

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

SPECIAL APPEAL NO. 235 OF 2023

25TH JULY, 2023

BETWEEN:

Arvind Singh

.....Appellant.

And

State of Uttarakhand & others

....Respondents.

Counsel for the Appellant : Mr. Reituparna Joshi, learned counsel.

Counsel for the State : Mr. Vikas Pande, learned Standing Counsel.

Counsel for the Respondent No.5 : Mr. C.K. Sharma, learned counsel.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

The present special appeal is directed against the order dated 31.03.2023, passed by the learned Single Judge, in Writ Petition (S/S) No.490 of 2023, whereby the appellant's said writ petition has been dismissed.

2. The appellant has assailed the cancellation of his candidature for the post of Assistant Teacher (L.T. Grade) on the ground of his not possessing the requisite prescribed qualification.

3. Admittedly, the petitioner possesses Diploma in Physical Education (D.P.Ed.). The prescription of the minimum qualification for the said post is Bachelor of Physical Education (B.P.Ed.). The case of the petitioner, in the writ

petition, was that the matter relating to the equivalence of Diploma in Physical Education with Bachelor in Physical Education had been referred by the State Government to the National Council for Teacher Education (*for short 'NCTE'*). The petitioner claimed that the NCTE had not given its opinion on the issue of equivalence of the said two courses. Consequently, the learned Single Judge dismissed the writ petition since the Court cannot go into the issue of equivalence.

4. We have heard learned counsel for the appellant.

5. We are not inclined to interfere with the impugned order, insofar as the learned Single Judge opined that it is not for the Court to determine the equivalence, and since the petitioner did not have the minimum qualification of B.P.Ed., his candidature was rightly rejected. At the same time, we are of the view that the observation made by the learned Single Judge to the effect that “*even otherwise also, D.P.Ed. (Diploma in Physical Education) cannot be treated as equivalent to B.P.Ed. (Bachelor in Physical Education)*”, was not called for, since the issue of equivalence, according to the petitioner-appellant, was pending consideration before the NCTE.

6. We, therefore, dismiss this appeal while making it clear that it shall be open to the NCTE to take a decision of

equivalence of the aforesaid two courses on its own merit without being influenced by the observations made by the learned Single Judge. The NCTE should take a decision on the issue of equivalence within the next three months.

7. A copy of this order be communicated to the NCTE, as well as their Standing Counsel Mr. Yogesh Pacholia, by the Registry.

8. The appeal is accordingly dismissed.

9. Since we have examined the appeal on its merits, we are not going into the issue of delay of 65 days in preferring the special appeal.

10. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 25th July, 2023

NISHANT