

Court No. - 21

Case :- CIVIL MISC REVIEW APPLICATION No. - 44 of 2023

Applicant :- Sanjiv Kumar Tiwari And 11 Others

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Taniya Pandey

Counsel for Opposite Party :- C.S.C., Archana Singh

Hon'ble Manoj Kumar Gupta, Acting Chief Justice

Hon'ble Donadi Ramesh, J.

1. Heard Ms. Taniya Pandey, learned counsel for the applicants (petitioners), Sri Rajiv Gupta, learned Additional Chief Standing Counsel for the State-respondents and Ms. Archana Singh, learned counsel for respondent no. 3.

2. The challenge advanced was to Rule 8(ii)(c) of the U.P. Basic Education (Teachers) Service (Twenty Third Amendment) Rules, 2019 in so far as the same prescribed the requirement of minimum qualifying marks in the Assistant Teacher Recruitment Examination for eligibility in appointment to the post of Assistant Teacher for Siksha Mitra only.

3. The contention of learned counsel for the petitioners was that there was no such prescription in the Act and the Regulations framed by National Council for Teachers Education. The challenge was repelled by the judgment passed by a Co-ordinate Bench. It has been held that the said additional prescription was uniformly applied for all the candidates. There was no discrimination made against the petitioners. Therefore, the Rule cannot be struck down. In coming to the said conclusion, the Division Bench relied on the judgment of Supreme Court in **Ram Sharan Maurya & Others vs. State of U.P. & Others, AIR 2021 SC 954**. The instant review application is against the said judgment.

4. In para 12 of the judgment, it has been observed that the Assistant Teacher Recruitment Examination was held twice in the year 2018-19. The petitioners, who were Shiksha Mitra, had not made any averment as to whether they had appeared in the recruitment of the year 2018-19 and this amounts to suppression of material facts. It is urged that the said observations in the judgment under review is against

the record. In para 29 of the writ petition it was duly disclosed that the petitioners had appeared in the Assistant Teacher Recruitment Examination 2018 conducted on 27.05.2018, but the petitioners were declared failed on account of prescription of a cut off percentage, which the petitioners failed to achieve.

5. Ms. Archana Singh, learned counsel appearing on behalf of respondent no. 3 fairly concedes that judgment under review wrongly mentions that the petitioners had not disclosed as to whether they had appeared in the recruitment held in the year 2018-19. She has no objection in case the observation made in this regard is corrected. However, she submits that it would not affect the ultimate outcome of the writ petition as it has not been dismissed on the ground of suppression of facts alone but also on merits. This, according to her, is evident from para 16 of the judgment wherein the challenge to the vires of Rules has been negated on the ground that the prescription of additional eligibility qualification has been applied uniformly to all candidates and no discrimination was meted out to the petitioners.

6. We are in complete agreement with the submission of learned counsel for respondent no. 3. Although, we find that recital in para 12 of the judgment is not correct in so far as it mentions that petitioners had not disclosed information as to whether they had appeared in the Assistant Teachers Recruitment Examination held in year 2018-19, but it would have no bearing on the ultimate outcome of the writ petition inasmuch as the challenge to the vires of the Rules has been negated on merits. The contention that such a provision has been made only for Shiksha Mitra, was not found correct. The provision in this regard was found to be applicable to all the candidates.

7. The instant review application is accordingly disposed of by clarifying that there was no suppression of any fact as the applicants had duly disclosed that they had appeared in the recruitment held in the year 2018-19 but had failed. However, the writ petition would stand dismissed as the above clarification does not affect the merits of the judgment under review.

(Donadi Ramesh, J.) (Manoj Kumar Gupta, A.C.J.)

Order Date :- 1.12.2023/Ruhi H.