

**Case :-** SERVICE SINGLE No. - 1301 of 2017

**Petitioner :-** Rakesh Kumar

**Respondent :-** State Of U.P Thru Secy Secondary Edu Lko & Ors

**Counsel for Petitioner :-** Yogendra Kumar Mishra,K.B Pandey

**Counsel for Respondent :-** C.S.C

**Hon'ble Dinesh Kumar Singh,J.**

1. The present writ petition under Article 226 of the Constitution of India has been filed for quashing of the order dated 27.12.2016 passed by the District Inspector of Schools, Gonda upholding the order dated 20.10.2014 passed by the committee of management terminating the services of the petitioner on the ground that the petitioner does not possess the requisite qualification for appointment as Teacher in the attached primary school of the Vivekanand Inter College, Gonda, whereas under sub-section (2) of Section 16 of the Intermediate Education Act, 1921 (for short 'Act, 1921'), the requisite qualification for a Teacher of attached primary school is graduation plus C.T./B.T.C./H.T.C. or equivalent qualification and in the event of non-availability of B.T.C. trained person, person with B.Ed. degree qualification is eligible for appointment.

2. Swami Vivekanand Inter College, Gonda (hereinafter referred to as 'the institution') is recognised and Government aided institution, which imparts education upto Intermediate classes. It imparts education from Class-I to Class-XII. It is governed under the provisions of the Act, 1921 as well as Uttar Pradesh High Schools and Intermediate Colleges (Payment and Selection of Teachers and other Employees) Act, 1971 (for short 'Act, 1971').

3. In the primary section, nine posts of Assistant Teachers are sanctioned. In the year 2003, an amendment was brought in by inserting Regulation 7(2)(a) under Regulation 7, Chapter-II of the Regulations framed under the Act, 1921 providing for promotion of Assistant Teachers of the attached primary section to the post of Assistant Teachers in LT Grade and, it was provided that 25% posts of Assistant Teachers of LT Grade would be filled up by promotion of Assistant Teachers of primary schools, who are having five years service to their credit and having requisite qualification for appointment as LT Grade Teacher. Three Teachers of the attached primary school of the institution, namely, Raj Mani Tripathi, Smt. Rama Devi Shukla and Dr. Dinesh Kumar Shukla were promoted to the post of Assistant Teacher in LT Grade under 25% promotional quota.

4. The committee of management of the institution vide its letter dated 1.10.2008 sought sanction from the District Inspector of Schools to fill up three posts of Assistant Teachers in the primary section. The District Inspector of Schools vide letter dated 7.11.2008 informed the institution that the State Government vide order dated 25.9.2008 had imposed ban on the appointments of the Teachers. Subsequently, the said ban was lifted by the State Government. The committee of management, thereafter, advertised three posts and appointed Rakesh Kumar, the present petitioner, Shailendra Kumar Singh and Ms. Poonam Devi and sent the papers to the District Inspector of Schools, Gonda vide letter dated 16.4.2010 for approval. The District Inspector of Schools vide his order dated 5.5.2010 disapproved the selection and appointments made by the committee of management of three aforesaid persons to the post of Assistant Teacher in the primary section of the

institution.

5. Against the said order, Writ Petition No.2981 (SS) of 2010, Km. Poonam Devi and others Vs. State of U.P. and others, was filed before this Court. The aforesaid writ petition was disposed of vide order dated 9.8.2010 as under:-

*“Heard Sri H.G.S.Parihar, learned counsel for the petitioner, Sri Rakesh Kumar Chaudhary for the opposite party no.5-Committee of Management and Sri Manjeev Shukla, learned Standing counsel for the State.*

*The petitioner is aggrieved by the order of the District Inspector of Schools (DIOS) dated 5.5.2010. By this order the DIOS has cancelled the appointment made by the committee of management without prior approval of the State Government. The petitioner says that there were vacancies. The committee of management duly informed the DIOS and asked for his permission. The DIOS made some queries which were answered by the committee of management and the committee of management proceeded to make the appointment after making necessary advertisement in the news papers as required by law.*

