

(2010) 02 UK CK 0058
In the Uttarakhand High Court

State of Uttarakhand and Others

APPELLANT

Vs

Sanjay Singh and Others

RESPONDENT

Date of Decision : 09-02-2010

Acts Referred:

Citation : (2010) 02 UK CK 0058

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Judgement

J.S. Khehar, C.J.

Delay Condonation Application No. 388 of 2010

1. For the reasons indicated in the application, we are satisfied that the delay in filing the instant Special Appeal deserves to be condoned. The same is accordingly condoned.

Special Appeal No. 2 of 2010

2. A bunch of writ petitions was filed in this Court raising identical issues. One of the aforesaid writ petitions i.e. Writ Petition (SS) No. 580 of 2009 was filed by the respondent Sanjay Singh and a few other similarly situated as him. The aforesaid writ petitions were prompted by the action of the appellants in not considering their claims for appointment against the post of Trained Graduate Assistant Teacher (Physical Education) advertised in June 2002, October 2004 and November 2004. The claim of the candidature of the petitioners was sought to be denied on account of the fact that they were treated as ineligible for consideration.

3. In all the aforesaid writ petitions including Writ Petition (SS) No. 580 of 2009, a learned Single Judge of this Court arrived at the conclusion, that the petitioners were prima facie eligible for appointment against the advertised post, and accordingly, directed the appellants herein to consider their candidature in furtherance of the advertisements referred to hereinabove.

4. The aforesaid order passed by the learned Single Judge on 4.9.2009 is subject matter of challenge at the hands of the appellants through the instant Special Appeal.

5. The only issue canvassed at the hands of the learned Counsel for the appellants pertains to the eligibility of the candidates adjudicated upon by the learned Single Judge. In order to demonstrate the ineligibility of the candidates, learned Counsel for the appellants has invited our attention to the Uttar Pradesh Subordinate Educational (Trained Graduates Grade) Service Rules, 1983 (hereinafter referred to as the Service Rules). In so far as the eligibility for the post of Assistant Master/Assistant Mistress (Physical Education) is concerned our pointed attention has been invited to Rule 8, and to Serial No. 6 thereof, relating to the post of Assistant Teacher (Physical Education). Serial No. 6 delineating the qualification to the post under reference. Serial No. 6 is being extracted hereunder:

6. Assistant Bachelor's Degree from a Master/Assistant recognized University or Mistress (Physical Education). a degree recognised by the Government as equivalent thereto and Diploma in Physical Education.

6. The sole contention of the learned Counsel for the appellants is, that the respondents, and all others similarly situated as them, were ineligible for appointment to the post of Assistant Master (Physical Education) as they do not possess the qualification of Diploma in Physical Education. It is not a matter of dispute, that all the respondents, as also other similarly situated as them, were declared ineligible despite the fact that they possessed the qualification of "Vyayam Ratna" from "Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi". The contention of the learned Counsel for the appellants before this Court is, that the aforesaid qualification has not been recognized as equivalent to Diploma in Physical Education, and as such, the same cannot be taken into consideration to determine the eligibility for candidates applying for the posts of Assistant Master (Physical Education).

7. Whilst the contention at the hands of the learned Counsel for the appellants is based on equivalence, we are of the view that the issue of equivalence does not arise under the rule extracted above. A perusal of the Rule extracted above reveals, that two qualifications have been prescribed for the eligibility for the post under reference. Firstly, a bachelor's degree from a recognized university or a degree recognized by the Government as equivalent. Secondly, Diploma in Physical Education. A close examination of the prescribed qualification postulates that the requirement of a bachelor's degree from a recognized University, or alternatively a bachelor's degree accepted as equivalent thereto by the Government. The postulated Diploma qualification, however, stands on a different footing. The Rule does not mandate the qualifications of a Diploma from a specified institution and therefore, the equivalence thereof is an irrelevant consideration. The rule only mandates the possession of the qualification of Diploma in Physical Education. The question therefore to be determined is,

