Course. It would definitely reduce the chances of the Appellants in the prospective training courses. While determining the person aggrieved to file the appeal what is important to note is that a person filing the appeal must have legal grievance against the judgment which has wrongfully deprived him of something or affects his right to something. In *Corpus Juris Secundum*, Vol. IV the person aggrieved has been defined as under:

As a general rule a party or a privy to the record, or one who is injured by the judgment, or who will be benefited by its reversal, may appeal or sue out a writ or error.

26. In the case of *Bar Council of Maharashtra v. M.V. Dabholkar and Ors.* reported in (1985) 2 SCC 702, a number of advocates found guilty by the disciplinary committee of the Bar Council of Maharashtra. The Advocates punished by the Disciplinary Committee preferred appeal before the Bar Council of India. The disciplinary committee of the Bar Council of India allowed the appeal and set aside the order of the disciplinary committee of Bar Council of Maharashtra. The Bar Council of Maharashtra preferred the petition before the Hon'ble Apex Court. The main question for the consideration arose before the Hon'ble Apex Court that the Bar Council can maintain this petition before the Court. The question for consideration was the meaning of the words "any person aggrieved by an order made by the disciplinary committee of the Bar Council of India" occurring in Section 38 of the Act. It is noticeable that in Section 37, the Advocate-General of the State and in Section 38, the Attorney-General or the Advocate-General of the State, as the case may be, have been given specific rights of appeal. These rights were introduced into the Act by amendments made

in the year 1974 by Amending Act 60 of 1973. It was contended that the Bar Council of Maharashtra had no right to challenge the order before the Apex Court. The Apex Court held that the Bar Council is "a person aggrieved" for the reasons that the words "person aggrieved" in the Act are of wide import in the context of the purpose and provisions of the statute. The Bar Council is "a person aggrieved" because it represents the collective conscience of the standards of professional conduct and etiquette. The Bar Council acts as the protector of the purity and dignity of the profession. Once an inquiry starts, the Bar Council has no control over its decision. The Bar Council may entrust it to another disciplinary committee or the Bar Council may make a report to the Bar Council of India. This indicates that the Bar Council is all the time interested in the proceedings for the vindication of discipline, dignity and decorum of the profession. A decision of a disciplinary committee can only be corrected by appeals as provided under the Act. When the Bar Council indicates proceedings by referring cases of misconduct to disciplinary committee, the Bar Council in the performance of its functions under the Act is interested in the task of seeing that the advocates maintain the proper standards and etiquette of the profession. The Bar Council will have a grievance if the decision prejudices the maintenance of standards of professional conduct and ethics.

27. Thus in view of the above, we do not find any substance in the argument raised by the learned Counsel for the writ Petitioner/Respondent No. 9 - Munni Upreti.

28. It was further contended by the learned Counsel for the writ Petitioner/Respondent No. 9 - Munni Upreti that Shiksha Visharad awarded by Hindi Sahitya Sammelan, Allahabad has been recognized by University Grants Commission in the year 1988. It was further contended that the said Shiksha Visharad degree has been recognized by the University Grant Commission and it is equivalent to B.Ed. Learned Counsel for the writ Petitioner/Respondent No. 9 - Munni Devi had relied upon annexure R.A.-2 of his rejoinder affidavit in which a letter dated 20-05-1988 has been filed wherein the Deputy Secretary (Admn.) has addressed to the Principal, Saraswati Vidya Mandir, Bihar stating therein that Hindi Sahitya Sammelan Prayag, Allahabad is recognized, as such, the persons possessing B.Ed, degree from Hindi Sahitya Sammelan Prayag, Allahabad is eligible to be a trained teacher. The letter annexure C.A.-2 of the rejoinder affidavit is reproduced hereunder:

Central Board of Secondary Education

(.....)

7/19 Sant VisharAnsari Road,

Dary, Ganj, New Delhi-11002

Dated-20-5-88

? Mo CBSC/Atfin/3335/88/3006

The Principal

Saraswati Vidya Mandir

11/ABakaro Steel City, Bihar

Sir,

With reference for your letter dated 14-3-1988 regarding eligibility of B.Ed, degree from Hindi Sahitya Sammelan Prayag, Allahabad I am to inform you that as per Hand book for personal officer Government of India, the above said University is recognized. As such the person processing B.Ed, degree from Hindi Sahitya Sammelan Prayag, Allahabad is eligible to be a trained teacher.

