

Court No. - 74

Case :- WRIT - A No. - 2686 of 2021

Petitioner :- Pooja Tiwari

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Seemant Singh

Counsel for Respondent :- C.S.C.,Dhananjay Awasthi,Raghvendra Pratap Singh

Hon'ble J.J. Munir,J.

A detailed order was passed by this Court on 22.02.2021 which reads as under:

"Clause 23 of the Circular, dated 18.1.2020 requiring training qualification obtained after Graduation alone to be recognized for selection is assailed on the ground that minimum qualification for admission to diploma course is Intermediate and not Graduation. Attention of the Court has been invited to judgment of this Court in writ petition no. 23691 of 2018, decided on 17.4.2019 as also a judgment in writ petition no. 5981 of 2019. It is further contended that special appeal filed in the matter has also been rejected. Contention is that Clause 23, therefore, is contrary to the law settled by this Court and deserves to be set aside. According to petitioner, though he has been issued appointment letter, but his placement is not being made only on account of such clause.

Learned Standing Counsel as well as Sri Durga Singh, who has accepted notice on behalf of respondent no. 5 seeks ten days' time to obtain instructions in the matter.

It shall be open for the learned counsel for the respondent no. 5 to obtain instructions from the Director General and to file his affidavit.

Post this matter as fresh on 16.3.2021."

Again, on 22.03.2021, a month later, further time was granted to the learned Standing Counsel to seek instructions with a stop order which reads thus:

"Despite grant of opportunity learned Standing Counsel has not been able to obtain instructions. As a last indulgence, ten days' and no more time is allowed to learned counsel for the respondents to obtain instructions, in terms of the previous order passed.

Put up as fresh, once again, on 09.04.2021.

Learned Counsel representing respondent No.4 may also obtain instruction, in the meantime."

When the matter comes up today, the learned Standing Counsel does not have instructions. Learned counsel for the petitioner has invited the attention of the Court to the decision of this Court in **Writ A No. 23691 of 2018, Vikram Singh and 4**

others vs. State of U.P. and 3 others, decided on 17.04.2019 and another decision in **Writ A No. 5981 of 2019, Suraj Kumar Tripathi vs. State of U.P. and 3 others, decided on 10.05.2019**. In both these decisions, particularly that in Writ A No. 5981 of 2019, it has been held that the standard of Elementary Education Programme fixed by the NCTE Rule, 2014 would prevail over the provision carried in Rule 2(1)(q) of the U.P. Basic Education (Teachers) Service Rules, 1981, inasmuch as the NCTE Rule, 2014 have been framed under a Central legislation. The NCTE Rules envisage a Diploma in Elementary Education to teach classes 1 to 8 and appendix 2 to the NCTE Rule called the National Council for Teachers Education (Recognition Norms and Procedure) Regulations, 2014, provide as eligibility qualification for admission to the said post acknowledged candidates who have 50% marks in higher secondary or its equivalent examination. Admission to this Elementary Education Diploma is not based on a graduation. Therefore, Rule 2(1)(q) of the Rules of 1981 would not come to its aid. The petitioner has already been appointed *vide* order dated 5th December, 2020 to the post of Assistant Teacher. The said order has been issued by the Basic Shiksha Adhikari, Mainpuri. She has also joined in the office of the Basic Shiksha Adhikari but has not been allotted a school or permitted to function and paid salary because of the impugned Circular dated 18.01.2021 carrying Clause 23 which enforces adherence to Rule 2(1)(q) of the Rules of 1981. *Prima facie* Clause 23 of Circular dated 18.01.2021 is vitiated.

Admit.

Issue notice.

Notice on behalf of respondent no. 1 is accepted by the learned Standing Counsel. Mr. R.P. Singh accepts notice on behalf of respondent nos. 2 and 3. Mr. Dhananjay Awasthi accepts notice on behalf of respondent no. 4. All the learned counsel appearing on behalf of the respondents are granted four weeks time to file a counter affidavit.

List for orders on 22.07.2021 along with a report regarding status of pleadings.

Order on Civil Misc. Stay Application No. 1 of 2021

Issue notice.

Until further orders, operation of the impugned Circular dated 18.01.2021 only to the extent of Clause 23 thereof shall remain stayed and the petitioner shall be immediately allotted a school,

permitted to discharge her duties and paid salary regularly.

Let this order be communicated to the Basic Shiksha Adhikari, Mainpuri by the Registrar (Compliance) within **48 hours**.

Order Date :- 18.6.2021

Brijesh Maurya