**IN THE HIGH COURT OF ALLAHABAD**

Civil Misc. Writ Petition No. 72433 of 2011

Decided On: 14.12.2011

Appellants: **Govind Kumar Dixit and Others**
**Vs.**
Respondent: **State of U.P. and Others**

**Hon'ble Judges/Coram:**
Sudhir Agarwal, J.

**JUDGMENT**

**Hon'ble Sudhir Agarwal, J.**

1. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Siddharth Khare, learned counsel for the petitioners at length, learned Standing Counsel, Sri S.K. Verma and Sri R.A. Akhtar, Advocates for respondents. Petitioners have assailed the validity of Rule 14 of U.P. Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as the "1981 Rules") as inserted by notification dated 9.11.2011 and further request to treat it inoperative in case this Court finds that conditions in advertisement dated 29/30.11.2011 is based upon the said Rules. They have also assailed the validity of advertisement dated 29/30.11.2011 issued by the Board of Basic Education in U.P. (hereinafter referred to as the "Board")

2. It would be appropriate first to notice the very Rule which has been assailed in this writ petition. It reads as under:

14. Determination of vacancies and preparation of list-(1) In respect of appointment, by direct recruitment to the post of Mistress of Nursery Schools and Assistant Master or Assistant Mistress of Junior Basic Schools under clause (a) of rule 5, the appointing authority shall determine the number of vacancies as also the number of vacancies to be reserved for candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes and other categories under rule 9 and notify the vacancies in at least two leading news papers having adequate circulation in the State as well as in concerned district inviting applications from candidates possessing prescribed training qualification from the district concerned and who have passed teacher eligibility test conducted by Government of Uttar Pradesh.

(2) The appointing authority shall scrutinize the applications received in pursuance of the advertisement and prepare a list of such persons as appear to possess the prescribed academic qualifications and be eligible for appointment.

(3) The names of candidates in the list prepard under sub-rule (2) shall then be arranged in such manner that their names shall be placed in descending order on the basis of the marks obtained in Teacher Eligibility Test conducted by the Government of Uttar Pradesh.

Provided that if two or more candidates obtain equal marks, the candidiate senior in age shall be placed higher.

(4) No person shall be eligible for appointment unless his or her name is included in the list prepared under sub-rule (2).

(5) the list prepared under sub-rule (2) and arranged in accordance with sub-rule (3) shall be forwarded by the appointing authority to the selection committee.

3. It is worthy to mention at this stage that in the State of U.P. since 1972 Basic Education is being governed by U.P. Basic Education Act, 1972 (hereinafter referred to as the "Act, 1972") and the Rules and Regulations framed thereunder. All the primary schools in State of U.P. imparting education from Class I to VIII need to get recognition from Board in order to have a valid qualification unless such qualification is obtained from an institution, equivalent and recognised by some other similar educational body.

4. Prior to Act, 1972 there were three types of primary schools mainly functioning in State of U.P., (1) those established and managed by State Government through its various departments, (2) those established by local bodies and managed by them and, (3) those established by private bodies.

5. These were/are some institutions established by private bodies and are recognised by other Boards like Indian Council for Secondary Education, Central Board of Secondary Education etc. with which this Court is not concerned.

6. These primary schools established and managed by private managements were also having different financial arrangements inasmuch as some were wholly managed by private bodies from their own funds, some partly from the grant from Government or Governmental bodies and some which were fully under the grant from Government but for other purposes managed by private bodies.

7. With the enactment of Act, 1972 the institution managed by local bodies and Government stood transferred to the Board and since then are being managed by it. At present the number of such schools is more than 1.25 lacs in the entire State. These primary schools are in two categories, namely, Junior Primary Schools, i.e., from Class I to V and Senior Primary Schools or Junior High Schools, i.e., from Class VI to VIII. In respect to institutions managed by Board, it has framed rules laying down process of recruitment, appointment and conditions of service of its teachers. In respect to Junior Primary Schools, i.e., from Class I to V the Rules laying down process of recruitment, appointment and other conditions of service of teaching staffs are 1981 Rules. The qualifications to be possessed by persons eligible for appointment as Assistant Teacher in Junior Primary Schools is clearly laid down in Rule 8 of 1981 Rules. Besides other educational qualification, it talks of training qualification, namely, Certificate of Teaching, Hindustani Teaching Certificate, Basic Teacher Certificate etc. The most prevalent training qualification used to be imparted by Government institutions, namely, District Institute for Education and Training (hereinafter referred to as the "DIET") which are owned and managed by State Government. In every district there is/was one such institution. Since the Junior Primary Schools are situated in much interior areas, considering all the relevant facts and circumstances in this respect, the authorities used to make recruitment at district level basis so that teachers appointed are mostly those who live in same local area having first hand information of local requirement etc. and may serve the young students in a better way.

