

(2010) 10 AHC CK 0043
In the Allahabad High Court
Case No : Special Appeal No. 416 of 2010

State of U.P. and Others

APPELLANT

Vs

Furqan Ali and Others

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 — Rule 5, 8, 8(1), 8(2), 8(4)

Citation : (2011) 1 ADJ 480

Hon'ble Judges : Sunil Ambwani, J; Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The delay in filing this special appeal has been sufficiently explained in the affidavit of Shri Ramesh Chandra, District Basic Education Officer, Buland Shahr. The delay condonation application is allowed. The special appeal was heard.
2. We have heard Shri K.S. Kushwaha, learned Standing Counsel for the State-appellant. Shri Shailendra appears for the petitioner-respondents.
3. The State of U.P. through Secretary, Basic Education, U.P. Lucknow and other State respondents-appellants have filed this special appeal, against the judgment of learned Single Judge dated 5.11.2009, by which he has held that the diploma in teaching Urdu language awarded by the Aligarh Muslim University, of 2 years duration, recognised by the National Council of Teachers Education, under (The) National Council of Teachers Education Act, 1993, is equivalent to the basic teachers certificates in Urdu, from the Government training centers at Lucknow, Agra, Mawana in Distt. Meerut and Sakaldiha in District Chandauli, and thus the petitioner-respondents are entitled to be appointed as Asstt. Teachers in Basic Schools, as against the posts covered by Rule 8(4) of the U.P. Basic Education Teachers Service Rules, 1981. Learned Single Judge has directed the respondent-appellants not to make appointment on the posts covered by Rule 8(4) of the Rules of 1981 from the candidates, who have, or who may have obtained Special

BTC Training, Urdu, and to initiate process for appointment of Asstt. Teachers in primary level educational institutions for teaching Urdu, which are lying vacant.

4. All the petitioners pursued and were awarded diplomas by Aligarh Muslim University, known as Diploma in Teaching Urdu of 2 years duration recognised by the NCTE under the NCTE Act, 1993. By the Writ Petition No. 1393 of 2009 giving rise to this special appeal, they challenged the notification dated 21.11.2008, and prayed for a writ of mandamus to the State-respondents to consider them for appointments as Asstt. Teachers in Primary Schools for teaching Urdu language on the basis of their qualifications treated to be equivalent to Basic Teachers Certificate from the Training Centres of the State Government under Rule 8(4) (ii) of the U.P. Basic Education Teachers Service Rules, 1981 (in short the Rules of 1981), vide Government Order dated 26.9.1994.

5. Shri K.S. Kushwaha, learned Standing Counsel appearing for the State appellants submits:

a. The writ petition challenging the order of appointment dated 21.11.2008, by the Basic Shiksha Adhikari, Buland Shahar appointing 31 persons as Asstt. Teachers Urdu on the basis of their qualification of Special BTC Urdu, was not maintainable, without impleading all the appointees;

b. The academic and training qualifications are different, and are treated differently in the Rules of 1981, for different purposes. The petitioners have diploma in teaching from Aligarh Muslim University. It is an academic qualification, which is not equivalent to the training qualification.

c. The Supreme Court has held in Basic Education Board, U.P. v. Bhupendra Rai 2008(1) ESC 160, that the provisions of NCTE Act, and those of UP Basic Education Act are not overriding. Consequently, the Rules framed under the U.P. Basic Education Act are neither superseded, nor nullified because of the provisions of NCTE Act. Under Rule 8 of the Rules of 1981 the words "equivalent" to the prescribed training qualification refers to the training qualification BTC. The diploma in teaching Urdu of Aligarh Muslim University was never declared equivalent to BTC.

d. The Government Order dated 26.9.1994 allowing equivalence has become meaningless after the judgment of the Supreme Court in Mohd. Sartaz Ahmad's case and that in any case the equivalence has been cancelled by the State Government by amendment in the Rules of 1981, dated 6.8.1997.

e. The advertisement dated 14.9.2001 for recruitment issued by Basic Shiksha Adhikari, Buland Shahar clearly prescribed training qualification, "BTC" from the District Institute of Education and Training, Buland Shahar. Any application beyond the qualifications prescribed in the advertisement was not required to be considered.

f. The eligibility qualification should be considered by the appropriate authority and not by Courts vide L. Muthukumar and Another Vs. The State of Tamil Nadu

and Others, and in State of Rajasthan and Others Vs. Lata Arun,

6. Rule 8 of the Rules of 1981 is quoted as below:

8. (1) The essential qualifications of candidates for appointment to a post referred to in Clause (a) of Rule 5, shall be as shown below against each:

Post

Academic Qualification

(i) Mistress of Nursery School

Certificate of Teaching (Nursery) from a recognised training institution in Uttar Pradesh or any other training qualification recognised by the Government as equivalent thereto.

