

(2011) 03 AHC CK 0430
In the Allahabad High Court
Case No : Special Appeal No. 1323 (D) of 2009

Smt. Sadhana Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Constitution of India, 1950 — Article 1, 14, 16, 317
National Council for Teacher Education Act, 1993 — Section 17(4)

Citation : (2011) 5 ADJ 54 : (2011) 4 AWC 3843 : (2011) 3 UPLBEC 1850

Hon'ble Judges : Sunil Ambwani, J; K.N. Pandey, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. We have heard Shri Abhishek Srivastava, learned Counsel for the Petitioner-Appellant. Shri R.A. Akhtar appears for the National Council for Teachers' Education (NCTE)-Respondent No. 3. Shri S.G. Hasnain, AAG has appeared for the State of U.P.
2. Cause shown for condonation of delay is sufficient. The delay condonation application is allowed.
3. The Petitioner has obtained degree of B. Ed, from the Jammu and Kashmir University. They applied in the selections for Special BTC Training Course, 2007 designed specially for those, who have B. Ed. degrees, for training to fill up vacancies of teachers with primary school teachers training, after seeking approval of the NCTE. The Petitioner was excluded from the selection on the ground that she has obtained B. Ed, degree from Jammu and Kashmir University.
4. The question whether the candidate, who had obtained B. Ed, degree prior to the enforcement of National Council of Teachers Education Act, 1993 or after the enforcement of the Act, during the period, when the application of the institution or university was pending consideration was referred to a larger Bench.
5. The Full Bench of this Court in Bhupendra Nath Tripathi and Ors. v. State of U.

P. and Ors. 2009 (1) ADJ 232 (FB), held as follows:

The exclusion of the candidates from the field of eligibility for Special Basic Training Course 2007, who had obtained B. Ed degree prior to enforcement of National Council for Teacher Education Act, 1993 or after the enforcement of National Council for Teacher Education Act, 1993 during the period when the application of the institution or the University was pending consideration is arbitrary, unreasonable and violative of Articles 14 and 16 of the Constitution of India, and that the above two categories of candidates are also eligible to participate in Special Basic Training Course 2007.

6. in the judgment giving rise to this special appeal, learned Single Judge has held that though NCTE has taken a stand that the Degree/Diploma awarded by the State of Jammu and Kashmir will be valid for giving appointment in the rest of the country there was justification in the wisdom of the State Government to exclude those candidates who have not obtained B. Ed. Degree from the institute recognized by the NCTE. In the judgment, the Court has held that the candidates with a degree of B. Ed, from institutions in Jammu and Kashmir form a different class, and if such class of candidates have been excluded from consideration for admission to BTC Special Training Course, 2007 by the State Government, purposely, it cannot be said to be violative of Article 14 of the Constitution of India.

7. Learned Counsel for the Petitioner has filed supplementary affidavit annexing public notice of the State Universities published by the University Grants Commission on 25th August, 2010, the Universities in the State of Jammu and Kashmir including Jammu University, Jammu Tawi at Item No. 86, declared eligible for central assistance under the UGC Act, 1956 with effect from 1969. The Jammu University is one of the university recognized by the University Grants Commission.

8. Shri R.A. Akhtar, learned Counsel appearing for the NCTE submits that the Council had taken clear stand in the year 2007 by issuing letter No. 49-21/2005/NCTE/(N&S) dated 31.5.2007 and letter No. 49-21/2005/NCTE/N&S dated 27th June, 2007 sent by Shri V.C. Tewari, Member Secretary to all Educational Secretaries of all State Governments/U Ts as per list clarifying the stand of the Council. Both the letters are quoted as below:

F. No. 49-21/2005NCTE/(N&S) 31.5.2007

To

All Education Secretaries All State Govts/U Ts as per list

Sub. Issues related to validity of degree in teacher education obtained from the State of J&K

Sir,

The NCTE Act, 1993 extends to the whole of India except of State of J & K the

issue of validity of degrees in teacher education obtained from the State of Jammu & Kashmir has been attracting the attention of NCTE and MHR Dd for quite some time past Now the MHRD has given the following clarifications.

