

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP (C)4024/2002**

Reserved on: August 7, 2009

Pronounced on: August 13, 2009.

ALL INDIA ASSOCIATION OF TEACHER EDUCATORS

...Petitioner

! Through: None.

VERSUS

\$ UNIVERSITY OF DELHI & ORS. Respondents

^ Through: Mr. Amit Bansal, Advocate

CORAM:-

HON'BLE MR. JUSTICE V.K.JAIN

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? yes
2. To be referred to the Reporter or not? yes
3. Whether the Judgment should be reported in the Digest? Yes

V.K.Jain, J.

1. The petitioner is a society with university teachers as its members. Respondent No. 2, University of Delhi, vide advertisement No. Estab. IV/Advt./168/2001 dated 9th February, 2001 and Estab. IV/Adv./171/2001 dated 18th June,

2001 advertised for the posts of Professor and Lecturer in Education and prescribed the following qualifications for these posts:

“Professor (Except Social Work):

An eminent Scholar with published work of high quality, actively engaged in research, with 10 years of experience in post-graduate teaching, and/or experience in research at the University/National Legal institutions including experience of guiding research at doctoral level.

Or

An outstanding scholar with established reputation who has made significant contribution to knowledge.

Reader (Except Social Work) : *Good academic record with a doctoral degree or equivalent published work. In addition to these, candidates who join from outside the University system, shall also possess atleast 55% of the marks or an equivalent grade of B in the 7 point scale with latter grades O,A,B,C,D,E and F at the Master’s degree level. Five years of experience of teaching and/or research excluding the period spent for obtaining the research degrees and has made some mark in the areas of scholarship as evidenced by quality of publications, contributions to educational innovation, design of new courses and curricula.”*

2. On the other hand, vide Gazette Notification published in Gazette of India Extra Ordinary, Part-III, Section IV, the following qualifications were prescribed by respondent No. 3, National Council for Teacher Education (hereinafter referred to as NCTE), for teaching staff:

“Qualification of Teaching Staff

(a) Professor

M.Ed. or M.A. (Education)

Ph.D. or equivalent published research work

At least 10 years experience of teaching in teacher education institutions at post graduate level.

Or

An outstanding scholar with established reputation who has made significant contribution to knowledge.

(b) Reader

Good academic record with M.Ed. or M.A. (Education)

Ph.D. or equivalent published research work

At least 5 years’ experience of teaching education.

(c) Lecturer

Good academic record with M.Ed./M.A. (Education) with 55% marks.

Or

Good academic record with Master’s Degree with 55% marks in the relevant school subject with M.Ed. /M.A. (Education) with 58% marks.

(d) A relaxation of 5% may be provided from 55% to 50% of the marks, at the master’s level for the SC/ST category.

(e) Apart from the qualifications prescribed at (a), (b) and (c) above, the candidates shall be required to have such other qualifications as may be prescribed by other regulatory bodies like the University Grants Commission (UGC), etc.”

3. The case of the petitioner is that the qualifications laid down in the advertisements issued by respondent No. 1 are contrary to those prescribed in the gazette notification since there is no requirement of the candidates possessing the B.Ed., M.Ed., M.A. (Education) or Ph.D. in Education, which are the requirement laid down in the gazette notification. The petitioner has, therefore, sought quashing of the notification issued by respondent No. 1 on 9th February, 2001.

4. In their counter affidavit, respondents No. 1 and 2 have admitted the advertisements purportedly issued by them and have stated that the qualifications mentioned in the advertisements are those which have been laid down in the relevant statutes and ordinances of the university. It has been further alleged that the essential qualifications as stipulated in their advertisements do not debar the candidates, who possess qualifications of M.A., M.Ed. etc. and such candidates are duly considered for the posts of Professors, Readers etc. While admitting that they have made appointments on the basis their advertisements, the respondents No. 1 & 2 have denied having ignored the norms and standard as laid down in the gazette notification.

