

BASIC EDUCATION BOARD, U.P.

v.

UPENDRA RAI AND ORS.

(Civil Appeal No. 8034 of 2001)

FEBRUARY 12, 2008

(H.K. SEMA AND MARKANDEY KATJU, JJ.)

U.P. Basic Education (Teachers) Service Rules, 1981:

r. 8 – Assistant Teacher of Basic School – Training qualification for – U.P. Government Circular dated 11.8.1997 – Prescribing training qualification from U.P. Government Training Institutes and specifically canceling equivalence to BTC granted earlier to other certificates – Challenged by candidate holding a certificate of Diploma in Education from an institute in M.P. recognized under NCTE Act – HELD: Grant or revocation of equivalence is an administrative decision taken by experts appointed by Government and is in sole discretion of authority concerned – Court would not interfere with such a policy decision unless it is in violation of some statutory or constitutional provision – Circular dated 11.8.1997 is not violative of Article 14 of the Constitution – On facts, D.Ed. Certificate is no longer regarded as equivalent to BTC after the circular dated 11.8.1997 – Therefore, candidate holding D. Ed. Certificate was not entitled to be appointed as Assistant Teacher of a Basic School in U.P. – The word ‘institution’ as defined in s.2(e) of NCTE Act, only means teachers’ training institute and not ordinary educational institutions – NCTE Act and U.P. Basic Education Act/Rules operate in two different fields, as explained in judgment – Therefore, NCTE Act cannot be said to override U.P. Act/Rules – Article 254 of Constitution has no application to facts of the case – National Council for Teachers Education Act, 1993 – ss. 2(e), 2(m), 3(1), 12(d), 14(1), 14(5), 17(1) and 17(4) – Constitution of India – Articles 14 and 254 – Seventh Schedule – List III – Entry 25 –

A *Administrative Law – Policy decision of State Government – Interference by Court.*

Words and Phrases:

B *Word “institution” as defined in s.2(e) of National Council for Teachers Education Act, 1993 – Meaning of.*

The Government of Uttar Pradesh issued a circular dated 11.8.1997 in terms of Rule 8 of the U.P. Basic Education (Teachers) Service Rules, 1997 prescribing that the posts of Assistant Teachers in Primary Schools of the Basic Education Board would be filled up only with the candidates trained in the U.P. Government Training Institutes and possessing B.T.C. (Basic Teacher Certificate) or Hindustani Teaching Certificate or teaching certificate of Junior Teacher. It was specifically mentioned in the circular that equivalence to BTC granted earlier to other certificates was cancelled. The respondent in Civil Appeal No. 8034 of 2001, who held a Diploma in Education awarded by DIET Jabalpur, M.P., challenged the said circular dated 11.8.1997 and the advertisement pursuant thereto issued on 28.4.1999 on the ground that the D.Ed. Certificate awarded by DIET, Jabalpur was earlier recognized as equivalent to BTC of U.P. Certain other writ petitions were filed before the High Court. The single Judge of the High Court rejected the claim and upheld the circular. However, the Division Bench, in special appeals, quashed the circular as also the advertisement. This gave rise to the instant appeals.

Disposing of the appeals, the Court

G HELD: 1.1 Grant of equivalence and /or revocation of equivalence is an administrative decision which is in the sole discretion of the authority concerned, 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

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such matters. Court should exercise judicial restraint and not interfere in it. [para 15] [715-F, G] A

1.2 The respondent in C.A. No. 8034 of 2001 does not possess the qualification mentioned in Circular dated 11.8.1997. 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 the Court cannot interfere with it unless it is in violation of some statutory or constitutional provision. The respondent was not entitled to be appointed as Assistant Teacher of a Junior Basic School in U.P. [para 14] [715-C, D, E] B C