(a) Persons who have obtained degree from institutions recognized by the Govt, of J & K/UGC would be eligible for employment in Central Govt, and other States and

(b) As the NCTE Act does not cover the issue of admission in institutions for higher qualifications, the eligibility of persons with degrees from institutions in J & K will not be governed by the provisions of the NTE Act but by the relevant laws/rules/regulations of the respective States/Universities.

The above clarifications are for information and necessary action.

The above clarifications are for your information and necessary action.

Yours faithfully Sd/-V.C. Tewari Member Secretray

No. 49-21 /2005/NCTE/N&S 27 June, 2007

To,

All Education Secretaries All State Govts/U Ts as per list.

Sub. Issues related to validity of Diploma/Certificate in teacher education obtained from the State of J & K.

Sir,

This is in continuation of our letter of even number dated 31.5.2007 on the above mentioned subject. The following clarifications have further been issued by Ministry of HRD.

"a diploma or certificate in teacher education awarded by an institution/ university in the State of Jammu & Kashmir is also valid for employment in other parts of the country subject to the provisions of the act. In other words such certificates/diplomas will also have to be treated on the same footing as a degree awarded by such institutions."

2. The above clarifications are for your information and necessary action.

Yours faithfully, (V.C. Tewari) Member Secretary.

9. We are informed that learned Single Judge of this Court in Kamlesh Kumar and Ors. v. State of U.P. and Ors. Writ A No. 25186 of 2008 decided on 6.1.2011 has taken a view, following the reasoning given in the Full Bench judgment in Bhupendra Nath Tripathi's case that where a degree of B. Ed, was obtained prior to the enforcement of NCTE Act, meaning thereby that the degree was obtained, when NCTE Act was not enforce the candidate having such a degree cannot be

disqualified for holding such a degree. The view taken by learned Single Judge is quoted as below:

All these Petitioners have been disqualified for admission in Special B.T.C. Course-2007 on the ground that they have obtained their B. Ed, degree from various institutions/Universities located in Jammu and Kashmir and the said degrees are not recognized by N.C.T.C.

The Petitioners 1 to 5 passed B. Ed, examination in the year 2005, 2003, 1995, 2004 and 2004 respectively. N.C.T.E. Act, admittedly, has no application to the State of Jammu and Kashmir and it has not been extended thereto. The educational degrees imparted by various Universities in State of Jammu and Kashmir, satisfying the standards set up by University Grants Commission, are valid for all purposes. In *Bhupendra Nath Tripathi and Ors. v. State of U.P. and Ors.* 2009 (1) ADJ 232, this Court held that when N.C.T.E. Act was not in force, the degree of B. Ed, obtained from respective educational institutions cannot be held to be invalid for the purpose of selection and admission in Special B.T.C. Course since the Act at that time was not applicable. In the case of State of Jammu and Kashmir also, the Act has no application. B. Ed, degree granted by the Universities in Jammu and Kashmir, in absence of application of N.C.T.E. Act therein, cannot be distinguished qua degrees awarded by institutions where the Act is applicable and degrees are recognized or approved by N.C.T.E.

In my view, the view taken by Full Bench in *Bhupendra Nath Tripathi* (supra) which holds good in respect to B.Ed degrees obtained by the candidates before the enforcement of N.C.T.E. Act would equally apply to B. Ed, degrees obtained from Jammu and Kashmir where N.C.T.E. Act is yet to be applied. The disqualification of the candidates on this ground cannot sustain.

In view of above, Respondents are directed to re-consider case of Petitioners for admission in Special B.T.C. Course-2007 in the light of the observations made hereinabove.

With the aforesaid directions/observations, writ petition is disposed of finally."

10. Shri Abhishek Srivastava submits that the same reasoning, which was adopted by the Full Bench, and in the judgment in *Kamlesh Kumar* following the Full Bench in *Bhupendra Nath Tripathi*'s case, was adopted by the Rajasthan High Court in *Emarata Ram Pooniya and 8 Ors. v. State of Rajasthan* decided on 15.2.2005 reported in 2005 (2) WLC (Raj) 358, the relevant portion of the judgment is quoted as below:

Exclusion of Candidates Having B. Ed. Degree From Universities in The State of J & K:

