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(2007) 10 ADJ 615 : (2008) 26 LCD 330

ALLAHABAD HIGH COURT (LUCKNOW BENCH)

SHASHI SHARMA — Appellant

Vs.

STATE OF U.P.AND OTHERS — Respondent

(Before : Pradeep Kant, J and Shri Narayan Shukla, J)

Special Appeal No.346 of 2004

Decided on : 26-10-2007

A. Education Law — Teacher Training Courses — Special B.T.C. Course, 2004 — Eligibility criteria — Whether an advertisement restricting eligibility for B.Ed./L.T. degrees to only "regular" candidates, thereby excluding correspondence, modular, or distant learning courses, is legal and valid — Held that such a restriction is impermissible. (Paras 3, 4)

B. Statutory Interpretation — Teacher Eligibility — National Council for Teacher Education (NCTE) Act — Absence of specific rider in NCTE Act against correspondence courses — State Government's inability to impose restrictions not present in enabling legislation — Restrictions on eligibility based on mode of study (regular vs. distance) are invalid when NCTE Act does not make such a distinction. (Para 8)

C. Precedent — Binding Nature — Conflicting judgments — Prior Division Bench ruling (Gyanendra Kumar Sharma and others) on identical restriction — Present appeal adopting the reasoning of the prior Division Bench — High Court relying on its own previous Division Bench findings that such a restriction is not permissible. (Paras 6, 7, 9)

D. Remedial Action — Appointment of Teachers — Direction to State — Effect of quashing restrictive condition — State directed to consider appellant's candidature for Special B.T.C. Course, 2004, disregarding the

"regular candidate" condition — Immediate action for consideration given that reserved seats for appellants are vacant. (Para 9)

JUDGMENT

1. Heard the learned counsel for the appellants Sri Ramesh Pandey and Sri Alok Sinha, learned Additional Chief Standing Counsel for the State. Sri Sharad Tiwari appears for Indira Gandhi National Open University.

2. This is a bunch of special appeals containing similar facts and questions of law, therefore, the same are being decided by a common order. The questions involved are as under:

3. Whether the restriction imposed in the impugned advertisement excluding the candidates, who has not obtained B.Ed./L.T./ B.P.Ed./C.P.Ed./D.P.Ed. degrees as regular candidate for selection to the Special B.T.C. Course, 2004 is legal and valid and whether the correspondence course/modular course/distant learning course and any other course other than the regular course is an institutional course and are equivalent to regular course of B.Ed. for selection to the Special B.T.C. Course, 2004.

4. Petitions were filed for issuing a writ in the nature of mandamus commanding the opposite parties to consider the appellants' candidature for Special B.T.C. Course, 2004 and to issue a mandamus commanding the respondents to send the appellants for Special B.T.C. Course, 2004 and to consider their appointment on the post of Assistant Teacher. The appellants had also prayed for quashing the condition prescribed in the advertisement, as regards the requirement of B.Ed./L.T. Degree as regular student excluding the correspondence course for the purpose of Special B.T.C. Course, 2004. It was pleaded that the Government issued two orders on 14.1.2004 and 20.2.2004, and on the basis of these two Government Orders, Rajya Saikshik Anusandhan Evam Prashikshan Parishad, issued advertisements for selection to the Special B.T.C. Training Course, 2004. In these advertisements, it was prescribed that the candidates aspiring for Special B.T.C. Training Course should have B.Ed./L.t. degrees from the University as regular students.

5. There are conflicting orders passed by different Single Judges' Bench, which have been brought on record, wherein conflicting views have been taken. In the case of those petitioners, even the learned Single Judge, who has passed the present order has allowed the petition earlier, but this time he dismissed the writ petition. It is further being informed that those petitioners have already been given appointment.

6. It is the common case of both the sides that such type of restriction was imposed continuously thereafter, and lastly by means of the Government Order dated 10th July, 2007, the same was reiterated for Special B.T.C. Course, 2007 with the same restriction and the advertisement was also issued in the same manner. The advertisements of 2007 again became the subject matter of challenge and the learned Single Judge dismissed the

writ petition upholding the restriction imposed Special Appeal filed against the order of the learned Single Judge bearing number 1271 of 2007, in re: Gyanendra Kumar Sharma and 49 others v. State of U.P. and others, has been allowed vide judgment and order dated 3.10.2007 by the Bench consisting of Hon'ble the Chief Justice and Anjani Kumar, J. However, in earlier special appeals bearing number 981 of 2002: State of U.P. and others v. Smt. Madhu Bala and others and 461 of 2004: Devendra Singh and others v. State of U.P. and others, contrary view was taken.

7. There are different conflicting judgments of the learned Single Judge and also in two special appeals. In special appeal No.1271 of 2007, in re: Gyanendra Kumar Sharma and 49 others v. State of U.P. and others, the Court had an occasion to consider the same restriction. The Division Bench has reached the conclusion that there cannot be any restriction in the matter of selection for being sent for training on the aforesaid ground.

8. The Division Bench after considering the necessity of teachers found that there was paucity of teachers and qualified candidates being not available and the concern shown by the State Government for having maximum number of teachers and also the fact that the correspondence course is not excluded from the NCTE Act and no such rider is put by the NCTE Act, therefore, such a restriction cannot be imposed by the State Government.

9. We are in respectful agreement with the reasons given in the aforesaid judgment given in special appeal, as nothing could be argued, so as to dislodge the findings recorded by the aforesaid Bench. Since the controversy involved in the present special appeals is squarely covered by the judgment in the aforesaid special appeal of Gyanendra Kumar Sharma and 49 others, we, for the aforesaid reasons, set aside the order passed by the learned Single Judge dated 14.9.2004 and direct the State to proceed further in accordance with law with respect to the present appellants. We are informed that one seat each is reserved for all the appellants, which are lying vacant, therefore, immediate action be taken for considering the case of the appellants, ignoring the condition that they have not passed their B.Ed/L.T. course, as a regular candidate.

10. The special appeals are allowed. No order as to costs.