

Court No. - 29

Case :- SPECIAL APPEAL No. - 222 of 2022

Appellant :- State Project Director U.P. Education For All Project Board
And Another

Respondent :- Saroj Maurya And 22 Others

Counsel for Appellant :- Durga Singh, Sr. Advocate

Counsel for Respondent :- C.S.C., A.S.G.I., Amardeo Singh, Piyush
Mishra, Siddharth Khare

Hon'ble Pritinker Diwaker, J.

Hon'ble Ashutosh Srivastava, J.

Order on the Impleadment Application dated 6.4.2022:

The application seeking impleadment of the applicants as respondent Nos. 24, 25 & 26 in the Special Appeal, being not opposed, is allowed. The applicants shall stand impleaded as party respondent Nos. 24, 25 and 26. Learned counsel for the applicants / appellants to carry out necessary corrections in the array of the parties.

Order on Exemption Application:

The application, being not opposed, stands allowed as prayed. The applicants / appellants are exempted from filing true typed copies of page nos. 193, 200, 201, 202, 251, 344 to 350, 382 to 394, 399 to 402 of the appeal.

Order on the memo of the Appeal:

This Intra-Court Appeal has been filed at the instance of the State Project Director, U.P. Education for All Project Board, Lucknow and Finance Controller, Sarva Shiksha Abhiyan, U.P. Lucknow (respondent Nos. 3 and 4 in the writ petition) questioning the judgment and order dated 21.12.2021 passed by the learned Single Judge in Writ-A No. 9673 of 2021 (Kuldeep Kumar Saxena and 19 others versus Union of India and 3 others) and connected Writ-A No. 6911 of 2020 (Saroj Maurya and 20 others versus Union of India and 3 others) whereby the Writ-A No. 6911 of 2020 (Saroj Maurya and 20 others versus Union of India and 3 others) has been allowed on the basis of the impugned judgment and order dated 21.12.2021 passed in Writ-A No. 9673 of 2021 (Kuldeep

Kumar Saxena and 19 others versus Union of India and 3 others).

Before dwelling into the validity of the impugned judgment and order of the learned Single Judge, it would be apposite to briefly state the controversy before the learned Single Judge, the plea raised by the writ petitioners in the writ petition, the stand of the respondents (including the appellants herein) before the learned Single Judge and the findings and conclusion drawn by the learned Single Judge, so as to have a bird eye view of the controversy at hand which will aid in effective adjudication of this appeal.

Case of the Writ Petitioners (respondents herein) before the learned Single Judge:

The writ petitioners who are Teachers engaged on contractual basis in Kasturba Gandhi Balika Vidyalayas set up across the State of U.P. initially under a scheme launched by the Government of India known as Kasturba Gandhi Balika Vidyalaya (hereinafter referred to as the “KGBV”) scheme which later came to be merged with Sarva Shiksha Abhiyan / U. P. Education for All Project, approached the learned Single Judge seeking quashing of a Circular dated 14.7.2020 issued by the State Project Director, U.P. Education for All Project Board, Lucknow in so far as it prescribed categorization of existing teachers into Sangat (consistent) and Asangat (inconsistent) categories and issued directions regarding non renewal of the term of Asangat (inconsistent) contractual teachers for the Academic Sessions 2020-21.

The Circular dated 14.7.2020 has been issued with a view to implement the policy of the Central Government set out in Circulars dated 29.7.2013, 24.3.2014 and the provisions of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the “RTE Act, 2009”). The Circular further noticed certain infirmities existing in the KGBV institutions which were sought to be done away with such as; there were more than one teacher in a subject engaged in various KGBV; appointments made were inconsistent with the curriculum of the Basic Shiksha Parishad; the contractual appointment of teachers were found inconsistent with the provisions of the RTE Act,

2009 particularly Sections 19 and 25 and also contrary to Circulars dated 29.7.2013 and 24.3.2014. Accordingly, a Committee was sought to be constituted at the district level to examine the renewal of the term of contractual employees and ensure that the Asangat (inconsistent) teachers are not retained in KGBV.

It was contended before the learned Single Judge that the subjects and course content for KGBV is based upon the curriculum published by the Basic Shiksha Parishad which contains subjects over and above those specified in schedule to Sections 19 and 25 of the RTE Act, 2009 and cannot be said to be irrelevant and inconsistent so as to disengage the teachers employed for such subjects who have continued for long time categorizing them as Asangat (inconsistent); the qualification of teachers is prescribed by the statutory regulations framed by NCTE and the NCTE does not differentiate the teachers based on qualification with reference to their subjects. The entire exercise sought to be undertaken by aid of the Circular dated 14.7.2020 is completely misdirected and also inconsistent with the scheme of the RTE Act, 2009 and the NCTE Regulations.

