

\$~24

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

Date of decision: 11th April, 2019

+ W.P.(C) 241/2018

SUNAINA DEVI SMARAK SHIKSHAN

PRASHIKSHAN SANSTHAN

..... Petitioner

Through: Mr. Sanjay Sharawat, Adv. with
Mr. Mayank Manish, Adv.

versus

NATIONAL COUNCIL FOR TEACHER

EDUCATION & ANR

..... Respondents

Through: Mr. Shivam Singh and
Mr. Aditya Raina, Advs. for NCTE

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

%

J U D G M E N T (O R A L)

1. *Vide* an application dated 31st December, 2012, the petitioner applied, to the Northern Regional Committee (hereinafter referred to as “the NRC”), under the National Council for Teacher Education (hereinafter referred to as “the NCTE”), for recognition of the Bachelor of Education (hereinafter referred to “the B.Ed.”) course, which it sought to commence in its institution, for a period of one year. The application was made under the National Council for Teacher Education (Recognition Norms and Procedure), Regulations 2009 (hereinafter referred to as “the 2009 Regulations”).

2. Consequent to an inspection of the petitioner’s premises, by an expert team of the NCTE, which did not discern any deficiency

therein, the NRC issued, to the petitioner, a letter of intent on 22nd February, 2014, directing the petitioner to submit a Fixed Deposit Receipt, as required by the 2009 Regulations, and to appoint faculty.

3. Compliance therewith, was effected, by the petitioner, on 24th April, 2014.

4. The 2009 Regulations were replaced by the National Council for Teachers Education (Recognition Norms and Procedure) Regulations, 2014 (hereinafter referred to as “the 2014 Regulations”), which came into effect on 1st December, 2014.

5. Appendix IV of the 2014 Regulations dealt with “Norms and Standards for the Bachelor of Education Programme leading to the Bachelor of Education (B.Ed.) Degree”. Sub-clause 5.2, under the said clause, dealt with the qualifications to be possessed by the faculty appointed by the Institution. The said clause 5.2 may be reproduced, *in extenso*, thus:

“5.2 The faculty shall possess the following qualifications:

A. Principal/HoD

(i) Postgraduate degree in Arts/Sciences/Social Sciences/Humanities/Commerce with minimum 55% marks; and

(ii) M.Ed, with minimum 55% marks; and

(iii) Ph.D. in Education or in any pedagogic subject offered in the institution; and

- (iv) Eight years of teaching experience in a secondary Teacher Education Institution.

Desirable; Diploma/ Degree in Educational Administration or Educational Leadership.

B. Perspectives in Education or Foundation Courses

- (i) Postgraduate degree in Social Sciences with minimum 55% marks; and
- (ii) M.Ed. degree from a recognised university with minimum 55% marks

OR

- (i) Postgraduate (MA) degree in Education with minimum 55% marks; and
- (ii) B.Ed./B.El.Ed. degree with minimum 55% marks.

C. Curriculum and Pedagogic Courses

- (i) Postgraduate degree in Sciences/Mathematics/Social Sciences/Languages with minimum 55% marks, and
- (ii) M.Ed. degree with minimum 55% marks.

Desirable: Ph.D degree in Education with subject specialisations

6. Certain facts, though they may not be strictly relevant to the controversy in issue, deserve to be noted, in the interest of completion of recital of facts.

7. On 26th March, 2015, the NRC required the petitioner to submit the FDR of ₹ 4,00,000/-, which direction was complied with, by the petitioner, on 8th April, 2015. Despite this, the NRC rejected the petitioner's application *vide* letter dated 19th November 2015, on the ground that the petitioner had not submitted the requisite FD. The petitioner appealed thereagainst. The Appellate Authority of the NCTE *vide* Order dated 18th April, 2016, directed the petitioner to submit relevant documents, to the NRC, within 15 days.

8. *Vide* Letter dated 27th April, 2016, a photocopy of the FDR was furnished by the petitioner to the NRC.

9. Various Show Cause Notices followed.

10. On 4th August, 2016, Show Cause Notice was issued, to the petitioner, by the NRC, seeking to reject the petitioner's application on the ground of non-submission of requisite documents. The petitioner replied on 30th August, 2016.

11. A second Show Cause Notice, dated 18th October, 2016 was issued to the petitioner, by the NRC, on the ground that the petitioner had not submitted evidence to the effect that it was a composite institution. The reply, to this show cause notice, was also submitted by the petitioner on 18th November, 2016.

