

(2013) 05 AHC CK 0333

Allahabad High Court

Case No: C.M.W.P. No. 24959 of 2013 with W.A. No"s. 24980, 25031 and 25029 of 2013

Dharmraj

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: May 3, 2013

Citation: (2013) 4 AWC 3909 : (2013) 2 UPLBEC 1673

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Advocate: Kshetresh Chandra Shukla, for the Appellant; B.P. Singh and Miss Rashmi Tripathi, for the Respondent

Final Decision: Dismissed

Judgement

Arun Tandon, J.

All the above writ petitions raise common questions of law. They are clubbed together and are being decided by this common order, treating Writ Petition No. 24959 of 2013 as the leading case. Heard learned counsel for the parties.

2. Learned counsel for the petitioner before this Court submits that the petitioner has to his credit a two years Diploma Course in Physical Education from Shri Lakshmi Vyayam Mandir Vyayam College, Jhansi, Uttar Pradesh. This institution, according to the petitioner has necessary recognition from National Council for Teacher Education. New Delhi.

3. The petitioner before this Court seeks quashing of the part of the Government order dated 31.1.2013. annexed as Annexure-7 to the writ petition, whereunder the State Government has floated a scheme for appointment of temporary Anudeshaks on contract basis for the purposes of Art Education, Health and Physical Education and Work Education insofar as it lays down the minimum qualification for the post of Anudeshak, Health and Physical Education. Under the said Government order appointment of such Anudeshaks is to be made only in such Basic Schools run by Parishad which have more than 100 students on roll. The State Government has

provided for Constitution of Selection Committee as well as minimum qualification for appointment of Anudeshaks. The dispute in the present writ petition pertains to the subject of Health and Physical Education. The minimum qualification whereof have been provided under the Policy decision as follows:

4. According to the petitioner the State Government could not have added any qualification and should have adopted the one provided for by the National Council for Teachers Education under the notification dated 3rd September, 2001 known as National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (hereinafter referred to as "the Regulations-2001"). The relevant extract of notification dated 3rd September, 2001 is quoted below:

Qualifications for recruitment of teachers of Physical Education in Educational Institutions mentioned in Section 2 of the. Regulations.

5. It is pointed out that after the enforcement of Right to Education Act, 2009. National Council for Teachers Education has been appointed as the. authority for laying down minimum, qualifications, by the Central Government u/s 23 of the Act of 2009. The National Council for Teacher Education has issued the Notification dated 10th June, 2011, which lay down minimum qualification. Clause 5 (b) of the notification provides that for Physical Education Teacher, the minimum qualification shall be as per the N.C.T.E. Regulations dated 3rd September, 2001 quoted above. The relevant Clause 5, (b) of the Notification dated 10th June, 2011 is quoted below:

(b) The minimum qualification norms referred to in this Notification, apply to teachers of Languages, Social Studies, Mathematics, Science. In respect of teachers for physical Education, the minimum qualification norms for Physical Education teachers referred to in N.C.T.E. Regulation dated 3rd November, 2001 (as amended from time to time) shall be applicable. For teachers of Art Education, Craft Education, Home Science, Work Education, the existing eligibility norms prescribed by the State Governments and other school managements shall be applicable till such time the N.C.T.E. lays down the minimum qualifications in respect of such subject teachers.

6. According to the petitioner the State Government cannot add or subtract any thing to the minimum qualification which were prescribed under the Regulation, 2001 read with Notification dated 10th June, 2011. He further submitted that adding of the word "Degree" in the Government order dated 31.1.2013 in addition to "Diploma" is illegal so far as the subject of Health and Physical Education is concerned.

7. The contentions raised on behalf of the petitioner does not appeal to the Court for following reasons:

(A) Under the Government order dated 31.1.2013. qualification have been laid down for appointment of Anudeshak on part time basis to be appointed in institutions on

contract basis. These qualifications are not referable to the qualifications which are prescribed for teachers in Parishadiya Vidyalayas called U.P. Basic Education Teachers Service Rules, 1981.

(B) Under the Notification of the N.C.T.E. dated 3rd September, 2001, it is provided the minimum qualification shall be C.P.Ed. of duration of 2 years or any other qualification equivalent thereto.

8. The State Government does have the competence to provide for a Degree to be treated as qualification for the purposes of appointment of Health and Physical Education Anudeshak, even if it is accepted that Regulation of 2001 will hold the field.

9. It may be recorded that what was earlier called certificate in Physical Education, i.e., C.P.Ed., is known as "Diploma" in Physical Education.

10. Consequentially the prescription of the qualifications under the Government order dated 31.1.2013, for the post of Health and Physical Education Anudeshak cannot be said to be in violation of the N.C.T.E. Regulations in any manner. No interference against the same is called for. The writ petition lacks merit, the same is hereby dismissed.