

RAJESH KUMAR GUPTA AND ORS.

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v.

STATE OF U.P. AND ORS.

MAY 4, 2005

[K.G. BALAKRISHNAN AND B.N. SRIKRISHNA, JJ.]

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Service Law :

National Council for Teacher Education, 1993:

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U.P. Basic Education Act, 1972:

U.P. Basic Education (Teachers) Service Rules, 1981—Rule 5"

Constitution of India, 1950—Articles 14, 15, 16 and 350-A:

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Special Basic Teacher's Certificate training course—By State Government—For Primary Schools—Training not recognized under 1993 Act—Rules providing qualification and procedure for selection of candidates 50% seats reserved for female candidates—Change made in preparation of merit list from Statewise basis to Districtwise basis—Validity of the act of the State—Held: The Special Training course was contrary to the provisions of the Basic Education Act, Rules and 1993 Act—Reservation for female candidates is not arbitrary and hence not violative of Articles 14, 15 and 16—State's act in changing the criteria for preparation of merit list from Statewise basis to Districtwise basis is arbitrary and violative of Article 15(1) and 16(2)—There is no violation of Article 350-A as the case is not shown to be one of linguistic minority.

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In view of insufficient number of Teachers holding Basic Teacher's Certificate (BTC), required for primary schools run by the Basic Education Board, respondent-State decided to impart special training to B.Ed./L.T. in order to employ them as Teachers in the primary schools. 50% of the seats were reserved for female candidates. There was also a restrictive condition for the candidates to make the applications only against the vacancies available in their home district. Subsequently the restrictive condition was modified and it was decided to prepare the merit

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A list at the State level. Thereafter again the condition was imposed and decided to prepare the merit list at the District Level instead of State Level. The candidates who had applied on the basis of the order providing preparation of merit list Statewise, since were not selected, filed writ Petition. Single Judge of High Court allowed the Petition. Division Bench of High Court also decided in favour of the State. Hence the present appeals.

Dismissing the appeals, the Court

C HELD : 1. The special BTC training course contemplated by the State of U.P. had not been recognized by the National Council for Teacher Education under the National Council for Teacher Education Act, 1993. It was, therefore not a recognized teachers' training course. The State government, therefore, could not have declared it or treated it as equivalent qualification for the purpose of Assistant Masters or Assistant Mistresses. In view of the U.P. Basic Education (Teachers) Service Rules, D 1981, and particularly keeping in view Section 16 of 1993, which gives overriding effect to the provisions of State Act, the special BTC training course formulated by the State government was contrary to the provisions of the Basic Education Act, 1972 and Rules and the 1993 (Central) Act.

[1180-C, F; 1181-A]

E *Union of India and Ors. v. Shah Goverdhan L. Kabra Teachers College, JT (2002) 8 SC 269, relied on.*

F 2. Restriction of the selection and preparation of merit list at the district level was arbitrary and violative of Article 15(1) and 16(2) of the Constitution. Though at one stage the State Government had decided to prepare the merit list on the State level, it was suddenly changed to the district level and the reasons advanced for the sudden change were found to be wholly irrelevant and unjustified. [1179-A-C; 1179-B]

G 3. Articles 15(3) of the Constitution enables the State Government to make special provision for women and children notwithstanding the prohibition contained in Article 15(1). Particularly viewed in the background of the fact that a large number of young girls below the age of 10 years were taught in the primary school, and recognizing that it would be preferable that such young girls are taught by women, the reservation of 50% of the posts in favour of female candidates was

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justified. The classification made was justified and cannot be styled as arbitrary or liable to be hit by Article 14. [1178-E-G] A

4. Article 350-A was not violated as there is no material to show that the case of any linguistic minority was involved. [1170-G-H]

5. The candidates, who had applied and were not selected could not be said to be estopped from challenging the process of selection. Nor could there be any plea of promissory estoppel invoked by the writ petitioners, as nothing was established to show that they had altered their position to their detriment by applying pursuant to the advertisement. B

6. Even though the candidates, whose names appeared in the select list, were not made parties to the writ petition, the writ petitions could not be summarily dismissed on the said ground. C

Shankarsan Dash v. Union of India, AIR (1991) SC 1612, followed.

Diwakar v. Government of Andhra Pradesh, AIR (1982) SC 1555, relied on. D

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3048-3064, 3065-3066, 3067-3071, 3072 and 3073 of 2005.

