

Neutral Citation No. - 2024:AHC-LKO:1129-DB

Reserved

A.F.R.

Court No. - 1

Case :- SPECIAL APPEAL No. - 441 of 2021

Appellant :- Rakesh Kumar

Respondent :- State Of U.P. Thru. Prin. Secy. Secondary Education
Lko.Andors

Counsel for Appellant :- Yogendra Kumar Mishra,Ajey Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

- (1) Heard Sri Yogendra Kumar Mishra, learned Counsel for the appellant and Sri Anil Kumar Singh Visen, learned Standing Counsel for the State-respondents.
- (2) The instant Special Appeal has been filed under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 assailing the order dated 04.10.2021 passed in Writ Petition No. 1301 (SS) of 2017, *Rakesh Kumar v. State of U.P. and others*, whereby the writ petition filed by the appellant-petitioner has been dismissed on the ground that since the appellant/petitioner lacks essential qualification as prescribed under the Statute for appointment as Assistant Teacher in the attached Primary School of the Institution inasmuch as B.P.Ed. degree is not an alternate qualification prescribed for B.T.C., he cannot claim to be qualified.
- (3) Facts necessary for disposal of the appeal, which lies in narrow compass, need mention infra to appreciate the controversy involved in the appeal.
- (4) Swami Vivekanand Inter College, Gonda (here-in-after referred to as 'the institution' for the sake of brevity) is a recognized and Government aided institution imparting education upto Intermediate classes. The institution is governed under the

provisions of Intermediate Education Act, 1921 and Uttar Pradesh High Schools and Intermediate Colleges (Payment and Selection of Teachers and other Employees) Act, 1971.

- (5) On 17.03.2010, the Committee of Management got published advertisements for appointment of Assistant Teachers in the daily newspapers 'Swatantra Bharat' and 'Trigut'. Subsequently, the Committee of Management appointed Rakesh Kumar (appellant/petitioner), Shailendra Kumar Singh and Ms. Poonam Devi and the relevant papers were sent by the Manager of the Committee of Management to the District Inspector of Schools for approval on 16.04.2010. However, the District Inspector of Schools vide his order dated 05.05.2010 disapproved the selection and appointments made on three posts of Assistant Teachers in the Primary Section of the Institution by the Committee of Management.
- (6) Aggrieved by the order of District Inspector of Schools dated 05.05.2010 disapproving the selection of three persons including the appellant/petitioner, Writ Petition No. 2981 (SS) of 2010, *Km. Poonam Devi and others v. State of U.P. and others* was filed before this Court. While disposing of the writ petition vide order dated 09.08.2010, the District Inspector of Schools, Gonda was directed to send the matter alongwith complete record to the State Government for its approval and liberty was granted to the State Government to examine the matter independently and take a decision either way for requisitioning the Committee of Management. The decision so taken within two months was directed to be communicated to the Committee of Management.
- (7) Assailing the order dated 09.08.2010, Km. Poonam Devi and others filed Special Appeal No. 607 of 2010 before a Division Bench of this Court which was disposed of vide order dated

17.04.2012 modifying the order dated 09.08.2010 to the extent that the primary section concerned should not make appointment beyond the sanctioned strength available and, further that once sanction in respect of appointment has already been granted at any state in respect of vacancy, against the said vacancy no fresh sanction would be required to fill up the post. In case the appellants have been appointed against sanctioned posts, it would be inappropriate on the part of the authority to insist upon a seeking a fresh sanction.

- (8) Thereafter, the District Inspector of School passed an order dated 17.07.2012 for payment of salary to the aforesaid three persons with the stipulation that if any adverse material pertaining to the appointment of these three persons would come to his notice, the order would be cancelled. To this effect, appointment authority and the concerned teacher would be responsible. When the three Teachers submitted their testimonials for making entries in the service books, it was found that the date of entry of Km. Poonam Devi was different, to which she was unable to give proper and satisfactory explanation. As stated above, relying on the order dated 17.07.2012, the Manager stopped the payment of salary to Km. Poonam Devi vide order dated 13.07.2013. When she preferred a representation before the District Inspector of Schools, he has ordered for conducting the inquiry into the selection and appointment of the appellant/petitioner and two others. For this purpose, the District Inspector of Schools appointed Principal, F.A.A. Government Inter College, Gonda vide his order dated 12.09.2013 who, in turn, has submitted his inquiry report on 12.11.2013 stating therein that the appellant/petitioner and other two persons were selected only on the basis of the marks secured in the interview and despite the persons having B.Ed. Degree available, two persons holding B.P.Ed., degree were selected. In these circumstances, it was held by the Inquiry

Officer that stoppage of payment of salary to the appellant/petitioner and other persons would not be proper.

