

(1999) 10 AHC CK 0077
In the Allahabad High Court
Case No : C.M.W.P. No. 34146 of 1999

Shiv Raj Singh and others	Vs	APPELLANT
Board of Basic Education, U.P. Allahabad and others		RESPONDENT

Date of Decision : 12-10-1999

Acts Referred:

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

Citation : (2000) 1 AWC 20

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant; S.C. and R.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

V. M. Sahai, J.—The petitioners appeared in BTC entrance examination conducted by the State Government. They were selected and did their training course from District Institute of Education and Training, Mathura. During the session 1996-98 all the petitioners were successful and were awarded BTC training certificates. On 18.12.1998 the Basic Shiksha Adhikari, Mathura, issued an advertisement inviting applications for appointment as BTC teacher for recruitment in the district. The petitioner applied as they had done their BTC training course. Their names were included in the list. However, no appointment was given to the petitioners, therefore, they represented on 18.5.1999 before the Principal, District Institute of Education and Training, Mathura. The principal made of queries from the Basic Shiksha Adhikari and from the report Annexure-6 to the writ petition, it is clear that there were 148 posts of Assistant teachers in Junior Basic Schools of the district Mathura. In addition to it 19 posts of Head Master of Junior Basic Schools fell vacant on 30.6.1999. These 19 posts of Head Master also became available. Therefore, the total vacancies in the district were 235. The Secretary Board of Basic Education, U. P. Allahabad, also, sent a communication to Regional Assistant Registrar of Education (Basic). Agra.

against the inaction of the respondent authorities for granting appointment to the petitioners. The Basic Shiksha Adhikari instead of granting appointment to the petitioners against the existing vacancies forwarded the application forms of the petitioners to the Regional Assistant Director of Education (Basic), Agra, for consideration of their claim in some other district. The Regional Assistant Director of Education (Basic), Agra, forwarded the application forms to district Mainpuri. The Basic Shiksha Adhikari, Mainpuri, issued a notice in newspaper "Aaj" dated 8.9.1999 notifying that the candidates whose applications have been received on transfer from Mathura should be present before him on 11.6.1999 for verification. In pursuance of this notice, the petitioners appeared before him on 11.6.1999. Even thereafter, the respondent No. 5 did not issue any appointment letter to the petitioners.

2. In the counter-affidavit filed on behalf of the respondent Nos. 1 to 3. the allegation of the petitioners has not been disputed. Sri R. K. Sharrna learned counsel for the respondents and Sri V. K. Rai brief holder for State of U. P. stated that the certificate of BTC training course submitted by the petitioners has been forwarded for verification to the Registrar. Departmental Examination U. P. Allahabad. Sri Ashok Khare learned counsel for the petitioners urged that the petitioners appointment could not be withheld by the respondents on the pretext that their testimonials have been sent for verification. He further urged that the apprehension of the petitioners was that in view of the Government order dated 9.1.1998 large number of teachers who passed C.P. Ed., B.Ed., L.T., D.P.Ed, and B.P.Ed., etc. were permitted special training of BTC may be given preference as against petitioners. The learned counsel urged that the order was issued at a time when BTC trained teachers were not available. But they cannot be appointed in preference of the petitioners.

3. From the G. O. dated 9.1.1998 issued by the Government filed as Annexure-10 in Civil Misc. Writ Petition No. 43563 of 1999, Santosh Kumar and others v. State of U.P- and others. It is clear that due to non-availability of BTC teachers the Government took a decision to permit C.P. Ed., B.Ed.. L.T., D.P.Ed, and B.P. Ed. etc., to undergo short special training course for meeting the exigency for 1997-98 only. The vacancies which are in dispute were advertised in December 1998. On 29.1.1999 the Government issued another order to keep vacancies of BTC vacant as the special trainees have to be appointed. On 28.7.1999 this Court in Civil Misc. Writ Petition No. 27948 of 1999, Ghanshyam and others v. State of U. P. and others, while dismissing a large number of writ petitions filed by B.Ed, and L.T. for direction to permit them to join BTC held that it was admitted in the counter-affidavit that it was one time arrangement and the benefit could be availed only by those who were covered in the G.O. dated 9.1,1998 and had applied in pursuance of advertisement dated 8.3.1998. Therefore, the special trainees could be accommodated in vacancies of 1997-98 only. The G.O. dated 9.1.1998 should be construed as not to affect the BTC trainees. If the special trainees are given preference over BTC trainees, it would defeat the very objective of the Government policy decision of 9.1.1998 to

permit C.P. Ed., B.Ed., L.T., D.P.Ed, and B.P. Ed. to undertake short training so that the work of basic schools may not suffer due to non-availability of BTC trainees. Rule 8 of the U. P. Basic Education (Teachers) Service Rules, 1981, lays down the qualifications for appointment in basic institution. It provides that the qualifications mentioned in Rule 8 are essential qualifications. A candidate having these qualifications is entitled to be appointed. He cannot be ignored in preference to those who are C.P. Ed., B.Ed., L.T., D.P.Ed, and B.P. Ed. etc. because a candidate being only intermediate and having undergone BTC training is not eligible for any post except in basic institutions, whereas a graduate or post-graduate with C.P. Ed., B.Ed., L.T., D.P.Ed, and B.P.Ed., etc. is eligible for higher secondary etc. If these candidates are permitted to join in basic schools, it would be unfair to BTC trainees. It would defeat the purpose of laying down essential qualifications. Therefore, the reasonable construction would be to appoint BTC trainees first and then the special BTC trainees on remaining vacancies of 1997-98.

4. In the result the writ petition succeeds and is allowed. Writ of mandamus is issued to the respondents to appoint the petitioners BTC trained candidates as Assistant teachers in Junior Basic Schools of District Mainpuri on preferential basis as compared to Special BTC trained candidates in the light of observation made in this judgment within a period of two months from the date a certified copy of this order is produced before the District Basic Education Officer Mainpuri.

5. There shall be no order as to costs.