

(2017) 03 AHC CK 0133
In the Allahabad High Court
Case No : Service Single No. 1471 of 2017

Shobh Nath Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 20-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Basic Education Act, 1972 — Section 13

Citation : (2017) 4 ADJ 508 : (2017) 4 All LJ 39 : (2017) 2 All WC 2126

Hon'ble Judges : Devendra Kumar Upadhyaya, J.

Bench : Single Bench

Advocate : Rakesh Kumar Agarwal, Advocate, for the Petitioner; C.S.C, Rajiv Singh Chauhan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Devendra Kumar Upadhyaya, J.— Heard learned counsel for the petitioners, learned Standing Counsel for the State and Sri Rajiv Singh Chauhan, learned counsel representing District Basic Education Officer, Unnao.

2. The petitioners are working as Teachers in the institutions being run by Basic Education Board, U.P. which is a statutory body created under Uttar Pradesh Basic Education Act, 1972 and are aggrieved by the order dated 03.01.2012 passed by the District Basic Education Officer, Unnao whereby their claim for payment of salary in the trained pay scale with effect from the date of their initial recruitment/appointment as Assistant Teachers in primary school has been rejected.

3. The petitioners are holders of Certificate in Physical Education (C.P.Ed.) qualification to their credit. The conditions of service of teachers including their recruitment/appointment are governed by Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 (hereinafter referred as "Service Rules, 1981"), according to which, essential qualification for appointment to the post of Teacher in primary institutions is a Certificate of Teaching course for the post of

Mistresses of Nursery School. For the post of Assistant Master and Assistant Mistresses of Junior Basic Schools, the academic qualification as provided in the Service Rules, 1981 is a Bachelor's degree from a University established by law or a degree recognised by the Government as equivalent thereto together with the training qualification consisting of a Basic Teachers Certificate, Vishisht Basic Teacher's Certificate (BTC), 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.

4. Thus, as per statutory prescriptions available in the aforesaid Service Rules, 1981, qualification of C.P.Ed was not recognised as eligibility qualification for the post of Assistant Teacher in a primary school.

5. The Basic Education Board, U.P. in its meeting held on 17.06.1992 decided that the C.P.Ed. trained candidates be also appointed as teachers in the institutions run by the Board. The aforesaid decision of the Basic Education Board was considered by the State Government which issued a Government Order on 23.03.1995, according to which, the Government decided on the proposal of the Board that the candidates equipped with a C.P.Ed. training course may be appointed as teachers in the institution run by the Board treating them to be untrained and further that they be subjected to in-service training. The said Government Order dated 23.03.1995 further provides that such teachers will be given the trained pay scale only after completion of in-service training by them. It was also directed by the State Government that C.P.Ed. training course be abolished with effect from coming academic sessions 1996-1997. The relevant extract of the said Government Order dated 23.03.1995 is quoted herein below:-

"mijksDr fo"k;d lfpo csfld f"kk dks IEcksfU/kr vkids i= la[k cs0f"ko0i0 17741@94&95 fnukad 28 tuojh 1995 ds lanHkZ esa eq>s ;g dgus dk funsZ"k gqv k gS fd izLrko ij lE;d fopkjksijkUr "kklu }kjk ;g fu.kZ; fy;k x;k gS fd jkT; ljdkj }kjk lapkfy vFkok jkT; ljdkj }kjk ekU;rk izkIr laLFkkvksa ls lh0ih0,M0 izf"kk{k.k izkIr vH;fFkZ;ksa dks mRrj izns"k ds csfld f"kk{k ifj"knh; fo|ky;ksa esa vizf"kf{kr ekudj fu;qfDr iznku dh tk, vkSj mUgSa lsokjr izf"kk{k.k fnyk, tk,A lsokdkyhu izf"kk{k.k mRrhZ.k djus ij mUgSa izf"kf{kr osrueku fn;k tk,A blds vfrfjDr "kklu }kjk ;g Hkh fu.kZ; fy;k x;k gS fd vkxkeh o"kZ 1996&1997 ls lh0ih0,M0 izf"kk{k.k lekIr dj fn;k tk, d`i;k rnuqijkUr dk;Zokgh lqfuf"pr djus dk d"V djsaA"

6. The Director of Education (Basic) clarifying the aforesaid position based on the decision of the Basic Shiksha Parishad taken in its meeting held on 17.06.1992 and the Government Order dated 23.03.1995, issued a circular on 22.06.2011, which is addressed to all Assistant Directors of Education (Basic) and the District Basic Education Officers throughout the State of U.P. The said circular dated 22.06.2011 makes a reference to the letter dated 01.01.1993 which was issued by the Director of Education (Basic)/Chairman, Basic Education Board, U.P. Allahabad consequent to the decision of the Board taken in its meeting held on

