

Jai Prakash Yadav And 46 Others vs The Union Of India And 4 Others on 10 May, 2018

Bench: Dilip B. Bhosale, Suneet Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Chief Justice's Court

Case :- WRIT - A No. - 11545 of 2018

Petitioner :- Jai Prakash Yadav And 46 Others

Respondent :- The Union Of India And 4 Others

Counsel for Petitioner :- Satyaveer Singh

Counsel for Respondent :- A.S.G.I., C.S.C., Dhananjay Awasthi, M.N. Singh, Rajesh Tripathi

Hon'ble Dilip B. Bhosale, Chief Justice

Hon'ble Suneet Kumar, J.

Heard Shri Satyaveer Singh, learned counsel appearing for the petitioners, Shri Rajesh Tripathi, learned counsel appearing for the Union of India, Shri Dhananjay Awasthi, learned counsel appearing for the National Council for Teacher Education, Shri M.N. Singh, learned counsel appearing for the Uttar Pradesh Public Service Commission and Shri A.K. Goel, learned Additional Chief Standing Counsel appearing for the State-respondents.

Petitioners, 47 in number, by the instant writ petition seek writ of mandamus declaring Rule 8(12) of U.P. Sub-ordinate Educational (Trained Graduate Grade) Services (4th Amendment) Rules, 2016, ultra-vires of Article 14 of the Constitution of India to the extent the impugned rule prescribes qualification for the post of Assistant Teacher-Art as having graduation with Art and/or

Fine Art, consequently, the advertisement dated 15 March 2018 issued by the Secretary, U.P. Public Service Commission, Allahabad, is also being challenged.

Petitioners admittedly do not fulfill the qualification for the post of Assistant Teacher-Art mandated by the impugned rule, they are intermediate with Art (Technical Art/Drawing Technical). In other words, petitioners are graduate in streams other than Art/Fine Art but have Art subject at intermediate (Class 12). It is urged on behalf of the petitioners that the teachers are to be appointed for Class 9 and 10 in government intermediate schools. The provisions of Intermediate Education Act, 1921² and Regulations framed thereunder prescribe qualification for Assistant Teachers-Art, inter alia, as intermediate in Art/Fine Art. All persons possessing the qualifications are eligible to be appointed as teachers in private aided/non aided recognized schools. The syllabus prescribed under the Regulations is common to the students, studying in government schools and private schools which fall within the purview of the Board which conducts a single examination for Class 10. In this backdrop, it is urged that prescribing two set of qualifications, one for teachers to be appointed in government schools and the other for teachers seeking appointment in private aided institution is arbitrary as the Assistant Teachers would teach students of Class 9 and 10 and the students would be examined by the same examining Board on the syllabus prescribed under the Regulations. It is, therefore, urged that the impugned rule prescribing qualification different than that prescribed under the Intermediate Act is bad in law being discriminatory.

Learned Additional Chief Standing Counsel appearing for the State-respondents and the counsel appearing for the National Council for Teacher Education³, in rebuttal, submit that the petition is misconceived. The Rules, 2016 has been made by the Governor amending the Uttar Pradesh Subordinate Educational (Trained Graduates Grade) Service Rules, 1983, whereby, academic qualification for appointment of Assistant Teacher has been provided. The Amending Rule, 2016 was made in consonance with the qualification prescribed by the NCTE vide notification dated 12 November 2014, which is the competent authority to prescribe qualification for the persons to be recruited as teachers in Secondary, Senior Secondary or Intermediate Schools or Colleges, which is binding upon all recognized schools throughout country. In this backdrop, it is urged that the qualification prescribed for Assistant Teacher-Art under the Intermediate Act not being in consonance with the qualification prescribed by the NCTE cannot be relied or acted upon either by the State Government or by the Board, therefore, petitioners cannot take the benefit of the qualification prescribed under the Regulations being in teeth of the qualification prescribed by the NCTE.

Rival submissions fall for consideration.