8. In order to bring standard of such teachers at par throughout the country, since at higher education level, students from entire country otherwise have no reason of disparity or discrimination, the Government of India enacted National Council for Teacher Education Act, 1993 (hereinafter referred to as the "Act, 1993") whereunder an expert body, i.e., National Council for Teacher Education (hereinafter referred to as the "NCTE") was contemplated who was empowered to grant recognition to the Institutions imparting Teachers Training Education so that proper and well trained teachers are available for imparting education to young and raw minds which require a different kind of special training.

9. Act, 1993 is a Central Act enacted by Parliament and after receiving the assent of the President on 29.12.1993 was published in the Gazette of India, (Extra.) Part II, Section 1, dated 30.12.1993. Section 1 (3) provides that Act 1993 shall come into force on such date as the Central Government may appoint by notification in initial gazette. Pursuant thereto the Central Government by notification dated 1.7.1995 appointed the same day i.e. 1.7.1995 for enforcement of Act 1993.

10. The Act 1993 was enacted with an objective of achieving planned and coordinated development for teacher education system throughout the country, the regulation and properly maintenance of norms and standards in teacher education system and for matters connected therewith.

11. In State of Maharashtra v. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and others, : (2006) 9 SCC 1, Apex Court observed that considering the objective and preamble of the Act and various provisions, it is clear that the aforesaid Act of Parliament is referable to Entry 66 of List I of Schedule VII of the Constitution and to the extent the field is occupied by Act 1993 the State Legislature cannot encroach upon the said field.

12. The Act 1993 contemplates establishment of a council called as "National Council For Teacher Education" and its functions are enumerated in detail in Section 12 of Act 1993. It clearly talks of planned and co-ordinated development of teacher education, and determination and maintenance of standards for teacher education. It is in this regard various subjects and functions of NCTE have been enumerated in Section 12 from Clauses (a) to (n) which reads as under:

(a) undertake surveys and studies relating to various aspects of teacher education and publish the result thereof;

(b) make recommendations to the Central and State Governments, Universities, University Grants Commission and recognised Institutions in the matter of preparation of suitable plans and programmes in the field of teacher education:

(c) co-ordinate and monitor teacher education and its development in the country;

(d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognised institutions.;

(e) lay down norms for any specified category of courses or training in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum;

(f) lay down guidelines for compliance by recognised institution for starting new courses or training, and for providing physical and instructional facilities, staffing pattern and staff qualifications;

(g) lay down standards in respect of examinations leading to teacher education qualifications, criteria for admission to such examinations and schemes of courses 6r training;

(h) lay down guidelines regarding tuition fee and other fee chargeable by recognised institutions;

(i) promote and conduct innovation and research in various areas of teacher education and disseminate the results thereof;

(j) examine and review periodically the implementation of the norms, guidelines and standards laid down by the Council, and to suitably advise the recognised institutions;

(k) evolve suitable performance appraisal systems, norms and mechanisms for enforcing accountability on recognised institutions;

(l) formulated schemes for various levels of teacher education and identify recognised institutions and set up new institutions for teacher development programmes;

(m) take all necessary steps to prevent commercialisation of teacher education; and

(n) perform such other functions as may be entrusted to it by the Central Government.