12. A third Show Cause Notice, dated 23rd December, 2016, was issued to the petitioner by the NRC, on the ground that the list of the faculty of the petitioner, as approved by the affiliating body of the Dr. Ram Manohar Lohiya Awadh University (hereinafter referred to as

“the RMLA University”), submitted by the petitioner on 29th March, 2014, had become irrelevant and the petitioner was required to submit a fresh list of its faculty, duly approved by the above said affiliating University. The said request was reiterated by the NRC, *vide* letter dated 12th January, 2017,

13. On the ground that the petitioner had not complied with the requirement of submitting a fresh list of its faculty, the NRC again rejected the petitioner’s application *vide* letter dated 1st February, 2017.

14. On 9th February, 2017, the RMLA University provided the list of the faculty approved with the petitioner institution, which, therefore, forwarded the said list to the NRC under cover of letter dated 10th February, 2017. It is not in dispute that the said faculty did possess the requisite qualifications, existing on the dates of their appointments, as extracted in para 5 (*supra*).

15. The petitioner appealed, against the Order dated 1st February, 2017, of the NRC, to the Appellate Authority in the NRC, which, *vide* Order dated 21st August, 2017, remanded the matter for reconsideration to the NRC.

16. It was at that stage that the Show Cause Notice dated 26th September, 2017, wherefrom the present dispute germinates, was issued by the NRC. The Show Cause Notice proposed rejection of the petitioner’s application, essentially on the ground that the list of its faculty members, as submitted by the petitioner, was not as per the

2014 Regulations, as amended on 9th June, 2017.

17. This makes it necessary to refer to the amendment of the 2014 Regulations, made effective from 9th June, 2017, *vide* the National Council for Teacher Education (Recognition, Norms and Procedure) Amendment (Regulation) 2017 (hereinafter referred to as “the 2017 Amendment Regulations”). To the extent the said regulations are relevant for the purpose of controversy in issue, para 8 of the 2017 Amendment Regulations may be reproduced thus:

“8. In the said regulations in Appendix-4, in paragraph 5 in sub paragraph 5.2-

(a) after C (ii) and between “Desirable” the following Note shall be inserted namely:-

Note: “Besides fulfilling the above qualification the candidate shall have cleared the National Eligibility Test (NET) conducted by University Grants Commission. Provided candidates, who are, or have been awarded Ph.D. degree in Education in accordance with the University Grants Commission (Minimum Standard and Procedure for Award of Ph.D. Degree) Regulation 2009, shall be exempted from the requirement of the clearing of NET for appointment as Assistant Professor or equivalent position in Universities or college or institutions.”

(b) after C (ii), the entry “Desirable: Ph.D. degree in Education with subject specialisation” shall be omitted.”

18. Essentially, therefore, the change effected in the 2014 Regulations, *vide* the 2017 Amendment Regulations to the extent it is

relevant to the controversy in issue, was in the replacement of the stipulation of a “Ph.D. degree in Education with subject specialisations”, as the desirable qualification for faculty members of the institution, with a mandatory qualification, requiring the faculty members to have cleared the National Eligibility Test (NET) conducted by the University Grants Commission (UGC), subject to exemption from the rigor of the said requirement in the case of candidates who had been awarded the Ph.D. degree in Education in accordance with the UGC (Minimum Standards and Procedure) Regulation 2009 . These requirement did not figure in the 2014 Regulations.

19. To this extent, learned counsel before me are *ad idem*.

26. Consequent to submission of response, by the petitioner, to the aforementioned Show Cause Notice, the impugned order, dated 8th November, 2017, came to be passed by the NRC.

27. The order recounts the entire history of the case, including the various Show Cause Notices, issued, from time to time, by the NRC, to the petitioner, to which allusion already stands made by me hereinabove.

28. The concluding and operating paras of the impugned order may, therefore, alone be reproduced thus:

“AND WHEREAS, the appeal order dated 21.08.2017 received in NRC office on 28.08.2017 (Dairy No. – E – 22560). The matter was considered by NRC in its

Emergent Meeting and 275th (Part-1) Meeting of the NRC held on 16th to 18th and 19th to 21st September, 2017 and decided to issue Show Cause Notice to the institution on the following grounds:-

- In compliance of the Appeal Order date 21.08.2017, NRC observed that the list of faculty submitted by the institution has been approved by the affiliating University on 09.02.2017.
- The institution has not submitted the approved list of teachers as per the Regulations amended on 09.06.2017 by the NCTE.

Accordingly, Show Cause Notice issued on 26.09.2017 to the institution.

