

11/15/18
B.6-18

विषयक,
एस0 राजलिंगम
विशेष सचिव
उ0प्र0 शासन।

जमी
8/6/2018

सेवा में,
1. निदेशक,
बेसिक शिक्षा,
उ0प्र0 लखनऊ।

2. सचिव,
बेसिक शिक्षा परिषद,
उ0प्र0 इलाहाबाद।

लखनऊ: दिनांक: 8 मई, 2018

शिक्षा अनुभाग-5

विषय- मा0 उच्च न्यायालय इलाहाबाद में योजित रिट याचिका संख्या-27870/2017 नीरज कुमार पाण्डेय व अन्य बनाम उ0प्र0 राज्य व अन्य के साथ सम्बद्ध रिट याचिकाओं में पारित आदेश दिनांक 03.11.2017 के विरुद्ध योजित विशेष अपील सं0 648/2017 उ0प्र0 सरकार व अन्य बनाम नीरज कुमार पाण्डेय व अन्य के साथ सम्बद्ध विशेष अपील (डी) सं0 30/2018 उ0प्र0 सरकार व अन्य बनाम दीपिका सिंह तथा विशेष अपील (डी) सं0 33/2018 उ0प्र0 सरकार व अन्य बनाम उम्मे साफिया फरीदी में पारित आदेश दिनांक 12.04.2018 के संबंध में।

महोदय,
उपर्युक्त विषयक में कृपया सचिव, बेसिक शिक्षा परिषद उ0प्र0 इलाहाबाद के पत्र दिनांक 29.05.2018 का संदर्भ ग्रहण करने का कष्ट करें, जो कि मा0 उच्च न्यायालय इलाहाबाद में योजित रिट याचिका संख्या-27870/2017 नीरज कुमार पाण्डेय व अन्य बनाम उ0प्र0 राज्य व अन्य के साथ सम्बद्ध रिट याचिकाओं में पारित आदेश दिनांक 03.11.2017 के विरुद्ध योजित विशेष अपील सं0 648/2017 उ0प्र0 सरकार व अन्य बनाम नीरज कुमार पाण्डेय व अन्य के साथ सम्बद्ध विशेष अपील (डी) सं0 30/2018 उ0प्र0 सरकार व अन्य बनाम दीपिका सिंह तथा विशेष अपील (डी) सं0 33/2018 उ0प्र0 सरकार व अन्य बनाम उम्मे साफिया फरीदी में पारित आदेश दिनांक 12.04.2018 के संबंध में है। मा0 उच्च न्यायालय का दिनांक 12.04.2018 का कार्यकारी अंश निम्नवत है:-

We have considered the submissions advanced by learned counsel for the parties.

At this stage, it would be appropriate to refer to the recruitment process that had been put on hold because of the instructions issued by the Joint Secretary of the Board in his communication dated 23 March 2017 and the same are as follows:- Sr. No. Recruitment Total Posts G.O.

1. Assistant Teachers Urdu in Primary Schools 4000 15.12.2016
2. Assistant Teachers in Primary Schools 12460 15.12.2016
3. Assistant Teachers in Primary Schools 16448 16.06.2016
4. Science/Math Teachers in Upper Primary (Class6-8) 29334 11.07.2013
5. Instructors (Physical Training) in Upper Primary Schools (Class 6-8) 32022 19.09.2016

Thus, the recruitment for as many as 94,264 Assistant Teachers/Instructors had been put on hold merely because of the communication dated 23 March 2017 sent by the Joint Secretary of the Board. 6/8

It has been pointed out by learned counsel for the writ petitioners that out of 29334 posts of Assistant Teachers in Science/Mathematics, many of them have already been filled up and likewise, out of 16448 posts of Assistant Teachers in Primary Schools, many have been filled up.

