

Court No. - 58

Case :- WRIT - A No. - 10827 of 2018

Petitioner :- Saroj And 6 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Lavlesh Kumar

Counsel for Respondent :- C.S.C.,Amit Shukla

Hon'ble Ashwani Kumar Mishra,J.

Petitioners had applied for appointment against 12460 posts of Assistant Teachers advertised for various basic schools run by the Basic Shiksha Parishad, U.P., Allahabad. The process was initiated vide Government Order dated 15.12.2016. Grievance of petitioners is that though they have applied for appointment and possess requisite qualification for the post, yet, their candidature is not being considered.

It transpires from records that petitioners were earlier appointed as Shiksha Mitra and their services were later absorbed on the post of Assistant Teacher. Such absorption was subject matter of challenge which travelled upto the Apex Court. The absorption was found invalid and consequently set aside. While disposing of the matter, Hon'ble Supreme Court in State of U.P. and another vs. Anand Kumar Yadav and others being Civil Appeal No.9529 of 2017, made following observations in para 25 & 26:-

"25. On the one hand, we have the claim of 1.78 Lakhs persons to be regularized in violation of law, on the other hand is the duty to uphold the rule of law and also to have regard to the right of children in the age of 6 to 14 years to receive quality education from duly qualified teachers. Thus, even if for a stop gap arrangement teaching may be by unqualified teachers, qualified teachers have to be ultimately appointed. It may be permissible to give some weightage to the experience of Shiksha Mitras or some age relaxation may be possible, mandatory qualifications cannot be dispensed with. Regularization of Shiksha Mitras as teachers was not permissible. In view of this legal position, our answers are obvious. We do not find any error in the view taken by the High Court.

26. Question now is whether in absence of any right in favour of Shiksha Mitra, they are entitled to any other relief of preference. In the peculiar facts situation, they are to be given opportunity to be considered for recruitment if they have acquired or they now acquire the requisite qualification in term of advertisement for recruitment for next two consecutive recruitments. They may also be given suitable age relaxation and some weightage for their experience as may be decided by the concerned authority. Till they avail of this opportunity, the State is at liberty to continue them as Shiksha Mitras on same terms on which they were working prior to their absorption, if the State so decides."

Learned counsel for the petitioner submits that vacant posts are still available and that their claim for appointment is liable to be considered.

The petition is opposed by the respondents on the ground that the petitioners did not pursue their application at the relevant

point of time and their claim is not liable to be entertained now.

The issue has been examined in the context of a similar claim made against recruitment undertaken to fill up 16448 posts, in Writ Petition (S/S) No.18762 of 2017. Petitioners though selected but were not allowed to join as No Objection Certificate was not issued to them by their previous employer. This Court observed as under:-

".....

Now, in these compelling circumstances they have approached this Court saying that some of the 16448 posts against which they had been selected are still lying vacant, therefore, they should be allowed to join against them as they have lost the other job.

Learned Additional Chief Standing Counsel has placed before the Court an instruction dated 13.09.2017 in pursuance to an order dated 04.09.2017 passed in Writ Petition No. 18762(S/S) of 2017 which states that joining within the time stipulated in the appointment order is a must failing which the said appointment order ceases to be effective. While there is no dispute about the recitals contained in the instructions, the Court is of the view that there is already a dearth of Assistant Teachers in the field Basic Education in the State of U.P. The petitioners herein are already selected after following due and proper advertisement and it is nobody's case that the selection was improper or illegal in any manner. The only reason they could not join on the post in question was the predicament which they faced as narrated above, therefore, the question which arises is if no mandatory Rule is being violated in a manner so as to prejudice the State Government or any other person in any manner what is the difficulty in allowing the petitioners to join on the vacant posts, as, it would facilitate their services for imparting Basic Education to the Children. As already state above, thousands of posts of Assistant Teachers are still vacant.

Moreover, the Court also finds that if a fresh recruitment is held against the said posts, then, obviously it will take time as even the advertisement has not been issued as yet, therefore, one fails to understand as to why the State Government can not consider and allow the selected petitioners to join on the vacant posts, as, it would sub-serve the common good without violating any statutory provision.

It is made clear that the joining of the petitioners shall not be treated as a precedent for other matters, as, at best the State Government can be apprehensive that others similarly situated in respect of other selections may also come forward treating it to be a precedent which is not the case. Neither any financial nor administrative prejudice is being caused to the State Government.

....."

Reasons may vary but the situation is similar here also. Petitioners, admittedly, have applied for appointment against the posts in question and possess requisite qualification. They were either not permitted to participate in the counselling or were not able to join as No Objection Certificate was not issued to them. It may be that petitioners pursued their candidature disinterestingly, as they were already absorbed as Assistant Teachers, but in the changed circumstances they ought not to be penalized for it. The Hon'ble Supreme Court in para 26 has been pleased to acknowledge equity arising in their favour and they have been given opportunity to face open competition. In

the present case also, if a direction is issued to consider petitioners' candidature against vacant posts, on the basis of petitioners' merit, no prejudice would be caused to paramount public interest. In the process no rule of law would be violated and equity would also be adjusted. Vacant posts are otherwise required to be filled so as to meet the requirement of free education to children aged between 8 to 14 years.

In the facts and circumstances, noticed above, this writ petition stands disposed of with the direction upon the respondents to allow petitioners to participate in the ongoing recruitment exercise and their candidature be also considered against vacant posts on the strength of their merit and in accordance with law. Liberty is, therefore, given to the petitioners to represent in the matter before the District Basic Education Officer concerned, in respect of their grievance, noticed above, alongwith certified copy of this order, within a period of two weeks from today. In case such a claim is raised, the authority concerned shall examine the petitioners' claim for appointment on the post of Assistant Teacher, on basis of their merit, if vacant posts are still available, and appropriate orders would be passed in that regard within a period of two months, thereafter. This observation is being made considering the peculiar facts of the present case, as well as keeping in view the observations made by the Apex Court in para 26 of the judgment in State of U.P. and another vs. Anand Kumar Yadav and others (supra).

Order Date :- 30.4.2018

Ashok Kr.