From the Judgment and Order dated 23.11.2002 of the Allahabad High Court in S.A. Nos. 206, 212, 365, 381, 384, 396, 417, 420, 440, 459, 461, 465, 479, 488, 624, 626 and 628 of 2002. E

Mrs. Shobha Dikshit, Raju Ramachandran, Pradeep Misra, Ms. Malika Trivedi, Kamal Singh Pundir, Kh. Nobin Singh, Shrish Kumar Misra, Dinesh Kumar Garg, Hari Om Yaduvanshi, Ms. Monika Gusain with them for the Appellants. F

R.G. Padia, Ms. Niranjana Singh, Abhishek Choudhary, Anil Kr. Sharma, Dr. Kailash Chand, Yatish Mohan, A.S. Pundir, E.C. Vidya Sagar with him for the Respondents. G

The Judgment of the Court was delivered by

B.N. SRIKRISHNA, J. Leave granted.

This group of appeals impunges the judgment of the Division Bench of H

A the Allahabad High Court in a group of appeal challenging the correctness of the decision of the learned Single Judge, who allowed a batch of writ petitions resulting in the quashing of certain Government Orders relating to selection for training of candidates for appointment as Assistant Teachers in the primary schools run by the U.P. Basic Education Board (hereinafter referred to as the 'Board').

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The material facts relevant for disposal of this group of appeals may be summarized thus :

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For several years, the State of U.P. had experienced a severe shortage of teachers as a result of which it was finding it difficult to fulfill its obligations as mandated by Article 45 of the Constitution of India to provide free and compulsory education for all children up to the age of 14 years. The State Government runs a training college in each district, (about 70 in number) where the candidates are given training in the teaching and on successful completion of the training are awarded a 'Basic Teacher's Certificate'

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(hereinafter referred to as BTC). The State government experienced that the number of candidates turned out from these training institutions was insufficient to meet the large requirement of trained teachers required to teach in primary schools run by the Board. While the intake in the training college was only about 100 persons in a year, resulting in the number of trained BTC teachers in the range of 5000 to 6000 per annum, it was found that the total requirement of Assistant Teachers for teaching students in the primary schools run by the Board was in the range of about 50,000. In order to meet the shortfall, the State government decided to impart two months' special training to candidates, who had done their B.Ed/L.T. so that they could be employed as Assistant Teachers in the primary schools run by the Board. This decision

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was implemented by a Government Order dated 3.8.2001. Applications were called for from B.Ed/L.T. qualified candidates for selection to undergo the special BTC training after which suitable candidates would be selected and appointed as Assistant Teachers. The Government Order provided the 50% of the candidates to be selected shall be from Science stream and 50% from the Arts stream and further 50% would be female candidates and 50% would

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be male candidates. The Government Order also states that after the special BTC training, there would be an examination held and the selected candidates passing the examination would be interviewed and after selection would be recruited as Assistant Teachers in the primary schools of the districts and regions where there was deficiency of teachers. There was a restrictive

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condition in the Government Order dated 3.8.2001 that candidates were eligible

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to make applications only against the vacancies available in their home district and that, if a candidate applied for two or more districts, such applications were liable to be rejected. There was a detailed manner of selection for training on the basis of quality point marks obtained in the various examinations passed by the candidates. The Government Order stated that those candidates who successfully completed the special BTC training shall be treated on par with the BTC general trained candidates and become eligible for appointment to the vacant posts of Assistant Teacher for primary schools.

The Government Order dated 3.8.2001 was subsequently modified by another Government Order dated 20.8.2001 under which the candidates having C.P.Ed., D.P.Ed. and B.P.Ed. Training as regular students from the universities, colleges and training college recognised and run by the State government, were also eligible to apply for the BTC training programme. There was some relaxation of age given by the Order which is not material. The last date of receipt of application was extended from 15.9.2001 to 29.9.2001.

By another Government Order dated 14.9.2001, the State government took a policy decision to prepare a merit list, not on the district level, but at the State level. The Government Order dated 14.9.2001 indicates the manner in which the State level merit list was to be compiled.

On 31.10.2001, by another Government Order, the Government Order dated 14.9.2001 was amended and once again the merit list of all the applications received from the candidates was directed to be prepared in accordance with the provisions given in the Government Order at the district level. A corrigendum published in the newspaper dated 22.9.2001 indicated this policy decision.

Some of the candidates had applied on the basis of the corrigendum which provided for preparation of merit list State wise found themselves left out from consideration as a result of the change in the criteria of preparation of merit list from State wise to district wise pursuant to the Government Order dated 31.1.2001. When the merit list was notified their names did not find place in the merit list of their respective home district. Being aggrieved, they moved the High Court by filing writ petitions under Article 226 of the Constitution of India and challenged the action of the Government as arbitrary and in contravention of Articles 14, 15 and 16 of the Constitution.

