

Court No. - 34

Case :- WRIT - C No. - 24528 of 2024

Petitioner :- Yashank Khandelwal And 9 Others

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar, J.

1. The present writ petition has been preferred for issuing direction to the respondent to permit the petitioners and other similarly situated candidates for admission to two year Diploma in Elementary Education 'hereinafter referred to as D. El. Ed.' 2024, with eligibility criteria for admission with intermediate certificate examination or equivalent qualification examination possessed by them, in the District Institute of Education and Training hereinafter referred as DIET and with a further prayer for quashing of the impugned Government Order dated 09.09.2024, so far as it prescribes the eligibility criterion of having pass a graduation course for admission in two years in D. El. Ed.' B.T.C, 2024 training course.

2. Learned counsel for the petitioners has submitted that a Government Order dated 09.09.2024 has been issued inviting applications for admission in the two years in D. El. Ed.' 2024 training course and the minimum eligibility educational qualification provided in the said Government Order is graduation, which is arbitrary, unreasonable, discriminatory and violate of Article 14 of the Constitution of India hence the present writ petition is preferred only to the extent for quashing of the said condition in the Government Order and permit the petitioners, who are intermediate to consider their candidature for admission in D. El. Ed. training course.

3. It is further submitted that D. El. Ed.' 2024 course is run by the institutions after the recognition granted by the NCTE. The NCTE has framed the norms and standards for D. El. Ed.' 2024 programme and clause 3.2 provides that the eligibility qualification provided for the candidates with at least 50% marks in the higher secondary (+2) or its equivalent examination are eligible for admission. The said eligibility qualification has

been enhanced to graduation by the State Government i.e. only a candidate who is graduate can apply for admission in D. El. Ed course.

4. It is further submitted that the petitioners are not disputing that the State Government is empowered to enhance the educational eligibility qualification and provide higher than the educational qualification provided by the NCTE, the apex body.

5. The present writ petition has been preferred as there is discrimination by adding higher qualification for certain class of candidates who have to take admission in the government run institutions i.e. DIET and the candidates who have to take an admission in 'D. El. Ed.' 2024 (special education) i.e. to teach students suffering from physical disability, the qualification is intermediate. So by the impugned condition in Government Order created a class within the class which is discriminatory and not permissible hence unconstitutional and liable to be quashed.

6. It is further submitted that in the private universities and the colleges, the minimum educational qualification required for admission in the diploma in elementary course is intermediate as provided by AICTE. Though these colleges are not governed by the Government Order dated 09.09.2024 but the petitioners will be affected for the reason that along with the two years training course candidate can also pursue the graduation course from correspondence course and they would be eligible for appointment on the post of Assistant Teacher within three years whereas, the petitioners would be eligible for appointment after five years i.e. two years for completing this course and three years for graduation, which is unreasonable and discriminatory. The said averment made in para 26 and 27 of the writ petition has not been denied in para 26 of the counter affidavit, in the counter affidavit, the reply is that contents of paragraph 24 to 29 of the writ petition need not reply and thereafter the reply given in para 26 is not related to the contents of para 26 and 27 of the writ petition.

7. It is further submitted that the condition putting higher qualification,, though the State is empowered to do it but there is no nexus with the purpose which may be sought to be achieved.

8. It is further submitted that even if it policy decisions taken by the State Government yet the courts can interfere if the same is unconstitutional, without jurisdiction or against any statutory provision. The said condition in the Government Order is violative of Article 14 of the Constitution of India hence unconstitutional and its judicial review is permissible. In support of his submission the learned counsel for the petitioners has placed reliance upon the judgment of Hon'ble Supreme Court in the case of ***Delhi Development Authority and another vs. Joint Action Committee, Allottee of SFS Flats and ors reported in (2008) 2 SCC page 672*** and the Division Bench Judgment of this Court vide order dated 27.05.2011 in the case of ***Har Pal Singh and ors vs. State of U.P.*** passed in Special Appeal No.371 of 2011 along with other connected matters ***Har Pal Singh and ors vs. State of U.P. and Ors.***

