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**(1995) 02 AHC CK 0088**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous W. P. No. 25929 of 1992

Virandra Bahadur Singh and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

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**Date of Decision :** 06-02-1995

**Acts Referred:**

Constitution of India, 1950 — Article 14, 16, 215, 226

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

**Citation :** (1995) 02 AHC CK 0088

**Hon'ble Judges :** S.R.Singh, J

**Final Decision :** Dismissed

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## Judgement

S. R. Singh, J.—The question that crops up for determination by the Court in the aforesaid writ petitions, is : whether exclusion of the candidates who have passed Intermediate Examination of the Board of High School and Intermediate Education, U. P. or any other qualification recognised by the State Government as equivalent there together with training qualification of B. T. C. (Correspondence) from the field of consideration for appointment to the posts of Assistant Teachers of Junior Basic Schools, recruitment to which is admittedly governed by the U. P. Basic Education (Teachers) Service Rules, 1981 (in short "the Rules") is illegal, arbitrary and violative of any Constitutional or Statutory provisions.

2. The petitioners in ail the writ petitions aforesaid have, it is alleged, passed intermediate Examination of the Board of High School and Intermediate Education, U, P. and they have also, to their credit, the training qualification of B. T. C. (Correspondence) Course in that they have passed Adhyapak (Basic) Prashikshan Pariksha that is to say Teachers (Basic) Training Examination conducted by Registrar, Departmental Examination, U. P. and were awarded certificates known as Adhyapak (Basic) Prashikshan (Patracharit) Pariksha, 1983 on 1986 depending on the year of examination conducted by Registrar, Departmental Examination, U. P. According to them, the Director of Education (Basic) U. P. Lucknow by his letter dated 1811986 has recognised B. T. C.

(Correspondence) training as equivalent to B. T. C. Training and therefore the candidates having passed B. T. C. (Correspondence) Examination are qualified for appointment in Junior Basic Schools controlled and run by the U. P. Board of Basic Education.

3. Having heard learned counsel appearing for parties and having given my anxious consideration to the point involved in the case, I am of the considered view that exclusion of candidates having B. T. C. (Correspondence) Training qualification from the field of eligibility and consideration for appointment to the posts of Assistant teachers in Junior Basic Schools is neither arbitrary nor violative of any Statutory Rules or Constitutional Provisions. The essential academic qualification for the posts in question as laid down in Rule 8(1) of the Rules is as below :

"Intermediate Examination of the Board of High School and Intermediate Education U. P. or any other qualification recognised by the State Government as equivalent thereto together with the training qualification consisting of Basic Teacher's Certificate, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other training course recognised by the State Government as equivalent thereto : provided that the essential qualification for candidate who has passed the required training course shall be the same which was prescribed for admission to the said training course."

4. The argument advanced by the counsel for the petitioners is that the petitioners are possessed of training qualification and they cannot be discriminated merely because training qualification has been acquired by them through correspondence course and in support of their contention they placed reliance on the letter dated 1811986 of the Director of Education (Basic) U. P. Lucknow the relevant portion of which reads as under

5. Learned counsel appearing for the petitioners also placed reliance on a single Judge decision in *Ramesh Pratap Singh v. State of U. P. and others*, 1993 (21) ALR 88, holding that Rule 8 does not make any distinction between two types of certificates one obtained from a regular course and the other through a correspondence course. Reliance was also placed on another single Judge decision in *Civil Misc. Writ Petition No. 22828 of 1991, Vishwambhar Nath Misra and others v. Basic Shiksha Parishad, U. P. Allahabad and others*, following the decision in *Ramesh Pratap Singh* (supra).

6. It may be observed that B. T. C. (Correspondence) training examination used to be held once in a while with a view to imparting inservice training to untrained teachers already in employment and/or granting them exemption from training on the basis of a minimal test pursuant to Government Orders issued from time to time. One such Government Order runs as below :

7. Sri K. S. Shukla, counsel appearing for the Board stated at the Bar that the system of B. T. C. (Correspondence) training has now been done away with in view of Government Order which automatically confers the status of a trained

teacher to an untrained teacher after completion of a stipulated period of service. I have no reason to doubt the correctness of the statement. The decision of the Board contained in letter dated 1811986 of the Director was recalled by the Board of Basic Education in their meeting held on 921989 and according to the decision taken by the Board in its meeting held on 921989, those who have passed B. T. C. (Correspondence) Training Examination are not to be appointed in Junior Basic Schools of the Board. The decision taken by the Board in its meeting on 921989 was circulated by the Director of Education, U.P. vide order dated 1921989 which reads as below :

Relying upon the said Circular dated 1921989, a Division of this Court, dismissed the Civil Misc. Writ Petition No. 23341 of 1989 tiled by Faujdar Yadav and 11 others, vide judgment and order dated 731990 which reads as under :

"Heard learned counsel for the petitioners and Sri G. P. Mathur for the newly added respondents as well as the learned Standing Counsel.

