

DELHI HIGH COURT

Renuka Khurama

Vs.

Delhi Administration (Delhi)

CWP 759 of 1991

(M.C. Jain, C.J. & Arun Kumar, JJ.)

31.05.1991

JUDGEMENT

M.C. Jain, C.J.

1. Rule D.B.

2. The petitioners are the candidates of Nursery Teachers Training Part 1, who have been given admission by the Institute of Child Education. After having undertaken admission test. They completed their education. The Director of Education vide his letter dated 24.1.91 informed the Principal, Institute of Child Education, respondent No. 4 that the present petitioners who are 26 in no are not eligible for admission and Irregular admissions have been done in spite of registered letter No. 2785 dated 9.7.90 whereby respondent No. 4 was required to act as per the public notice regarding admission. The Principal was informed that the candidates should not be permitted to take examination of 1991 unless the admissions are rectified according to the eligibility condition. In the advertisement issued by the Director, an eligibility condition "was imposed that in the previous examination, the candidate should have obtained 50% marks in aggregate. It is only such candidates who would be eligible to be given admission in the Nursery Teachers Training Course.

3. The whole controversy in this petition is as to whether such a condition can be imposed by the Director regarding admission in respect of recognized unaided schools. The petitioners' case is that the Head of the Institute of Child Education is the sole authority to regulate admission either on the basis of admission test or on the basis of result in the senior secondary class under Rule 145 of Delhi School Education Rules, here as the respondents' case is that the Director has full authority to issue instructions laying down such an eligibility

condition which will equally apply to the recognized unaided school and power has been drawn under Rule 144 read with sub-rule (2) of Rule 145.

4. The question that arises for consideration in the present writ petition, therefore, is as to whether the Director is empowered to lay down eligibility condition which may be applicable to the recognized unaided school. It would be appropriate to consider the relevant rule of Delhi School Education Rules. Rule 131 confers power on the Director to regulate admission to aided schools. Under that Rule the Director has the power to regulate admission to aided schools or to a class thereof either on the basis of admission test or on the basis of the result of a student in a class. Rule 132 provided that save as otherwise provided in Chapter Xii relating to admission to recognized schools, no aided school shall hold any test for admission to any class except with the written approval of the Director. It would appear that these two rules have application to aided schools. The power of regulation of admission can be exercised by the Director under Rule 131 on the basis as provided under Rule 131 and so far as holding of admission test is concerned, the aided schools cannot hold any test except with the approval of the Director. The relevant rules are Rule 144 and 145. They are as under:-

"144. Power to issue departmental instructions-The Director may issue instructions with regard to any matter, not covered by this Chapter, relating to admission to aided schools.

145. Admission to recognized unaided schools-(1) The head of every recognized unaided school shall regulate admissions to & recognized unaided school or to any class thereof either on the basis of admission test or on the basis of result in a particular class or school.

(2) Subject to the provisions of sub rule (1), the provisions of this Chapter shall so far as may be, apply to admission to a recognized unaided school as they apply to admissions to an aided school".

5. It would appear from Rule 144 that it confers power on the Director to issue departmental instructions with regard to matters which are not covered by Chapter XII. The power has been conferred on the Director to issue instructions with regard to any matter relating to aided school to aided schools. Thus, it would appear that power under Rule 144 can be exercised by the Director relating to aided schools with a further condition that instructions can be issued

with regard to matters not covered by Chapter XII. Rule 145 deals with admissions to recognised unaided schools. Sub-rule (1) of the Rule confers power on the head of the recognized unaided school to regulate admissions to a recognized unaided school or any class thereof either on the basis of admission or on the basis of result in a particular class or school. By virtue of sub-rule (2) of Rule 145, the provisions of Chapter XII so far as may be, have been made applicable relating to admission to a recognized unaided school as well and this may include Rule 144 as well. The sub-rule (2) of Rule 145 would not apply in relation to matters covered by sub-rule (1) of Rule 145. As already stated, sub-rule (1) confers power on the head of unaided school for regulating admission on either of the two bases i.e. on the basis of test or on the basis of result in the previous class. It is left to the direction of the head of the recognized unaided school to adopt either of the two methods of admission.

6. Mr. S.K. Mahajan, learned counsel for respondent nos. 1 to 3 submitted that any instructions issued under Rule 144 would equally apply to unaided recognized schools as well and that would not affect the power of the head of the recognized unaided schools. The admission test can be held even when an eligibility condition of 50% aggregate marks is laid down by the Director in exercise of the power under Rule 144. Sub-rule (2) of Rule 145 makes the provision in the Chapter applicable to recognized unaided schools as well, relating to admissions. We are unable to agree with the submission of the learned counsel for respondents 1 to 3. If any such condition with regard to admission is laid down by the Director, making it applicable to recognized unaided schools, then, it would affect the power of the head of the recognized unaided schools. There are no such limitations on the power of the head of the recognized unaided school that he can regulate admission on the basis of admission test confining that test to the candidates having 50% marks in aggregate in the senior secondary examination. If the power under Rule 145 is conferred on the head of the recognized unaided school, then that would mean that candidates who have passed senior secondary examination would be eligible for undertaking the admission test. Even if such a power is vested in any authority then, it would be vested in the head of the recognized unaided school because the power of regulation is conferred on such a head of the recognized unaided school. So, in exercise of this regulating power vested in the head of a recognized unaided school, such like eligibility condition for undertaking admission test can be laid down by the head of the recognized unaided school.

If any instructions are issued by the Director under Rule 144, it would affect the power of the head of the recognized unaided school. That regulatory power is not in any way controlled by sub-rule (2) of Rule 145.

7. In our opinion, the above interpretation is borne out from the provisions contained in Rules 144 and 145 read together, as Rule 144 would be subject to Rule 145, and particularly sub-rule (2) of Rule 145. In this view of the matter, in our opinion, the petitioners have been wrongly denied the right to undertake the examination on the ground that they were ineligible for admission unless they satisfy the eligibility criteria of 50 per cent marks in aggregate. Under orders of this court dated 11th March, 1991, the petitioners were permitted to appear in the Nursery Teachers Training Part-1 examination.

8. This writ petition, in our opinion, in the light of what has been considered above, deserves to be allowed. Accordingly, the writ petition is allowed. The impugned communication of the Director, dated 24.1.1991 is set aside and the respondents are directed to declare the result of the petitioners as they have been rightly admitted to the aforesaid course. Parties to bear their own costs.

Petition allowed.