Parliament enacted the National Council For Teachers Education Act 1993⁴ to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and coordinated development for the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system including qualifications of school teachers and for matters connected therewith. The expression "including qualifications of school teachers" was inserted by Act No. 18 of 2011 with effect from 1 June 2012. Consequently, word "school" was added by defining it under sub-clause (ka) of Section 2 of NCTE

Act, 1993, which reads thus:

"(ka) "school" means any recognized school imparting pre-primary, primary, upper primary, secondary or senior secondary education, or a college imparting senior secondary education, and includes--

(i) a school established, owned and controlled by the Central Government, or the State Government or a local authority;

(ii) a school receiving aid or grants to meet whole or part of its expenses from the Central Government, the State Government or a local authority;

(iii) a school not receiving any aid or grants to meet whole or part of its expenses from the Central Government, the State Government or a local authority]"

Sub-clause (m) of Section 2 of NCTE Act, 1993, defines "teacher education qualification", which reads thus:

"(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."

Amending Act inserted Section 12-A: "Power of Council to determine minimum standards of education of school teachers". The said provision empowered the NCTE by regulations, to determine the qualifications of persons for being recruited as teaches in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college established, run, aided or recognised by the Central Government or a State Government or a local or other authority. Section 12A is extracted:

"12-A. Power of Council to determine minimum standards of education of school teachers.-- For the purpose of maintaining standards of education in schools, the Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognised by the Central Government or a State Government or a local or other authority;

Provided that nothing in this section shall adversely affect the continuance of any person recruited in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or colleges under any rule, regulation or order made by the Central Government, a State Government, a local or other authority, immediately before the commencement of the National Council for Teacher Education (Amendment) Act, 2011 solely on the ground of non-fulfilment of such qualifications as may be specified by the Council;

Provided further that the minimum qualifications of a teacher referred to in the first proviso shall be acquired within the period specified in this Act or under the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009)]."

NCTE in exercise of power conferred under Clause (dd) of sub-clause (2) of Section 32 read with section 12-A of NCTE Act, 1993 and in supersession of the National Council for Teacher Education (Determine of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001, made National Council for Teacher Education (Determine of Minimum Qualifications for persons to be recruited as Education Teachers and Physical Education Teachers in Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014. The Regulation was notified on 12 November 2014. Regulation 2 provides that the Regulations shall be applicable for recruitment of teachers and Physical Education Teachers in any recognized school imparting Pre-primary to Intermediate or Senior Secondary education. "Explanation" to Regulation 2 of Regulations, 2014 provides "School" to include-

- (i) A school established, owned and controlled by the Central Government, or the State Government or a local authority;
- (ii) A school receiving aid or grants to meet whole or part of its expenses from the Central Government or the State Government or a Local Authority;
- (iii) A school not receiving any aid or grants to meet whole or part of its expenses from the Central Government or the State Government or a Local Authority.

Qualification for recruitment of teachers in any recognized school imparting Pre-primary to Senior Secondary education shall be as given in the First and Second Schedule(s) to the Regulations, 2014. Regulation 4 is extracted:

"Qualifications for Recruitment-

(a) The qualifications for recruitment of teachers in any recognized school imparting Pre-primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges imparting senior secondary education shall be as given in the First and Second Schedule(s) annexed to these Regulations.

(b) For promotion of teachers the relevant minimum qualifications as specified in the First and Second Schedule(s) are applicable for consideration from one level to the next level."

The First Schedule prescribes the minimum academic and professional qualifications from Pre-School to Senior Secondary/Intermediate Education. For our purpose, the qualifications for persons to be recruited as teacher in Secondary/High School (Class IX-X) is extracted:

First Schedule {See Sub-regulation (2) of Regulation (4)} The National Council for Teacher Education (Determination of Minimum Qualifications for Persons to be recruited as Education Teachers in Pre-Primary, Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014.

LEVEL MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATIONS

4. Secondary/High School (For Classes IX-X)

(a) Graduate/Post Graduate from recognized University with at least 50% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution.

OR

(b) Graduate/Post Graduate from recognized University with at least 45% marks in either Graduation or Post Graduation (or its equivalent) and Bachelor of Education (B.Ed.) from National Council for Teacher Education recognized institution {in accordance with the National Council for Teacher Education (Form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002 and National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on 10.12.2007) OR

(c) 4-years degree of BA. Ed/B.Sc.Ed. From any National Council for Teacher Education recognized institution.