9. On the other hand learned State counsel has submitted that it is permissible for the State Government to prescribe higher qualification for the purposes of admission than what has been prescribed by the NCTE hence there is no illegality in imposing or putting such a condition in the Government Order. In support of his submission, the learned counsel State Counsel relied upon the judgment of Hon'ble Apex Court in the case of ***State of Tamil Nadu vs. S.V. Bratheep (minor) and ors reported in AIR 2004 SCC page 1861.***

10. The learned State Counsel has further submitted that as stated above that the judicial review is not permissible as the judicial review in the policy matter are permissible in case when the action of the Government is unconstitutional or contrary to a statutory provision and not when such action is not wise and in support of his submission the learned State Counsel has relied upon the judgment of the Supreme Court in the cases of ***Balco Employees' Union (regd.) vs. Union of India and Ors (2002) 2 SCC 333, S. Subramaniam Balaji vs. State of Tamil Nadu and Ors, (2013) 9 SCC 659 and Villianur Iyarkkai Padukappu Maiyam vs. Union of India and Ors, (2009) 7 SCC 561.***

11. It is further submitted that the higher qualification of graduation is required in Uttar Pradesh Basic Education (Teacher) Service (5th Amendment) Rules, 1998 hence without graduation, a candidate could not be permitted to take admission in the training programme and there is a nexus with the purpose sought to be achieved and there is no illegality in the same.

12. After hearing learned counsel for the parties going through the record of the case, the following two issues are to be considered by this Court:-

firstly, whether this Court could interfere in the present case in the policy matter/ policy decision taken by the State?

secondly, whether putting such a condition is arbitrary, unreasonable, discriminatory or unconstitutional?

13. The issue which the learned State counsel has raised that the State is empowered to prescribe higher education than provided by the NCTE, is not required to be addressed as it is not in dispute.

14. The power of judicial review is undisputedly and as per the law settled by this Court and the Hon'ble Apex Court is very limited. The judicial review as settled by judgment relied upon by both the sides i.e. in the case of **Delhi Development Authority and others Vs. Joint Action Committee, allottee of SFS Flats and others reported in (2008) 2 SCC 672** judicial review in policy matters is permissible on following grounds:

a. if it is unconstitutional;

b. if it is de hors the provision of the Act and regulation;

c. if the deligatee has acted beyond its power of delegation;

d. if the executive policy is contrary to the statutory or larger policy.

15. In the present case the petitioners have come with a case that for the admission in the same course i.e. D. El. Ed.', different qualification has been prescribed for different colleges or the institutions. For the admission in the DIET, belonging to the government, the qualification prescribed for admission in D. El. Ed.' 2024 is graduation and at the same time admission in the DIET in the same course having (special education) which is required

for teachers for imparting education to the students suffering from physical disability, the qualification prescribed is intermediate. The said submission of learned counsel for the petitioners is not disputed by learned State Counsel, as would be evident from the averment made in para 28 of the counter affidavit in reply to para 36 of the writ petition so the State has created a class within the class which is not permissible and violative of Article 14 of the Constitution of India.

16. As far as the private institutions and universities are concerned who also run the same course the eligibility qualification for admission those institutions is only intermediate. Though the Government Order is not applicable and they are different class but at the same time, it is noticeable that the candidates who get admission in these private universities and the colleges, they could pursue their training as well as graduation course simultaneously and become eligible and qualified for appointment on the post of Assistant Teacher under the State within a period of three years whereas the petitioner would become eligible after five years, so they will be deprived for two years more to participate in selection for appointment on the post of Assistant Teacher and the same is arbitrary and results in discrimination.

17. The submission of learned State Counsel that there is a nexus for the purpose sought to achieved is concerned, the Rules, 1998, made by the Government provides that for appointment on the post of teacher, the candidate must be graduate and having training certificate, so there is no illegality in putting this condition of higher qualification in the Government Order, it is not acceptable, for the reason the requirement of graduation arises at the time of appointment. The Rules has been relied by the State in its counter affidavit is for appointment not for admission in the training programme. These two are totally different things, one relates to admission in the training course and other relates to appointment on the post of teacher. So this classification is not intelligible and not rational and has no nexus with the purpose sought to be achieved.