- (9) Considering the report of the Inquiry Officer, the District Inspector of Schools had withheld the salary of the aforesaid three Teachers vide order dated 29.11.2013. Out of them, one Teacher Shailendra Kumar Singh had submitted a representation for reconsidering the matter, on which the then Finance and Accounts Officer (Secondary Education), Gonda had directed to re-consider the matter vide his order dated 28.06.2014. Before completion of the proceedings, he was transferred. In the meantime, vide order dated 27.06.2014, the Committee of Management had decided to terminate the aforesaid three Teachers and forwarded the papers to the office of District Inspector of Schools. After giving an audience to all three Teachers, the District Inspector of Schools approved the decision taken by the Committee of Management vide his order dated 27.09.2014 and thereafter, the services of all three teachers were terminated vide order dated 20.10.2014 by the Committee of Management.
- (10) Assailing the order passed by the District Inspector of Schools dated 27.09.2014, whereby the District Inspector of Schools had approved the decision taken by the Committee of Management terminating the services of three Teachers, the appellant-petitioner filed Writ Petition No. 6517 (SS) of 2014 on the ground of passing sketchy order passed by the District Inspector of Schools, wherein the Writ Court vide order dated 14.09.2016, while remanding the matter to the District Inspector of Schools for passing a fresh order, after giving an audience to the appellant-petitioner, allowed the writ petition filed by the appellant-petitioner with a direction that the appellant-petitioner shall continue on the post of Assistant Teacher and till a decision is taken by the District Inspector of

Schools, the appellant-petitioner is entitled for salary as and when it would fall due.

- (11) Pursuant to the order passed by the Writ Court, the appellant-petitioner preferred a representation dated 28.10.2016 annexing therewith a copy of order dated 14.09.2016 passed by the Writ Court. The District Inspector of Schools after hearing the appellant-petitioner, representative of the Committee of Management and Principal of the Institution, passed the impugned order dated 27.12.2016 rejecting the representation of the appellant/petitioner with the stipulation that the appellant possesses the degree of B.P.Ed., which is not recognized.
- (12) In the aforesaid backdrop, the appellant-petitioner has filed Writ Petition No. 1301 (SS) of 2017 which was dismissed vide impugned judgment and order dated 04.10.2021 on the grounds enumerated in para – 2 of the order.
- (13) The contention of the learned Counsel for the appellant-petitioner is that the qualification prescribed for the Assistant Teacher is ‘trained graduate’ as mentioned in the advertisement dated 17.03.2010. Since the appellant- petitioner is B.P.Ed., the order passed by the District Inspector of Schools rejecting the representation of the appellant-petitioner is patently illegal.
- (14) He next contended that the training qualification B.P.Ed., is equivalent to B.Ed., L.T./C.T. and therefore, he ought not to have been terminated by the authorities concerned and in support of this contention, he has relied upon the Full Bench judgment of this Court dated 10.10.2018 rendered in *Special Appeal No. 1247 of 2012, Amal Kishore Singh vs. State of U.P. and others*.
- (15) His further submission is that the learned Single Judge has also not considered aforesaid facts and dismissed the petition filed

by the appellant-petitioner. Hence, the Special Appeal filed by the appellant-petitioner is liable to be allowed and the impugned order is liable to be set aside.

- (16) On the other hand, learned Standing Counsel appearing for the opposite parties submits that the essential qualification required for the Assistant Teachers in Primary School is graduation with C.T./B.T.C./H.T.C. or equivalent qualification and if the candidates having the aforesaid qualification are not available, persons with B.Ed., degree would be appointed. Since the qualification acquired by the appellant-petitioner is B.P.Ed., and it is not a recognized qualification for appointment to the post of Assistant Teacher in the Primary Section of Intermediate Colleges, the order passed by the learned Single Judge whereby the writ petition filed by the appellant-petitioner has been dismissed is perfectly legal and no need to interfere in the impugned order.
- (17) Considered the submissions made by the learned Counsel for the parties and perused the record available on record with the Special Appeal.
- (18) Admittedly, pursuant to the advertisements for appointment of Assistant Teachers in the daily newspapers 'Swatantra Bharat' and 'Trigut' dated 17.03.2010, Rakesh Kumar (appellant/petitioner), Shailendra Kumar Singh and Ms. Poonam Devi had applied and selected for the post of Assistant Teacher. The qualification mentioned in the advertisement is 'trained graduate' (Annexure No.19) and the appellant being a trained graduate applied for the post of Assistant Teacher in Primary School having the qualification of graduation with B.P.Ed., training and after considering the qualification of B.P.Ed. training, the appellant had been appointed on 13.04.2010 (Annexure No.20). On conclusion of selection proceedings, the

papers were sent to the District Inspector of Schools on 16.04.2010 for approval, who in turn has refused to grant the approval. The disapproval of the District Inspector of Schools dated 05.05.2010 was assailed before Writ Court in Writ Petition No. 2981 (SS) of 2010 which was disposed of vide order dated 09.08.2010

