

## Ashok Kumar Kulshrestha Vs State of U.P. and Others

**Court:** Allahabad High Court

**Date of Decision:** Dec. 10, 2009

**Citation:** (2010) 2 AWC 1160

**Hon'ble Judges:** Amreshwar Pratap Sahi, J

**Bench:** Single Bench

**Final Decision:** Dismissed

### Judgement

Amreshwar Pratap Sahi, J.

Heard Shri Vashistha Tiwari, learned Counsel for the petitioner, learned standing counsel for the respondent

Nos. 1, 2 and 3 and Shri A.K. Yadav, learned Counsel for the respondent No. 6.

2. The petitioner is a candidate for the post of Head Master in a Higher Secondary School governed by the provisions of the U.P. Intermediate

Education Act, 1921 and the Regulations framed thereunder, for which selections are held by the U.P. Secondary Services Selection Boards Act,

1982.

3. The grievance of the petitioner is that his candidature is being considered without awarding quality point marks which should be allotted by

including his B.T.C. training as a qualification of training prescribed in Appendix "A" to Chapter II of the Regulations framed under the U.P.

Intermediate Education Act, 1921.

4. The submission in short is that in the event the quality point marks are awarded for B.T.C. training as well, the petitioner has a chance of

standing higher in merit and getting selected. Conversely, it is submitted that by not adding the aforesaid marks, the petitioner is being denied the

said benefit which is available upon a reading of Appendix "A", inasmuch as, a teacher having the qualification of B.T.C. has been treated to be

eligible as a C.T. grade teacher provided that he has put in five years of service as such.

5. In view of the aforesaid provision of Appendix "A" Shri Tiwari submits that there is no reason for the Board to deny the award of quality point

marks for such training.

6. Shri A.K. Yadav, learned Counsel for the Board submits that the said qualification of training is for primary education and not for secondary

education and secondly the statute itself does not provide for any such benefit to be extended to a candidate, who has applied for the said post. He

submits that the quality point marks are calculated in accordance with the 1998 Rules and the said rules do not provide for award of any quality

point marks for B.T.C. training. He submits that the statute cannot be interpreted so as to include a provision, which is not specifically provided

for.

7. Learned standing counsel contends that there is no amendment in the statute and the argument of Shri Tiwari, if accepted would amount to

substantial modification of the 1998 Rules by reading into it a training, which is not contemplated.

8. Shri Tiwari contends that the word "training", which has been used either under the U.P. Intermediate Education Act, 1921 or under the U.P.

Secondary Education Services Selection Board Act, 1982 and the Rules framed thereunder, does not specifically exclude the training of B.T.C.

for the purpose of award of quality point marks and therefore this Court should construe it to have been impliedly included. He therefore submits

that the Board may not have discriminated the petitioner but it has acted arbitrarily but not correctly applying the Rules.

9. Having considered the aforesaid submissions, it is evident that the word "training" has not been defined so as to include B.T.C. training course as

well for the purpose of award of quality point marks. The reliance placed by Shri Tiwari on the words used in Appendix "A" cannot be construed

to include the said training for the purpose of awarding of quality point marks, inasmuch as, merely because a teacher having five years B.T.C.

experience is treated as eligible to be a C.T. grade teacher, the training received as a B.T.C. teacher cannot be automatically treated to have been

incorporated as a rule of eligibility for the award of quality point marks.

10. The principles of sub-silentio and casus omissus is not attracted, inasmuch as, merely because a statute does not include something, the same

does not amount to expressing a silent intent in a matter of qualification. The statute is to expressly provide a qualification and in the absence of any

such recital, it is not for the Courts to read into a qualification, which is not specifically provided for. It is well-settled by now that a Court can while

proceeding to interpret a provision can iron out the creases and not weave a new texture. The question of reading the qualification as stated by Shri

Tiwari would amount to introducing a qualification, which the Legislature or the rule making authority never intended to provide for. For this, it

would be appropriate to appreciate the argument of Shri Yadav, learned Counsel for the respondent Board that the training of B.T.C. is for

primary education and not for secondary education. In this view of the matter also, the said provision cannot be deemed to have been included as

suggested by Shri Tiwari as it would conversely do violation to the said provisions.

11. The argument so advanced might appear to be attractive but cannot be accepted keeping in view the fact that even Heydon's rule of purposive

interpretation cannot be pressed into service where the statute is clear. It has time and again been settled by this Court as well as by the Apex

Court that the departure from the rule of literal interpretation can be made only if there is ambiguity and not otherwise.

12. Having heard learned Counsel for the parties at length and keeping in view the aforesaid facts and circumstances of the case, there is no

occasion for this Court to admit and accept the B.T.C. training qualification for award of quality point marks under the 1998 Rules for training.

13. The writ petition lacks merit and is accordingly dismissed.