2.1 The two Acts, namely, the NCTE Act and the U.P. Basic Education Act operate in two different fields. The NCTE Act was made to regulate the teachers training system and the teachers training institutes in the country. It has nothing to do with the ordinary educational institutions like primary schools, high schools, intermediate colleges or Universities. Primary Schools in U.P. are governed by U.P. Basic Education Act, 1972. Qualification for appointment as teacher in the ordinary educational institutions cannot be prescribed under the NCTE Act. Essential qualifications for such institutions are prescribed by the local Acts and Rules in each State. In the State of 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 said Rules cannot validly be appointed as an Assistant Teacher in a Junior Basic School in the State of U.P. [para 19 and 22] [716-F, G, H; 717-A] D E F G

2.2 The word "institution" as defined in Section 2(e) of the NCTE Act only means an institution which offers H

A courses or training in *teacher education* and not the
ordinary educational institutions. The NCTE Act does not
deal with the ordinary educational institutions like Primary
Schools, High Schools, Intermediate College or University.
B 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. Therefore, it cannot be
said that the NCTE Act overrides the UP Basic Education
C Act and Rules made thereunder. The Division Bench of
the High Court wrongly relied upon Article 254 of the
Constitution, which has no application in the instant case
at all. The Division Bench, therefore, wrongly held that
the respondent had the requisite qualification for being
D appointed as an Assistant Teacher in a Junior Basic
School. [para 22-23] [718-D, E, F, G; 719-A, B]

3. The Division Bench erred in holding that there was
violation of Article 14 of the Constitution. There is no
violation of Article 14 by the impugned circular dated
E 11.8.1997 or the advertisement dated 28.4.1999, as has
been rightly held by Single Judge of the High Court in
Writ Petition no.33856 of 1997. [para 24] [719-B, C, D]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 8034
of 2001.

F From the Judgment and Order dated 18.02.2000 of the
High Court of Judicature at Allahabad in Special Appeal No. 25
of 2000.

WITH

G Civil Appeal Nos. 3998/2002, 153/2003, 1207/2006,
2796/2006, 4784/2006, 1234, 1235 & 1236 of 2008.

H L.P. Naithani, A.G. for Uttarakhand, Shobha Dixit, Subodh
Markandeya, Dr. J.N. Dubey, Garvesh Kabra, Shrish Kr. Mishra,
Kamlendra Mishra, Niranjana Singh, Bhanu Pratap Singh, G.

Sheshagiri Rao, Pitam Agarwal, Chitra Markandaya, Anurag Dubey, Anu Sawhney, Meenesh Dubey, D.P. Pandey, S.R. Setia, Aditya K. Dubey, Sangeeta Datta, Devaratt, Anish Kumar Gupta, Kamakshi S. Mehlwal, Manoj K. Mishra, Rati Gupta, Shailendra Singh, D.N. Dubey, Vijay K. Jain and P.N. Gupta for the appearing parties. A

The Judgment of the Court was delivered by B

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. C

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. D E F

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 G H

A Act, 1972.

B 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.

C 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 –

D (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);

E (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.

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

G 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.

H 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. A

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. B
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12. The aforesaid circular in Hindi is reproduced below : E

“संख्या—2657/15.5.97-127/97 टी० सी०

प्रेषक,

श्री आलोक रंजन
सचिव, बेसिक शिक्षा
उत्तर प्रदेश शासन। F

सेवा में,

शिक्षा निदेशक (बे०), लखनऊ। G

एवं

अध्यक्ष, शिक्षा परिषद, उ० प्र० लखनऊ।

शिक्षा (5)—अनुभाग

लखनऊ : दिनांक 11.08.1997 H

A विषय : उ० प्र० बेसिक शिक्षा परिषद द्वारा संचालित विद्यालयों में अध्यापकों की नियुक्ति के सम्बन्ध में।

