

Neutral Citation No. - 2025:AHC:85144

Reserved on 14.05.2025

Delivered on 21.05.2025

Court No. - 6

1. Case :- WRIT - A No. - 5045 of 2016

Petitioner :- Hem Singh And 21 Others

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- Ashok Kumar Singh, C.S.C., Santosh Kumar, Shyam Krishna Gupta

2. Case :- WRIT - A No. - 3721 of 2016

Petitioner :- Sudesh Kumar Tiwari And 8 Ors.

Respondent :- State Of U.P. And 5 Ors.

Counsel for Petitioner :- Siddharth Khare, Sr. Advocate

Counsel for Respondent :- , C.S.C., Prem Prakash Yadav, Vikram Bahadur Singh

3. Case :- WRIT - A No. - 3773 of 2016

Petitioner :- Raj Kumar Pal And 10 Ors.

Respondent :- State Of U.P. And Anr.

Counsel for Petitioner :- Kailash Singh Kushwaha

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Shyam Shamshery, J.

1. In the present bunch of writ petitions petitioners have set up a case that they have participated in BTC Training Course-2008, however, their training were conducted only in the year 2010-11 and finally they were permitted to appear in examination in the years 2011 to 2013 and certificates were issued thereafter. Due to such huge delay, petitioners were not considered for appointment and they claimed that they can still be considered.

2. In some of the writ petitions there is challenge to a notification dated 21.08.2015 passed by Director of Education (Basic), U.P., Lucknow whereby in similar circumstances an opportunity was granted to Special BTC Trained candidates to participate in recruitment process of 15000 Assistant Teachers having qualifications in terms of relevant provisions.

3. Sri Ashok Khare, learned Senior Advocate assisted by Kauntey Singh, Advocate and Sri Kailash Singh Kushwaha, Advocate for petitioners, submitted that delay was due to State and petitioners were not on fault. They should be considered in terms of qualification as in the year 2004 though some of the petitioners have passed subsequently UP TET also. However, it is not on record, whether the petitioners have participated in recruitment process of such Special BTC Training for recruitment of 15000 Assistant Teachers.

4. Aforesaid submissions are opposed by Sri Ashish Kumar Nagwanshi, learned Additional Chief Standing Counsel and Sri Shivendra Singh Bhadauria, Sri Vijendra Mani, Sri Ashok Kumar Singh and Sri Vikram Bahadur, Advocates for Respondents have opposed the aforesaid submissions.

5. I have considered the above submissions and is of the opinion that the issue involve in this writ petition has already been considered by this Court in **Krishna Kushwaha and another vs. State of U.P. and others, 2025:AHC:65788** and for reference the judgment in its entirety is reproduced hereinafter:

“1. Heard Sri Yash Singhal, Advocate holding brief of Sri Kartikeya Saran, learned counsel for petitioner and Sri Rajeshwar Tripathi, learned Chief Standing Counsel for State.

2. In the present case, petitioners are harping on a lost battle on factual as well as on legal grounds. The petitioners have set up a case that they have applied for Special B.T.C. in the year 2004, however, initially their candidature was rejected on ground that they have passed B.Ed. from a correspondence course.

3. The position was clarified and petitioners were allowed to participate in Special B.T.C. in 2014 and thereafter their claim for appointment of post of Assistant Teacher was rejected by an reasoned order dated 23.06.2015 and relevant part thereof is mentioned hereinafter:-

“उ०प्र० बेसिक शिक्षा (अध्यापक) सेवा नियमावली- 1981 में विहित न्यूनतम शैक्षिक एवं प्रशिक्षण अर्हता एवं मा० उच्च न्यायालय की वृहद पीठ द्वारा टी०ई०टी० को अनिवार्य योग्यता मान्य किये जाने के पश्चात बिना टी०ई०टी० अर्हता के किसी अभ्यर्थी की नियुक्ति परिषदीय जूनियर बेसिक स्कूलों में