A The broad grounds of challenge before the learned Single Judge were as follows :

(i) the preparation of merit list district wise was arbitrary and violative of Articles 14, 15, 16 and 21 of the Constitution of India;

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(ii) it was also contrary to the provisions of U.P. Basic Education Act, 1972 (hereinafter referred to as the Act) and U.P. Basic Education (Teachers) Service Rule, 1981 (hereinafter referred to as the Rules); and

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(iii) the reservation to the extent of making selection of 50% males and 50% females against the prescribed number of 50% candidates from the Science group and 50% from the Arts group is arbitrary and violative of Articles 14, 15, 16 and 21 of the Constitution of India.

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The learned Single Judge overruled the objection that, having taken their chance under the rules, the candidates who had failed were not entitled to challenge the selection process. The learned Single Judge also found that the impugned Government Orders were contrary to the provisions of the Act as well as the Rules. Since a categorical statement was made by the Chief

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Standing Counsel on behalf of the State government that, not a single person has been declared selected, and that not a single person has been appointed pursuant to the impugned process of selection and only the result has been declared, the learned Single Judge took the view that non-impleadment of the successful candidate was not an insurmountable difficulty which could come in the way of entertaining the writ petitions. The learned Single Judge further

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held that the reservation of 50% to Arts and 50% to Science group and 50% for males and 50% for females was not warranted by the constitutional provisions, being over and above the constitutional reservations in favour of backward classes. Finally, the learned Single Judge came to the conclusion that the change made in preparation of the merit list from Statewise basis to

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districtwise basis was contrary to and violative of Articles 14 and 16 of the Constitution.

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The State of U.P. impugned the judgement of the learned Single Judge by its Special Appeal No. 404 of 2002 before the Division Bench of the High Court. Some of the candidates in the selection also filed Special Appeal before the Division Bench. The Division Bench heard all the Special Appeals

together and disposed them of by the impugned judgment which upheld the judgment of the learned Single Judge with a slight modification. Being aggrieved thereby, the appellants are before this Court. **A**

The Division Bench raised the following points which arose for its determination :

(i) Whether in the absence of the selected candidates having been implemented by the writ petitioners, the writ petitions are maintainable. **B**

(ii) Whether the writ petitioners having applied for Special BTC training course and having failed to get their name in the merit list are estopped from challenging the advertisement and selection made pursuant thereto. **C**

(iii) Whether the plea of promissory estoppel is available to the writ petitioners. **D**

(iv) Whether the reservation of 50% females and 50% males and 50% for Arts group and 50% for science group in addition to the reservation policy of the State Government already in force is contrary to the provisions of Articles 14, 15 and of the Constitution of India. **E**

(v) Whether the State Government can prepare merit list at the District level instead of State level and the same is violative of Article 15 and 16 of the Constitution of India. **F**

(vi) Whether the provisions of Article 350-A of the Constitution of India are attracted in the present case. **F**

(vii) Whether the selection of candidates for special BTC training is contrary to the provisions of the basic Education Act, 1972 and U.P. Basic Education (Teachers) Services Rules, 1981. **F**

With regard to the first point, the impugned judgment of the Division Bench holds that full effect of the result would be given only after verification of the testimonials, certificates and documents mentioned in the application and mere publication of the selection list on 31.11.2001 did not result in accrual of any right in favour of the candidates, whose names had found place in the select list. Relying on the judgment of this Court in *Diwakar v.* **G**
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A *Government of Andhra Pradesh*, AIR (1982) SC 1555 and *Shankarsan Das v. Union of India*, AIR (1991) SC 1612, and the statement made by the Chief Standing counsel on behalf of the State made at the Bar, the Division Bench held that even though the candidates, whose names appeared in the select list, were not made parties to the writ petitions, the writ petitions could not be summarily dismissed on the said ground. We are inclined to agree with this finding of the Division Bench, which is supported by the authority of the Constitution Bench in *Shankarsan Dash v. Union of India* (supra) and several other judgments of this Court.

C The Division Bench also found that at the time of making the application the scheme notified by the State Government was that the preparation of the merit list would be at the State level and not at the district level. The criterion for merit list was subsequently challenged only on 31.10.2001 i.e. after the applications had been made by the candidates. Consequently, no candidate had any occasion to protest, since the criterion was abruptly changed by the State Government. Thus, the Division Bench overruled the objection to the maintainability of the writ petitions by taking the view that there was no question of estoppel and the candidates, who had applied and were not selected could not be said to be estopped from challenging the process of selection. Nor could there be any plea of promissory estoppel invoked by the writ petitioners, as nothing was established to show that they had altered their position to their detriment by applying pursuant to the advertisement. In our view, the finding of the Division Bench on this point is justified.

