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RANU HAZARIKA & ORS.

v.

STATE OF ASSAM & ORS.

(Civil Appeal No.2153 of 2011 etc.)

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FEBRUARY 28, 2011

[D.K. JAIN AND H.L. DATTU, JJ.]

Assam Elementary Education (Provincialization) (Amendment) Rules, 2005:

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Teachers Training – Elementary/Primary Schools – The amendment Rules substituting the requirement of diploma in teachers training by providing that preference would be given to trained candidates – High Court holding the amendment invalid being contrary to the NCTE Act and the Regulation 2001, but allowing the State Government to complete the recruitment process – Held: The decision of the High Court, permitting the State Government to continue with the recruitment process, initiated on the basis of the Amendment Rules, 2005, which have been declared by it to be illegal, is clearly indefensible – High Court could not have permitted the State Government to perpetuate an illegality – Having failed to sustain the Amendment Rules, 2005 before the High Court, it would be improper for the State to go ahead with the recruitments under the said amended Rules which have been declared null and void, particularly, when the decision of the High Court on that issue has not been questioned by it – The leave granted by the High Court to the State to complete the selection process in terms of employment notice dated 2-12-2005, is set aside and the said notice (dated 02-12-2005) is also quashed – Assam Elementary Education (Provincialization) Rules, 1977 – National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 – National Council for Teacher Education Act, 1993.

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Writ petitions were filed before the High Court challenging the Assam Elementary Education (Provincialization) (Amendment) Rules, 2005 whereby the State Government provided that preference to trained candidates would be given in the appointments of teachers in elementary/primary schools., and the consequent employment notice dated 2.12.2005. It was the case of the writ petitioners that in the State of Assam, in March 1999, a pre-service teacher's training course of two years duration leading to award of diploma had been introduced and the admission to the said course was regulated by an advertisement published in the newspapers on 14-4-1999. In the said advertisement, it was mentioned that the pre-service training course leading to an award of diploma in education, for which applications were invited, had been designed to secure improvement of the professional skill of the persons to be recruited as teachers in elementary schools against the vacancies that would occur in the near future. Most of the writ petitioners applied for joining the diploma course pursuant to the said notice/advertisement and completed the two years course leading to the award of diploma. After the commencement of the said course in the year 2000, two batches, totalling 900 persons, completed the course, qualified and were awarded diploma. However, the State Government discontinued the course with effect from the year 2003. The High Court though held the Assam Elementary Education (Provincialization) (Amendment) Rules, 2005 as invalid being contrary to National Council for Teacher Education Act, 1993 and the National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001, yet allowed the State Government to complete the recruitment process initiated pursuant to the employment notice dated 2.12.2005. Aggrieved, the writ petitioners filed the appeals.

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A Allowing the appeals, the Court

B HELD: 1.1 It is manifest from the Preamble to the National Council for Teacher Education Act, 1993 that it had been enacted with a view to achieving planned and coordinated development; and proper maintenance of norms and standards in the teacher education system etc. throughout the country. In exercise of powers conferred on the NCTE u/s 32(2)(d)(i) of the Act, it framed National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001, which in so far as the elementary/primary schools are concerned, inter alia, provided Diploma of certificate in basic teachers training of a duration of not less than two years or Bachelor of Elementary Education (B.E.Ed)" [para 3 and 5] [284-E; 285-C-E]

E 1.2 The decision of the High Court, permitting the State Government to continue with the recruitment process, initiated on the basis of the Amendment Rules, 2005 which have been declared by it to be illegal is clearly indefensible. Having clearly held that "the requirement of adherence to the Statutory Regulations framed by the NCTE cannot be left to be determined at the discretion of the authorities of the State Government and that there was no compelling reason with the State to justify a departure from the Statutory Regulations, any action under illegal rules would be null and void", the High Court could not have permitted the State Government to perpetuate an illegality. Having failed to sustain the Amendment Rules, 2005 before the High Court, it would be improper for the State to go ahead with the recruitments under the said amended Rules which have been declared null and void, particularly, when the decision of the High Court on that issue has not been questioned by it. The impugned observation by the High

Court would be clearly inimical to the rule of law. While it is trite that Courts can exercise judicial discretion in moulding the relief, however, such discretion cannot be exercised to perpetuate and encourage an illegality. [para 16] [289-H; 290-A-D]

M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu & Ors. 1999 (3) SCR 1066 = (1999) 6 SCC 464 - relied on.