5. In its short counter affidavit, the respondent No. 3 has stated that it is a regulatory body, set up under an Act of Parliament, to

ensure planned and coordinated development of Teachers' Education and to determine and maintain standard for teachers education. It has been alleged that respondent No. 3 has already laid down regulations prescribing norms and standard for recognition of various teacher education programmes including B.Ed. and M.Ed. programmes, and the same have been circulated to all the State Governments and Universities for implementation. It has been further stated that in view of notification of the regulations, the same have to be strictly followed while making appointments of the teaching staff for various teacher education programmes.

6. Respondent No.3, National Council for Teacher Education Act, 1993, has been set up under Section 3 of the National Council for Teacher Education Act, 1993. Section 2(e) of the Act defines 'Institution' to mean an institution which offers course or training in teacher education. Section 2(l) and 2(m) which define 'teacher education' and 'teacher education qualification' respectively read as under:

"2. Definitions-

(l) "teacher education" means programmes of education, research or training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools, and includes non-formal

education, part-time education, adult education and correspondence education;

(m) "teacher education qualification" means a degree, diploma or certificate in teacher education awarded by a University or examining body in accordance with the provisions of this Act."

7. Section 12 of the Act, to the extent it is relevant, reads as under:

"12. Functions of the Council-

(d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognised institutions;

8. Section 14(1) of the Act reads as under:

"14. Recognition of institution offering course or training in teacher education-(1) *Every institution offering or intending to offer a course or training in teacher education on or after the appointed day may, for grant of recognition under this Act, make an application to the Regional Committee concerned in such form and in such manner as may be determined by the regulations;*

Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee."

9. Section 16 of the Act reads as under:

16. Affiliating body to grant affiliation after recognition or permission by the Council- *Notwithstanding anything contained in any other law for the time being in force, no examining body shall, on or after the appointed day-*

(a) grant affiliation whether provisional or otherwise, to any institution; or

(b) hold examination whether provisional or otherwise, for a course or training conducted by a recognised institution,

Unless the institution concerned has obtained recognition from the Regional Committee concerned, under section 14 or permission for a course or training under section 15.

10. Section 17(4) of the Act reads as under:

“17. Contravention of provisions of the Act and consequences thereof.

(4) If an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition under sub-section(1), or where an institution offering a course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central Government, any State Government or University, or in any school, college or other educational body aided by the Central Government or any State Government.

11. Section 32 of the Act to the extent it is relevant reads as under:

“32. Power to make regulations.- (1) *The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, generally to carry out the provisions of this Act.*

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(d) the norms, guidelines and standards in respect of-

(i) the minimum qualifications for a person to be employed as a teacher under clause(d) of section 12;

(ii) the specified category of courses or training in teacher education under clause(e) of section 12;

(iii) starting of new courses or training in recognised institutions under clause (f) of section 12;

(iv) standards in respect of examinations leading to teacher education qualifications referred to in clause (g) of section 12;

(v) the tuition fees and other fees chargeable by institutions under clause (h) of section 12;

(vi) the schemes for various levels of teachers education; and identification of institutions for offering teacher development programmes under clause (l) of Section 12;

(e) the form and the manner in which an application for recognition is to be submitted under sub-section (1) of section 14;

(h) conditions required for the proper conduct of a new course or training and conditions for granting permission under clause (a) of sub-section (3) of section 15;

12. It is evident from a reading of the above referred provisions of the National Council for Teachers Training Act, 1993, that every institution offering or intending to offer a course or training in teacher education on or after appointed day, is required to obtain recognition from National Council of Teacher Education. An institution which was already offering a course of training in teacher education, on the appointed day, was entitled to continue such course or training for a period of six months, provided it had made an application for recognition within that period and until the disposal of its application by the Regional Committee. As

provided in sub-section 4 of Section 17, if an institution offering a course or training in teachers' education immediately before the appointed day fails or reflects to obtain recognition or permission under the Act, the qualifications in teacher education, obtained pursuant to such course or training or after undertaking a course or training in such institution, is not to be treated as a valid qualification for obtaining employment under the Government or in a University School, College or other education institutions aided by the Government. The appointed day, as defined in Section 2(a) of the Act means the date of establishment of National Council for Teacher Training. Therefore, neither Delhi University nor its departments can offer a course or training in Teacher Education, without obtaining recognition from Respondent No.3.

