

A RAM KUMAR PATEL & ORS. ETC.

v.

STATE OF U.P. & ORS. ETC.

(Civil Appeal No. 9546 of 2017)

B

JULY 25, 2017

[ADARSH KUMAR GOEL AND UDAY UMESH LALIT, JJ.]

Uttar Pradesh Basic Education (Teachers) Service Rules, 1981:

C *Amendment of 1981 Rules – By Uttar Pradesh Basic Education (Teachers) Service (16th Amendment) Rules, 2012 – Propriety of – High Court quashed the 2012 amendment on the ground that the amendment by the State was in conflict with the Notification dated 11th February, 2011 issued by the Central Government – On appeal, held: There is no conflict in the*
D *Notification issued by the Central Government and the amendment to the State Rules since weightage to the Teachers Eligibility Test marks in the process of appointment of teachers, was not mandatory and was merely a guideline – Therefore, State Rule cannot be held to be void on the ground of repugnancy – Appeals allowed –*
E *Constitution of India – Schedule VII, List III, Entry 25.*

Shiv Kumar Pathak v. State of U.P. 2017 (7) JT 352 : 2017 (8) SCALE 202 – relied on.

F *Prabhakar Singh v. State of U.P. (2013) 1 ADJ 651 – approved.*

Shiv Kumar Sharma v. State of U.P. (2013) 6 ADJ 310 – referred to.

Case Law Reference

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2017 (7) JT 352	relied on	Para 2
(2013) 1 ADJ 651	approved	Para 7
(2013) 6 ADJ 310	referred to	Para 7

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9546 A
of 2017.

From the Judgment and Order dated 04.07.2016 of the High
Court of Judicature at Allahabad in Writ-A No. 26952 of 2016

WITH

Civil Appeal Nos. 9547, 9548, 9549, 9551, 9550, 9706, 9710, B
9554, 9715, 9716, 9718, 9719 and 9720 of 2017

Writ Petition (Civil) Nos. 900 and 107 of 2016

Writ Petition (Civil) No. 167 of 2015.

Ajay Kumar Mishra, Sr. Adv. (AAG, UP), R. S. Suri, K. T. S. Tulsi, C
Salman Khurshid, Dinesh Dwivedi, Colin Gonsalves, V. Shekhar, Nidesh
Gupta, Mahabir Singh, Ms. Meenakshi Arora, Pallav Sisodia,
R. Venkataramani, Ranji Thomas, Nagendra Rai, Rakesh Khanna,
Sr. Advs., R. K. Singh, Kumar Gaurav, B. N. Dubey, Ms. Neeraj Singh,
Tom Joseph, Ms. Priyanka Aggarwal, Rameshwar Prasad Goyal, Nishant D
Singh, Krishnan Mishra, Yasharth Kant, V. K. Mishra, Ms. Radhika
Dwivedi, Ms. Lubna Naaz, Ms. Kunika, Ms. Tehsina Wasim,
Ms. Sanchita, Kundan Kumar Lal, Ms. Robin Khokhar, P. Dayal,
Sajith P., Swarupama Chaturvedi, Pradeep Kumar Dwivedi, Ms. Madhu
Bala, Pradeep Kr. Tiwari, Pyush Pandey, Dr. Vinod Kumar Tewari, Dr.
B. K. Jauhari, Ms. Purnima Jauhari, Deepak Anand, Ms. Parul Shukla, E
Udayaditya Banerjee, Ms. Anannya Ghosh, E. C. Agrawala, Dheeraj
Dubey, Mrs. Shally Bhasin, Manoj K. Mishra, Umesh Dubey, Ms. Nazish
Fatima, Nachiketa Joshi, Sandeep Kumar Dwivedi, Vivek Tewari, Pankaj
Singh, Anupam Dwivedi, Satyam Pandey, Amit Pawan, Dhananjay Garg,
Pratham Kant, Nirmal Singh B. Sanjay Singh, Raj Kishor Chaudhary, F
Anuvrat Sharma, Ms. Alka Singh, M. R. Shamsad, Ms. Asha Gopalan
Nair, Ms. Nivedita Nair, Pitamber Dutt Nautiyal, Sanath Rebello, Rakesh
Mishra, Yashraj Singh Bundela, Rakesh Mishra, Prashant Shukla,
T. D. Bhaskar, Satyajeet Kumar, Dinesh Kr. Tiwari, Mrs. Rajmala Dohare,
Ramesh Thakur, Swami Nath, Bishnu Prasad Tiwari, Saftosh Kr. Tripathi,
Amit Pawan, Abhishek Asmritanshu, Anand Nandan, Akshat Srivastav, G
Gaurav Singh, Hassan Zubhair Waris, Akshay Sinha, Suryodaya Prakash
Tiwari, Rahul Kumar Tripathi, Harish Pandey, Rakesh Mishra,
Ankit Mishra, Sujeet Kumar, P. Gautam, Ms. Reena Patel, Mehul M.
Gupta, R. P. Gupta, Anupam Mishra, Shashank Mishra, Ms. Dwarka
Sawale, Ms. Manju Jetley, Advs. for the appearing parties.