2. The leave granted by the High Court to the State to complete the selection process in terms of employment notice dated 2-12-2005, is set aside and the notice dated 02-12-2005 is also quashed. [para 17] [290-E]

Case Law Reference:

1999 (3) SCR 1066 relied on para 16

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2153 of 2011.

From the Judgment & Order dated 09.04.2009 of the High Court of Guahati at Gauhati in Writ Petition (Civil) No. 3254 of 2006.

WITH

C.A. Nos. 2154-2167 & 2168-2170 of 2011.

R.F. Nariman, Arunabh Chowdhury, Parthiv Goswami, Anupam Lal Das, Hrishikesh Das, Praveen Chaturvedi, Jyoti Chaturvedi, Azim H. Laskar, Sachin Das, Abhijit Sengupta, Avijit Roy (for Corporate Law Group) for the appearing parties.

D.K. JAIN, J. 1. Leave granted.

2. This batch of appeals, by grant of leave, arises out of judgments and orders dated 9th April 2009, 22nd June 2009, 17th July 2009 and 18th September 2009 respectively passed

A by the Gauhati High Court at Guwahati. By the impugned judgments, the High Court has held that the Assam Elementary Education (Provincialization) (Amendment) Rules, 2005 (for short "the Amendment Rules, 2005") are ultra vires the provisions of the National Council for Teacher Education Act, 1993 (for short "the Act") and the Regulations framed thereunder.

3. The material facts leading up to the filing of the writ petitions before the High Court may be stated as follows :

C The National Council for Teacher Education (for short "the NCTE") was set up in the year 1973 by a Government Resolution as a National Expert Body to advise the Central and State Governments on all matters pertaining to teacher education. Since the role assigned to the NCTE was purely advisory in nature, it had very little impact on the standards of teacher training institutions in the country and on their unplanned growth. Therefore, in order to empower the NCTE to make qualitative improvements in the system of teacher training, in the year 1993, the Act was enacted by the Parliament giving statutory recognition to the NCTE. It is manifest from the Preamble to the Act that it had been enacted with a view to achieving planned and coordinated development; and proper maintenance of norms and standards in the teacher education system etc. throughout the country.

F 4. Section 12 of the Act enumerates the functions of the NCTE. Primarily, it provides that it shall be the duty of the NCTE to take all such steps as it may think fit to ensure that there is planned and coordinated development of teacher education and proper standards in that behalf, determined by it, are maintained. For achieving the object for which the Act was enacted, several functions enlisted in the Section have been assigned to the NCTE, which includes laying down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognized institutions. Section 32 of the Act confers on the NCTE power to make Regulations. Sub-clause (d)(i) of sub-section (2) of Section 32

provides that the NCTE may lay down minimum qualifications for a person to be employed as a teacher under clause (d) of Section 12. Under Section 33 of the Act, the Regulations made by the NCTE are required to be laid before each House of Parliament and it is only upon due approval of such Regulations or upon modifications as may be made by the Parliament that the Regulations take effect.

5. In exercise of powers conferred on the NCTE under Section 32(2)(d)(i) of the Act, it framed a set of Regulations viz. National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001. In the schedule to the said Regulations, the minimum academic and professional qualifications for recruitment of teachers at different levels have been stipulated. In so far as, the elementary/primary schools are concerned, the qualifications prescribed by the schedule are as follows :

“(i) Senior Secondary School Certificate.

(ii) Diploma of certificate in basic teachers training of a duration of not less than two years,

Or

Bachelor of Elementary Education (B.E.Ed)”

The said Regulations further contemplated that the existing Recruitment Rules would be modified within a period of three years so as to bring such Rules in conformity with the qualifications prescribed in the schedule to the Regulations.

