

**SUPREME COURT OF INDIA**

Secretary, Board of Basic Education,U.P.

Vs.

Rajendra Singh

C.A.No.844-846 of 2002

(R.V.Raveendran and J M Panchal JJ.)

05.02.2009

**ORDER**

1. Application for impleadment allowed. Heard.

2. These appeals relate to recruitment to the post of Assistant Teachers in primary schools run by the Board of Basic Education, Uttar Pradesh, regulated by the *U.P. Basic Education (Teachers Services) Rules, 1981* ('Rules' for short). The qualifications prescribed in Rule 8 of the said Rules, for appointment to the post of Assistant Master in Junior basic Schools are as follows:

“Assistant Master and Assistant Mistress of Junior Basic Schools:

Intermediate Examination of the Board of High Court and Intermediate Education, Uttar Pradesh or any other qualification recognized by the State Government as equivalent thereto together with the training qualification consisting of a Basic Teacher's Certificate, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other training course recognized by the State Government as equivalent thereto.”

3. The appellant Board ('Board' for short) issued an advertisement dated 18.1.1997 inviting applications for the posts of Assistant Teachers in its Basic Schools. The said advertisement reiterated the aforesaid qualification of BTC, HTC, JTC certificate of teaching or other training courses recognized by state government as equivalent thereto, (prescribed under Rule 8) as eligibility criterion for recruitment.

4. The private respondents in these appeals have undergone a one year Physical Education Course and possess CPED Certificates. The Basic Teacher's Certificate and other qualifications prescribed under Rule 8 are two years training Courses. The CPED was never recognized by the State Government as equivalent to either BTC, HTC or JTC prescribed as qualifications for the post of Assistant Teachers/Masters.

5. On 23.3.1995, the State Government issued a direction under Section 13 of the *U.P. Basic Education Act, 1972* ('Act' for short) to the Board that candidates possessing CPED Certificate could be appointed in the schools run by the Board by treating them as untrained candidates and provide training to them during the course of their employment. The said letter further directed that the pay scale applicable to trained teachers should be extended to such appointees only after they undergo training and necessary examination. The letter also informed that the State Government had taken a decision to close training of the CPED in the State from the 1996-97 Session.

6. The State Government issued another direction dated 28.2.1996 under Section 13 of the Act superseding the Government Order dated 24.8.1978 which had recognized the CPED Certificates issued by Shri Hanuman Vyayam Prasarak Mandal, Amravati, Maharashtra as equivalent to CPED Certificate issued by the State of Uttar Pradesh.

Consequently, it was informed that CPED Certificate issued by the Amrawati Institute will not be recognized.

7. In view of the directions contained in Government order dated 23.3.1995, the applications from private respondents who possessed only CPED Certificates were entertained for the post of Asstt. Teachers against the advertisement dated 18.1.1997. The private respondents allege that a select list was also prepared, which contained their names. The select list, was, however, not given effect.

8. On 11.8.1997, the State Government in supersession of the earlier orders, directed that posts of Assistant Teachers in the Basic Schools run by the Board shall be filled up, only by those candidates who are BTC trained from U.P. Government Training Institutes or those possessing HTC/JCT/Teacher's Certificate. The said order cancelled the equivalence given to other training courses. The said order dated 11.8.1997 contains a specific direction that the appointment to the posts of Assistant Teachers in the schools run by the Board shall be made only in accordance with the Rules, by candidates possessing BTC/HTC/JCT/Teaching Certificate. According to the government, the said direction dated 11.8.1997 was issued to give effect to the NCTE guidelines and the Rules. In view of the said direction, the Board abandoned the process of selection commenced in pursuance of the advertisement dated 18.1.1997 and issued a fresh advertisement dated 17.8.1997 restricting the qualifications to what was stated in the direction dated 11.8.1997. It also made it clear that those claiming the benefit of equivalence or those with CPED Certificate were not eligible for the post of Assistant Teachers.

9. Some of the CPED candidates from Amrawati Institute approached the Allahabad High Court and a learned Single Judge by Order dated 11.2.1997 held that CPED candidates, either from the State run institutions of Uttar Pradesh or from Amrawati, should not be treated as disqualified for appointment as Assistant Teachers, until the CPED course is brought to an end in terms of the G.O. dated 23.3.1995, that is from the sessions 1996-97 and consequently, the writ petitioners therein had to be considered for appointment.