17.06.1992. The said circular issued by the Basic Education Board further makes a reference to the Government Order dated 23.03.1995 which while agreeing with the resolution of the Basic Education Board treating C.P.Ed. qualification holders to be eligible for appointment as teachers in the institutions run by Basic Education Board, further states that such teachers will be appointed as untrained teachers and will be subjected to in-service training and further that it is only after completion of in-service training that such C.P.Ed. qualification holders will be eligible to be paid their salary in the trained pay scale. The circular dated 22.06.2011, thus, required the District Basic Education Officers that action be ensured in respect of such C.P.Ed. qualification holders who were appointed between 01.01.1993 till 11.08.1997 after ensuring that appointment of such teachers was made against available vacancy, after advertisement and that selection process was fair and the constitution of Selection Committee and approval of the selection etc. was done in accordance with statutory Rules of 1978.

7. There is no other government order or circular issued either by the Director or the Secretary, Basic Education Board which can be said to govern the matters relating to eligibility and entitlement of those teachers who were appointed on the basis of their having qualification of C.P.Ed. and were thereafter subjected to in-service training.

8. It is to be noticed that the Basic Education Board, U.P. Allahabad is a statutory body having been created under Section 3 of Uttar Pradesh Basic Education Act, 1972. The said Act vests various powers in the Board to conduct its business.

9. However, Section 13 of the Act specifically provides that the Board shall carry out the directions to be issued by the State Government from time to time. It further provides that if in connection with an exercise of any of its power and discharge of any of the function by the Board, any dispute arises between the Board and the State Government, the decision of State Government shall be final and binding on the Board. Section 13 (1) of Uttar Pradesh Basic Education Act, 1972 runs as under:-

"13. Control by the State Government-(1) The Board shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act."

10. Thus, though there are certain statutory functions assigned to the Basic Education Board by the Act, however, the State Government has been vested with the authority under Section 13 to exercise control over the functions and powers of the Board and any direction given by the State Government to the Board is binding and the Board is under statutory mandate to carry out the said directions which are issued from time to time by the State Government.

11. In the instant case, admittedly, the statutory service rules did not, at the relevant point of time, envisage C.P.Ed. as an eligibility qualification for appointment of teachers in the primary institutions. The Basic Education Board in

its meeting held on 17.06.1992 resolved to appoint C.P.Ed. qualification holders also as Teachers in the institutions being run by it, however, the said decision of the Board was subjected to a decision taken by the State Government. The decision of the State Government in this regard is reflected in the Government Order dated 23.03.1995, which though agreed with the decision of the Board to treat C.P.Ed. qualification holders as eligible for appointment, however, the said agreement was coupled with the condition that such teachers shall be first subjected to in-service training and thereafter they will be entitled to be paid salary in the trained scale of pay only on completion of teachers training.

12. The Government Order dated 23.03.1995 is unambiguous and does not leave any room of doubt that C.P.Ed. qualification holders appointed as teachers in primary institutions are eligible to be paid trained scale of pay only on completion of the teachers training to which they, after their appointment, were subjected to.

13. Any deviation from the said norms and the mandate of the State Government embodied in the Government Order dated 23.03.1995, in my considered opinion, will not be permissible.

14. The impugned order passed by the District Basic Education Officer has relied upon a circular dated 22.06.2011 issued by the Director of Education (Basic) which is nothing but reiteration of the decision of the Basic Education Board taken in its meeting held on 17.06.1992 as communicated vide letter dated 01.01.1993 and that of the Government Order dated 23.03.1995.

15. Severely attacking the impugned decision taken by the District Basic Education Officer, Unnao, learned counsel for the petitioner has raised three grounds. Firstly, he has contended that the District Basic Education Officer was directed by the Secretary, Basic Education Board vide his letter dated 19.12.2016 to consider the claim of the petitioners in view of the provisions of para-4 of the circular dated 22.06.2011 which only required verification of certain facts regarding availability of posts, permission for advertisement, process of advertisement, selection of all candidates, constitution of selection committee, interview, approval of selection etc. Learned counsel for the petitioners has, thus, submitted that what District Basic Education Officer was required to consider at the time of passing of impugned order was as to whether the petitioners' appointment fulfilled the requirement as detailed in para-4 of the circular dated 22.06.2011 and that he was not required to go any further.

16. The aforesaid submission of learned counsel for the petitioners is absolutely misconceived for the reason that the direction contained in the letter of the Secretary, Basic Education Board, Allahabad dated 19.12.2016 is that the matter be decided in terms of the procedure and the arrangement made in the circular dated 22.06.2011 issued by the Director of Education (Basic). It is true that the letter dated 19.12.2016 makes a mention that the District Basic Education Officer shall ensure compliance of the contents of para-4 of the circular dated 22.06.2011, however, in the last paragraph of the said letter, it has categorically

been stated by the Secretary that the matter needs to be considered in light of the provisions contained in the circular dated 22.06.2011. The said letter dated 19.12.2016 does not at all mean that the District Basic Education Officer was required to take into account the provisions contained in para-4 of the circular dated 22.06.2011 only and to have forgotten or ignored all other relevant provisions contained in said circular. Further, para-4 of the said circular dated 22.06.2011 cannot be read in isolation; rather it has to be read in conjunction with the other clauses of the said circular and according to para-2 of the said circular, C.P.Ed. qualified teachers are eligible and entitled to be paid trained scale of pay only when they complete their teachers training.