*Learned Standing counsel says that prior approval is required under the Government Order dated 19th April, 2003 and the committee of management without waiting for the prior approval of the State Government has made the appointment which are against the spirit of the provisions of government order. Hence, the cancellation order passed by the DIOS is valid.*

*Sri H.G.S. Parihar, on the other hand, has stated that under the regulation 7-A, Chapter II, there is no need for the prior approval of the State Government and the Government Order can not override the provisions of the regulations. He has also drawn the attention of this Court towards the judgment of this Court in 2009 (3) ESC 2108 (ALLD) wherein it was decided that since all formalities had already been completed and only prior approval was not given by the State Government it is necessary that such procedure should start once again.*

*In view of rival submissions, the Court comes to the conclusion that prior approval, if not granted, has to be given by the State Government. Accordingly, the DIOS, Gonda is directed to sent the matter along with complete record to the State Government for its approval. The State Government shall be at liberty to examine the matter independently and take a decision either way regarding the requisition of the committee of management. The decision shall be taken within two months from the date a certified copy of this order*

*is placed before him and the decision so taken shall be communicated to the committee of management.*

*With these observations and directions the petition is disposed of finally.”*

6. Against the said order dated 9.8.2010, Special Appeal No.607 of 2010, Km. Poonam Devi and others Vs. State of U.P and others, was filed before a Division Bench of this Court. The Division Bench of this Court vide order dated 17.4.2012 disposed of the said special appeal modifying the order dated 9.8.2010 passed by the learned Single Judge to the extent that the primary section concerned should not make appointment beyond the sanctioned strength available and, further that once sanction in respect of appointment has already been granted at any stage in respect of vacancy, against the said vacancy no fresh sanction would be required to fill up the post. In case the appellants have been appointed against sanctioned posts, it would be inappropriate on the part of the authority to insist upon seeking a fresh sanction. With the aforesaid modification, the special appeal stood disposed of.

7. The District Inspector of Schools thereafter, vide order dated 17.7.2012 passed the order for payment of salary to three persons, namely, Rakesh Kumar, the present petitioner, Shailendra Kumar Singh and Km. Poonam Devi with the condition that in case some relevant facts/adverse material would come to the notice in future in relation to appointment of the said persons, the order for payment of salary would be cancelled and for such action, appointing authority and the concerned Teacher would be responsible. The said three Teachers thereafter, submitted their testimonials for making entries in their service books. The date of birth of Km. Poonam Devi was found to be different than in the mark-sheets. Km. Poonam Devi could not give proper and satisfactory

explanation in this regard to the Manager and, therefore, the Manager vide order dated 13.7.2013 stopped the payment of salary of Km. Poonam Devi. Km. Poonam Devi made a representation against the order dated 13.7.2013 passed by the Manager before the District Inspector of Schools and, the District Inspector of Schools vide his order dated 12.9.2013 appointed Principal, F.A.A. Government Inter College, Gonda as enquiry officer for conducting the enquiry in the selection and appointment of the petitioner and two others. The enquiry officer submitted his enquiry report on 12.11.2013, in which it was said that Rakesh Kumar, the present petitioner, Shailendra Kumar Singh and Ms. Poonam Devi were selected only on the basis of the marks secured in the interview instead of the total marks of educational qualifications and interview and despite there having candidates with B.Ed. degree available, two candidates with B.P.Ed. degree were selected and, therefore, the payment of salary to these Teachers would not be proper in the interest of the students or the State.