- (19) Thereafter, when the aforesaid order was assailed in Special Appeal No. 607 of 2010, the order passed by the Writ Court was modified with certain stipulations. Truly it is stated that the orders passed by the Writ Court as also passed by the superior Court were complied with. However, when the salary to Km. Poonam Devi vide order dated 13.07.2013 was stopped, she preferred a representation before the District Inspector of Schools, who in turn has ordered for conducting the inquiry into the selection and appointment of the appellant/petitioner and two others.
- (20) In the inquiry report submitted by the Inquiry Officer, it is revealed that though the candidates acquiring the qualification of B.Ed., are available, yet two persons who are having the qualification of B.P.Ed., have been recommended for appointment on the post of Assistant Teacher in the Primary School.
- (21) Since much emphasis has been laid by the appellant-petitioner that the B.P.Ed., qualification is equivalent to B.Ed., and in support of this, he has relied upon paragraphs 45, 46 and 47 of judgment of Full Bench in *Amal Kishore Singh (supra)*, it is necessary to have a look into the aforesaid paragraphs which are reproduced hereunder for ready reference:-

“45. We now proceed to examine the stand of the State Government in respect of the controversy in hand. In this regard we would

allude to an affidavit filed by Principal Secretary, Secondary Education, U.P. Lucknow dated 18th May, 2017 wherein the State Government has also accepted the position that B.P.Ed. qualification is equivalent to other teaching qualifications enumerated in Paragraph 2 of Appendix-A and it reads thus:-

"8. That in Appendix in reference of Regulation-1 Chapter-II of U.P. Intermediate Education Act, does not refer specifically the B.P.Ed. Course. After the Regulation 2001 came into force. It has been adopted by the State as equivalent to 'trained' for which a necessary amendment is required to be incorporated I the Schedule. As a principal, the B.P.Ed. Degree is treated to be equivalent to a 'trained' as referred in para-2 of Appendix-A.

9. That in view of the above, the B.P.Ed. Course is equivalent to that of B.Ed., L.T., B.T./C.T. It is further clarified that the necessary amendment is to be incorporated in the schedule."

46. In view of the foregoing discussion and having regard to the stand of the State Government on the issue, we are unable to subscribe to the view taken by Division Bench in Vindhyachal Yadav that B.P.Ed. could not be equated with other teaching qualifications prescribed under Appendix-A of Regulation 1 of Chapter-II of the regulations framed under the U.P. Intermediate Education Act, 1921 and accordingly, we overrule the same as well as all other judgements of this Court taking a contrary view.

47. We, thus, answer question (i) in affirmative and question (iii) by holding that Vindhyachal Yadav does not lay down the correct law. However, question (ii) has to be answered, subject to certain riders. A B.P.Ed. degree being a post graduate training qualification, would entitle a person to hold post of Headmaster of a recognised High School but not that of Principal of an Intermediate college. The reason is that under Regulations, 2001 as well as under Minimum Qualification Regulations, 2014 framed by NCTE, B.P.Ed. is recognised as eligibility qualification for

teaching Classes IX - X (Secondary/ High School) but not for Classes XI - XII (Senior Secondary/ Intermediate). For teaching Intermediate classes, the person should possess M.P.Ed. degree of at least two years duration from any National Council for Teacher Education recognised institution. These regulations do not prescribe any separate qualification for Head of institution and thus the qualification prescribed for a teacher of Intermediate classes (Senior-Secondary) would also apply to Head of such an institution. We have already held above that the qualifications prescribed by NCTE would be binding on the State, therefore, the qualifications prescribed by Minimum Qualification Regulations, 2014 have to be read alongwith Appendix-A and thus, a teacher possessing B.P.Ed. degree, would not be eligible to hold post of Principal of an Intermediate College.”

- (22) A perusal of the aforesaid paragraphs indicates that a teacher possessing B.P.Ed., degree is eligible to be appointed as Headmaster of a High School, but not as Principal of an Intermediate College.
- (23) Admittedly, the appellant-petitioner is having the qualification of B.P.Ed., and has applied for Assistant Teacher in Primary School and as per verdict of the Full Bench of this Court, as mentioned above, it is not applicable in the case of the appellant-petitioner.
- (24) Relying upon the judgment of Full Bench of **Amal Kishore Singh (supra)**, the order passed by the District Inspector of Schools, wherein it has been observed that the B.P.Ed., degree is not recognized for Primary Schools, is perfect. Consequently, no interference is required in the impugned order passed by the learned Single Judge wherein it has been observed that the petitioner lacks essential qualification as prescribed under the Statute for appointment as Assistant teacher in the attached school of the Institution inasmuch as B.P.Ed. Degree is not an

alternate qualification prescribed for B.T.C. etc., he cannot claim to be qualified.

- (25) For all the reasons stated above, the Special Appeal, being bereft of any merit, is **dismissed**.
- (26) There shall be no order as to costs.

(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)

Order Date :- 05.01.2024

Lakshman