

Basic Education Board, U.P vs Upendra Rai And Others on 12 February, 2008

Equivalent citations: 2008 AIR SCW 1560, 2008 (3) SCC 432, 2008 LAB. I. C. 1755, 2008 (3) ALL LJ 539, AIR 2008 SC (SUPP) 1321, (2008) 1 ESC 160, (2008) 2 MAD LJ 1084, (2008) 2 SCALE 407, (2008) 2 SCT 49

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Bench: H. K. Sema, Markandey Katju

CASE NO.:

Appeal (civil) 8034 of 2001

PETITIONER:

Basic Education Board, U.P.

RESPONDENT:

Upendra Rai and others

DATE OF JUDGMENT: 12/02/2008

BENCH:

H. K. Sema & Markandey Katju

JUDGMENT:

J U D G M E N T CIVIL APPEAL NO. 8034 OF 2001 [with Civil Appeal Nos. 3998/2002, 153/2003, 1207/2006, 2796/2006, 4784/2006, Civil Appeal Nos /2008 (arising out of SLP(Civil) Nos. 4819/2002, 9289/2002 & 20337/2002)] MARKANDEY KATJU, J.

1. Delay condoned.

2. Leave granted.

3. Since a common question of law is involved in the appeals filed by the State of U.P., Civil Appeal No.8034/2001 Basic Education Board, U.P. vs. Upendra Rai and others is taken as the leading case for consideration in dealing with these appeals. Civil Appeal No. 8034/2001 has been filed against the impugned judgment and order dated 18.2.2000 passed by a Division Bench of the High Court of Judicature at Allahabad in Special Appeal No. 25 of 2000 by which the Learned Division Bench set aside the judgment of Learned Single Judge dated 7.12.1999.

4. Before the Learned Single Judge the challenge was to the advertisement dated 28.4.1999 and the Government Circular dated 11.8.1997. The Learned Single Judge dismissed the writ petition, but in appeal the Division Bench set aside that judgment and also the impugned Government Circular and

the advertisement and allowed the appeal. Against the judgment of the Division Bench, this appeal has been filed by special leave.

5. The question in this case and the connected appeals is about the qualification of the respondent for being appointed as Assistant Master in Junior Basic Schools in U.P. The essential academic qualification prescribed for the post of Assistant Master or Assistant Mistress of Junior Basic Schools in U.P. is mentioned in Rule 8 of the U.P. Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as the Rules) which have been framed under the U.P. Basic Education Act, 1972.

6. At the relevant time the said qualification mentioned in Rule 8 was Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh or any other qualification recognized by the Government as equivalent thereto together with training qualification consisting of a Basic Teacher Certificate, Hindustani Teacher Certificate, Junior Teacher Certificate, Certificate of teaching or any other training course recognized by the Government as equivalent thereto.

7. A perusal of Rule 8 shows that there are two essential requirements for being appointed as Assistant Master or Assistant Mistress of Junior Basic Schools, these are

(a) Intermediate Certificate of the Board of High School and Intermediate Education, UP (which was later substituted by an amendment of Rule 8 by prescribing bachelor's degree instead of Intermediate Certificate);

(b) Training qualification consisting of Basic Teachers Certificate (BTC), Hindustani Teachers Certificate, Junior Teachers Certificate or Certificate of Teaching or any other training course recognized by the Government equivalent thereto.

8. In the present case, we are concerned with the second essential requirement viz., training qualification.

9. Admittedly, the respondent in Civil Appeal No. 8034/2001 (Upendra Rai) only holds a Diploma in Education (in short D.Ed.) which was awarded to him after he completed two years' course from DIET Jabalpur in M.P. He does not hold any of the certificates of training qualification referred to in Rule 8 of the Rules.

10. It was submitted by learned counsel for the writ petitioner (respondent in this appeal) before the High Court that the aforesaid D.Ed. certificate awarded by the DIET, Jabalpur was earlier recognized as equivalent to BTC of U.P. However, even if that is so, we find that its equivalence (if it existed at all) to BTC has been, admittedly, rescinded by the U.P. Government Circular dated 11.8.1997.