Case of the respondents (including the appellants herein)

The stand of the appellants herein as also the other respondents in the writ petition before the learned Single Judge as regards the Circular dated 14.7.2020 was that the Circular had been issued to ensure that the engagement of teachers in KGBV remain in consonance with the provisions of the RTE Act, 2009; to ensure that quality education is provided to girl students of KGBV by qualified teachers; issuance of the Circular was necessitated by the fact that more than one teacher / teachers were found working in one subject in various KGBVs; engagement of teachers was found beyond the subjects prescribed by the Board of Basic Education for its curriculum; part time teachers were engaged to teach main subjects i.e. Mathematics, Science, Social Science, Languages while full time teachers were employed to teach subjects meant for part time teachers. In substance, the circular dated 14.7.2020 was issued to ensure that quality education is provided to the

girl students of KGBV by qualified teachers and the engagement of teachers in KGBV is in accordance with the provisions of the RTE Act, 2009. Besides the above, it was also the case of the respondents in the writ petition that this Court in a batch of writ petitions with leading writ petition, being Writ Petition No. 4845 of 2021 claiming similar relief had been dismissed vide order dated 12.8.2021 and the present writ petition giving rise to the present appeal was liable to meet the same fate.

Findings / conclusions of the learned Single Judge:-

The learned Single Judge on a meticulous examination of the respective contentions of the parties recorded his findings and conclusions in his order dated 21.12.2021 which is under challenge in this Intra-Court Appeal.

The learned Single Judge found that the issue raised in these bunch of writ petitions giving rise to the present appeal were neither raised nor decided in Writ Petition No. 4845 of 2021 (Suneeta Singh vs. State of U.P. and others) and as such, the decision dated 12.8.2021 passed in Writ Petition No. 4845 of 2021 would not govern the decision of the writ petition giving rise to the instant appeal particularly, when the Circular dated 14.7.2020 was not put to challenge in Writ Petition No. 4845 of 2021.

The learned Single Judge in order to test the Circular dated 14.7.2020 proceeded to frame certain questions for consideration as under and thereafter decided the same. The questions framed by the learned Single Judge are being reproduced hereunder:-

“(i) whether qualification for an upper primary teacher is prescribed in law with reference to particular subject and therefore such teacher is required to possess special knowledge in the subject concerned?

(ii) whether subjects specified in Schedule to Sections 19 and 25 of the RTE Act, 2009 lay down the minimum subjects to be taught in the KGBV Institutions, leaving dispensation of education in other subjects is permissible in KGBV?

(iii) whether the classification of teacher in KGBV as *Sangat* (consistent) or *Asangat* (inconsistent), based on the subject taught by them is a valid classification?”

The learned Single Judge has thereafter answered the aforesaid

questions so framed by observing that (a) qualification for appointment of teacher in an upper primary school is not with reference to any subject but is trained graduate with TET as per Notification of NCTE dated 29.7.2011 which is not only binding upon the State Government but also has over riding effect, (b) the circular dated 14.7.2020 wrongly assumes that subjects specified in Schedule to Sections 19 and 25 of the RTE Act, 2009 alone are permissible to be taught in the upper primary institutions and the engagement of teachers for other subjects is contrary to the RTE Act, 2009. In fact the list of subjects specified in the Schedule to Sections 19 and 25 of the RTE Act, 2009 is not exhaustive; the policy of the State Government is to provide education in other subjects also as per the curriculum of Basic Shiksha Parishad and not limit the subjects to be taught in KGBV only as per schedule to the RTE Act, 2009; many of the teachers previously engaged for teaching subjects other than those specified in the Schedule to the RTE Act, 2009 would become redundant and may have to be discontinued, only because the respondents have confined the permissible subjects to be taught as those specified in Schedule to the RTE Act, 2009; the concept of *Sangat* (consistent) and *Asangat* (inconsistent) contained in the Circular dated 14.7.2020 was required to be understood accordingly.

The learned Single Judge further found that the grounds for not accepting the rationale behind the Circular dated 14.7.2020 was apparent on the face of the record inasmuch as, the qualification of teacher in upper primary school is not subject specific and that the appellants erred in taking a contrary view. A teacher possessing qualification as per NCTE Regulation and appointed to teach Hindi, could teach Social Science or Arts also at upper primary level. Besides the segregation of the teachers based on subjects taught by them as full time teacher or part time teacher was totally alien to the curriculum of the Basic Shiksha Parishad and the appellants were proceeding to revise the engagement of teachers based on a flawed interpretation and understanding of the RTE Act, 2009. The learned Single Judge noticed that there is lack of clarity on the distinction between full time and part time teachers. The learned

Single Judge further noticed that the Circular dated 14.7.2020 does not take note of the NCTE Regulations which prescribe the qualifications for the appointment of teachers for primary classes and does not examine the issue of engagement of the teachers with reference to curriculum formulated by the Basic Shiksha Parishad. Accordingly, the learned Single Judge found the Circular dated 14.7.2020 to be unsustainable and proceeded to quash the same by the impugned order at the same time has required the appellants to revisit the issue in the light of the qualifications prescribed vide NCTE Regulations as also the curriculum prescribed by the Basic Shiksha Parishad for Classes VI to VIII and proceed thereafter on the observations made in the impugned order.

We are in respectful agreement with the approach and view taken by Hon'ble Ashwani Kumar Mishra, J. for allowing the writ petition and requiring the respondents / appellants herein to revisit the issue in view of the shortcomings noticed in the Circular dated 14.7.2020.

The Intra-Court Appeal lacks merit and is, accordingly, ***dismissed***.

Order Date :- 18.4.2022
Ravi Prakash

(Ashutosh Srivastava, J.)

(Pritinker Diwaker, J.)