13. The Act 1993 contemplates recognition and permission of NCTE for running courses or training in teacher education. Section 17 provides, if course or training in teacher education has been imparted or obtained in violation of the provisions of the Act, such course or training shall not be treated a valid qualification for employment under Central and State Government, University, any School/College or other educational body aided by Central or the State Government. The restriction imposed by Section 17(4) is only to the extent that a training or course in teacher education which does not conform to the various provisions of Act 1993 shall not be a valid qualification for employment as stated above, and nothing more and nothing less. The entire Act 1993 does not talk of the manner in which appointments of teachers shall be made, the eligibility to be laid down for appointment of teachers in Primary Schools etc. except qualification. It is confined to the standard and quality of teachers training education. In this regard NCTE obviously can lay down minimum qualification which may be prescribed for appointment of a teacher but it does not control thereafter the mode, manner and other relevant provisions regarding recruitment and appointment of such teachers.

14. In State of U.P. and others v. Bhupendra Nath Tripathi and others,  : 2010 (5) ESC 630, the Apex Court has clearly observed in para 24 that NCTE can lay down minimum qualification for appointment of teacher by competent appointing authority or the authority competent to frame rules and regulations may lay down any qualification over and above the minimum qualification prescribed by NCTE. Para 24 of the judgment in Bhupendra Nath Tripathi (supra) reads as under:

The is no quarrel with the proposition that the State in its discretion is entitled to prescribe such qualifictions as it may consider appropriate for candidates seeking admission into BTC course so long as the qualifications so prescribed are not lower than those prescribed by or under the NCTE Act. The State can always prescribe higher qualification,...

15. Meaning thereby requirement for appointment of a teacher, as contemplated by Act 1993, is that the teacher education must be such as is in conformity with Act 1993 and that the teacher must possess minimum qualification before he is considered for appointment and then on, Act 1993, in my view, stops from that stage and onwards.

16. The Apex Court and this Court have repeatedly held that no person shall be appointed as teacher in primary schools unless he possess requisite qualification of teacher's training which is duly recognised by NCTE under Act, 1993 after its enactment. Once the limitations of NCTE are observed, the power of appointing authority or rule framing authority in the State or by the Board, as the case may be, providing a higher or better qualification has not been checked but duly recognised. The only rider is that the Teachers Training qualification in respect to appointments made after enforcement of Act, 1993 should be such which training qualification has been recognised and approved by NCTE. From what has been discussed above and also considering the submissions of learned counsel for the petitioners there is no doubt that to this extent there is no quarrel.

17. If I take up the case in hand, the matter would thereafter be governed by Act 1972 and 1981 Rules. The qualifications required to be possessed by a teacher for appointment in a Primary School is provided in Rule 8 of 1981 Rules. This rule has undergone amendments from time to time broadly. Initially it provides for a qualification up to High School and training qualification like Basic Teachers Certificate, Junior Teacher Certificate, Certificate of Teaching etc. Later on amendments were made which basically increased educational qualification of High School to Intermediate and then to Graduation but so far as training qualification is concerned, the same continued to be as such with some minor additions in the last decade. For the first time, an amendment was made in 2004 by adding "Special Basic Teachers Certificate Course" as one of the training qualification under Rule 8(1). Subsequently another amendment came to be made by notification dated 25.11.2006 in Rule 8(1). To this extent there is no dispute among the parties.

18. In view of above discussion, it thus can be said that after enactment of Act, 1993 the only rider came to apply with respect to recruitment and appointment of Teachers in Primary Schools is that they must possess training qualification approved by NCTE under various provision of Act, 1993 but rest of the matter governed by relevant provisions relating to recruitment and appointment applicable in the concerned province, for example in State of U.P. by Act, 1972 and the Rules framed thereunder.

19. The situation changes when the Apex Court insisted upon to make primary education as a constitutional right of the children in the age group of 6 to 14 years.

20. In fact due to lack of appropriate avenues providing required training to persons making them eligible for Primary Teachers a huge number of vacancies continued to exist in Primary Schools, whether managed by Board or by primage managements. Moreover, the mindless and sometimes wholly illegal and erroneous decisions and activities of authorities in Basic Education Department in State also constitute a lot on their part. The litigation in respect to employment in Primary Schools constitute a major chunk of litigation in this Court in the last two decades and more. The aspirations of people widened with the judgment of Apex Court in Mohini Jain v. State of Karnataka,  : AIR 1992 SC 1858 and Unni Krishnan J.P. v. State of A.P., : AIR 1993 SC 2178 and the cases followed thereafter observing Primary Education to children from age of 6 to 14 years as a constitutional right. Efforts were made by Governments, Central and State both, to expand primary education by establishing primary schools at Village Panchayat level in a major way. This really gave a boomerang to number of schools as also corresponding increase in number of teachers requiring to man these primary institution.