11. The aforesaid U.P. Government Circular dated 11.8.1997 has been annexed as Annexure P-5 to this appeal. This Circular dated 11.8.1997 was written by the Secretary, Basic Education, U.P. Government to the Director of Education (Basic) & Chairman, Basic Shiksha Parishad, U.P. In this

Circular it is mentioned in paragraph 2 that it has been decided by the Government after sufficient consideration that in accordance with the provisions of the Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 the posts of Assistant Teachers in the primary schools of the Board be filled up only with those candidates who are trained in U.P. Government Training Institutes and possess BTC or Hindustani Teaching Certificate or teaching certificate of Junior Teachers or Teacher. It was also specifically mentioned in the aforesaid circular dated 11.8.1997 that equivalence to BTC granted earlier to other certificates was cancelled with immediate effect.

12. The aforesaid circular in Hindi is reproduced below :

"la[;k&2657/15.5.97-127/97 Vho lho iszid] Jh vkyksd jatu lfpo] csfld f'k{kk mRrj izns'k 'kkluA lsok es] f'k{kk funs'kd <cs0=] y[kuEA ,oa v/;{k} f'k{kk ifj"kn] mo izo y[kuEA f'k{kk <5=&vuqHkkx y[kuE % fnukad 11.08.1997 fo"k; % mo izo csfld f'k{kk ifj"kn }kjk lapkfyr fo|ky;ksa esa v/;kidksa dh fu;qfDr ds lEcU/k esaA egksn;] mi;qZDr fo"k;d vkids v)Z'kkldh; i= lao cso f'ko io 537/97-98 fnukad 14.4.97 dh vksj vkidk /;ku vkdf"kZr djrs gq;s eq>s ;g dgus dk funs'k gqv kS fd cho Vho lho ds led{k ekurs gq;s dfri; 'kklukns'kksa ds }kjk fofHkUu izf'k{k.k izek.k-i=@mikf/k izkIr vH;fFkZ;ksa dks mo izo csfld f'k{kk ifj"kn }kjk lapkfyr fo|ky;ksa ls lgk;d v/;kid ds in ij fu;qfDr gsrq vgZ ekuk x;k gSA ifj"kn; fo|ky;ksa esa Hkkjh la[;k esa fjfDr;ksa rFkk izns'k esa miyC/k cho Vho lho izf'k{k.k vH;fFkZ;ksa dks /;ku esa j[krs gq;s mo izo csfld f'k{kk ifj"kn v/;kid lsok fu;ekoyh esa lkrosa la'kks/ku }kjk fu;qfDr dh izf'k{k.k ds dfri; la'kks/ku fd;s x;s gSaA o"kZ 1995 ls jk"V* h; v/;kid f'k{kk ifj"kn~ }kjk fofHkUu izf'k{k.k laLFkkvksa dks ekU;r iznku djus ds lEcU/k esa foLr`r fn'kk funsZ'k fuZxr fd;s x;s gSa ftuds vkyksd esa vc fofHkUu f'k{kd izf'k{k.k vgZrkvksa ds lEcU/k esa Fks iquZfopkj dh vko';drk gks x;h gSA

2. mDr ds vkyksd esa 'kklu }kjk lE;d~ fopkjsijkuUr ;g fu.kZ; fy;k x;k gS fd vc izns'k ds ifj"kn; izkFkfed fo|ky;ksa esa lgk;d v/;kid ds inksa ij fu;qfDr gsrq mo izo csfld f'k{kk <v/;kid= lsok fu;ekoyh] 1981 ds izkfo/kkuksa ds vuqlkj mYkj izns'k ljdkj }kjk lapkfyr laLFkkvksa ls izf'k{k.k choVholho rFkk fgUnqrkuh v/;kid izek.k-i=] twfu;j v/;kid izek.k-i= ,oa v/;kid izek.k-i= izkIr vH;fFkZ;ksa ls gh Hkjk tk;A rFkk choVholho ds leku vU; izf'k{k.k ikB~;Xeksa ,oa mikf/k;ksa dks iznku dh x;h led{krrk;sa rkRdkfyd izHkko ls fujLr dj nh tk;A

