**IN THE HIGH COURT OF ALLAHABAD**

Civil Misc. Writ Petition No. 66206 of 2011

Decided On: 21.11.2011

Appellants: **Smt. Harsh Bala Tewari**
**Vs.**
Respondent: **The State of U.P. & Ors.**

**Hon'ble Judges/Coram:**
Hon. Dilip Gupta, J.

**JUDGMENT**

**Hon. Dilip Gupta, J.**

1. The petitioner, who has passed the Intermediate Examination and is working as Shiksha Mitras in a Primary School, has filed this petition for quashing the directions issued by the Secretary of the State Government in the communication dated 11th July, 2011 to the extent it restricts the training by Distance Education to untrained Shiksha Mitras who are Graduates only. A further direction that has been sought is that the respondents should permit the petitioner to undergo the training even though she has passed the Intermediate Examination only and are not Graduates.

2. It is stated that the Government formulated a Scheme for appointment of Shiksha Mitras in Junior Basic Schools/Senior Basic Schools as there was shortage of teachers. The candidates who had passed the Intermediate Examination were also considered for appointment as Shiksha Mitras and, accordingly, the petitioners were appointed. The State Government by its communication dated 3rd January, 2011 submitted a proposal to the National Council for Teachers Education (hereinafter referred to as the 'NCTE') for conducting Elementary Teacher Education Programme (Diploma in Elementary Education) of two years duration through Open and Distance Learning Mode for training of the existing 1,24,000/-Untrained Graduate Shiksha Mitras. Such training was to be provided to the Untrained Graduate Teachers to make them eligible for appointment as Assistant Teachers in the Junior Basic Schools/Senior Basic Schools. The NCTE by its communication dated 14th January, 2011 approved the proposal of the Government and subsequently a communication dated 11th July, 2011 was sent by the Secretary of the Government to the Director of Education (Basic) and Director, State Council for Educational Research and Training, Lucknow regarding the aforesaid two years teaching programme through Open and Distance Learning Mode to the Untrained Graduate Shiksha Mitras. The challenge to the aforesaid directions is to the extent that Untrained Shiksha Mitras who are not Graduates and have passed Intermediate Examination should also be included in the said training.

3. Learned counsel for the petitioner has submitted that Norms and Standard for Diploma in Elementary Education Programme through Open and Distance Learning Mode leading to Diploma in Elementary Education is contained in Appendix-9 to the National Council for Teachers Education (Recognition, Norms and Procedure) Regulation, 2009 (hereinafter referred to as the '2009-Regulation') and Clause 5(2), which deals with eligibility, refers to Senior Secondary (Class XII) or equivalent Examination with 50% marks and two years teaching experience in a Government or Government recognized Primary/Elementary School. He, therefore, submits that when the eligibility requirement is only Senior Secondary (Class XII) or equivalent Examination for seeking admission to the aforesaid Diploma Course, the State Government is not justified in restricting this training to only the Graduate Untrained Shiksha Mitras and such Shiksha Mitras who have passed the Class XII examination should also be included in the training.

4. Learned Standing Counsel appearing for the respondents, however, has submitted that the purpose of imparting training to such Untrained Graduate Shiksha Mitras is to make them eligible for appointment to the post of Assistant Masters and Assistant Mistresses of Junior Basic Schools and Rule 8 of the U.P. Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as the 'Rules') provides that the Academic Qualification should be a Bachelors Degree from a University established by law in India with Training qualification. He, therefore, submits that a policy decision was taken by the State Government to impart such training to Untrained Graduate Shiksha Mitras only and there is no illegality or arbitrariness in excluding such Shiksha Mitras who are not Graduates. It is also his submission that mere prescription of some eligibility requirement for seeking admission to the Diploma in Elementary Education Programme through Open and Distance Learning System as provided for in Appendix-9 to the 2009-Regulation will not mean that the State is obliged to impart training to such Untrained Shiksha Mitras who are not Graduates.