whether the respondents in this case, and others similarly situated as them, who had acquired the "Vyayam Ratna" qualification from "Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi" possess the prescribed qualification. The answer to this is in the affirmative for two reasons. Firstly, the Government Order dated 18.11.1982 wherein the qualification of "Vyayam Ratna" from "Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi" was recognized as Diploma in Physical Education; and secondly, that "Vyayam Ratna" from "Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi" has been recognized as a Diploma in Physical Education by NCTE. Thus viewed, we are satisfied that "Vyayam Ratna" from "Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi" is liable to be treated as Diploma in Physical Education, for all intents and purposes. In fact, the instant aspect of the matter stands confirmed by a letter of the Director of Education, Uttarakhand dated 31.8.2007 (Annexure-8 to the writ petition).

8. The conclusion recorded by us hereinabove, must be read in addition to the two findings recorded by the learned Single Judge. Firstly, that the qualification of "Vyayam Ratna" from "Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi" is equivalent to the qualification of Diploma in Physical Education (inspite of the view expressed by us hereinabove, that the issue of equivalence is irrelevant to the present controversy). And secondly, persons possessing the same qualification i.e. "Vyayam Ratna" from "Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi" have been treated as eligible by the State of Uttarakhand under the Rule extracted hereinabove, and have been appointed against the post of Trained Graduate Assistant Teachers (Physical Education) hither to before.

9. For the reasons recorded hereinabove, we find no merit in the Special Appeal and the same is accordingly dismissed.

10. In the set of writ petitions filed before the learned Single Judge including Writ Petition (SS) No. 580 of 2009, the only issue arising for consideration was, whether the petitioners in the said bunch of cases were eligible for appointment as Trained Graduate Assistant Teachers (Physical Education). The learned Single Judge vide his order dated 4.9.2009 has already arrived at the conclusion that the petitioner who had approached this Court were eligible. Through the instant Special Appeal, we have examined the objections raised at the hands of the appellants, to the determination rendered by the learned Single Judge in his order dated 4.9.2009. Having considered the objections of the appellants, we have concurred with the view expressed by the learned Single Judge vide his order dated 4.9.2009, and as such, have concluded that the petitioners having the qualification of "Vyayam Ratna" from "Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi" were all eligible for consideration against the post of Trained Graduate Assistant Teachers (Physical Education) in response to an advertisements issued in June 2002, October 2004, and November 2004. Having so determined, there is no other issue that remains pending to be considered at

the hands of the learned Single Judge.

11. In view of the above, while dismissing the instant Special Appeal, we hereby with the consent of the learned Counsel for the rival parties prepone all the connected writ petitions listed for consideration on 9.9.2009, so as to take them on the board, for final disposal today itself.

12. Having arrived at the conclusions recorded hereinabove we are satisfied that the petitioners in Writ Petition (SS) No. 614 of 2009, Writ Petition No. (SS) No. 580 of 2009, Writ Petition (SS) No. 604 of 2009, Writ Petition (SS) No. 635 of 2009 and Writ Petition (SS) No. 643 of 2009, possessing the qualification of "Vyayam Ratna" from "Maharani Laxmi Bai Vyayam Mandir, Vyayam College, Jhansi" must be deemed to possess the qualification of Diploma in Physical Education, and as such, are eligible to be considered for the posts of Trained Graduate Assistant Teachers (Physical Education). The aforesaid writ petitions are allowed. The selecting agency/appointing authority, is accordingly directed to consider their candidatures in the selection process for appointment to the posts of Trained Graduate Assistant Teachers (Physical Education), advertised in June 2002, October 2004 and November 2004.

13. Special Appeal No. 2 of 2010 and Writ Petition (SS) No. 614 of 2009, Writ Petition No. (SS) No. 580 of 2009, Writ Petition (SS) No. 604 of 2009, Writ Petition (SS) No. 635 of 2009 and Writ Petition (SS) No. 643 of 2009 are accordingly disposed of in the aforesaid terms.