3. vuqjks/k gS fd d`I;k 'kklu ds vi;qZDr vkns'kksa dk dM+kbZ ls vuqiky lqfuf'pr djkus ,os ifj"kn; fo|ky;ksa esa lgk;d v/;kid ds fjDr inksa dks mo izo csfld f'k{kk <v/;kid= lsok fu;ekoyh] 1981 ds izkfo/kkuksa ds vuqlkj choVholho rFkk fgUnqrkuh v/;kid izek.k-i=] twfu;j v/;kid izek.k-i= ,oa v/;kid izek.k-i= izkIr vH;fFkZ;ksa ls gh Hkjs tkus dh dk;Zokgh djus dk d"V djsaA tgka dgha ekuuh; U;k;ky;ksa }kjk ikfjr vkns'kksa ds vuqlkj dk;Zokgh visf{krrk gks ml ij rn~uqlkj dk;Zokgh dh tk;s rFkk mls 'kklu ds laKku esa rRdky yk;k tk;sa Hkonh;] vyksd jatu lfpoA"

13. We are concerned here with the second paragraph of the aforesaid circular.

14. The respondent admittedly got appointment after the Circular dated 11.8.1997 and hence this Circular applies to him. Admittedly, the respondent does not possess the qualification mentioned in the said Circular. He does not either possess BTC, Hindustani Teaching Certificate, JCT or Certificate of Teaching. The D.Ed. Certificate is no longer regarded as equivalent to BTC after the circular dated 11.8.1997. This was a policy decision of the U.P. Government, and it is well settled that the Court cannot interfere with policy decisions of the Government unless it is in violation of some statutory or constitutional provision. Hence, we are of the opinion that the respondent was not entitled to be appointed as Assistant Master of a Junior Basic School in U.P.

15. Grant of equivalence and /or revocation of equivalence is an administrative decision which is in the sole discretion of the concerned authority, and the Court has nothing to do with such matters. The matter of equivalence is decided by experts appointed by the government, and the Court does not have expertise in such matters. Hence it should exercise judicial restraint and not interfere in it.

16. Learned counsel for the respondent, however, submitted that the respondent has the requisite qualification in view of the National Council For Teacher Education Act, 1993 (hereinafter referred to as the NCTE Act). He has invited our attention to various provisions of the said Act. In particular he has referred to Section 2(m) of the NCTE Act which states as under:

" (m) "teacher education qualification" means a degree, diploma or certificate in teacher education awarded by a University or examining body in accordance with the provisions of this Act;"

17. Learned counsel also submitted that the NCTE Act overrides the UP Basic Education (Teachers) Service Rules 1981 in view of Article 254 of the Constitution read with Entry 25 of List III of the Seventh Schedule to the Constitution.

18. Learned counsel submitted that if a person has the qualification mentioned in section 2(m) of the NCTE Act he has the necessary qualification for being appointed as an Assistant Master or a Teacher in any educational institution in India. We regret, we cannot agree.

19. A perusal of the NCTE Act shows that this Act was made to regulate the teachers training system and the teachers training institutes in the country. It may be mentioned that there are two types of educational institutions (1) ordinary educational institutions like primary schools, high schools, intermediate colleges and universities and (2) teachers' training institutes. The NCTE Act only deals with the second category of institutions viz. teachers' training institutes. It has nothing to do with the ordinary educational institutions referred to above. Hence, the qualification for appointment as teacher in the ordinary educational institutions like the primary school, cannot be prescribed under the NCTE Act, and the essential qualifications are prescribed by the local Acts and Rules in each State. In U.P. the essential qualification for appointment as a primary school teacher in a Junior Basic School is prescribed by Rule 8 of the U.P. Basic Education (Teachers) Service Rules, 1981 which have been framed under the U.P. Basic Education Act, 1972. A person who does not have the qualification mentioned in Rule 8 of the aforesaid Rules cannot validly be appointed as an Assistant Master or Assistant Mistress in a Junior Basic School.