32. Lastly, we may deal with the contention raised by Mr. M.R. Singhvi and Mr. M.S. Singhvi with respect to finding of the learned Single Judge excluding the candidature of the persons who have passed their B. Ed, from the institutions affiliated to the Universities of State of Jammu & Kashmir. Learned Single Judge

accepted the contention holding that the degree of B. Ed, awarded by the Universities in the State of Jammu & Kashmir may be valid in that State but so far as the selections are being held, in the State of Rajasthan pursuant to the advertisement, in view of the specific condition in the advertisement that the candidate must possess a degree as recognized by the institution, which has the sanction of N.C.T.E. cannot be held to be valid. In view of the finding, the learned Single Judge directed the Respondents to exclude such of the candidates from consideration who are holding the degree of B. Ed, from such institutions, which are not recognized by the N.C.T.E.

33. Assailing the finding of the learned Single Judge on this count, it is vehemently argued by Mr. M.R. Singhvi, learned Counsel for the interveners that in terms of Article 1(ii) of the Constitution of India, the State of Jammu & Kashmir is integral part of the Union of India, as it finds place in Section No. 15 of the First Schedule. Since Jammu & Kashmir forms an integral part of the Union of India, the citizens of Jammu & Kashmir possessing requisite qualification, have the same right as citizens of the other States to be considered for recruitment on the posts advertised. It is further submitted that it was open for the Union to make law under Article 317 of the Constitution, which applies to the State of Jammu & Kashmir but if the Act of 1993 has not been made applicable to the State of Jammu & Kashmir, no fault can be found with the persons obtaining the degree from a University situated in the State of Jammu & Kashmir. It is further submitted that the learned Single Judge has erroneously placed reliance on a decision of the Apex Court in Union of India (UOI) and Others Vs. Shah Goverdhan L. Kabra Teachers College, Mr. N.M. Lodha, learned Additional Advocate General, has also supported the contention raised on behalf of the interveners. It is submitted by Mr. Lodha that the contention of obtaining a degree from such institutions which are not recognized by the N.C.T.E., refers to only those degrees which have been obtained from an area to which the provisions of the National Council for Teachers Education Act, 1993, hereinafter referred-to as the "Act of 1993" are applicable, as the State of Jammu & Kashmir has been excluded from the application of the Act of 1993, the question of recognition of degrees awarded by the Universities in the State of Jammu & Kashmir by N.C.T.E. does not arise. It is further submitted that the same view has been taken by a learned Single Judge of this Court in Surendra Kumar Gupta v. State of Rajasthan 2002 (3) RLR 854. The State filed an application for Special Leave to Appeal before the Apex Court, but later on, the same was withdrawn. Thus, The order of the learned Single Judge has attained finality. Pursuant to the directions of the learned Single Judge in Surendra Kumar's case, the State issued a direction to consider the candidature of the persons holding B. Ed. Degree from a University in the State of Jammu & Kashmir. On that basis, the selection list has also been prepared considering such candidates eligible for appointment. Mr. Mridul appearing for the Appellants has supported the judgment of the learned Single Judge on this count.

34. We have considered the rival contentions. It is not in dispute that the

Universities of Jammu & Kashmir awarding the B. Ed. Degrees finds place in the list of the Universities published by the University Grants Commission. Thus, the B. Ed. Degree obtained by the candidates in the State of Jammu & Kashmir is a degree from legally and duly constituted University. It is also not in dispute that the provisions of the Act of 1993 have not been made applicable to the Universities in the State of Jammu & Kashmir. Thus, the question of recognition of degree awarded by the Universities in Jammu & Kashmir by the N.C.T.E. Does not arise. So far as the decision of the Apex Court in Goverdhan L Kabra Teachers College's case (supra), relied upon by the learned Single Judge is concerned, the same has no application to the facts of the case. In the said case, the question was with respect to the Constitutional validity of Section 17(4) of the Act of 1993. The Division Bench of this Court declared the provisions of Section 17(4) of the Act of 1993 ultra vires of the Constitution being beyond the competence of the Union Legislature. On examining the Statute as a whole and applying the doctrine of pith and substance, the Apex Court held that even if Sub-section (4) of Section 17 is very much a law dealing with the co-ordination and determination of standards in institutions for higher education giving the chief Entry 66 of the List III of VIIth Schedule and, as such, the Union Legislature did hold the competence for enacting the said provisions.