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A The Judgment of the Court was delivered by

ADARSH KUMAR GOEL, J. 1. Leave granted. This batch of appeals has arisen from the judgment dated 1st December, 2016 of the High Court of Judicature at Allahabad in Special Appeal No.657 of 2015¹ and batch of the High Court of Judicature at Allahabad. The High Court has quashed the U.P. Basic Education (Teachers) Service (16th Amendment) Rules, 2012 on the ground that the said amendment was in conflict with the Notification dated 11th February, 2011 issued by the National Council of Teachers Education (NCTE).

2. It is not necessary to discuss the issue in detail as in the impugned judgment the High Court has followed its earlier judgment in *Shiv Kumar Pathak v. State of U.P.*² wherein the issue of validity of 15th Amendment to the same rule was considered on the same ground. The said issue has been gone into by this Court in a separate judgment in Civil Appeal Nos. 4347-4375 of 2014 entitled *State of U.P. and ors. versus Shiv Kumar Pathak and Ors.* The High Court in the impugned judgment observed:

“... .. During the course of submissions advanced by the rival parties before us, we noted that the issues which were being canvassed were in fact identical and similar to those framed by the Supreme Court especially issues such as whether the guidelines framed by the NCTE were valid, could they form the sole criteria for filling vacancies and if held to be intra vires what interpretation is liable to be rendered to the word “weightage” in paragraph 9(b) of the Guidelines dated 11th February, 2011. Upon this being pointed out, the majority of the learned counsels for the parties urged us to proceed to dispose of this batch of matters so as to enable them to take their matters also to the Supreme Court and raise all contentions so that a quietus to the entire controversy is ultimately rendered. We accordingly proceeded to hear the parties on merits and consequently note the submissions advanced hereinafter.

We find no ground which may warrant taking a different view. Following the dictum laid down in Shiv

¹2017(1)ADJ 141, 2017(1)ALJ 445

²2013(1)ADJ 21

Kumar Sharma by the Full Bench as reiterated in *Shiv Kumar Pathak*, we uphold the guidelines and hold that they are not liable to be struck down on the grounds urged before us.

As discussed in the earlier part of this judgment, the 16th Amendment Rules which came into force with effect from 4th December, 2012 did not remedy the situation. Rule 14(3) (a) which came to be introduced provided that the names of candidates would be arranged in accordance with quality points specified in Appendix-1. Appendix-1, as noted above, did not have any independent existence. It was introduced only by 15th Amendment Rules. Once the Division Bench had struck down Rule 14(3) as introduced by the 15th Amendment Rules in *Shiv Kumar Pathak*, it cannot be said that the Appendix which came to be introduced by the said provisions continued to exist or remained on the statute book. The Appendix to the original 1981 Rules as has been noted by us earlier had only a limited application. The 16th Amendment Rules therefore were clearly otiose and unworkable.

We are constrained to hold so in light of the settled principle that when a statutory provision is struck down, the effect of such a judicial declaration is that it will be deemed to have never existed. The declaration in *Shiv Kumar Pathak* had the effect of erasing Rule 14(3) as introduced by the 15th Amendment Rules along with the Appendix introduced therein which also stood completely erased and effaced. We are constrained to record this conclusion in light of the undisputed factual position that the insertion of Rule 14(3) by the 15th Amendment Rules led to a situation where original Rule 14 was completely substituted and consequently ceased to exist. The subsequent striking down of the amending rules will not revive the provisions as they stood earlier either at the time of promulgation of the 12th or the 15th Amendment Rules. Presently therefore as the enactment exists there is no revival of the Appendix or Rule 14 as it stood prior to the promulgation of the 12th Amendment Rules. We are

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A *therefore of the considered opinion that the 16th Amendment Rules must necessarily fall.*"

3. Accordingly, we may deal with the matter very briefly. The Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 (1981 Rules) have been framed under Section 19 of U.P. Basic Education Act, 1972 (1972 Act). Basic education in the State of Uttar Pradesh is regulated by the 1972 Act. Section 19 of the 1972 Act, provides for rules to determine the qualification for appointment as teachers and conditions of service of teachers of basic schools.

