

22.07.2022.
Court No.13
Item No. 93
ap

W.P.A. No. 20955 of 2021

**Sri Sanjib Bar & Ors.
Versus
The State of West Bengal & Ors.**

Mr. Kallol Basu,
Mr. Suman Banerjee.

...For the petitioners.

Mr. Bhaskar Prasad Vaisya,
Mr. Joydip Banerjee.

...For the State.

The State has not filed report as called for by a
Co-ordinate Bench of this Court on 4th May, 2022.

The petitioners are all special educators. They
are trained in imparting education to children with
special needs.

The substance of the grievance is that the State
has not put in place any system or rule to recruit
special educators to teach students with special needs
at any level primary, secondary or higher secondary.

Counsel for the petitioners has placed a 3 Judge
Bench decision of the Hon'ble Supreme Court in the
case of **Rajneesh Kumar Pandey & Ors. -Vs. - Union
of India & Ors** reported in **2021 SCC Online SC
1005**.

The said judgment has discussed in detail the
provisions of the Right of Children to Free and
Compulsory Education Act, 2009 in the context of
needs of specially abled children.

Reference has also been made to the “Right of Persons with Disabilities Act”, 2016 and the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, on the need for Special Educators for Children with Special Needs (CWSN).

The directions of the Court of State Commission for Disabilities NCT Delhi in the case of *Ms. Reshma Parveen – Vs. – The Director, Directorate of Education* decided on 31st December, 2019 being Case No. 821/1014 of 2019 has also been discussed.

The recommendation of the Commission in the said Rehma Parveen decision (supra) have been approved and directed to be implemented by the Hon’ble Supreme Court of India in the **Rajneesh Kumar Panday** (supra). The said directions are, inter alia, as follows:

After analyzing the relevant provisions and the schemes, the State Commissioner made following recommendations:

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“62. After going through the submissions of the parties, the views of the experts and based on my interactions with the parents of children with disabilities and my experience while dealing with their complaints, the following recommendations are made:

i) As an immediate measure, Director, DoE; Commissioner, North DMC; Commissioner, SDMC; Commissioner, EDMC; Chairman, New Delhi Municipal Council and CEO, Cantonment Board should create at least two posts of Special Education Teachers per school an appropriate mix of various specialisations.

ii) Respondents no. 1 to 6 should make provision for appointment of Special Education Teachers in Autism Spectrum Disorder, Intellectual Disability, Learning Disability, Deaf-Blind, Visual Impairment, Hearing Impairment and Cerebral Palsy which are RCI approved Teacher Training Courses.

iii) Since the number of students with different disabilities in schools is dynamic, provision of Special Education Teachers per school would not have any rationale to continue for long and hence will not be a reasonable criterion. The number of Special Education Teachers in a particular disability should be determined based on the

generally accepted pupil teacher ratio of 1 : 8 for children with Cerebral Palsy, visual impairment and hearing impairment, 1 : 5 for children with intellectual disability, ASD and Specific learning disabilities; and 1 : 2 for Deaf-Blind and a combination of two or more of the seven disabilities mentioned above.

iv) Respondent no. 1 to 6 within one month of receipt of this order, should obtain the number of children with different disabilities in the schools under their respective jurisdictions and determine the number of Special Education Teachers required in different disciplines based on the criteria at (ii) above. They should also make an estimation of out of school children with disabilities, which was 28.07% for all India and 7.28% for Delhi as per National Sample Survey : Estimation of Out-of-School Children in the Age 6-13 : Social & Rural Research Institute & Technical Support Group for SSA, Ed CIL, 2014 and 54% of children with multiple disabilities (CwMDs) never attended an educational institution as per Census 2011.

v) After determining the number of Special Educators for preprimary level/primary level, upper primary level, secondary and Sr. Secondary level, respondents no. 1 to 6 should initiate action to create or convert the existing posts of general teachers into the required number of Special Education Teachers of the appropriate specialities at different levels including at primary level. The minimum requirement of RCI approved qualification should be as prescribed by RCI. This should be done within 3 months from the date of receipt of this order. It should be noted that there cannot be different criteria for the schools of DoE and that of the Corporations.

vi) Respondents no. 1 to 6 should either set up resource centre in each school or for a cluster of closely located schools, not beyond a radius of 2-3 KMs where all teaching, learning material/resources including the Special Education Teachers of different speciality should be available for deployment in the schools as per need to ensure that every child with any disability is ensured quality education on equal basis with others. Equality as well as equity must be ensured.