(ii) Assistant Master and Assistant Mistress of Junior Basic School

A Bachelor's Degree from a University established by law in India or a Degree recognised by the Government as equivalent thereto together with the training qualification consisting of a Basic Teacher's Certificate, Vishist Basic Teachers Certificate (B.T.C.) 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:

Provided that the essential qualification for a candidate who has passed the required training course shall be the same which was prescribed for admission tot he said training course.

(2) The essential qualification of candidates for appointment to a post referred to in Sub-clause (iii) and (iv) of Clause (h) of Rule 5 for teaching Science, Mathematics, Craft or any language other than Hindi and Urdu shall be as follows:

(I) A Bachelor's Degree from a University established by Law in India or a Degree recognized by the Government as equivalent thereto with Science, Mathematics, Craft or particular language, as the case may be, as one of the subjects, and

(ii) Training qualification consisting of a Basic Teacher's Certificate, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of teaching or any other training course recognized by the Government as equivalent thereto.

(3) The minimum experience of candidates for promotion to a post referred to in Clause (b) of Rule 5 shall be as shown below against each:

Post

Experience

(i) Headmistress of Nursery School

At least five years" teaching experience as permanent Mistress of Nursery School.

(ii) Headmaster or Headmistress of Junior Basic School and Assistant Master or Assistant Mistress of Senior Basic School and

At least five years" teaching experience as permanent Assistant Mistress or Assistant Master of Junior Basic School, Assistant Master or Assistant Mistress of Junior Basic School, Assistant Master or Assistant Mistress of Senior Basic School

(iii) Headmaster or Headmistress for Senior Basic School

At least three years" experience as permanent Headmaster or permanent Assistant Master or Assistant Mistress of Senior Basic School, as the case may be;

Provided that if sufficient number of suitable or eligible candidates are not available for promotion to the posts mentioned at serial numbers (ii) or (iii) the field of eligibility may be extended by the Board by giving relaxation in the period of experience.

(4) The essential qualification of candidates for appointment to the posts referred to in Clause (a) and Sub-clause (iii) and (iv) of Clause (b) of Rule 5 for teaching Urdu language shall be as follows:

(I) A Bachelor's Degree from a University established by Law in India or a Degree recognized by the Government as equivalent thereto with Urdu, as one of the subjects.

(ii) Basic Teacher's Certificate from any of the training centres in Lucknow, Agra, Mawana in district Meerut and Sakaldiha in district Chandauli established by the Government for imparting training for teaching Urdu or any other training qualification recognized by the Government as equivalent thereto.

(5) The essential qualifications of candidates having proficiency in Urdu for appointment to the posts referred to in Sub-clause (ii) of Clause (a) of Rule 5 for teaching in Urdu medium shall be as follows:

(I) A Bachelor's Degree from a University established by Law in India or a Degree recognized by the Government as equivalent thereto. The qualifications for proficiency in Urdu will be such as may be prescribed from time to time by the government.

(ii) Training Qualification of two years BTC Urdu special training course.

7. Learned judge in the judgment under appeal found that in Rule 8 of the Rules of 1981 four categories of posts are contemplated:

a. Teachers for general subject (Rule 8(1));

b. Teacher of Science, Maths, Craft or any other language other than Hindi and Urdu (Rule 8(2));

c. Teacher for teaching Urdu language (Rule 8(4));

d. Teacher for teaching various subjects through Urdu medium (Rule 8(5)).

8. The qualifications for each category of teachers namely academic and training are different. Whereas in Sub-rule 8(1) to 8(2) and 8(4), the State has power to declare any training qualification/ course as equivalent to one prescribed, no such power has been retained by the State under Rule 8 (5). The Asstt. Teacher to be appointed for teaching in Urdu medium must have training qualification of 2 years BTC Urdu Special Training Course. For teaching Urdu language in Basic Schools it is necessary under Rule 8(4), for a teacher to possess Basic Teachers Certificate for teaching Urdu language from the Government Training Centres at Lucknow, Agra, Mawana in Meerut and Sakaldiha in Distt. Chandauli established by the Government for teaching Urdu or any other training qualifications recognised by the Government equivalent thereto. There is no such equivalence given for training qualifications for teaching in Urdu medium under Rule 8 (5), which provides training qualification of 2 years BTC Urdu special training course.