4. Rule 8 of the 1981 Rules prescribes the academic qualification for appointment of a teacher. The qualification prescribed is the bachelor's degree together with the training qualification i.e. Basic Teacher's Certificate (BTC), Hindustani Teacher's Certificate, Junior Teachers' Certificate, Certificate of Teaching or any other training course recognized by the Government as equivalent thereto. Rule 14 lays down the manner of appointment.

5. The 1981 Rules were amended in 2011 by the 12th Amendment. Prior to the amendment, there was a provision for quality points under Rule 14(4) as follows:

"(4) The names of candidates in the list prepared under sub-rule (2) shall then be arranged in such manner that the candidates who have passed the required training course earlier in point of time shall be placed higher than those who have passed the said training course later and the candidates who have passed the training course in a particular years shall be arranged in accordance with the quality points specified in the appendix."

6. The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act), enacted in the wake of Eighty Sixth Amendment to the Constitution in the year 2002, regulates elementary education and also deals with the qualification for appointment of teachers under Section 23 of the RTE Act. NCTE constituted under the National Council for Teachers' Education Act, 1993 (NCTE Act) has been prescribed as an 'academic authority' by the Central Government to lay down the minimum qualification prescribed for appointment of a teacher. Accordingly, Notification dated 23rd August, 2010 has been issued by the NCTE laying down such qualification. Teacher Eligibility Test (TET) is the essential

qualification prescribed under the said Notification. However, the guidelines/ Notification dated 11th February, 2011 provided that in the process of appointment of teachers, weightage has to be given to the marks obtained in TET examination. A

7. As already noted, the State of Uttar Pradesh amended 1981 Rules by 12th Amendment. This was done to comply with the Notification dated 11th February, 2011. However, subsequently there was further amendment. Some of which were challenged before the High Court on the ground of being repugnant to the Central Rule/Notification dated 11th February, 2011. Conflicting views were taken in the judgments of the Allahabad High Court. In *Prabhakar Singh* versus *State of U.P.*³ it was held that weightage to the TET marks laid down in Notification dated 11th February, 2011 was not mandatory. The said judgment was doubted and the matter was referred to a Full Bench. The Full Bench in *Shiv Kumar Sharma* versus *State of U.P.*⁴ held a different view. It was held that by virtue of power of the Central Government on a subject in Concurrent List, in case of repugnancy, the State rule was required to comply with the disposition in a central legislation. Same view was taken in *Shiv Kumar Pathak (supra)*. Therein, Fifteenth Amendment to the Rules was held to be in conflict with the NCTE Notification dated 11th February, 2011. On the same reasoning, the impugned judgment has struck down the Sixteenth Amendment. B
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8. We have heard learned counsel for the parties.

9. Learned counsel for the State of U.P. submitted that there was no conflict in the notifications issued by the NCTE and the amendment in the State Rules. It was submitted that the jurisdiction of the NCTE under Section 23(1) was limited to laying down of qualification as a condition for appointment and the power conferred under the said section did not stipulate regulation of the selection process. F

10. The NCTE has taken a stand that its notification suggesting weightage to TET marks was not mandatory. The original writ petitioners however support the impugned judgment by submitting that since the issue is covered by Entry 25 List III of the Seventh Schedule to the Constitution, any standard laid down by the Central Government will bind the State and any conflicting decision of the State will be unconstitutional. G

- A 11. We find that there is no conflict in the notification issued by the Central Government and the amendment to the State Rules since the Notification dated 11th February, 2011 to the extent of suggesting weightage to TET marks can be held to be merely a guideline.
- B 12. We have already dealt with the matter in Civil Appeal Nos. 4347-4375 of 2014 entitled *State of U.P. and ors. versus Shiv Kumar Pathak and Ors.* and held that weightage to the TET marks was not mandatory and the State rules, not being in conflict with the norms laid down by the NCTE, may not be held to be void on the ground of repugnancy.
- C 13. Accordingly, we allow these appeals and set aside the impugned judgment. The State is at liberty to proceed with the matter in accordance with law.

Kalpana K. Tripathy

Appeals allowed