AND WHEREAS, the institution has submitted its reply in NRC office on 17.10.2017. The matter was considered by NRC in its 276th Meeting held on 30th to 31st October, 2017 and the Committee decided that the application of the institution for grant of recognition/permission is refused on the following grounds: -

- Despite opportunity given to the applicant institution vide SCN dated 26.09.2017, the applicant institution has not submitted approved list of teachers as per Regulations amended on 09.06.2017.

NOW THEREFORE, in exercise of the powers vested under Section 14 (3) (b) of NCTE Act, 1993, the Northern Regional Committee hereby rejects the said application of the institution i.e. Sunaina Devi Smarak Shikshan Prashikshan Sansthan, Plot/Khasra Number-244, Street Number- Amaniganj, Village- Doondi, Post Office- Amaniganj, Tehsil/Taluka- Milkipur, Town/City- Faizabad, District- Faizabad(UP), State- Uttar Pradesh,

Pin Code- 224121 and recognition/permission is refused on the grounds mentioned above.”

29. Though the ground on which the petitioner’s application stands rejected, as enunciated in the impugned Order, dated 8th November, 2017 (*supra*), is none too happily worded, learned counsel are *ad idem* that the essential objection, of the NRC, to the petitioner’s application for grant of recognition, was that the faculty appointed by the petitioner did not possess the qualifications stipulated in the Note, inserted by the Regulation 8 of the 2017 Amendment Regulations, in place of the “desirable” qualifications stipulated in the 2014 Regulations.

30. In other words, more simply put, the objection of the NRC was to the effect that the faculty appointed by the petitioner, and working with it, had not cleared the National Eligibility Test (NET) conducted by the UGC.

31. Mr. Sharawat candidly acknowledges that the faculty working with the petitioner had not cleared the NET but submits that there was no such requirement, of clearing of the NET, at the time when the said faculty was appointed, which was under the regime of the pre-amended 2014 Regulations, the said requirement having been introduced for the first time by Regulation 8 of the 2017 Regulations. Mr. Sharawat would submit that, consequently, the ground on which the impugned Order, dated 8th November, 2017 (*supra*), seeks to reject the petitioner’s application for grant of recognition for the B.Ed. course, is both arbitrary and illegal.

32. Mr. Singh, learned counsel for the NCTE, contends, *per contra*, that it was in the interests of achieving excellence in education, by teachers who were themselves to impart education to others, that the 2017 Amendment Regulations had made the qualifications, required to be possessed by the faculty, appointed by the Teachers Education Institutions, stricter. He submits that, once the 2014 Regulations stood amended by the 2017 Amendment Regulations, the application of the petitioner for commencement of the B.Ed course, which was still pending consideration, had to necessarily abide by the said Amendment regulations. He also submitted a set of written arguments, in which, *qua* the applicability of the 2014 Regulations, as amended by the 2017 Amendment Regulations, it is contended thus:

“B. THE PETITIONER’S ACTION OF CHOOSING THE SET OF REGULATIONS THAT SHALL GOVERN ITS CONDUCT IS TANTAMOUNT TO APPROBATE AND REPROBATE”

It is submitted that it is a settled principle of law that if the legislature amends/alters/modifies a particular provision then the new set of provision must always be given their full expression until and unless it is found that the new provision is constitutionally invalid. It is further submitted that in the absence of any challenge to the vires and constitutional validity of the new set of provisions as introduced in NCTE (Recognition Norms and Procedure) (Amendment) Regulations, 2017, it is not open for the Petitioner to wriggle out of its mandatory requirements. It is respectfully submitted that the rigours of the new provision must apply in their full rigour upon the Petitioner.

It is an admitted fact that petitioner institution applied for B.Ed. course for one year duration as per the

NCTE Regulation, 2009. The petitioner institution in compliance of the Regulation 9 of the NCTE Regulation, 2009 submitted the list of faculty for the first time on 29.03.2014 (**Ref; Annx P-1 @ Pg. 33**) as per the Norms mentioned in Appendix-4, Clause 4(II) of NCTE Regulation, 2009, within stipulated time after issuance of LOI from the NCTE on 22.02.2014.

It is also undisputed that during the pendency of the petitioner's application for grant of recognition, NCTE in exercise of its powers u/s 32(2) NCTE Act, 1993 on 01.12.2014 came up with new set of regulations superseding the earlier NCTE Regulations, 2009. As per the new set of NCTE Regulations, 2014 a new list of faculty approved by the affiliating authority was sought by the respondent vide its SCN dated 23.12.2016 and provided by the petitioner institute on 10.02.2017. (**Ref; Annx P-12 @ Pg. 79**). NCTE Regulation, 2014 was gradually replaced by the NCTE Regulation, 2017 as on 09.06.2017.