35. The State Government pursuant to the directions of this Court in Surendra Kumar Gupta's case (supra), has issued direction to consider the candidature of the persons holding B. Ed. degree from the duly constituted Universities in the State of Jammu & Kashmir. We do not find any infirmity in the said Circular, as the same has been issued in pursuance of the directions of this Court. The view taken by this Court in Surendra Kumar Gupta's case (supra), further finds support from another decision delivered by Hon'ble Mr. Justice P.P. Naolekar (as his Lordship then was) dated 10.4.2002 rendered in S.B. Civil Writ Petition No. 96/2000. We are in complete agreement with the view expressed in Surendra Kumar Gupta's case (supra). Learned Single Judge has committed apparent error in directing to exclude the candidates who have obtained B. Ed, degree from the Universities situated in the State of Jammu & Kashmir. The part of the judgment in that regard deserves to be quashed.

36. Before parting with, we make it clear that keeping in view the standing practice in vogue since long following the Rules of 1971, we have not disturbed the selections but it would be just and fair for the State Government and its authorities to give a fresh look to the relevant Rules before the next selection, particularly the issues raised in the instant petitions. We have adopted the course of non-interference, as the decision in the instant case is not going to adversely affect any of the Appellants.

37. Consequently, the group of Special Appeals are partly allowed. The impugned judgment dt. 4.11.2004 of the learned Single Judge is modified. The direction to exclude the candidates from consideration on the post of Teacher Gr.II/Senior Teachers, who have obtained B. Ed, degree from the Universities in the State of

Jammu & Kashmir, is set aside. The judgment under appeal stands modified to that extent only. No order as to costs.

11. Shri S.G Hasnain, AAG appearing for the State of U.P. has justified the exclusion of the candidate on the ground that after enforcement of NCTE Act the degree obtained from another University, which is not recognized by NCTE could not be considered and that if the Court will interfere, the notifications for recruitment will be affected and that large number of candidates, who have obtained B. Ed, from Jammu and Kashmir University and were excluded from the selection will be deprived of their rights in the selection.

12. We have carefully considered the submissions and agree with the view of learned Single Judge in Kamlesh Kumar's case that the candidates, who have obtained B. Ed. degree from the State of Jammu and Kashmir to which NCTE Act do not form a class to be excluded from selection. The reasoning is not in consonance with constitutional scheme of equality. Jammu and Kashmir is an integral part of Union of India. It has been given special status so far as laws relating to the citizens of Jammu and Kashmir are concerned. The historical reasons for which special status was given has been considered in several judgments of the Supreme Court. The citizens of Jammu and Kashmir cannot be excluded from consideration for employment in the other States of the country on the ground that some of the Act such as NCTE Act does not have application in the State of Jammu and Kashmir. Exclusion of such candidates cannot be treated to be valid classification under Article 14 and 16 of the Constitution of India to support the argument that such class is exclusive class and could be excluded from consideration for Special BTC Training Course.

13. Special BTC training course is designed to equip those candidates, who have B. Ed. degrees to take teachers training for primary classes for the purposes of employment. It is an employment oriented course. It is not denied that all the successful candidates, who have passed BTC examination are employed in Primary Schools funded by the Central Government under Serv Shiksha Abhiyan. The exclusion of some of the candidates, who have taken degrees from the universities situate in the State to which NCTE Act does not apply would be a hostile and invidious discrimination to them. Such students cannot be put at fault on account of special status given to the State of Jammu and Kashmir.

14. The reasoning given by the Full Bench in Bhupendra Nath Triapthi is squarely applicable to the case. If the students having obtained B. Ed, degrees in the period, when NCTE Act was not enforced or where institutions have applied but the recognition was not given can be considered for selection in Special BTC course, the exclusion of those candidates, who have obtained degrees from the States to which NCTE Act does not apply, would be discriminatory and violative of right to equality under Articles Hand 16 of the Constitution of India.

15. The special appeal is allowed. The judgment of learned Single Judge dated 5.11.2009 is set aside. The Petitioner will not be treated to be disqualified and

will be considered alongwith the candidates of Special BTC Course 2007 subject to her comparative merit with other candidates.

16. We may add caveat here that only those candidates having degrees from State of Jammu and Kashmir will be considered qualified, who have obtained these degrees from the universities recognized by the University Grants Commission.