8. In view of the aforesaid report of the enquiry officer, salary of the aforesaid three Teachers was withheld vide order dated 29.11.2013. Shailendra Kumar Singh again submitted representation for re-consideration of the matter. The then Finance and Accounts Officer (Secondary Education), Gonda vide order dated 28.6.2014 had directed to re-consider the matter, but due to his transfer, the same could not get completed. The committee of management vide order dated 27.6.2014 had decided to terminate the services of three Teachers and forwarded the papers to the office of the District Inspector of Schools for approval. The District Inspector of Schools gave opportunity to these three Teachers for representing their case and fixed 26.9.2014 for hearing. All the

three Teachers remained present and made submissions in support of their case. The District Inspector of Schools approved the decision of the committee of management dated 27.6.2014 vide order dated 27.9.2014 and in pursuance thereof, services of the petitioner were terminated by the committee of management vide order dated 20.10.2014.

9. The petitioner challenged the said orders by filing Writ Petition No.6517 (SS) of 2014 before this Court. The aforesaid writ petition was allowed vide judgement and order dated 14.9.2016 on the ground that the order dated 27.9.2014 passed by the District Inspector of Schools did not contain any reason. The matter was remitted back to the District Inspector of Schools to pass a fresh order after giving opportunity of hearing to the petitioner and the committee of management, preferably, within a period of four months from the date of the order. It was further directed that petitioner should continue as Assistant Teacher in the institution and his salary should be paid as and when it would fall due till the fresh decision is taken by the District Inspector of Schools.

10. In compliance of the aforesaid order, the petitioner made representation dated 28.10.2016 annexing the order dated 14.9.2016 passed by this Court. The District Inspector of Schools fixed 18.11.2016, the date for hearing. However, on the said date, Manager of the institution was not present and, therefore, next date was fixed as 25.11.2016, on which date the petitioner as well as the representative of the committee of management, i.e. Principal of the institution, were present. After hearing the petitioner as well as the committee of management, the impugned order dated 27.12.2016 was passed by the District Inspector of Schools.

11. Learned counsel for the petitioner submits that training qualification B.P.Ed. is equivalent qualification to B.Ed., L.T., B.T./C.T. and B.P.Ed. is covered by phrase “equivalent qualification” as provided under sub-section (2) of Section 16 of the Act, 1921. He, therefore, submits that the ground, on which the petitioner’s services were terminated that he did not possess the requisite qualification for appointment to the post of Assistant Teacher in the attached primary school, is wholly incorrect and is liable to be set aside.

12. Learned counsel for the petitioner in support of his contention has placed reliance upon a Full Bench judgement and order of this Court rendered in ***Special Appeal No.1247 of 2013, Amal Kishore Singh Vs. State of U.P. and others, decided on 10.10.2018.***

13. On the other hand, learned counsel for the opposite parties submit that as per the provisions of sub-section (2) of Section 16 of the Act, 1921, the Assistant Teacher in the primary section, where the Teachers are receiving the salary under the provisions of the Act, 1971 are to be appointed through direct recruitment. The essential qualification for the Assistant Teacher in such primary school is graduation with C.T., B.T.C./H.T.C. or equivalent qualification, but in case of non-availability of person with BTC qualification, person with B.Ed. degree qualification would be appointed. The qualification of B.P.Ed. is not a recognised qualification for appointment to the post of Assistant Teacher in the primary section of Intermediate Colleges. It is further submitted that B.P.Ed. is a training for imparting physical education, which is being imparted at the High School and Intermediate level. However, in the institution in question, no post of Physical Education Teacher is created at primary level.

14. I have considered the submissions advanced on behalf of the learned counsel for the petitioner as well as by the learned counsel for the opposite parties.

15. The question, which arises for consideration, is whether the petitioner having qualification of B.A. and B.P.Ed. was eligible to be appointed on the post of Assistant Teacher in the attached primary section of the institution. The qualification of Assistant Teacher in attached primary section of an Intermediate College is graduation plus C.T., B.T.C./H.T.C. or equivalent qualification, but in case of non-availability of person with BTC qualification, person with B.Ed. degree qualification would be appointed.