20. Learned counsel for the respondent then referred to section 12(d) of the NCTE Act which states that the National Council for Teacher Education established under sub-section (1) of section 3 can lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognized institutions. He also invited our attention to section 14(1) of the NCET Act which states as under:

"(1) Every institution offering or intending to offer a course or training in teacher education on or after the appointed day, may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by regulations:

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee."

Sub-section (5) of section 14 states as under:

"(5) Every institution, in respect of which recognition has been refused shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub-section (3)".

21. Learned counsel has also referred to section 17(1) and (4) of the NCTE Act. Under section 17(1) the Regional Committee if satisfied that a recognized institution has contravened any provision of the Act or the rules and regulations, it can withdraw recognition of such recognized institution after giving opportunity of hearing. The consequences of withdrawal of such recognition are given in section 17(4) which states as under:

" (4) If an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition under sub-section (1) or where an institution offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central Government, any State Government or University, or in any school, college or other educational body aided by the Central Government or any State Government".

22. It may be mentioned that the word "institution" is defined in Section 2(e) of the NCTE Act to mean an institution which offers courses or training in teacher education. Thus, the NCTE Act does not deal with the ordinary educational institutions like primary schools, high schools, intermediate college or university. The word "institution" as defined in Section 2(2) only means teachers' training

institute and not the ordinary educational institutions. Hence, it is only the teachers' training institutions which have to seek grant of recognition or continuation of recognition from the Regional Committee. The ordinary educational institutions do not have to seek any such recognition or continuation under the NCTE Act. In fact, the NCTE Act does not relate to the ordinary educational institution at all. We, therefore, fail to understand how it can be said that the NCTE Act overrides the UP Basic Education Act and Rules made thereunder. In fact, the two Acts operate in altogether two different fields. The NCTE Act deals with the teachers' training institutions while the UP Basic Education Act deals with the ordinary primary schools in U.P. and not any teachers' training institute. The argument of learned counsel for the respondent is thus wholly misconceived.

23. The impugned judgment also proceeds with the same fallacy. The Division Bench, in our opinion, wrongly relied upon Article 254 of the Constitution. Article 254, as stated above, has no application in this case at all because the two Acts operate in two different fields. In our opinion, the Division Bench, therefore, wrongly held that the respondent (the appellant before the Division Bench) had the requisite qualification for being appointed as an Assistant Master in a Junior Basic School.

24. In our opinion the Division Bench also erred in holding that there was violation of Article 14 of the Constitution. We see no violation of Article 14 by the impugned circular or the advertisement dated 28.4.1999. This aspect of the matter has been discussed in detail in the judgment of the learned Single Judge of the High Court dated 19.12.1997 in writ petition no.33856 of 1997, Hira Mani vs. District Basic Shiksha Adhikari connected with writ petition no.32184 of 1997 Smt. Kiran Kumari vs. State of U.P., and we see no reason to take a contrary view. Hence, the view taken by the Division Bench, in our opinion, is not correct.

25. In view of the above, the impugned judgment of the Division Bench is set aside and the writ petition filed before the High Court is dismissed. The appeal is allowed. There shall be no order as to costs.

Civil Appeal Nos. 3998/2002, 153/2003 & Civil Appeal Nos. . /2008(@ SLP(Civil) Nos. 4819/2002, 9289/2002 & 20337/2002)

26. In view of the decision given above in Civil Appeal No. 8034/2001, these appeals are allowed. There shall be no order as to costs.

27. Civil Appeal No. 1207 of 2006 was filed against the judgment of the Division Bench of the High Court in Special Appeal No. 328 of 2001 which was dismissed both on merits and on the point of limitation. In the special circumstances, we condone the delay in filing the Special Appeal. The appeal is allowed in view of the decision given above in Civil Appeal No. 8034 of 2001. There shall be no order as to costs.

Civil Appeal Nos. 2796/2006, 4784/2006

28. In view of the decision given in C.A. No. 8034/2001, these appeals are dismissed. There shall be no order as to costs.