“When another batch of petitions filed by some other CPED candidates came up before another learned Single judge of the High Court, he did not agree with the reasoning of the order dated 11.2.1997 and referred the matter to a Division bench by order dated 10.7.1997. In the reference order, it was observed that the Government direction dated 23.3.1995 was not of any assistance to the candidates, as the Rules contemplated only trained teachers, that is teachers possessing BTC or other equivalent training being considered as eligible and there was no question of giving appointment to candidates who did not possess the qualification prescribed under Rule 8 of the Rules. Another learned Single Judge, who considered the matter after the issue of the Government direction dated 11.8.1997 made an order dated 23.8.1998 in another batch quashing the Government direction dated 11.8.1997 and the consequential advertisement dated 17.8.1997 and directed that all candidates who had obtained CPED Certificates prior to 6.8.1997 should be considered for appointment to the post of Assistant teachers in Basic Schools.”

10. The appeals from the orders dated 11.2.1997 and 23.8.1998 of the two learned Single judges and the writ petitions referred to a larger Bench by another learned Single Judge, were all considered by the Division bench. By the impugned order dated 26.6.2000, the Division Bench directed that CPED candidates trained in the institutions run by the state, or institutions recognized by state or trained from any other institutions which had been recognized equivalent to CPED Course of Uttar Pradesh should be considered for appointment in terms of the Government orders dated 23.3.1995 and 28.2.1996. The Division Bench also directed that CPED candidates who have obtained certificates from Amrawati Institute should also be considered on the basis of the judgment dated 11.2.1997 of the learned Single Judge. The said judgment is challenged in these appeals.

11. Though the Division Bench noted that CPED was never recognized by the State Government as equivalent to BTC, HTC or JTC, it was of the view that having regard to the directions contained in the Government letter dated 23.3.1995 issued under Section 13 of the Act, candidates who possess CPED Certificates were eligible to be considered as untrained candidates, who, on selection and appointment should be subjected to training. But the Division Bench overlooked the fact that though the government direction dated 23.3.1995, may apply to advertisement dated 18.1.1997, the said direction dated 23.3.1995 was revoked and superseded by the subsequent government direction dated 11.8.1997. The Government direction dated 11.8.1997, is a policy formulated in pursuance of NCTE guidelines, to make appointments only in accordance with the rules, without relaxations. It did not suffer from any infirmity. When the said direction was received, the Board apparently decided not to proceed with the selection process commenced in pursuance of the advertisement dated 18.1.1997 and issued a fresh advertisement dated 17.8.1997, which it was entitled to do.

“It is now well settled that merely because a candidate is eligible when the advertisement was issued or that a candidate's name is included in the selection list does not confer any right to the candidate to be appointed. It is also well settled that it is for the rule making authority or the appointing authority to prescribe the qualifications for recruitment and courts will not interfere with the qualifications

prescribed by such authority. In this case, the Board decided not to pursue the recruitment advertisement dated 18.1.1997 for good and valid reasons and issued a fresh advertisement dated 17.8.1997 in terms of the direction dated 11.8.1997. Therefore, the issue whether the CPED Certificate candidates who applied against the advertisement dated 18.1.1997, were eligible or not, with reference to the said superseded advertisement dated 18.1.1997, becomes academic.

The High Court could not have, therefore, directed that the CPED Certificate candidates be considered in terms of the government directions dated 23.3.1995 after the Government direction dated 11.8.1997. In the view we have taken, it is not necessary to examine the other question as to whether the government, by an executive order, can direct the Board to deviate from the qualifications prescribed by the rules.”

12. The appeals are, therefore, allowed and the order of the Division bench is set aside and the writ petitions by the private respondents are dismissed. The validity of the Government direction dated 11.8.1997 and consequential advertisement is upheld.

13. We may, however, make it clear that if any candidate with CPED Certificate had already been appointed by virtue of any interim or final order of the High Court, and continues to be in appointment even as on date, after undergoing training as stated in the Government directions dated 23.3.1995, his service may not be terminated merely on the ground that the said Government direction was superseded by the Government direction dated 11.8.1997.