महोदय,

B उपर्युक्त विशयक आपके अर्द्धशासकीय पत्र सं० बे० शि० प० 537/97-98 दिनांक 14.4.97 की ओर आपका ध्यान आकर्षित करते हुये मुझे यह कहने का निर्देश हुआ है कि बी० टी० सी० के समकक्ष मानते हुये कतिपय शासनादेशों के द्वारा विभिन्न प्रशिक्षण प्रमाण-पत्र/उपाधि प्राप्त अभ्यर्थियों को उ० प्र० बेसिक शिक्षा परिषद द्वारा संचालित विद्यालयों से सहायक अध्यापक के पद पर नियुक्ति हेतु अर्ह माना गया है। परिषदीय विद्यालयों में भारी संख्या में रिक्तियों तथा प्रदेश में उपलब्ध बी० टी० सी० प्रशिक्षण अभ्यर्थियों को ध्यान में रखते हुये उ० प्र० बेसिक शिक्षा परिषद अध्यापक सेवा नियमावली में सातवें संशोधन द्वारा नियुक्ति की प्रक्रिया के कतिपय संशोधन किये गये हैं। वर्ष 1995 से राष्ट्रीय अध्यापक शिक्षा परिषद द्वारा विभिन्न प्रशिक्षण संस्थाओं को मान्यता प्रदान करने के सम्बन्ध में विस्तृत दिशा निर्देश निर्गत किये गये हैं जिनके आलोक में अब विभिन्न शिक्षक प्रशिक्षण अर्हताओं के सम्बन्ध में थे पुर्नविचार की आवश्यकता हो गयी है।

E 2. उक्त के आलोक में शासन द्वारा सम्यक् विचारोपरान्त यह निर्णय लिया गया है कि अब प्रदेश के परिषदीय प्राथमिक विद्यालयों में सहायक अध्यापक के पदों पर नियुक्ति हेतु उ० प्र० बेसिक शिक्षा (अध्यापक) सेवा नियमावली, 1981 के प्राविधानों के अनुसार उत्तर प्रदेश सरकार द्वारा संचालित संस्थाओं से प्रशिक्षित बी०टी०सी० तथा हिन्दुस्तानी अध्यापक प्रमाण-पत्र, जूनियर अध्यापक प्रमाण-पत्र एवं अध्यापक प्रमाण-पत्र प्राप्त अभ्यर्थियों से ही भरा जाय। तथा बी०टी०सी० के समान अन्य प्रशिक्षण पाठ्यक्रमों एवं उपाधियों को प्रदान की गयी समकक्षतायें तात्कालिक प्रभाव से निरस्त कर दी जाय।

G 3. अनुरोध है कि कृप्या शासन के अपर्युक्त आदेशों का कड़ाई से अनुपालन सुनिश्चित कराने एवे परिषदीय विद्यालयों में सहायक अध्यापक के रिक्त पदों को उ० प्र० बेसिक शिक्षा (अध्यापक) सेवा नियमावली, 1981 के प्राविधानों के अनुसार बी०टी०सी० तथा हिन्दुस्तानी अध्यापक प्रमाण-पत्र,

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जूनियर अध्यापक प्रमाण-पत्र एवं अध्यापक प्रमाण-पत्र प्राप्त अभ्यर्थियों से ही भरे जाने की कार्यवाही करने का कष्ट करें। जहां कहीं माननीय न्यायालयों द्वारा पारित आदेशों के अनुसार कार्यवाही अपेक्षित हो उस पर तदनुसार कार्यवाही की जाये तथा उसे शासन के संज्ञान में तत्काल लाया जाये।

भवदीय,
अलोक रंजन
सचिव।”

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

A (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:

B “ (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;”

C 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.

D 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.

E 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

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mentioned in Rule 8 of the aforesaid Rules cannot validly be appointed as an Assistant Master or Assistant Mistress in a Junior Basic School. A

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: B

“(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: C D

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.” E

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)”. F

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 H

A of such recognition are given in section 17(4) which states as
under:

B “ (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
C 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
D 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”.

E 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.
F 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
G 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
H argument of learned counsel for the respondent is thus wholly

misconceived.

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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.

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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.

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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.

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

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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.

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Civil Appeal No. 1207/2006

27. Civil Appeal No. 1207 of 2006 was filed against the judgment of the Division Bench of the High Court in Special

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A 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.

B **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.

C R.P. Appeals disposed of.