Intermediate Act, a State legislation was enacted for establishment of a Board of High School and Intermediate Education⁶ for regulating and supervising the system of High School and Intermediate Education in Uttar Pradesh and to prescribe courses therefor in place of Allahabad University. "Institution" is defined in sub-clause (b) of Section 2 under the Intermediate Act to mean Intermediate College, Higher Secondary School or High School, which is referable to the definition of "school" provided under the NCTE Act, 1993 and NCTE Regulations, 2014. The Board has been conferred power under the Intermediate Act to frame Regulations and in exercise thereof, syllabus of the subjects and academic qualifications of the teachers has been prescribed in Chapter II Regulation 1 Appendix 'A' to the Intermediate Act. Thereafter, the Uttar Pradesh Legislature enacted the Uttar Pradesh Secondary Education Services Selection Board Act, 1982⁷ to establish Secondary Education Service Selection Board⁸ for the selection of teachers in the institution/school recognized and in grant in aid under the Intermediate Act. Sub-clause (e) of Section 2 of the Act, 1982 defines "institution" which reads thus:

(e) 'Institution' means an Intermediate College or a Higher Secondary School or a High School recognized under the Intermediate Education Act, 1921, and includes institution maintained by a local authority but does not include an institution

maintained by the State Government;"

Selection Board has been conferred power to make recommendation regarding appointment of teachers in recognized institution against substantive vacancy.

Sub-clause (k) of Section 2 of Act, 1982 defines "Teacher" which reads thus:

"(k) 'Teacher' means a person employed for imparting instruction in an institution and includes a Principal or a Headmaster."

By virtue of Section 16 of the Act, 1982, appointment of teachers is to be made only on the recommendations of the Selection Board notwithstanding anything to the contrary contained in the Intermediate Act or the Regulations made thereunder but subject to the certain exception provided thereto. Section 32 of the Act, 1982 provides that the provisions of the Intermediate Act and the Regulation framed thereunder insofar they are not inconsistent with the provisions of Act, 1982 or the Rules or Regulations framed thereunder shall continue to be in force. On reading of Section 33-A & 33-B of the Act, 1982, it is clear that the qualifications for the teachers as provided under the Intermediate Act and the Regulations framed thereunder would continue to apply to selection and recruitment of teachers by the Selection Board under the Act, 1982.

The Uttar Pradesh Secondary Education Services Commission Rules, 1995, framed under the Act, 1982 clearly provides that the academic qualifications prescribed in Regulation 1 of Chapter-II of Regulations made under the Intermediate Act, shall continue to apply. Sub-clause (5) of Rule 3 of the Rules, 1995 is extracted:

"5. Academic qualifications.-- A candidate for appointment to a post of teacher must possess the qualifications specified in Regulation 1 of Chapter II of the Regulations made under the Intermediate Education Act, 1921."

On conjoint reading of the Intermediate Act, Act 1982 and the Rules and Regulations framed thereunder, selection of teachers against substantive vacancy of private and aided schools is exclusively within the domain of the Selection Board. The selection of teachers for government high school/intermediate schools is with the government which is outside the purview of the Selection Board. After insertion of Section 12A in NCTE Act, 1993, Parliament legislating on the subject 'education'. [Entry 25 of Concurrent List (Schedule VII) of the Constitution of India] has conferred power and authority upon the NCTE to prescribe qualification for teachers from pre-school onwards to higher secondary schools. The qualification prescribed by the NCTE would bind all the State governments, Boards, etc. Qualifications prescribed for teachers by the Rules/Regulations under State enactments to the extent it being repugnant to the qualification prescribed by the NCTE would render void. In other words, the qualifications prescribed by the NCTE in terms of Section 12A of Act, 1993 will prevail and bind the State Government and Selection Boards.

By virtue of the Constitution 42nd Amendment Act, 1976, the subject "Education" was withdrawn from Entry 11 (List II) i.e. State List and placed in Entry 25 of List III i.e. Concurrent List. Thus, the

legislative competence to legislate on the subject "Education" was brought under the Concurrent List with the Union and the State both having powers to legislate on the subject. In view thereof, powers vest with the Parliament to enact the law on the subject by inserting Section 12-A, Parliament has clarified and empowered NCTE to prescribe qualifications for a person aspiring to be teacher in secondary school through Regulations. The qualifications so prescribed by the NCTE would bind the State/Board and any qualifications which is in conflict with/or not in consonance with the qualifications prescribed by the NCTE to that extent would be void.

