
(2011) 09 AHC CK 0299
In the Allahabad High Court
Case No : Writ Petition No. 1246 (SS) of 2011

Vishwas Kumar and another	Vs	APPELLANT
State of Uttarakhand and others		RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Right of Children to Free and Compulsory Education Act, 2009 — Section 23

Citation : (2011) 09 AHC CK 0299

Hon'ble Judges : Sudhanshu Dhulia, J

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J. (Oral)

1. Heard Mr. Manish Arora, learned counsel for the petitioners, Mr. H.M. Raturi, learned standing counsel for the State of Uttarakhand, Mr. Abhishek Verma Advocate holding brief of Mr. Sudhir Singh, learned counsel for respondent no. 3 and Ms. Geeta Parihar, learned counsel for respondent no. 4.

2. The petitioners are the candidates for examination known as Teachers Eligibility Test. This examination has now been conducted after Article 21 A (b) has been inserted in Part III of the Constitution of India and Right to Education Act having been a fundamental rights. Consequently, Parliament enacted a legislation known as Right to Children to Free and Compulsory Education Act, 2009 (from hereinafter referred to as the Right to Education Act). Under the said Act, the qualifications of a teacher who will now be eligible to teach children in elementary school have to be prescribed by the academic authority of the Central Government under the said Act. Under Section 23 of the above Act only a person possessing said minimum qualification as laid down by an academic authority authorized by the Central Government (which now is National Council of Teacher Education, which is a Central Body) shall be eligible to be appointed as a teacher, in an elementary school.

3. The academic authority has laid down certain qualifications, which were

challenged by the number of writ petitioners before this Court and the leading case being writ petition no. 772 (SS) of 2011 Baldev Singh and others Vs. State of Uttarakhand and others in which the validity of such a test, i.e. Teachers Eligibility Test, (TET for short) which a person must qualify in order to become a teacher has been upheld by this Court.

This is so because now under Article 21A of the constitution and the right to Education Act, it is not just a fundamental right of children to get elementary education but this right has now become a meaningful right for various reasons and more particularly because a children will be imparted elementary education by qualified and trained teachers, which has already been stated by this Court in Baldev Singh's Case while upholding the validity of such a test, as under:

?We have already noticed in detail the object of the Act, which is, inter alia, to improve the standard of elementary education in our country. The Act strives to give to our children an elementary education through better trained and better qualified teachers. If the Act and the subsequent notification issued by the NCTE raises the scale for these teachers, such an effort is in public interest and not against it. Moreover, such an action on the part of either NCTE or the State Government does not violate or invade any right of the petitioners, much less any fundamental or constitutional right. Moreover, the Division Bench of Rajasthan High Court, to which we shall refer in some detail later in this judgment, has already upheld the validity of the test i.e. TET. This Court is in full agreement with the views expressed by the Hon'ble Rajasthan High Court in this regard. Moreover, the conditions and eligibility, etc. for such teachers are being given under a Central statute, which is under Entry 66 of List I of the Union List of Seventh Schedule, the same will have an overriding effect, over any State legislation. No interference therefore can be made regarding this prayer of the petitioner and it stands rejected.

In other words, the validity of Teachers Eligibility Test (TET) being already upheld by this Court no interference now can be made by this Court as it is this test which is presently under challenge in this petition. There is no illegality at all if the government insists on a teacher to appear in a test, before giving the appointment to such teacher in an elementary school. Though in the same case this Court had held that such candidates having less than 50% in their graduation been made ineligible even to appear in such examination or test to be arbitrary, yet the present writ petition before this Court is of a candidate who has already appeared in this Teachers Eligibility Test. Now having appeared in the Teachers Eligibility Test it is not given to him to challenge the same test now on the grounds that examination paper being given in such an examination was tough or that the time given to such a candidate in the examination was short. This Court is not inclined to interfere in the present matter, on any of the grounds urged in the writ petition.

The writ petition is liable to be dismissed and is hereby dismissed.

No order as to costs.