

Court No. - 1

Case :- WRIT - A No. - 9641 of 2023

Petitioner :- Mahesh Prasad And 470 Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Basic Education
Deptt.U.P.Govt. Civil Sectr. Lko. And Others

Counsel for Petitioner :- Bhuvan Dwivedi

Counsel for Respondent :- C.S.C.,Ran Vijay Singh,Sudhanshu Chauhan

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

1. Heard learned counsel for the petitioners and learned counsel appearing for the respondents.

2. A Notification was issued by National Council for Teacher Education on 28.06.2018 whereby B.Ed. degree was included as an eligibility criteria for appointment of candidates on the post of Assistant Teacher in Classes I to V. Amendments in the statutory rules were accordingly made in the State of U.P. In the State of Rajasthan, advertisement issued for appointment of the Assistant Teachers did not include such a qualification for appointment of Assistant Teachers in Primary Schools, hence the dispute arose before the High Court of Rajasthan in this regard.

3. Two fold disputes cropped up before the High Court of Rajasthan in the wake of Notification by the NCTE issued on 28.06.2018; one set of petitioners agitated the grievance that the State ought to include B.Ed. qualification as eligibility criteria for appointment of Assistant Teacher in Classes I to V, whereas, the other category of petitioners assailed the very issuance of the Notification dated 28.06.2018 and questioned its validity on the ground of being unconstitutional. The Rajasthan High Court ultimately after due consideration of the matter had declared the Notification dated 28.06.2018 as ultra vires on 25.11.2021. However, some observations as regards the acts done were also made by the Rajasthan High Court before the Notification was declared as ultra vires. The question as to the validity of notification dated 28.06.2018 went to the Apex Court as against the Rajasthan High Court judgment. The Hon'ble Apex Court while upholding the Rajasthan High Court judgment has made certain observations in its judgment reported in **2023 SCC OnLine SC 985; Devesh Sharma Vs. Union of India and others**. Paragraphs 80 to 84 for our purpose are relevant and the same are extracted herein below :

"80. In our considered opinion therefore the direction of the Central Government dated 30.05.2018 culminating in the notification dated 28.06.2018 of NCTE are violative of the principles as laid down in RTE Act. Not only this, the notification goes against the purpose and the mandate of law, which is to provide a meaningful and 'quality'

primary education to children.

81. The entire exercise is also procedurally flawed. The notification dated 28.06.2018 is not an independent decision of NCTE taken after due deliberation, but it simply follows the direction of the Central Government, a direction which fails to take into consideration the objective realities of the day.

82. Having made the above determination we, all the same, are also of the considered opinion that the State of Rajasthan was clearly in error in not calling for applications from B.Ed. qualified candidates, for the reasons that till that time when such an advertisement was issued by the Rajasthan Government, B.Ed. Candidates were included as eligible candidates as per the statutory notification of NCTE, which was binding on the Rajasthan Government, till it was declared illegal or unconstitutional by the Court. The Rajasthan High Court had rightly observed as under :

".. we are of the opinion that the State Government could not have ignored the notification while inviting applications for REET. Even if the State Government was of the opinion that such notification was unconstitutional or for any reason illegal, the same had to be stayed or set aside by a competent court before it could be ignored.

83. What the Rajasthan High Court had stated above is the settled legal position. In a recent three Judge judgment of this Court in State of Manipur v. Surjakumar Okram, this position that a statute which is made by a competent legislature is valid till it is declared unconstitutional by a court of law; has been reiterated.

84. Consequently, the Appeals are dismissed and the judgment dated 25.11.2021 of the Rajasthan High Court is upheld. The notification dated 28.06.2018 is hereby quashed and set aside. The Writ Petitions and all pending applications stand disposed of in light of the above order".

4. As a consequence of the judgment rendered by Hon'ble the Apex Court upholding the judgment of Rajasthan High Court on 11.08.2023, the NCTE has issued necessary directions to all the States on 04.09.2023 whereby necessary rectification in the statutory rules or notification issued for including B.Ed. as a eligibility qualification for appointment of Assistant Teacher has been directed to be made.

5. It is not the case before us that the State of U.P. has not agreed to the implementation of the communication issued by the NCTE on 04.09.2023. That being so, we see no reason for the petitioners to assail the amendment made in the Rules which were notified in furtherance of NCTE notification dated 28.06.2018. Once the NCTE has issued instructions for implementation of

Hon'ble Apex Court's judgment in letter and spirit, we do not see any cause for the petitioners to question the validity of the rules impugned herein. The State Government, however, is hereby directed to take the decision in furtherance of the communication of NCTE dated 04.09.2023 at the earliest and act upon the Notification in accordance with law.

6. With the aforesaid observations/directions, the writ petition is accordingly **disposed of**.

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[Om Prakash Shukla, J.] [Attai Rahman Masoodi, J.]

Order Date :- 19.12.2023

Sanjay