

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Contempt Petition No. 609 of 2017

Manmohan Singh Bighana & Others

...Petitioners

Vs.

Mrs. Bhpender Kaur & Another

...Respondents

Mr. Rakesh Thapliyal, Advocate for the applicant.

Mr. R.C. Arya, Standing Counsel for the State/respondents.

JUDGMENT

Dated: 09th August, 2018

Sharad Sharma, J. (Oral)

The learned Single Judge by the judgment dated 08.12.2016 had passed the following directions:

“10. The admitted position in the supplementary counter affidavit filed in WPSS No. 476 of 2016 on behalf of respondent no. 3 is that 2058 posts of Scheduled Caste, 214 posts of Scheduled Tribe are still lying vacant but as far as other Backward Classes are concerned, they are already in excess.

11. The contention of the respondents that he OBC candidates are in excess cannot be accepted as it has been specifically stated in WPSS No. 1730 of 2014 that against the OBC posts, Shiksha Acharya are woking. As far as Shiksha Acharya is concerned, Shiksha Acharya are ineligible for appointment as an Assistant Teacher in a primary school, as admittedly the only qualification of a Shiksha Acharya is graduate as per the averments made in WPSS No. 1430 of 2014 and in the counter affidavit.

15. Consequently, all the posts which are presently been occupied either by a “Shiksha Acharya” or by a “Shiksha Mitra”, shall be deemed to be vacated, and on those posts the duly selected candidates from each category shall be forthwith appointed. In case, there are no selected candidates as of now, these vacancies must be declared vacant and duly advertised, so that selection and appointment can be made on these posts as expeditiously as possible, but definitely within a period of two months from the date of production of a certified copy of this order.

18. With the above directions, the writ petitions stand disposed. All existing vacancies prior to March, 2016, irrespective of their present occupancy by Shiksha Acharya or unqualified Shiksha Mitra, shall be declared vacant and be filled by selected candidates. The remaining be carried forward for which a requisition be made forthwith to the selection body, in no case later than two months from the date of certified copy of this order is produced before the Secretary Education.”

2. It would not be out of place to mention that during the pendency of the Writ Petition when the same was being argued the respondent Director of Education has already taken this stand that there is no backlog vacancy and the backlog vacancy cannot be filled up in relation to the OBC candidates because they are already in excess was not accepted by the learned Single Judge for reasons given above. Reference has to be obtained of paragraph 10 of the judgment of the learned Single Judge. The said judgment was challenged by the State in a bunch of Special Appeals being leading Special Appeal No. 82/2017. The fact pertaining to the stand taken by the respondents with regards to the incapacity to fill up the post on the ground that there happened to be excess candidates in the OBC category was yet again taken into consideration and thereafter the judgment was rendered by the Division Bench of this Court on 04.09.2017 with a direction to be adhere to as contained in paragraph 16 & 17 of the judgment:

“16. Hence, we are of the considered view that the findings given in para 15 of judgment under challenge that the posts held by the Shiksha Mitras and Shiksha Acharyas shall be deemed to be vacant has now become irrelevant in the light of the judgment rendered by Hon’ble Apex Court in Civil Appeal No.9529 of 2017 & connected matters on 25.07.2017. Consequently, the said part of the judgment only as rendered by learned Single Judge declaring the post held by Shiksha Mitras and Shiksha Acharyas as deemed vacant becomes nonest and is hereby modified on the basis of the aforesaid judgment of Hon’ble Apex Court. So far as the directions given by the learned Single Judge for concluding the selection process of backlog vacancies from the date of production of the certified copy of the order, this Court finds that filling of backlog vacancies within the specified period do not suffer from any apparent error, because admittedly

the unfilled posts had been carried forward and they deserve to be fulfilled in the wider interest of the State and elementary education. All Special Appeals are being finally disposed of in terms of the following directions:

(i) The selection process for backlog vacancies is to be strictly carried in the light of the directions issued by the learned Single Judge, as that part of the judgment is upheld.

(ii) Since the posts held by the Shiksha Mitras and Shiksha Acharyas, which has been declared by learned Single Judge as to be deemed vacant, has been set aside by us, these Shiksha Mitras and Shiksha Acharyas, who are working and have qualified their TET, will have to be considered for appointments subject to the condition they fulfill the conditions given in para 26 of the judgment rendered by Hon'ble Apex Court on 25.07.2017.

(iii) The concerned authorities will ensure that the appointment of the primary school teachers even as against the backlog vacancies is done strictly in accordance with the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and the NCTE.

17. Subject to the above observations, all Special Appeals stand disposed of and the mandamus is issued to the authorities concerned to conclude the selection process as against the reserved category candidates against the backlog vacancies within time provided by learned Single Judge from date of judgment. No order as to costs.”

3. On account of non compliance of the directions given within the time frame provided by the Division Bench the present contempt petition was filed. Notices have been issued by this Court on 20.12.2017. In compliance thereto on 13.03.2018 a belated compliance affidavit has been filed by respondent no. 2.

4. Learned Single Judge has subsequently in paragraph 11 of the judgment has held that the post occupied by Shiksha Acharya is being occupied by the person, who are not eligible, appointed as Assistant Teacher in Primary School. Owing to the above mentioned averment Shiksha Acharya, who are not qualified and belonging to the OBC category, as referred therein, have to be suitably qualified for the

required selection. Thus, reiterating the stand in the compliance affidavit is controversial to the stand taken by the learned Single Judge, which should undisturbed by the Division Bench and the affidavit cannot be termed as to be complied.

5. Learned counsel for the applicant submits that the purported compliance affidavit is nothing but an eye wash for avoiding the compliance of the judgment of Division Bench, which stands affirmed since having not been challenged by the judgment of Hon'ble the Apex Court. What he points out is that in the compliance affidavit yet again the respondent had reiterated the stand which already stood settled and considered by the learned Single Judge and thereafter by the Division Bench for seeking an excuse for non compliance of the judgment. This stand taken by respondent no. 2 is blatantly contemptuous in nature and it is a deliberate attempt to avoid compliance of the order and trying to agitate the issue which otherwise stands settled by the judgment of the Division Bench. Such type of affidavit of compliance is nothing but a camouflage to avoid compliance and simultaneously to avoid the contempt proceedings. This action/act of respondent no. 2 is deplorable.

6. In that eventuality, the Registry is directed to issue notice to respondent no. 2 to show cause within a period of two weeks from today as to why the charges for drawing the contempt proceedings may not be framed against him.

7. List immediately after two weeks.

(Sharad Kumar Sharma, J.)

09.08.2018