It has also been pointed out that out of 94,264 posts, 12460 posts of Assistant Teachers are covered by the Circular dated 15 December 2016 that was assailed in Writ Petition and in Special Appeal Defective No.365 of 2017 (Kuldip Singh & 5 others Vs. State of U.P. & 8 Others) connected with Special Appeal Defective No.367 of 2017 (Sunil Dwivedi Vs. Gyan Chandra and 8 Others) and Special Appeal Defective No.556 of 2017 (Archana Verma & 3 Others Vs. State of U.P. & 8 Others). A Division Bench of this Court by judgment and order dated 6 February 2018, directed the State Government to take a decision as to whether they would like to proceed with the selection process or not. While deciding the Special Appeal, the Division Bench rejected the contentions advanced by the State that the Rules promulgated with effect from 9 November 2017 should be made applicable to the recruitment process since the advertisement was issued prior to 9 November 2017. Learned counsel for the writ petitioners have also placed before the Court, a Government Order dated 11 April 2018 that has been issued to give effect to the aforesaid judgment and order dated 6 February 2018 in the aforesaid Special Appeals. A direction has, therefore, been issued to make appointments of 12460 Assistant Teachers pursuant to the Government Order dated 15 December 2016, but of course that has been made subject to Special Appeal No.648 of 2017.

Learned counsel for the writ petitioners have also placed before the Court, a communication dated 7 December 2017 in regard to appointment of 29344 Assistant Teachers covered by the Circular dated 7/8 11 July 2013. It is stated that for the candidates who had received appointment letters but could not join for some reason, steps should be taken at the earliest for their joining. The Government Orders were issued on 11 July 2013, 15 December 2016, 16 June 2016 and 19 September, 2016 for as many as 94,264 posts of Assistant Teachers/Instructors. This itself shows that there is a dearth of Assistant Teachers/Instructors and for no rhyme or reason, the Board issued the circular dated 23 March 2017 putting on hold the on going recruitment process. This apart, the State itself is making appointment against the posts covered by the Circular.

It has also been urged by learned Senior Counsel appearing for the appellant that because of the coming into force of the Right of Children to Free and Compulsory Education Act, 2009 an exercise had to be undertaken to

find out the number of teachers actually required. It needs to be noted that the exercise had already been undertaken in 2013, 2015, and 2016 and except for making a bald statement, nothing has been pointed out in any of the affidavits that there is an error in the exercise earlier undertaken.

The contention of learned Senior Counsel for the appellant that the written examination has also to be conducted because of the amendment made on 7 November 2017 in the Rules cannot also be accepted for the simple reason that the advertisement had been issued earlier to that. The above contention has also been specifically rejected by Division Bench of this Court by order dated 6 February 2018 in the aforesaid Special Appeals filed by Kuldip Singh and Others.

It is more than apparent that there were no good grounds for putting on hold the recruitment process. What is important to note is that 2 The Act, 2009 8/8 when confronted, the Board made a statement in the Court that oral directions had been issued by the State Government for putting on hold the recruitment process and when called upon, the State Government in one of the matters, denied having issued such instructions. Even if it be assumed that the State Government has actually issued oral directions then we have no hesitation in observing that such oral directions could not have been made a ground by the Board to keep in abeyance the recruitment process. Even the communication dated 23 March 2017 sent by the Board does not indicate any reason as to why the recruitment process should be put on hold.

In such circumstances, there is no good reason to interfere with the directions issued by the learned Judge in the impugned judgment. We also expect that the Board will ensure that the recruitment process initiated by the aforesaid Government Orders dated 11 July 2013, 15 December 2016, 16 June 2016 and 19 September 2016 shall be completed as expeditiously not latter than two months from today. The Special Appeals are, accordingly, dismissed.