vii) The conditions of service and the Recruitment Rules for Special Education Teachers should also clearly prescribe that they may be required to teach not only children with disabilities but also children without disability in mainstream schools so that full utilization of their services is ensured. NCTE should issue necessary notification about their eligibility to teach children without disabilities at appropriate level as per their qualification within three months from the date of receipt of this order. It should also be ensured that Special Education Teachers are treated at par with mainstream teachers in terms of service conditions such as pay, etc.

viii) It is a matter of concern that NCTE (respondent no. 8) neither responded nor submitted any comments/advice with regard to the eligibility of Special Education Teachers at secondary/higher secondary level. NCTE should incorporate in the curriculum of teacher training programmes, mandatory papers on handling children with disabilities, basic sign language and Braille, if not already done, as otherwise children with disabilities will be deprived of their right to quality education on equal basis with other children which is a mandate of the Rights of Persons with Disabilities Act, 2016 as well as RTE Act, 2009 as amended in 2012.

ix) All in-service mainstream teachers at all levels, i.e. Pre-Primary, Upper Primary, Secondary and Sr. Secondary

Level must be exposed to the needs of children with different disabilities by mandatory training of a given duration. DoE should do it in consultation with RCI within three months from the date of receipt of this order and respondent No1 to 6 should plan the training of their respective mainstream teachers in a time bound manner and complete the training within a reasonable period of time.

x) NCERT should include a compulsory module on teaching of children with disabilities in its online digital platform 'Swayam' for training of In-service teachers.

xi) DoE, Govt. NCT of Delhi should develop guidelines for the inclusive education and inclusive schools in NCT of Delhi in Govt. as well as Private Schools in consultation with the experts in the field, the parents of children with disabilities belonging to different strata of the Society and put in place a robust mechanism to ensure its implementation by all concerned.

xii) Ministry of HRD, Govt of India should also issue model guidelines and the quality indicators for inclusive education and inclusive schools for adoption/adaptation as per local conditions at the earliest."

In the backdrop the above, the Supreme Court of India at paragraph 76 & 77 of the **Rajneesh Kumar Pandey** (supra) directed as follows:

In view of the above, a multipronged approach needs to be adopted by the concerned Authorities with immediate effect, inter alia, as follows:—

A. The Central Government must forthwith notify the norms and standards of pupil-teacher ratio for special schools and also separate norms for special teachers who alone can impart education and training to CwSN in the general schools; and until such time, as a stopgap arrangement adopt the recommendations made by the State Commissioner, NCT of Delhi in the case of *Ms. Reshma Parveen*²⁸ reproduced in paragraph 51 above;

B. To create commensurate permanent posts as per the just ratio to be specified by the competent authority for the rehabilitation professionals/special teachers who can cater to the needs of CwSN;

C. To initiate appointment process to fill-in vacancies for the posts so created for rehabilitation professionals/special teachers for being appointed on regular basis. The same shall be completed within six months from the date of this order or before the commencement of academic year 2022-2023, whichever is earlier;

D. To overcome the shortage of resource persons (rehabilitation professionals/special trained teachers), the training schools/institutions must take steps to augment the number whilst ensuring that the norms and standards specified under the governing laws and regulations including that of the Council for grant of recognition and registration are fulfilled;

E. Until sufficient number of special teachers becomes available for general schools and special schools, the services of special trained teachers can be availed as itinerant teachers as per the SSS within the school block (cluster schools) to optimize the resource persons and as a stopgap arrangement;

F. The other teachers and staff in the general schools be given compulsory training and sensitized to handle the CwSN in the general schools, if admitted; and

G. The authorities may also explore the possibility of merging unviable special schools with relatively viable special schools in the neighbourhood, so as to entail in consolidation of assets and resources for better delivery to the requirements of CwSN.

77. For the nature of observations made and directions issued, it is not limited to the States of Uttar Pradesh and Punjab, but will operate across the country (all States and Union Territories).

The said directions, therefore, were required to be mandatorily implemented by the State of West Bengal.

The petitioners have made an attempt to cull out the information sought by the Coordinate Bench and an affidavit has been filed which is taken on record.

Despite a lapse of two months, this Court notes with anguish the failure of the State to bring on record the information sought by the Court.

In addition to the information already sought by the order dated 4th May, 2022, the State shall also indicate as to what steps have been taken to

implement the mandatory directions of the Hon'ble Supreme Court of India that have been set out hereinabove.

Let such report be filed on or before 29th July, 2022 when the matter shall be listed at 2:00 P.M.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)