It is pertinent to mention that even on 21.08.2017 (**Ref; Annx P-9 Pg. 67-69**) when the Appeal Committee remanded the appeal of the petitioner institution for reconsideration before NRC, the new set of NCTE Regulation, 2014 were already in force.

The NRC therefore taking into consideration the NCTE Regulation 2014, read with the order dated 21.08.2017 passed by the Appeal Committee has correctly issued a SCN dated 26.09.2017 (**Ref; Annx P-11 Pg. 74, typed copy @ 75-77**) on the ground of non-submission of the approved list of faculty as per the Regulations amended on 09.06.2017 by the NCTE.”

33. Having heard learned counsel for both parties, and examining the records, it is obvious, at a plain glance, that the stand of the NCTE/NRC is not only completely arbitrary, but could also be said to

border on perversity.

34. The faculty appointed by the petitioner-institution, undisputedly, possessed the qualifications prescribed by the 2014 Regulations as they existed on the date when the said appointments were made. There could be no question, therefore, of the said faculty being required to possess the amended qualifications, which were introduced later, by the 2017 Amendment Regulations, which came into effect on 9th June, 2017.

35. Significantly, the 2017 Amendment Regulations, too, do not purport to be retrospectively applicable and, in fact, Regulation 1(2) thereof specifically stipulates that they would come into force on the date of their publication in the official Gazette.

36. It was manifestly arbitrary, therefore, on the part of the NCTE, to reject the petitioners' request for grant of recognition of its B.Ed course on the ground that the faculty, appointed by it prior to the coming into force of the said 2017 Amendment Regulations, did not possess the qualifications stipulated therein, for the first time.

37. It is also axiomatic that the law does not require man to do the impossible (*lex non cogit ad impossibilia*). It was well nigh impossible for the petitioner-institution to insist on the faculty, appointed by it prior to the 2017 Amendment Regulations, being possessed of qualifications introduced, for the first time, therein.

38. Mr. Shivam Singh, while re-emphasising his stand that the interests of education had to be accorded pre-eminence, suggests that

the petitioner could at least ensure that its faculty achieved the said additional qualifications, as conceptualized by Clause 8 of the 2017 Amendment Regulations.

39. This submission is, in my opinion, completely unrealistic. If such a submission were to be accepted, it would be open to the NCTE, from time to time, to amend the regulations, by introducing additional qualifications, and require the institutions to ensure that faculty, appointed by them much prior to the introduction of the said amended qualifications, achieved the same. This would result in a manifestly absurd, and obviously unworkable situation.

40. It is also a settled principle, fossilised in service jurisprudence, that the eligibility of a person, appointed against a post, is to be reckoned on the basis of the qualifications prescribed on the date when the appointment is made – in fact, in cases of direct recruitment, on the last date for submission of the applications for such recruitment. Service law is entirely ignorant of any principle whereby a person, who has been appointed at an earlier point of time, could be forced to acquire qualifications, introduced in the Recruitment Rules thereafter.

41. Obviously, therefore, the ground on which the NRC has chosen to reject the petitioner's application, is, completely bereft of any legal sanction whatsoever.

42. The petitioner is, therefore, entitled to succeed in this writ petition.

43. The impugned order dated 8th November, 2017 (*supra*), of the NRC is, accordingly, hereby quashed and set aside.

44. Inasmuch as the only ground on which the said order rejects the petitioner's application for recognition to commence its B.Ed course, is that the faculty appointed at an earlier point of time did not possess the qualifications introduced *vide* the 2017 Amendment Regulations, no purpose would be served in remanding the matter for reconsideration.

45. The respondent, is, therefore, directed to accord recognition, to the petitioner, for commencing the B.Ed. course, *albeit* from the next academic session, *de hors* the ground on which the impugned order stands issued. This, however, needless to say, would be subject to the petitioner fulfilling all procedural and other requirements, if any, applicable in law, in order to enable the petitioner to grant of such recognition.

46. As this is an entirely avoidable litigation, I would ordinarily have burdened the respondents with costs. However, given the eminently reasonable stand adopted by Mr. Shivam Singh, learned counsel for the respondent, who has entirely cooperated with the Court in arriving at a decision, I refrain from doing so.

47. The attitude of Mr. Shivam Singh is appreciated.

48. The respondent is directed to take a decision on the petitioner's application, by way of issuance of a formal order of recognition, in accordance with the above judgment in its next meeting.

49. No costs.

C. HARI SHANKAR, J

APRIL 11, 2019
dsn/bh