2- सचिव, बेसिक शिक्षा परिषद उ०प्र० इलाहाबाद द्वारा विशेष अपील में पारित उक्त आदेश के अनुपालन में दिनांक 29.05.2018 द्वारा यह अवगत कराया गया है कि शासनादेश सं० 265 (1)/79-5-14-1(04)/13 दिनांक 11.07.2013 परिषद द्वारा संचालित उच्च प्राथमिक विद्यालयों में कुल 29334 विज्ञान/गणित के सहायक अध्यापक के रिक्त पदों पर चयन/भर्ती के आदेश निर्गत किये गये थे। इसी के साथ शासनादेश सं० 5256/79-5-2014-1 (04)/13 दिनांक 24.12.2014 द्वारा भर्ती/चयन प्रक्रिया हेतु दिनांक 07.01.2015 एवं 08.01.2015 को अन्तिम काउन्सिलिंग की तिथि निर्धारित की गयी थी, जिसके कम में 26115 विज्ञान/गणित के सहायक अध्यापक के पदों पर चयन/भर्ती की जा चुकी है। अवशेष रिक्त पद अर्ह अभ्यर्थियों की अनुपलब्धता के कारण रिक्त हैं।

3- उक्त से स्पष्ट है कि चयन/भर्ती हेतु काउन्सिलिंग के पश्चात पात्र अभ्यर्थियों की नियुक्ति की जा चुकी है तथा उनके द्वारा कार्यभार भी ग्रहण किया जा चुका है। कतिपय अभ्यर्थियों द्वारा अन्तिम काउन्सिलिंग के पश्चात पुनः काउन्सिलिंग कराये जाने हेतु मा०

उच्च न्यायालय लखनऊ में याचिका योजित की गयी। मा० उच्च न्यायालय लखनऊ में योजित रिट याचिका सं० 9003/2016 जय शंकर प्रसाद व 65 अन्य बनाम उ०प्र० राज्य व अन्य में दिनांक 29.04.2016 को मा० न्यायालय द्वारा आदेश पारित किया गया है, जिसका कार्यकारी अंश निम्नवत है:-

".....Assuming that out 29334 posts 3,000 are still vacant as has been mentioned by the learned Standing Counsel in Writ-A No. 1939 of 2016, it can not be last sight of that more than two and half years have passed since these posts were advertised and in the interregnum several candidates must have acquired the eligibility for appointment against these posts. If endless holding of counselling is permitted, it will lead to appointment of less meritorious candidates as normally after each counselling the cut off merit gets lowered. As many as 7 counsellings 8 have already been held for open category and 8th for reserved category.

Considering the fact that more than two and half years have passed and there is no such mandatory statutory rule which compels the opposite parties to hold counselling even after 7th and 8th round, the writ of mandamus and certiorari prayed for are also misconceived. The impugned Government Order does not suffer from any such flagrant error or violation of law resulting in grave miscarriage of justice to the petitioners. In fact there is no such enforceable right of the petitioners which has been violated. They have been considered in the selection and have not been successful even after 7 counselings. Now, they can not pray for further counselling....."

4- यह भी उल्लेखनीय है कि बेसिक शिक्षा परिषद द्वारा संचालित उच्च प्राथमिक विद्यालयों में विज्ञान/गणित के सहायक अध्यापक के पदों पर सीधी भर्ती प्रक्रिया को अधिसूचना सं० 2282/79-5-2017-रिट-105-2014 दिनांक 09.11.2017 द्वारा समाप्त किया जा चुका है। वर्तमान प्राविधानों के अर्न्तगत विज्ञान/गणित के सहायक अध्यापक के पदों को पदोन्नति द्वारा भरा जाना है।

5- उक्त वर्णित तथ्यों के दृष्टिगत मुझे यह कहने का निदेश हुआ है कि परिषद द्वारा संचालित उच्च प्राथमिक विद्यालयों में कुल 29334 विज्ञान/गणित के सहायक अध्यापक के रिक्त पदों पर चयन/भर्ती हेतु निर्गत शासनादेश सं० 265 (1)/79-5-14-1 (04)/13 दिनांक 11.07.2013 तथा तदनुक्रम में निर्गत समस्त शासनादेश तत्कालिक प्रभाव से समाप्त करते हुये चयन/भर्ती प्रक्रिया को बन्द किये जाने का निर्णय लिया गया है।

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31/05/18

भवदीय,
(एस० राजलिंगम)
विशेष सचिव।

9/1