F The Division Bench took the view that Articles 15(3) of the Constitution enables the States government to make special provision for woman and children notwithstanding the prohibition contained in Article 15(1). Particularly viewed in the background of the fact that a large number of young girls below the age of 10 years were taught in the primary school and recognizing that it would be preferable that such young girls are taught by women, the reservation of 50% of the posts in favour of female candidates was held to be justified. The classification made was justified and cannot be styled as arbitrary or liable to be hit by Article 14.

G We agree with the Division Bench of the High Court that there was no violation of Article 14, 15 and 16 of the Constitution.

H *Whether the State Government can prepare merit list at the District level instead of State level and the same is violative of Article 15 and*

16 of the Constitution of India.

The Division Bench of the High Court came to the conclusion that the merit list could not be prepared on districtwise basis and that restricting the selection and preparation of merit list at the district level was not justified and amounted to discrimination. It was also found that though at one stage the State government had decided to prepare the merit list on the State level, it was suddenly changed to the district level and the reasons advanced for the sudden change were found to be wholly irrelevant and unjustified. The action of the State government in restoring the preparation of merit list from State level to district level was held arbitrary and violative of Articles 15(1) and 16(2) of the Constitution of India. The High Court has referred and relied on a number of judgements of this Court which have frowned upon recruitment on the basis of criteria restricted to candidates from specified local areas.

Although a feeble attempt was made by the counsel on behalf of the State respondents that different districts have different dialects and therefore, it would be necessary to restrict the selection to candidates conversant and fluent in those regional dialects, we are not satisfied that adequate material was presented to the High Court on the basis of which this distinction could have been justified. In the first place, there was no material to indicate that dialects vary from district to district. Consequently, there was no material to indicate that a candidate from one district was no likely to be familiar with the dialect of another district for which he applied for training. There was also no material placed on record to indicate that training was to be in local dialect for the local school only. Finally, if the emphasis is really on the regional dialect, nothing prevented the State government from making the knowledge of a specified regional dialect as preferential criterion for recruitment. For these reasons, we agree with the view taken by the Division Bench on this issue and hold that restriction of the selection and preparation of merit list at the district level was arbitrary and violative of Article 15(1) and 16(2) of the Constitution.

Whether the provisions of Article 350-A of the Constitution of India are attracted in the present case.

There was no material for the High Court to show that the case of any linguistic minority was involved, hence the High Court rightly held that Article 350-A was not violated.

Whether the selection of candidates for special BTC training is

A *contrary to the provisions of the basic Education Act, 1972 and U.P. Basic Education (Teachers) Services Rules, 1981.*

Relying on the judgment of *Union of Indian Ors. v. Shah Goverdhan L. Kabra Teachers College*, JT (2002) 8 SC 269, the High Court held that the National Council for Teacher Education constituted under Section 3 of the National Council for Teacher Education Act, 1993 is an expert body whose function is to maintain the standards of education in relation to teacher's education. It was for this body to prepare norms for recognised courses for teachers' education on different levels. The special BTC training course contemplated by the State of U.P. had not been recognised by the National Council for Teacher Education under the 1993 Act. It was, therefore, not a recognised teachers' training course. The State government therefore, could not have declared it or treated it as equivalent qualification for the purpose of Assistant Masters or Assistant Mistresses. Merely because the State was under pressure and in a hurry to recruit a large number of teachers, the requirement of educational standards of the training imparted to the teachers could not be compromised. Strangely, despite recognition of E.Ed/L.T. and other courses recognised by the National Council for Teacher Education under the 1993 Act, the State government had not bothered to declare their equivalence for the purpose of making appointment on posts of Assistant Masters and Assistant Mistress for the schools run by the Board. The High Court, therefore, pointed out that the Government Order recognizing special BTC course as equivalent qualification was contrary to the provisions of the UP Basic Education Act and provisions of the National Council for Teacher Education Act, 1993, particularly so in view of Section 16 of the National Council for Teacher Education Act, 1993 which gives overriding effect to the provisions of the State Act.

F The U.P. Basic Education (Teachers) Service Rules, 1981 provides under Section 5 for direct recruitment to the posts of Assistant Masters and Assistant Mistresses to Junior Basic Schools. The Rules prescribe the qualifications requisite for such posts. Academic qualification required is a bachelor's degree from a University established by law in India or a degree recognised by the Government together with 'training qualification' consisting of a Basic Teacher's Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of teaching or any other training course recognised by the government as equivalent thereto. In the face of these Rules, and particularly keeping in view the provisions of the National Council for Teacher Education Act, 1993, no fault can be found with the impugned judgment of

the High Court that the special BTC training course formulated by the State government was contrary to the provisions of the impugned Act and Rules and the 1993 Central Act. **A**

In the result, we find that the judgment under appeal is justified and sustainable. We see no reasons to interfere with the impugned judgment. Hence, all the appeals are dismissed. No costs. **B**

K.K.T.

Appeals dismissed.