21. The Court has been informed at the Bar that at present the number of primary schools in the State of U.P. are more than one lac and twenty five thousands which obviously mean that number of posts of teachers would also exceed the said figure.

22. To give boost and to fulfil the devout and pious objective, Parliament also intervened by inserting Article 21Ain the Constitution i.e. 'Right to Education', by Constitution (86th Amendment) Act, 2002, and, simultaneously inserting Clause (k) in Article 51A vide Section 4 of Constitution (86th Amendment) Act, 2002. The Parliament also in furtherance of the above constitutional provisions, come forward by enacting "Right of Children to Free and Compulsory Education Act, 2009" (hereinafter referred to as the "Act, 2009") published in Gazette of Indian on 27.8.2009. By virtue of Section 1(3) of Act 2009, it has been given effect from 1.4.2010.

23. One of the major change it has brought, besides other, is that no Primary School, other than a school established, owned or controlled by the appropriate Government or local body after commencement of Act 2009, shall be established or function without obtaining a certificate of recognition from such authority, as may be prescribed. For the purpose of seeking recognition, the school has to conform the norms and standards specified in Section 19 of Act 2009 read with the schedule appended thereto.

24. Thus situation underwent radical changes after enactment Act, 2009. Section 23 thereof reads as under:

23. Qualifications for appointment and terms and conditions of service of teachers.-(1) Any person possessing such minimum qualifications, as laid down by an academic authority authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.

(3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed.

25. The Act 2009, vide Section 23(1), also provides that any person possessing such minimum qualification, as laid down by an academic authority authorised by the Central Government, by notification, shall be eligible for appointment as a teacher. Section 23 (1) therefore talks of only eligibility for appointment as teacher but does not confer any corresponding right upon a person to claim appointment as teacher merely if he fulfills the qualification prescribed under Section (1) of Section 23. Simultaneously there is no corresponding obligation for offering appointment to such person as teacher. The power of State Legislature vide Entry 25 List 3 Schedule VII of the Constitution therefore to the extent it can make provisions for governing primary schools and providing provisions governing recruitment and conditions of service of teachers in such schools is not curtailed in any manner so long as it is not repugnant to any specific Central Act. None as such has been shown to this Court.

26. In exercise of powers under subsection (1) of Section 23 of Act, 2009, Government of India nominated NCTE as the authorised authority empowering it to frame Regulations laying down qualifications for appointment of teachers in primary schools. In exercise of powers under Section 23 of Act, 2009, NCTE has framed regulations, vide notification dated 23.8.2010 laying down minimum qualifications for a person to be eligible for appointment as a teacher in Class 1 to 8 in a school referred to in Clause (n) of Section 2 of Act 2009.

27. Section 2(n) of Act 2009 defines "School" for the purpose of Act 2009 and reads as under:

"school" means any recognised school imparting elementary education and includes-

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

(ii) an aided school receiving aid or grants to meet whole or part of its expenses from the appropriate Government or the local authority;

(iii) a school belonging to specified category; and

(iv) an unaided school not receiving any kind of aid or grants to meet its expenses from the appropriate Government or the local authority;

28. The minimum qualification prescribed in notification dated 23.8.2010 are in two parts, one for Junior Primary School namely Classes I to V and another is for Senior Primary School i.e. Class VI to VIII. Besides educational qualifications, for the first time, it also introduced eligibility qualification of teacher i.e. Eligibility Test i.e. passing of Teachers Eligibility Test (in short T.E.T.') conducted by concerned Government in accordance with the guidelines laid down by NCTE.

29. Para 3 of notification dated 23.8.2010 provides for "Compulsory Training" and reads as under:

Training to be undergone.-A person-

(a) with B.A./B.Sc. with at least 50% marks and B.Ed qualification shall also be eligible for appointment for class I to V upto 1st January, 2012, provided he undergoes, after appointment, and NCTE recognized 6-month special programme in Elementary Education.