सहायक अध्यापक के पद पर किया जाना सम्भव नहीं है। वि०बी०टी०सी० 2004 की चयन कार्यवाही पूर्ण हो चुकी है और इसके उपरान्त भी रिक्त पदों को भरने हेतु समय-समय पर विभाग द्वारा विज्ञप्ति प्रकाशित कर अध्यापकों की भर्तियां की गयी है। पुनः वर्ष 2014 में प्राथमिक विद्यालयों में सहायक अध्यापकों के अवशेष रिक्त पदों को भरने हेतु 15000 रिक्तियां विज्ञापित की गयी है। यद्यपि इस विज्ञापन के सापेक्ष आनलाइन आवेदन करने की अंतिम तिथि समाप्त हो चुकी है किन्तु अभी चयन सूची बनाने की कार्यवाही प्रारम्भ नहीं हुई है। ऐसी स्थिति में ऐसे याचीगण जो टी०ई०टी० उत्तीर्ण हो, वे वर्तमान में परिषदीय जूनियर बेसिक स्कूलों हेतु 15000 सहायक अध्यापक के पदों पर गतिमान उपरोक्त चयन प्रक्रिया में, यदि इच्छुक हों, आवेदन कर सकते हैं। उनके लिए आनलाइन आवेदन किये जाने हेतु अवधि बढ़ाने हेतु सचिव, बेसिक शिक्षा परिषद, उ०प्र० इलाहाबाद द्वारा शासन से अनुमति प्राप्त की जायेगी और एन०आई०सी० से सम्पर्क कर ऐसे याचीगणों के लिए आनलाइन आवेदन की सुविधा उपलब्ध करायी जायेगी। तत्क्रम में याचीगण द्वारा आवेदन किये जाने पर अन्य अभ्यर्थियों की भांति नियमानुसार उनके चयन पर विचार किया जायेगा।

एतद्वारा याचिका सं०- 10018/2015 राजीव वर्मा व 102 अन्य में मा० उच्च न्यायालय द्वारा पारित आदेश दिनांक 19.02.2015 के समादर में याचीगण का प्रत्यावेदन उपरोक्तानुसार निस्तारित किया जाता है।”

4. *The aforesaid order is impugned in the present case. The petitioners have also challenged a recruitment process, initiated by a circular dated 11.12.2014 to fill up the remaining post on 15000, which also included an eligibility of T.E.T. Certificate.*

5. *Learned counsel for petitioners has tried to convince the Court that petitioners were before this Court since 2004 and ultimately after 10 years he was allowed to pass Special B.T.C., therefore, his eligibility as required in the year 2004 be considered to be sufficient and he may be considered against still vacant posts in said recruitment process*

6. *However, a judgment placed by counsel for respondent, recently passed in case of Ankita Thakur & Ors. Vs. The H.P. Staff Selection Commission and Ors., 2023 SCC OnLine SC 1472, the submission that petitioners still have a right even after 20 years, has no legal basis. For reference, paragraph No.39 of it is mentioned hereinafter :-*

“58. It is well settled that an employer cannot be forced to fill all the existing vacancies under the old Rules. The employer may, in a given situation, withdraw an advertisement and issue a fresh advertisement in conformity with the new or amended Rules [See : State of M.P. v. Raghuveer Singh Yadav (supra)]. Even a candidate included in the merit list has no indefeasible right to appointment

even if the vacancy exists (See : Shankarsan Dash v. Union of India, (1991) 3 SCC 47). Issue No. (vii) is decided accordingly.”

7. The other argument that there are remaining vacancies, is also factually incorrect since in impugned order itself, it was specifically mentioned that for remaining vacancies of Special B.T.C. 2004 a fresh recruitment process was initiated by impugned advertisement for 15000 vacancies, however, since TET was also included as one of eligibility, therefore, despite petitioners were granted liberty to apply in said recruitment process, however, probably on ground that petitioners have not passed TET, they have not applied and challenge the same in writ petition. There is no substantial reason to challenge it and as referred above petitioners have already lost legal battle, therefore, no case is made out to grant relief as sought and accordingly, writ petition is dismissed.”

6. Aforesaid reasons are squarely applicable in the present cases also, however, against the petitioners. Petitioners have lost opportunity which was granted when State come up with a recruitment process to fill up 15000 vacancies from such Training Special BTC candidates, therefore, after such a long time claim of petitioners cannot be considered.

7. Otherwise also, it appears that petitioners must have crossed maximum age of appointment. The writ petitions are accordingly dismissed.

Order Date :- 21.05.2025

AK