13. In view of the provisions of Section 16 of the Act, no university including Delhi University can either grant affiliation to any institution or hold examination for a course or training conducted by a recognised institution, unless the institution has obtained recognition from the Regional Committee concerned under Section 14 or permission for a course or training under Section 15 of the Act.

14. Every institution recognized by National Council for Teacher Education is duty bound to follow the regulations framed

by the Council and in fact, Section 17 of the Act provides for withdrawal of recognition of an institution which contravenes the rules or regulations framed under the Act. Therefore, the regulations framed by Respondent No.1 are statutorily binding on University of Delhi as well as all its departments.

15. It is not in dispute that in exercise of the powers conferred upon it by Section 32 of the Act, the Council has framed norms and standards for various programmes including Elementary Teacher Education Programme, Secondary Teacher Education Programme (B.Ed.), Masters of Education Programme (M.Ed.).

16. A bare comparison of the qualifications laid down in the regulations framed by Respondent No.3 with the qualifications mentioned in the impugned advertisement would show that the qualifications laid down in the advertisements are different from the qualifications laid down by Respondent No.3. For Professor, Respondent No.3 has prescribed qualification of M.Ed. or M.A.(Education) with Ph.D. or equivalent published research work, with at least ten years experience of teaching in teacher education institutions at post-graduate level. On the other hand, the University has prescribed only ten years' experience in post-graduate teaching and/or experience in research at the

University/National Level Institution. The University does not insist upon the appointee being M.Ed. or M.A. (Education). The University permits ten years experience in research though the regulations framed by Respondent No.3 do not recognize such experience for the post of Professor. Similarly for the post of Reader, Respondent No.3 has prescribed good academic record with M.Ed. or M.A.(Education) with Ph.D. or equivalent published research work and at least five years experience work of teacher education whereas the University does not insist upon the appointee being an M.Ed. or M.A.(Education). The University also recognizes experience of research though it is not recognised by Respondent No.3. It is thus quite clear that the minimum educational qualification and experience fixed by the University are not at par with and in fact are lower than the qualifications and experience prescribed in the regulations made by Respondent No.3.

17. It was contended by learned counsel for Respondents No.1 and 2 that the qualifications stipulated in the advertisement issued by the University are only minimum qualifications and since selection is made by a Selection Committee consisting of eminent persons, it is unlikely that an unsuitable person would be selected by the University for appointment in its Education Department.

The Court does not have material before it to find out whether the persons appointed by the University from time to time, in its Education Department, possessed the qualifications and experience prescribed by Respondent No.3 or not. The fact remains that if the advertisement issued by the University stipulates qualifications lower than the experience and qualifications laid down in the regulations made by Respondent No.3, a person who does not possess the qualifications and experience prescribed in the regulations but fulfils the qualifications and experience laid down in the advertisements issued by the University can stake a claim for consideration on the ground that he fulfils the qualifications as well as experience laid down by the University. In any case, unless the Court insists upon strict compliance of the regulations made by Respondent No.3, in the matter of educational qualifications and experience of the candidates appointed as teachers in its Education Department, nothing comes in the way of University of Delhi appointing a person who does not fulfil the qualifications and experience prescribed in the regulations. The University cannot claim any right to appoint a person who does not possess the qualification or experience prescribed in the regulations, made by Respondent No.3.

18. For the reasons given in the preceding paragraph, it would be necessary to issue a writ of mandamus directing Respondent No.1 – University of Delhi not to appoint any teacher for teaching in its Education Department unless he fulfils the educational qualifications and experience as laid down in the regulations framed by Respondent No.3 – National Council for Teacher Education, in this regard from time to time. Ordered accordingly.

(V.K. JAIN)
JUDGE

August 13, 2009.
‘acm’/‘sn’