The amendments to the NCTE Act, 1993 were intended to clarify the intent of Parliament that the Act would apply to schools from the stage of pre-primary education through to the senior secondary or intermediate education covering also all stages between. Section 12-A was introduced into the NCTE Act, 1993 and an amendment was also made to Section 32(2) so as to empower NCTE to frame regulations in regard to the qualifications of teachers under Section 12-A, by the introduction of clause (dd) in sub-section (2) of Section 32.

At this stage, it would be necessary to dwell, briefly, on the legislative history which led to the amendments to the NCTE Act, 1993.

In *Basic Education Board, Uttar Pradesh Vs Upendra Rai*¹⁰, a Bench of two learned Judges of the Supreme Court held that the NCTE Act, 1993 deals only with teachers training institutions and had nothing to do with ordinary educational institutions, such as primary schools, high schools and intermediate colleges. The view which was taken was that qualifications for appointment as teachers in 'ordinary' educational institutions, like primary schools, could not be prescribed under the NCTE Act, 1993. The correctness of the judgment in *Upendra Rai* was referred to a larger Bench of the Supreme Court in *Irrigineni Venkata Krishnanand Vs Government of Andhra Pradesh*¹¹.

During the pendency of the reference to the Bench of three learned Judges of the Supreme Court, Parliament enacted Amending Act 18 of 2011 to provide for the insertion of Section 12-A into the NCTE Act of 1993. Section 12-A contemplates that NCTE may by Regulations determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate schools or colleges run, aided or recognised by the Central Government, State Government or a local authority. Section 12-A was introduced by Parliament to explicitly provide for a power in NCTE of a nature that the Act had contemplated in the power to frame regulations under Section 32(2)(d). (Refer: *Anand Kumar Yadav vs. Union of India*¹²).

We wish to make it clear that the law has to be followed in the manner in which it has been legislated. It cannot be diluted on account of the inaction of the State or the Board. All teachers whose appointment relate to the period after 2011 have to be possessed with the qualifications prescribed by NCTE. The impugned rule admittedly being in consonance with the qualifications prescribed by NCTE Regulations, 2014 would bind the State Government, Board under the Intermediate Act and the Selection Board constituted under Act, 1982.

Full Bench in Anand Kumar Yadav constituted pursuant to direction of Supreme Court to the deal with the Shiksha Mitra, to be appointed or regularized in junior basic school/senior basic school (Class I to VIII). The State Government by amending the rule impugned therein sought to absorb the Shiksha Mitras, though, the Shiksha Mitras did not fulfill the qualifications prescribed by NCTE in exercise of its power under Section 23 of Right of Children to Free and Compulsory Education Act, 2009. Full Bench struck down the rule made by the State Government being void. The relevant observation is extracted:

"The State Government has acted ultra vires the scope of the statutory powers conferred upon it by laying down qualifications for appointment of Shiksha Mitras as Assistant Teachers in direct conflict with what has been prescribed by NCTE..... The prescription of qualifications by the State Government by an amendment of its service rules in conflict with the minimum qualifications prescribed by NCTE is ultra vires. NCTE has the sole and exclusive authority to prescribe minimum qualifications. The encroachment by the State Government on the domain of NCTE is illegal and ultra vires."

(Para-92) "The effort of the State Government to by-pass well considered norms which are laid down by NCTE must be disapproved by the Court. We have done so on the ground that the State Government lacks the legislative power and competence to do so."

(Para-94) The decision of the Full Bench was affirmed by the Supreme Court in State Of U.P vs Anand Kumar Yadav¹³.

The legislative competence and intent thereof lead to the conclusion that the Parliament has authorized the NCTE to make provisions which have been carefully engrafted in the NCTE Regulations, 2014, which has been duly incorporated by the State Government under the impugned rule. The failure of the Board to timely implement the qualifications prescribed by the NCTE will not dilute or take away the impact of the NCTE Regulations, 2014 which is mandatory. Every rule/regulation of the State Government/Board prescribing qualifications of teachers from pre-school to higher secondary has to abide by the qualifications and norms fixed by the NCTE by virtue of Section 12-A of NCTE Act, 1993. [Refer: Shiv Kumar Sharma v. State of U.P.¹⁴].

For the reasons and law stated herein above, writ petition deserves to be dismissed. Order accordingly.

Order Date :- 10.5.2018 Mukesh Kr.

(Suneet Kumar,J)

(Dilip B. Bhosale,CJ)

