

(2008) 11 CAL CK 0057

In the Calcutta High Court

Case No : Writ Petition No. 28327 (W) of 2008

Sri Tulshi Bakshi

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 28-11-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 254

National Council for Teacher Education Act, 1993 — Section 12(d), 32

Citation : (2008) 11 CAL CK 0057

Hon'ble Judges : Surinder Singh Nijjar, C.J.; Sanjib Banerjee, J

Bench : Division Bench

Advocate : Asish Kumar Sanyal and Rajendra Banerjee, for the Appellant; HIRAK MITRA, Jaydip Kar, Saikat Banerjee, Siddhartha Ghosh, Jasojeet Mukherjee, Juin Chakraborty and Rajib Pal for the State Anindya Mitra and Abhijit Gangopadhyay for the SCC Asha G. Gutgutia for the NCTE, for the Respondent

Final Decision : Dismissed

Judgement

Surinder Singh Nijjar, CJ and Sanjib Banerjee, J.

The Judgment of the Court was as follows:

1. The challenge herein is to an advertisement issued by the West Bengal Central School Service Commission dated 25th August, 2008 for recruitment to the various categories of teachers within the State of West Bengal. It is the submission of learned Counsel for the petitioner that the qualifications that were prescribed in the aforesaid advertisement are not in conformity with the qualifications laid down in the guidelines issued by the National Council for Teacher Education (NCTE) in exercise of its powers under Sections 32 and 12 (d) of the National Council for Teacher Education Act, 1993 (73 of 1993). Undoubtedly, the qualifications prescribed in the guidelines dated 3rd September, 2001 and 28th April, 2003 provide the minimum qualification of BE/B.Ed. as an essential qualification for Assistant Teachers. However, the qualification which has been prescribed in the impugned advertisement as an essential qualification

is a Bachelor's Degree from any UGC recognized University. The qualification of B.T./B.Ed. has been prescribed as a desirable qualification. This apparently appears to be in conflict with the qualifications prescribed by the NCTE in the guidelines mentioned above. Learned Counsel for the petitioner submitted that since the qualifications prescribed by the West Bengal Central School Service Commission are not in conformity with the essential/minimum qualifications prescribed by the NCTE, the advertisement is liable to be declared illegal and no recruitment can be made under the prescribed qualifications in the advertisement.

2. Learned Counsel for the respondents, however, pointed out that in view of the judgment of the Supreme Court in the case of Basic Education Board, U.P. Vs. Upendra Rai and Others, , the issue raised by the petitioner is no longer open to discussion; the matter having been concluded by the Supreme Court, this Court would be bound by the same. Learned Counsel has pointed out the observations made by the Supreme Court in Paragraphs-14, 19, 23 and 24 which are as follows:-

14. The respondent admittedly got appointment after the Circular dated 11.8.1997 and hence this circular applies to him. Admittedly, the respondent does not possess the qualification mentioned in the said circular. He does not either possess BTC, Hindustani Teaching Certificate, JCT or Certificate of Teaching. The D.Ed. Certificate is no longer regarded as equivalent to BTC after the Circular dated 11.8.1997. This was a policy decision of the U.P. Government, and it is well settled that the Court cannot interfere with policy decision of the Government unless it is in violation of some statutory or constitutional provision. Hence, we are of the opinion that the respondent was not entitled to be appointed as Assistant Master of a junior basic school in U.P.

19. A perusal of the NCTE Act shows that this Act was made to regulate the teachers' training system and the teachers' training institutes in the country. It may be mentioned that there are two types of educational institutions-(1) ordinary educational institutions like primary schools, high schools, intermediate colleges and universities, and (2) teachers' training institutes. The NCTE Act only deals with the second category of institutions viz. teachers' training institutes. It has nothing to do with the ordinary educational institutions referred to above. Hence, the qualification for appointment as teacher in the ordinary educational institutions like the primary school, cannot be prescribed under the NCTE Act, and the essential qualifications are prescribed by the Local Acts and Rules in each State. In U.P. the essential qualification for appointment as a primary school teacher in a junior basic school is prescribed by Rule 8 of the U.P. Basic Education (Teachers) Service Rules, 1981 which have been framed under the U.P. Basic Education Act, 1972. A person who does not have the qualification mentioned in Rule 8 of the aforesaid Rules cannot validly be appointed as an Assistant Master or Assistant Mistress in a junior basic school.

23. The impugned judgment also proceeds with the same fallacy. The Division

Bench, in our opinion, wrongly relied upon Article 254 of the Constitution. Article 254, as stated above, has no application in this case at all because the two Acts operate in two different fields. In our opinion, the Division Bench, therefore, wrongly held that the respondent (the appellant before the Division Bench) had the requisite qualification for being appointed as an Assistant Master in a junior basic school.

24. In our opinion the Division Bench also erred in holding that there was violation of Article 14 of the Constitution. We see no violation of Article 14 by the impugned circular or the advertisement dated 28.4.1999. This aspect of the matter has been discussed in detail in the judgment of the learned Single Judge of the High Court dated 19.12.1997 in Writ Petition No. 33856 of 1997, Hira Mani vs. District Basic Shiksha Adhikari connected with Writ Petition No. 3184 of 1997, Kiran Kumari vs. State of U.P. and we see no reason to take a contrary view. Hence the view taken by the Division Bench, in our opinion, is not correct.

3. We have perused the aforesaid judgment. We are satisfied that the matter is squarely covered by the ratio of law laid down by the Supreme Court. However, at this stage learned Counsel for the petitioner whilst accepting that the judgment is wholly applicable to the facts of this case, submits that the same has been rendered per incuriam as the earlier judgment of the Supreme Court has not been noticed. We are unable to accept the submission; even otherwise learned Counsel has not cited any particular judgment which may or may not have been noticed by the Supreme Court.

4. With the above observations, the writ application is dismissed. Photostat certified copy of this order, if applied for, be given to learned Counsel for the parties subject to compliance of requisite formalities.