5. I have considered the submissions advanced by learned counsel for the parties.

6. It transpires that the State Government intended to impart training to Untrained Shiksha Mitras through Open and Distance Learning Mode leading to the award of Diploma in Elementary Education of two years duration to make such Untrained Shiksha Mitras eligible for appointment to the post of Assistant Masters and Assistant Mistresses of Junior Basic Schools and for such appointment the minimum Academic Qualification is a Bachelors Degree from a University established by law. It is for this purpose that the State Government restricted this training to Untrained Shiksha Mitras who were Graduates.

7. The only submission advanced by learned counsel for the petitioner for permitting the Untrained Shiksha Mitras who are not Graduates but have passed the Intermediate Examination is because the eligibility requirement of such training contained in Appendix-9 to the 2009-Regulations permits candidates who have passed Class XII examination to be admitted to this training.

8. Clauses 1 to 5 of Appendix-9 to the 2009-Regulations on which reliance has been placed by learned counsel for the petitioners are reproduced below:

Appendix-9

Norms and standards for Diploma in elementary education programme through Open and Distance Learning System leading to Diploma in elementary education (D. El. Ed.).

1. Preamble.-(i) The elementary teacher education programme through Open and Distance Learning System is intended primarily for upgrading the professional competence of working teachers in the elementary schools (primary and upper primary/middle). It also envisages bringing into its fold those teachers who have entered the profession without formal teacher training.

(ii) The NCTE accepts open and distance learning (ODL) system as a useful and viable mode for the training of teachers presently serving in the elementary schools. This mode is useful for providing additional education support to the teachers and several other educational functionaries working in the school system.

2. Condition of offering the course.-The institutions or academic units specially established for offering ODL programmes like the National Open University, State Open Universities and the Directorates/ School of Open and Distance Learning in the Central or State Universities shall be eligible to offer teacher education programmes (The Deemed to be Universities, Agricultural or Technical Universities, which specialize in a field other than teacher education and other discipline specific Universities/Institutions are not eligible to offer teacher education programme through ODL).

3. Territorial Jurisdiction.-The University offering teacher education programme through ODL will have territorial jurisdiction as defined in the Act of the University. The Study Centres of the University shall also be located in the territorial jurisdiction of the University.

4. Duration.-The duration of the programme shall be of two academic sessions/years (four semesters). The commencement and completion of the programme shall be so regulated that two long spells of vacation (summer/ winter/staggered) are available to the learners for guided/ supervised instruction and fact to face contact sessions. Sandwitching the programme between two summer vacations will be an ideal proposition.

5. Intake, Eligibility and Admission Procedure.

(1). Intake.-The basic unit of intake for the D.El.Ed. programme, shall be five hundred students subject to the condition that one Study Centre shall enroll not more than one hundred students in a given session. The request for additional unit in any programme shall be examined by the NCTE on the basis of the availability of required facilities in respect of study centres and related support in the territorial jurisdiction of the university.

(2) Eligibility.

(i) Senior Secondary (Class XII) or equivalent examination passed with fifty percent marks.

(ii)Twoyears teaching experience in a Government or Government recognized primary/elementary school.

(3) Admission Procedure.

(i) The State Government shall develop a suitable procedure for the selection of candidates.

(ii)The reservation for SC/ST/OBC and other categories shall be as per the rules of the Central Government/State Government, whichever is applicable. There shall be a relaxation of five percent marks in favour of SC/ST/OBC and other categories of candidates.

9. It may be that the eligibility requirement for such training is Class XII only but then it is for the State Government, in its wisdom, to specify which of such Untrained Shiksha Mitras should be sent for obtaining to the aforesaid Diploma in Elementary Education through Open and Distance Learning System. As noticed hereinabove, the State Government has restricted the training to such untrained Graduate Shiksha Mitras so that they can ultimately be considered for appointment as Assistant Masters and Assistant Mistresses of Junior Basic Schools.

10. The NCTE also by its letter dated 14th January, 2011 accepted the proposal of the State Government and the communication is as follows:-

I am directed to refer to your letter No. 3953/79-5/2011 dated 03.01.2011 on the subject mentioned above forwarding therewith a proposal for training of untrained teachers (Graduate Shiksha Mitras) and to say that the proposal has been examined in the NCTE in detail.

