

(2011) 01 AHC CK 0236
In the Allahabad High Court
Case No : Writ A No. 44073 of 2008

Vishwanath Yadav and Others

APPELLANT

Vs

State Of U.P. and Others

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Citation : (2011) 3 ADJ 236

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Sudhir Agarwal, J.—Heard Sri S.C. Srivastava, Advocate for the Petitioners and learned Standing Counsel for the Respondents.

2. All these matters involve similar questions of facts and law, hence as requested and agreed by learned Counsel for the parties, are being decided by this common judgment.

3. All these Petitioners were appointed on various dates as 2 teachers in various primary schools recognised by Board of Basic Education under the U.P. Basic Education Act, 1972 (hereinafter referred to as the "1972 Act"). The dates of appointment of all the Petitioners are not mentioned but the fact remains that all of them have been appointed in various primary schools though managed privately but recognised by the Board of Basic Education. Learned Counsel for the Petitioners stated that some of the teachers were appointed before the enactment of statutory rules under Basic Education Act laying down provisions for recruitment and conditions of service of such teachers and some were appointed after the enactment of such rules.

4. So far as the teachers who are appointed after the enactment of relevant recruitment rules framed under 1972 Act, since there was a prohibition in the rules for appointing any untrained teacher in primary school, the appointment of such teachers being impermissible in law, the Government orders providing

training for untrained teachers would not apply in those cases. Various orders referred to in the writ petitions have already been considered by a Division Bench of this Court in detail. This Court has held in its judgment dated 17.12.2008 passed in Special Appeal No. 10 of 2007 (State of U.P. and Ors. v. Shailesh Kumar Dwivedi and Ors. Special Appeal No. 10 of 2007) that the provisions for providing training subsequently to those Teachers who were appointed as untrained Teachers shall apply only to such teachers who were appointed before the enforcement of rules providing training qualification as a necessary qualification for appointment but those who were appointed after the enforcement of recruitment rules in violation thereof, having not possessed training qualification, they cannot be required to sent for training as the appointment itself was illegal. It may be 3 pointed out that against the judgment dated 17.12.2008 a recall application was also filed which was rejected by Division Bench by a detailed judgment dated 4.9.2009. It further appears that against the judgment dated 17.12.2008 in Special Appeal No. 10 of 2007, SLP No. 20691 of 2009 was filed which has also been dismissed by the Apex Court on 17.12.2009.

5. Thereafter this question again cropped up in another matter, i.e., Civil Misc. Writ Petition No. 4137 of 2010, Ayaz Ahmad and Ors. v. State of U.P. and others, decided on 29.01.2010 wherein this Court passed the following order dismissing the writ petition:

It is submitted on behalf of the Petitioners that though the appointment of the Petitioners have been made in the Primary School governed by U.P. Basic Education Service Rules, 1981 (hereinafter referred to as "1981 Rules") after the enforcement of the said Rules but the Petitioners, admittedly, are untrained. Learned Counsel for the Petitioners submitted that the appointments are covered by some executive orders issued by State Government though he could not show that there is any provision in 1981 Rules which permits relaxation of training qualification for making appointment on the post of Assistant Teacher in the Primary Schools. He also could not dispute that Rule 10 of 1981 Rules, which empowers the Government to relax training qualification is not applicable in the case in hand since none of the Petitioners is covered by the various categories prescribed therein. This Court has already held in its judgment dated 17.12.2008 passed in Special Appeal No. 10 of 2007 that the provisions for providing training 4 subsequently to those Teachers who were appointed as untrained Teachers shall apply only to such teachers who were appointed before the enforcement of rules providing training qualification but those who were appointed after the enforcement of recruitment rules in violation thereof, having not possessed training qualification, they cannot be required to sent for training as the appointment itself was illegal. It may be pointed out that against the order dated 17.12.2008 a recall application was also filed which was rejected by Division Bench of this Court by a detailed judgment dated 4.9.2009. It further appears that against the judgment dated 17.12.2008 in Special Appeal No. 10 of 2007, SLP No. 20691 of 2009 was filed which has also been dismissed by the

Apex Court on 17.12.2009.

In my view, the law laid down therein fully apply to this case also though there the matter relates to U.P. Recognized Basic Schools (Recruitment and Conditions of Service of Teachers and other Conditions) Rules, 1975 and U.P.

Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Service of Teachers) Rules, 1978 and the present case is governed by 1981 Rules but the exposition of law is fully applicable to this case also and, therefore, I find no reason to grant any relief to the Petitioner in the case in hand.

The Government Orders which provide for limited benefit for the teachers getting appointment on compassionate basis are admittedly covered by the provisions of Rule 10 of 1981 Rules.

In absence of any provision of relaxation for categories other than those covered by Rule 10, no relief can be granted to the Petitioners. Dismissed.

6. In the present cases in respect to all such Petitioners who have been appointed after the enactment of statutory rules under 1972 Act obviously there was a prohibition of appointment of untrained teachers. No appointment of untrained teacher could have been made. Hence the question of imparting training to such teachers does not arise in view of the above Judgment. But if any teacher was appointed before enactment of statutory rules as mentioned above the benefit of Government order for providing training in such a case may be extended.

7. In view thereof all these writ petitions are disposed of with liberty to Petitioners to approach the concerned Basic Education Officer in the district in which the institution concerned establish to examine the matter in the light of what has been decided by this Court in Shailesh Kumar Dwivedi (supra) and Ayaz Ahmad (supra) and in case there is any Petitioner who was appointed untrained before the enforcement of statutory rules laying down provision for recruitment of condition of service in primary recognised schools, he may pass appropriate order permitting training otherwise shall follow the law laid down in the case of Shailesh Kumar Dwivedi (supra). No costs.