9. Learned Single Judge observed that the equivalence granted by the Government Order dated 26.9.1994 is referable to the teachers training diploma holders of Aligarh Muslim University, with the BTC from Government Training Centres referable to Clause 8(4), and not referable to Rule 8(1), 8(2) or 8(5) of the Rules of 1981.

10. Learned Single Judge further found that the State Government while withdrawing equivalence provided under various Government Orders (qua equivalence to General BTC candidates, only referred to the equivalence referable to posts covered by Rule 8(1) and 8(2). It has no application to the equivalence granted to diploma in teaching Urdu by Aligarh Muslim University under Rule 8(4). The equivalence by Government Order dated 26.9.1994 was thus not withdrawn by the Government Order dated 11.8.1997.

11. It is not denied that the Training Centres established by the State Government for Basic Teachers Certificate at Lucknow, Agra, Mawana in Distt. Meerut and Sakaldiha in Distt. Chandauli, have been closed since 1997-98. The recital in the Government Order dated 11.8.1997 to the surplus qualified candidates available for the post of Asstt. Teachers is thus not in respect of posts covered by Rule 8(4). On the contrary the shortage of such qualified teachers is admitted in the Government Orders dated 16.2.2005 and 12.4.2005.

12. The notification issued by the Secretary, Basic Shiksha Parishad, U.P. dated 12.9.2002, appends a list of 27 qualifications of which equivalence was withdrawn by Government Order dated 11.8.1997. The list does not include diploma in teaching Urdu language by Aligarh Muslim University. On the contrary in Item No. 25, it is clarified that if under any Central Act or under any State Act any degree/ diploma is granted by University, no formal order of the State Government qua such degree/ diploma is necessary and that same shall be deemed to be necessary qualifications for appointment in the State services.

13. Learned Single Judge also observed that if the equivalence to diploma in teaching is treated to be withdrawn under Government Order dated 11.8.1997,

the appointments under Rule 8(4) cannot be made as the Government Training Centres mentioned in Rule 8(4) have stopped functioning since 1997-98.

14. In *Qamber Raza v. State of U.P.* Civil Appeal No. 1294 of 2007 decided on 12.12.2007, the distinction between teachers appointed for imparting education through medium of Urdu language, and teachers appointed for imparting education in Urdu was under consideration. The candidates, who have successfully completed BTC Training Course (Urdu) 2006, can be offered appointment against the posts covered by Rule 8(5), and not against the posts covered by Rule 8(4).

15. We have carefully considered the submissions of Shri K.S. Kushwaha for the State appellants. The grounds taken by him do not effect the reasons given by the learned Single Judge in granting relief to the petitioners.

16. The petitioners had prayed for quashing the order dated 21.11.2008, passed by the Basic Shiksha Adhikari, Buland Shahar, only to the extent that the selections on the posts of Asstt. Teachers (Urdu), made without considering the case of those, who have already qualified and had preferential right over the selectees. In Writ Petition No. 32760 of 2001 a direction was issued by the Court that whenever any vacancy in BTC (Urdu), will be advertised, the diploma holders from Aligarh Muslim University will be considered and thus a writ of mandamus was sought to be issued to the State authorities to appoint petitioners by giving them preference in appointment. It was, therefore, not necessary to implead the selected persons. The petitioners did not pray to quash their appointments. There were other vacancies to which the petitioners were claiming preference in appointment. By the impugned judgment dated 5.11.2009 the writ petition has been allowed to the extent that claim of petitioners and such other candidates possessing diploma in teaching from Aligarh Muslim University were directed to be considered against the posts referable to Rule 8(4) of the rules of 1981. The preliminary objection of non-impleadment of the selected teachers, therefore, does not have any force.

17. We also do not find substance in the contention of Shri K.S. Kushwana that equivalence was withdrawn by Government Order dated 11.8.1997. The equivalence given to diploma in teaching Urdu language by the Aligarh Muslim University by Government Order dated 26.9.1994 was not withdrawn by Government Order dated 11.8.1997. The Government Order dated 11.8.1997 refers to the equivalence given to the BTC/ Hindustani HTC BTC and CT referable to teaching qualifications in Rule 8(1) and Rule 8(2), and not to Rule 8(4).

18. Learned Single Judge has rightly held that for the posts referable to Rule 8(4) of the Rules of 1981, the petitioners having diploma in teaching in Urdu language from Aligarh Muslim University, fulfill both the teaching and training qualifications and thus the posts covered by Rule 8(4) of the Rules of 1981, lying vacant must be filled up from the qualified candidates, including the petitioners as early as possible.

19. The special appeal is dismissed.