

(2019) 09 UK CK 0036

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 1794, 1801 Of 2019

Sushma And Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 05-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2019) 09 UK CK 0036

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : Bharat Singh, Vikas Pandey, N.S. Negi, Yogesh Pacholiya, Naveen Chand Tiwari

Judgement

Ramesh Ranganathan, CJ

1. The earlier notification issued by the NCTE was subjected to challenge before this Court in Baldev Singh and others vs. State of Uttarakhand (order in Writ Petition (S/S) No. 772 of 2011 dated 20.08.2011), wherein the learned Single Judge opined that the prescription of a minimum of 45% marks in graduation for appearing in TET examination was violative of Article 14 of the Constitution of India. The appeal preferred thereagainst was dismissed, and the SLP preferred against the order of the Division Bench was also dismissed. Consequently, the order of the learned Single Judge, striking down the notification issued by the NCTE as violative of Article 14 of the Constitution of India, has attained finality.

2. Subsequently, in its order in Neeraj Kumar Rai and others vs. State of U.P. and others (order in Civil Appeal NO. 9732 of 2017 dated 25.07.2017), the Supreme Court, after taking note of both the judgments of the Rajasthan High Court in Sushil Sompura and others vs. State (Education) and others (judgment in Civil Writ Petition No. 3964 of 2011 dated 20.05.2011) and of the learned Single Judge of this Court in Baldev Singh and others vs. State of Uttarakhand (order in Writ Petition (S/S) No. 772 of 2011 dated 20.08.2011), recorded the concession of the Additional Solicitor General, appearing for the NCTE, that the appellants

would be treated at par with those who were covered by the Rajasthan and Uttarakhand High Courts judgments, which had been accepted by the NCTE. While granting a similar relief to the appellants before it, the Supreme Court observed that the NCTE ought to have issued a clarification by way of a supplementary notification. The NCTE was permitted to issue a supplementary notification within one month. After the order of the Supreme Court, in Civil Appeal No. 9732 of 2017 dated 25.07.2017, the NCTE issued the subsequent notification dated 28.06.2018, the validity of which is under challenge in these writ petitions.

3. The question whether the law declared by the learned Single Judge, in Baldev Singh and others vs. State of Uttarakhand (order in Writ Petition (S/S) No. 772 of 2011 dated 20.08.2011), would apply even to the subsequent notification dated 28.06.2018, and whether the said notification is also liable to be struck down as violative of Article 14 of the Constitution of India, necessitate examination in the writ petitions.

4. The learned Single Judge has, by his order in Writ Petition (S/S) No. 1794 of 2019 and 1801 of 2019 dated 05.08.2019, directed the matter to be placed before the Chief Justice so that a larger Bench can be constituted to decide the controversy whether the judgments passed by two different Benches are correct or not?

5. The order of the Division Bench, referred to by the learned Single Judge in his order dated 05.08.2019, is the order in Special Appeal No. 473 of 2013 and batch dated 06.09.2018. In the said order the Division Bench had, in fact, taken note of the earlier order passed by another Division Bench in Special Appeal No. 28 of 2012 dated 12.03.2013, and had opined that the earlier order of the Division Bench, in Special Appeal No. 28 of 2013 dated 12.03.2013, was obtained by suppression of material facts.

6. Another Division Bench had, in its order in Special Appeal No. 286 of 2013 and batch dated 04.09.2013, also similarly opined that the judgment rendered in Baldev Singh was suppressed, and the order in Special Appeal No. 28 of 2013 dated 12.03.2013 had been obtained by suppression of material facts.

7. Since two Division Benches, in their orders in Special Appeal No. 286 of 2013 and batch dated 04.09.2013, and subsequently in Special Appeal No. 473 of 2013 and batch dated 06.09.2018, have held that the earlier order in Special Appeal No. 28 of 2013 dated 12.03.2013 had been obtained by suppression of material facts, the question of a conflict between the order of the Division Bench in Special Appeal No. 28 of 2013 dated 12.03.2013 on the one hand, and the order in Special Appeal No. 473 of 2013 dated 06.09.2018 on the other, does not arise.

8. It is unnecessary for us, therefore, to refer the matter to a Full Bench. As noted hereinabove, the Supreme Court, in Neeraj Kumar Rai and others vs. State of U.P. and others (order in Civil Appeal NO. 9732 of 2017 dated 25.07.2017),

had permitted the NCTE to issue a fresh notification, which they have issued on 28.06.2018; and the validity of this notification is under challenge in the writ petitions.

9. The question whether the judgment in Baldev Singh, in which the validity of the notification issued by the NCTE dated 23.08.2010 was under challenge, would apply necessitating the fresh notification issued on 28.06.2018 being quashed or whether, in the light of the order of the Supreme Court, in Civil Appeal No. 9732 of 2017 dated 25.07.2017, the judgment, in Baldev Singh, has no application would also necessitate examination in the writ petitions.

10. We, accordingly, remand the matter to the learned Single Judge to examine the validity of the notification dated 28.06.2018 in accordance with law, after the respondents file their counter-affidavit(s) in the writ petitions.

11. Sri Yogesh Pacholia, learned counsel for NCTE, seeks six weeks' time to file counter-affidavit.

12. Let the writ petitions be listed before the learned Single Judge after six weeks from today.