(b) with B.Ed (Special Education) or B. Ed (Special Education) qualification shall undergo, after appointment, an NCTE recognized 6-month special programme in Elementary Education.

30. NCTE issued another notification on 29.7.2011 in purported exercise of powers under Section 23 of Act 2009. The aforesaid notification has amended notification dated 23.8.2010. Sub-para (i) and (ii) of Para 1; para 3 and para 5 have been substituted in entirety. For ready reference, the amended relevant provisions i.e. para 1 (i) and (ii) and para 3 reads as under:

1. Minimum Qualification.-

(i) Classes I-V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Elementary Education (by whatever name known) OR

Senior Secondary (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations, 2002.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor of Elementary Education (B.El.Ed)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education)

OR

Graduation and two year Diploma in Elementary Education (by whatever name known)

AND

(b) Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

(ii) Class VI-VIH

(a) Graduation and 2-year Diploma in Elementary Education (by whatever name known)

OR

Graduation with at least 50% marks and 1-year Bachelor in Education (B.Ed.)

OR

Graduation with at least 45% marks and 1-year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor in Elementary Education (B.E1. Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year B.A./B.Sc.Ed. or B.A.Ed./B.Sc.Ed.

OR

Graduation with at least 50% marks and 1-year B.Ed. (Special Education)

AND

(b) Pass in Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

31. Para 5 of notification dated 29.7.2011 is a kind of saving clause and provides that if an advertisement initiating process of appointment of teachers has already been issued before 29.7.2011, such appointments may be made in accordance with NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time).

32. Sub-para (b) of para 5 provides that minimum qualification prescribed by notification dated 29.7.2011 shall apply to all teachers except the teacher for Physical Education, for which NCTE Regulation dated 3.11.2001, as amended from time to time, shall continue to apply. Further regarding teachers of Art Education, Craft Education, Home Science, Work Education, etc. the existing eligibility norms prescribed by the State Government and other school managements shall be applicable till such time the NCTE lays down the minimum qualification in respect of such teachers.

33. The above discussion makes it beyond doubt that the above notifications issued by NCTE lays down minimum qualification, which would make a person eligible for appointment as a teacher in Primary Schools but the manner in which recruitments for appointment on the post of teacher in Primary School shall be made, and, their terms and conditions of service, for the same, aforesaid notification does not provide anything at all and hence in this regard 1981 Rules shall hold the field and would continue to apply.

34. Now I come to Rule 14, validity whereof has been assailed. It only talks of a procedure in which a recruitment has to be made for appointment of Assistant Teachers in Primary Schools governed by provisions of Act, 1993. Sub-rule (3) of Rule 14 talks of preparation of a list of the candidates who applied pursuant to an advertisement made under sub-rule (1) of Rule 14. The said list shall be prepared in descending order on the basis of merit obtained in T.E.T. The aforesaid list under sub-rule (5) is to be forwarded by appointing authority to Selection Committee. The Selection Committee thereafter shall proceed to make selection of the candidates whose names find mention in the aforesaid list in accordance with the procedure prescribed in Rule 17 and 17-A of 1981 Rules. The constitution of Selection Committee which would make the above selection is also provided in Rule 16. Therefore, apparently I do not find any inconsistency or repugnancy at all in Rule 14 of 1981. Rules as also Regulations framed by NCTE as well as the provisions of Act, 2009. For the purpose of arranging the names of applicants in descending order under Rule 14(3), the marks obtained in T.E.T. has been made as the guiding factor but for the purpose of selection under Rule 17 and 17-A which is to be made by selection committee a different procedure is prescribed.

35. Be that as it may, even otherwise, in absence of any prohibition under parent statute, it cannot be said that criteria for selection can be laid down by Regulation framing authority, i.e., NCTE.

36. To conclude, I find no merit in the petitioners' challenge to Rule 14, being illegal in any manner. Neither it is inconsistent to any provision which have overriding effect or which may prevail over it nor the aforesaid provision is ultra vires of the Act or Constitution in any manner.

37. No other point or issue pressed.

38. There is no merit in the writ petition.

39. Dismissed. No costs.