18. The Hon'ble Apex Court in the case of ***Tamil Nadu and another vs. National South Indian River Interlinking Agriculturalist Association*** in (Civil Appeal No.6764 of 2021), where the question under consideration was grant of loan waiver only to small and marginal farmers, though the issue was different but the ratio of the judgment dated 23.11.2021 passed by the Hon'ble Supreme Court are relevant for the adjudication of the present case. The Hon'ble Apex Court has held, that the Court can interfere with the policy of the Government only when the action is unconstitutional or contrary to statutory provision and violate Article 14 of the Constitution of India. The Hon'ble Apex Court has also relied upon the judgment in the case of ***State of West Bengal and ors vs. Anwar Ali Sarkar reported in 1982 SCR 284***, where it has been held, that the classification must be based on an intelligible differentia which distinguishes person or things that are grouped, from others left out of the group and the differentia must have the rational relationship to the object sought to be achieved. The Hon'ble Supreme Court has also relied upon the judgment in the case of ***E.P. Royappa vs. State of Tamil Nadu, (1974) 4 SCC 3***, wherein the Hon'ble Supreme Court has held, that the Court follows the two pronged test to determine, if there has been a violation of Article 14 of the Constitution of India. The test requires the court to determine, if there is a rational nexus with the object sought to be achieved and held that arbitrariness of State action is sufficient to constitute the violation of Article 14 of the Constitution of India.

19. In the present case as discussed above, the State Government by putting the said impugned condition for getting admission in the same institute by creating two groups/ class, one who are aspirant for admission in D. El. Ed.' 2024 and one those who are interested in D. El. Ed.' 2024 (special education) in the Government Institute i.e. DIET, for one the minimum eligibility qualification is graduation and for the other it is intermediate. This is nothing but creating a class within the class, which is arbitrary, discriminatory and violative of Constitution of India.

20. As discussed above that the State tried to justify its action and intelligible differentia only by placing reliance upon the Rules, 1998, which has no

nexus with the purpose sought to be achieved as Rules, 1998, are for the appointment on the post of teacher not for admission in the training course.

21. The petitioners have been rendered ineligible for the admission in the training course in the DIET though remained eligible for admission in D.El.Ed (Special Education). *No qualitative difference in said two courses has been pointed out by the State.* There is no reasonable ground to have any different qualifications for admission in one class of DIET therefore, it is arbitrary. No special purpose is going to be achieved by enhancing the eligibility condition for the course in DIET. It is also against larger policy as prevalent in all institutions in general all over India, where the eligibility criterion is intermediate for admission in D.El.Ed. course. The qualification of graduation has been provided for one such course in DIET otherwise in general the eligibility criterion is only intermediate for D.El.Ed course.

22. Article 14 of the Constitution of India deals with discrimination and equality, arbitrariness and reasonableness. The arbitrariness is anti-thesis of reasonableness. All these ingredients are present in case in hand hence, the condition number (a) and (d) are attracted i.e. (a) if it is unconstitutional and (d) if the executive policy, is contrary to the statutory or larger policy as per the law laid down by the Hon'ble Supreme Court in the case of Delhi Development Authority (*supra*).

23. At this stage, learned State Counsel has submitted that the process has already been initiated and in between the same cannot be changed and submitted that the condition may not be quashed. The said submission of learned State Counsel has force but at the same time the petitioners have approached this Court on 26.07.2024 and they have been vigilant for their rights. The process has started from 18.09.2024 and it would be completed on 12.12.2024 hence this Court directs the respondents to permit the petitioners to participate in the admission process for admission in the training course.

24. The impugned clause 4 in the Government Order dated 09.09.2024 to the extent for imposing condition of graduation in D. El. Ed.' 2024 course is

hereby quashed with prospective effect as the selection process has already started.

25. In the result, the writ petition is ***allowed***.

Order Date :- 24.9.2024

C. MANI