Considering the requirement of trained teachers in the State in the context of RTE Act, 2009, the National Council for Teacher Education hereby conveys its approval to the proposal of the Government of Uttar Pradesh to conduct Elementary Teacher Education Programme (Diploma in Elementary Education) of two years' duration through open and distance learning mode for training of existing 1,24,000 untrained Graduate Shiksha Mitras appointed by the State Government in elementary schools, subject to the following conditions:

(i) The programme shall be conducted by the SCERT which will develop D.El.Ed. curriculum for ODL system in the light of NCFTE 2010, prepare self-learning material as per the revised curriculum, provide student support services, monitor and supervise programme implementation, evaluate the programme and organize examination and certification in respect of this programme. SCERT will be duly equipped to use information and communication technologies (ICTs) to implement the programme.

(ii)Qualified faculty for all these tasks shall be put in place in SCERT before the commencement of the programme.

(iii) The programme will be launched only when the self-learning material is ready and submitted to the NCTE.

(iv)

The detailed programme schedule for the 300 contact hours divided into following four components alongwith examination scheme shall be submitted to NCTE before the commencement of the programme.

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| --- | --- |
| Academic Counseling: | 144 hours |
| Workshops: | 24 days |
| School based activities: | 15 study hours |
| Teaching practice : | 80 study hours |

11. The purpose for sending the untrained Shiksha Mitras is to make them eligible for appointment as Assistant Teachers and as such candidates who have passed Intermediate Examination only are not eligible under Rule 8 of the Rules, No useful purpose will be served by sending such Shiksha Mitras for training. The petitioner, who is not Graduate and has passed Intermediate examination only, therefore, cannot compel the State Government to send her for training.

12. This apart, a policy decision had been taken by the State Government to send only untrained Graduate Shiksha Mitras to such training.

13. The scope of interference of the Court in matters relating to policy decisions of the Government is very limited.

14. In Premium Granites Vs. State of Tamil Nadu reported in   : (1994) 2 SCC 691, the Supreme Court, while considering the power of the Courts in interfering with the policy decisions, observed :

It is not the domain of the court to embark upon unchartered ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be....

15. In M.P. Oil Extraction Vs. State of Madhya Pradesh   : (1997) 7 SCC 592, the Supreme Court also observed :-

...The executive authority of the State must be held to be within its competence to frame policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes in conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State....

16. In Ekta Shakti Foundation Vs. Govt. of NCT of Delhi, AIR 2006 SCW 3601 the Supreme Court observed as follows:-

While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See Ashif Hamid v. State of J. & K. (  : AIR 1989 SC 1899), Shri Sitaram Sugar Co. v. Union of India (  : AIR 1990 SC 1277). The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

The Court should constantly remind itself of what the Supreme Court of the United States said in Metropolis Theatre Company v. City of Chicago (1912) 57 L Ed 730. "The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. [ See: State of Orissa and Others v. Gopinath Dash and Others   : (2005) 13 SCC 495].

17. In State of Himachal Pradesh & Ors., Vs. Himachal Pradesh Nizi Vyavsayik Prishikshan Kendra Sangh (2011) 6 SCC 597 the Supreme Court has also observed:

...Inasmuch as ultimately it is the responsibility of the State to provide good education, training and employment, it is best suited to frame a policy or either modify/alter a decision depending on the circumstance based on relevant and acceptable materials. The courts do not substitute their views in the decision of the State Government with regard to policy matters. In fact, the court must refuse to sit as appellate authority or super legislature to weigh the wisdom of legislation or policy decision of the Government unless it runs counter to the mandate of the Constitution.

18. In view of the decisions of the Supreme Court, it is not possible to interfere with the Policy decision taken by the State Government for sending only the untrained Graduate Shiksha Mitras for training by Distance Education.

19. Thus, for the reasons stated above, it is not possible to grant any relief to the petitioners.

20. The writ petition is, accordingly, dismissed.