After hearing learned counsel for the parties, we find that the petitioners are not qualified to be appointed on the posts sought by them in view of a Circular of the Government dated 19th February 1989. In the circumstances we do not find any merit in this petition.

In case the petitioner's case is that they have been affected by the assurance given by the State Government, it is always open to the petitioners to approach the State Government in that regard. The interim order dated 8121989 is hereby vacated.

The petition is accordingly dismissed.

Sd/ S.D.A.J.

Sd G.K.M.J.

8. In *Rajendra Prasad v. Karnataka University*, AIR 1986 SC, it was held that the equivalence has to be decided by the University as it was not a matter of objective assessment and evaluation by the Court. In *J. Ranga Swami v. Government of Andhra Pradesh*, AIR 1990 SC it was held by the Supreme Court that it was not for the court to consider the relevance of qualifications prescribed for various posts. Relying upon the principle laid down by the Supreme Court in the aforesaid cases, I am of the view that it is not for this court to assess the comparative merits of B. T. C. (Correspondence) Training qualification visavis the regular B. T. C. Training qualification specifically mentioned in Rule 8 of the Rules. In any case, B. T. C. (Correspondence) trained teachers cannot claim parity with unemployed B. T. C. Trained candidates. Treating them as equal would tantamount to treating on equals

as equals. It may be observed that candidates appearing in B. T. C. (Correspondence) training examination were not required to attend theory and practical classes regularly whereas regular B. T. C. training candidates have to

attend theory and practical classes regularly. The object of B. T. C. (Correspondence) course, as pointed out earlier, was to confer status of a trained teacher to an untrained teacher already in employment. In these circumstances exclusion of B. T. C. (Correspondence) trained teachers from the field of eligibility, does not violate Articles 14 and 16 of the Constitution. The advertisement confining the field of eligibility to unemployed B. T. C. trained candidates does not suffer from the vice of arbitrariness. In facts exclusion of B. T. C. (Correspondence) trained teachers from the field of eligibility for purposes of appointment to the posts of assistant masters and assistant mistress in Junior Basic Schools controlled and run by U. P. Board of Basic Education is a matter of policy decision and therefore, the decision to exclude persons already in employment from the field of consideration cannot be said to be arbitrary or violative of any constitutional or legal right. The petitioners may, if so advised, move the State Government for equating the training qualifications but so long as it is not done, the petitioners are not entitled to claim parity with unemployed B. T. C. trained candidates.

9. The Division Bench decision in Faujdar Yadav (*supra*) was not brought to the notice of the learned single Judges whose decisions, the counsel for the petitioners have vehemently placed reliance on. Sitting single I am hidebound by the Division Bench decision and it is difficult to ignore the same on the doctrine of per incuriam which in the circumstances of the case is not attracted. The respondents are therefore not obliged to consider the petitioners at par with the candidates having passed B. T. C. regular examinations conducted by the Registrar, Departmental Examination, U.P. Allahabad. Writ Petition No. 23341 of 1989 aforesaid was filed by Faujdar Yadav, Ramdeo Muarya, Jagdutta Shukla, Ramjeet Pandey, Girjesh Bahadur Singh among others. The petition was dismissed but the persons aforesaid have filed writ petitions again by suppressing material fact that a similar writ petition filed by them earlier was dismissed. They have also suppressed the fact that the Circular dated 1811986 relied on by them in the present petitions had been rescinded vide circular dated 1921989. Thus the aforesaid persons have prima facie misused the process of the Court and are, therefore, liable to be proceeded against for contempt.

10. There is no merit in the aforesaid petitions and accordingly they are dismissed. The registry is, however, directed to issue notices within a week to the following persons calling upon them to show cause why contempt proceeding be not drawn against them for deliberate suppression of material facts as stated in the body of the judgment.

(1) Faujdar Yadav son of Sri Abhairaj Yadav, r/o village Khajuria Sri Netra Post Kathar Jangal, district Basti,

(2) Ram Deo Maurya son of Sri Salik Ram, r/o village Banaha, Post Ojhaganj, district Basti,

(3) Jagdutta Shukla son of Sri Ram Deo, village Bilaushi, P. O. Sansarpur, district

Basti,

(4) Ram Jeet Pandey son of Sri Kamlesh Prasad Pandey, r/o village Bankaria, P. W. Pokhera, District Basti,

(5) Birendra Bahadur Singh son of Sri Tilakraj Singh, r/o village Dharampur, P. W. Dubaulia, district Basti,

(6) Girjesh Bahadur Singh son of Sri Ram Agyan Singh r/o village and post Sansarpur, district Barti."