17. It is not that the District Basic Education Officer was not required to take into account the other clauses of the said circular dated 22.06.2011, merely because the other clauses were not mentioned in the letter dated 19.12.2016 written by the Secretary of the Board to the Basic Education Board. It is also emphatically observed that the entitlement of such teachers who were appointed on the basis of their C.P.Ed. qualification, for payment of regular scale of pay in the trained pay scale is to be adjudged only on the basis of provisions contained in the Government Order dated 23.03.1995 which is referable to Section 13 of the Basic Education Board, Act.

18. In view of the aforesaid discussion, first ground taken by learned counsel for the petitioners canvassing his case fails and thus, is not acceptable.

19. Learned counsel for the petitioners has thereafter submitted that the impugned order dated 03.01.2017 has been passed in compliance of an order passed by this Court on 26.08.2016 in earlier writ petition filed by the petitioners, namely, Writ Petition No. No.20004 (S/S) of 2016 wherein the District Basic Education Officer, Unnao was directed to consider the case of the petitioners and pass appropriate orders in accordance with law keeping in view the judgement and order dated 28.05.2015 passed in Writ-A No.-33232 of 2015 Manoj Kumar Pathak and others v. State of U.P. and others, and also the order passed in compliance thereof by the District Basic Education Officer, Varanasi on 26.06.2015. His submission is that the District Basic Education Officer, Unnao while passing the order under challenge in this petition has completely ignored the order dated 28.05.2015 passed in the writ petition filed by Manoj Kumar Pathak and others and the compliance order passed by the District Basic Education Officer, Varanasi on 26.06.2015.

20. The order dated 28.05.2015 is on record which was passed by this Court whereby the writ petition filed by the Manoj Kumar Pathak and certain other individuals was disposed of with the direction to the District Basic Education Officer concerned to consider their claims and pass appropriate orders in accordance with law.

21. While passing the said order dated 28.05.2015, the Court had observed that claim of the petitioners therein was based on the order dated 22.06.2011. It is

this order dated 22.06.2011 which was issued by the Director of Education (Basic) after the decision of the Basic Education Board, as contained in the letter dated 01.01.1993, and issuance of the Government Order dated 23.03.1995. The order passed by the District Basic Education Officer, Varanasi in compliance of the aforesaid order of this Court is also on record, according to which the petitioners of the said petition have been given the benefit of trained scale of pay with effect from their initial date of appointment. However, the Court though had directed to consider the claim of the petitioners in the case of Manoj Kumar Pathak and others in the light of the provisions contained in circular dated 22.06.2011 but the District Basic Education Officer, Varanasi while passing the said order has taken into account only the provisions of para-4 of the said circular.

22. The purport of the said circular and correct meaning it conveyed has already been discussed above.

23. In view of the discussions made above wherein it has already been determined that the circular dated 22.06.2011 provided that C.P.Ed. qualification holders shall be eligible and entitled to be paid their salary in trained pay scale only on completion of their in-service training, this submission made by learned counsel for the petitioners is also not tenable, which is hereby rejected.

24. Lastly, it has been contended by learned counsel for the petitioners that in various other districts, such as Allahabad, Faizabad, Sultanpur and others districts, the District Basic Education Officers have passed orders giving the benefit to similarly circumstanced teachers for payment of salary in the trained scale of pay with effect from their initial date of appointments, hence, the impugned decision in this case taken by the District Basic Education Officer, Unnao would be discriminatory.

25. I am afraid, I cannot agree with the submissions made by learned counsel for the petitioners in this regard for the simple reason that no parity on the basis of an illegality can be pleaded by any one before a Court of Law. The background in which the circular dated 22.06.2011 was issued has already been discussed above. There is no order issued by either of the State Government or Director of Education (Basic) or even by Secretary, Basic Education Board other than the Government Order dated 23.03.1995 which contains any substantive provision regarding eligibility and entitlement of C.P.Ed. qualification holders for payment of salary in the trained scale of pay.

26. At the cost of repetition, I may record that the provisions contained in the Government Order dated 23.03.1995 are very clear and does not leave any room of doubt, according to which C.P.Ed. qualification holders are eligible and entitled to be paid trained scale of pay only when they complete their in-service training and not from the date of their joining.

27. For the reasons disclosed above, the writ petition lacks merit and is hereby dismissed.