16. Section 16-G of the Act, 1921 stipulates that every person employed in a recognized institution shall be governed by such conditions of service as may be prescribed by Regulations. Section 15 of the Act, 1921 empowers the Board to make Regulations for the purpose of carrying into effect the provisions of the Act. In exercise of the said power, the Board has framed Regulations and under Chapter-II thereof, provisions relating to appointment of heads of institutions and Teachers have been laid down. Regulation-I provides the minimum qualifications for appointment of head of the institution and teachers in a recognized institution. In Appendix-A, the minimum qualifications for appointment of an Assistant Teacher in the attached primary school are provided. It is provided that posts of Assistant Teachers in the attached primary school, who are governed under the provisions of the Act, 1971, shall be filled up by direct recruitment with qualification of graduation plus C.T./B.T.C./H.T.C. or equivalent qualification and in case of non-availability of



B.T.C. trained candidate, person with B.Ed. degree can be appointed.

17. From perusal of the aforesaid provision, it is evident that in absence of a candidate having essential qualification of graduation plus C.T., B.T.C./H.T.C. or equivalent qualification, the candidate with B.Ed. degree would be eligible for appointment. B.P.Ed. degree is not mentioned as one of the alternate qualifications. This Court can not substitute the statutory qualification, which is not otherwise provided under the relevant provisions, which prescribe the essential qualification for appointment to the post of Assistant Teacher in the attached primary school.

18. In primary section, the children study in Class-I to Class-V and, therefore, the Teachers require such training to teach students of these classes. The Legislature in its wisdom, has prescribed the qualification for appointment of Assistant Teacher in the attached primary school, which does not include B.P.Ed. degree. It is also prescribed that only in absence of B.T.C. candidates, candidates with B.Ed. degree would be considered for appointment.

19. A Full Bench of this Court in the case of ***Ram Surat Yadav and others Vs. State of U.P and others***, 2013 CJ (All) 2205, while interpreting Rule 4 of the Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 has rejected the argument that B.Ed. qualification is a higher qualification than TTC and, therefore, the B.Ed. candidates should be held to be eligible to compete for the post of Assistant Teacher. Paragraph 10 of the aforesaid judgement is extracted herein-below:-

*"10. Consequently, the judgment of the Supreme Court holds that (i) the BEd qualification cannot be regarded as a 'higher qualification' than a prescribed certificate of training for primary school children; (ii) whether for a particular post, the source of recruitment should be from candidates with a particular degree is a matter of recruitment policy; and (iii) whether the BEd qualification can also be prescribed for primary school teachers is a question to be considered by the recruiting authority."*

20. It has been further held that Teacher's Training imparted to teachers for B.Ed. course equips them for teaching higher classes, whereas the Basic Teaching Certificate (BTC) is given to teachers for teaching small children and the two cannot be compared with. The duration of courses of B.T.C. and L.T./B.Ed. are entirely different and have been devised keeping in view the stages through which the students pass. In the case of B.T.C., the method of Training Course is devised so as to meet the requirement of teaching at a formative stage for a student who enters the School. Thus, it has been held that the training qualification for teaching small children is B.T.C. while the training qualification for teaching children in High Schools and Intermediate Colleges is B.Ed. or L.T.

21. The judgement cited by the learned counsel for the petitioner in the case of *Amal Kishore Singh* (supra) was in respect of the Head Master of the institution and not in respect of the Assistant Teacher in the attached primary school. Therefore, the said judgement is not relevant in the facts of the present case. Since, the petitioner lacks essential qualification as prescribed under the statute for appointment as Assistant Teacher in the attached primary school of the institution inasmuch as B.P.Ed. degree is not an alternate qualification prescribed for B.T.C. etc., he can not claim to be qualified and, therefore, I do not find any error in the impugned order dated 27.12.2016 passed by the District Inspector of Schools, Gonda upholding the order dated 20.10.2014 passed by the committee

of management terminating the services of the petitioner.

22. In view thereof, the writ petition fails and is hereby ***dismissed.***

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(Dinesh Kumar Singh, J.)

**Order Date :- 4.10.2021**

Rao/-