9-9-98

Yours faithfully

(K. Mohan Rao)

Dy. Secy. (Admin)

29. Perusal of this letter clearly indicates that the information has been given as per Hand book for Personal Officer, Government of India in which it has been mentioned that Hindi Sahitya Sammelan, Allahabad is said to have been recognized and as such, the persons possessing B.Ed, degree from Hindi Sahitya Sammelan Prayag, Allahabad are eligible to be trained teachers. The basis of this letter is itself not authentic. It was further pointed out that the letter issued by D.I.O.S., Aligarh on 25-11-1988 clearly indicates that by virtue of the Gazette Notification No. 50-4-01-8220/1007 dated 20-05-1971 issued by the Vishwa Vidhalaya Shiksha Samiti, the degree of Shiksha Visharad of Allahabad is equivalent to B.Ed./L.T. The said copy of the letter has been annexed with the affidavit which is quoted hereunder:

-

? - . ? . / 6872 / 88 - 89 25 - 11 - 88

- ? ?

?,

? ? ? . . 50 - 4 / 8220 / 1007 20 - 5 - 1971 ? ? (?) ? . ? . . , . . . ? | ? ? . . ? |

25-11-88

30. The said letter refers a G.O. dated 20-05-1971. But the said G.O. had not been placed on record on the basis of which this letter has been issued. The authenticity of this letter cannot be ascertained without going through the G.O. referred in the said letter. The learned Counsel for the writ Petitioner/Respondent No. 9 - Munni Upreti could not show us the said G.O. so that we could interpret the said G.O. In absence of the original G.O., the letter filed by the writ

Petitioner/Respondent No. 9- Munni Upreti is of no avail to the writ Petitioner/ Munni Upreti. On the basis of this letter it can not be held that the degree of Shahitya Visharad awarded by the Hindi Sahitya Sammelan Prayag, Allahabad is a recognized degree and it is equivalent to B.Ed. Learned Counsel for the writ Petitioner/Respondent No. 9 - Munni Devi could not demonstrate us any such recognition letter or G.O. issued by the University Grants Commission. In the case of Dr. Ravinder Nath (Supra), it has been held that the Tribunal had taken a view on the basis of the Directory of Institutions for Higher Education issued by the Government of India that the degree and diploma conferred by the Hindi Sahitya Sammelan, Allahabad was a recognized one. The Apex Court held as under:

11. The Tribunal's view that since H.S.S. is mentioned in the Directory of Institutions for High Education issued by the Government of India, the degree/ diploma conferred by it is entitled to be recognized for the present promotion, is clearly erroneous. The mere mention of the institution in the said Directory cannot confer on it the authority to give degrees/diplomas overriding the provisions of the Central Act of 1970, the State Act of 1968, the State Services Rule of 1974 and the notification of the State Government issued in 1978 which lay down the professional medical qualifications.

12. Hence we are of the view that the qualifications acquired by the Respondents from the H.S.S. which are admittedly, after 1967 do not entitle them to be considered for promotion to the post of Vaidya.

31. Apart this, we have already held in the preceding paragraphs that it is for the competent authority to include the degree in their advertisement or the rules or to exclude them from the rules or the advertisement. It is not for the Court to legislate in its own to include any degree by nomenclature in its rule or advertisement. We have also held in the preceding paragraphs that we have to see the intention of the competent authority while issuing the advertisement and we have to see the advertisement in between the line and not beyond that. Thus the contention advanced by the learned Counsel for the writ Petitioner/ Respondent No. 9-Munni Upreti has no force.

32. In view of the foregoing discussion, we are of the considered view that the appeal is liable to be allowed and the judgment and order dated 19-06-2006 passed by the learned Single Judge of this Court in Writ Petition No. 51 (S/ S)/2005, Munni Upreti Munni Pathak v. State of Uttaranchal and Ors. is liable to be set aside. Accordingly, the appeal is allowed and the judgment and order as mentioned above is hereby set aside and the writ petition is dismissed.

33. No order as to costs.