6. In the State of Assam, in March 1999, a pre-service teacher’s training course of two years duration leading to award of diploma had been introduced and the admission to the said course was regulated by an advertisement published in the newspapers on 14th April, 1999. In the said advertisement, it was mentioned that the pre-service training course leading to an award of diploma in education, for which applications were

A invited, had been designed to secure improvement of the professional skill of the persons to be recruited as teachers in elementary schools against the vacancies that will occur in the near future. Admittedly, most of the writ petitioners had applied for joining the diploma course pursuant to the said notice/advertisement and thus, completed the two years course leading to the award of diploma. After the commencement of the said course in the year 2000, two batches, totalling 900 persons, completed the course, qualified and were awarded diploma. However, the State Government discontinued the course with effect from the year 2003.

7. It seems that on the insistence of the NCTE, the State of Assam amended the Assam Elementary Education (Provincialization) Rules, 1977 with effect from 10th November, 2005. By the said amendment instead of making the requirement of a diploma in teachers training mandatory, as stipulated in the Regulations framed by the NCTE, it was provided that preference to trained candidates will be given. Schedule-I to the amended Rules stipulated that such preference will be in the form of 10 additional marks to trained teachers in the selection process for the recruitment of teachers. Having carried out the said amendment, an employment notice dated 2nd December, 2005 was issued in the newspapers inviting applications for filling up 5372 posts of Assistant Teachers. The prescribed minimum educational qualification was higher secondary, with preference to trained candidates.

8. Being aggrieved by the said amendment which waived the requirement of a diploma for selection of teachers, a group of writ petitions were filed, seeking quashing of the Amendment Rules, 2005, inter-alia, on the ground that the amendment was not in conformity with the Statutory Regulations framed by the NCTE. A prayer for setting aside advertisement dated 2nd December 2005 was also made.

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9. In the writ proceedings, the State chose not to spell out its stand on the issue, inasmuch as neither a counter affidavit on its behalf was filed nor any instructions were imparted to the counsel representing it before the High Court. Under the given circumstances, the High Court proceeded to decide the writ petitions on the basis of the material available on record.

10. As stated above, by the impugned judgment, the High Court has struck down the Amendment Rules, 2005, observing thus :

“15. In the present group of cases, as already noticed, the State has neither filed an affidavit nor has the State taken any particular stand before the Court. No compelling reasons dictated by public interest have been disclosed by the State to enable the Court to understand that the provisions of the Amendment Rules, though in departure from the Regulations framed by the Council, is dictated by acceptable reasons in public interest. Though in the course of the hearing the learned Standing Counsel of the Department has pointed out that in the State of Assam teachers in lower Primary schools are required to undergo a Basic training course after their appointment and till completion of the said course such teachers are not put on the regular scale of pay, the said facts cannot constitute adherence or even substantial compliance with the provisions of the Regulations in as much as the Regulations prescribe completion of the teachers training course as a positive condition of eligibility which is conspicuously absent in the Amendment Rules. The failure of the State to show any compelling or supervening circumstances justifying the said departure from the Regulations has, therefore, to be understood by the Court to be due to the absence of any such reasons. In such a situation, the requirement of adherence to the statutory Regulations framed by the Council cannot be left to be determined at the discretion of the authorities of the State

A Government of Assam. That apart, the Regulations framed (sic) by the Council has the effect of enhancing the quality of education at the primary level and in the absence of any compelling reason to justify a departure therefrom, the Court would lean in favour of an interpretation that would advance the cause of quality education in the State.

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D 16. Consequently and in the light of the foregoing discussions the provisions of the Assam Elementary Education (Provincialization) (Amendment) Rules, 2005 insofar as giving of preference to trained teachers is concerned is held to be invalid being contrary to the provisions of the National Council for Teachers Education Act, 1993 and the Regulations framed thereunder. As a corollary thereto, it will now be incumbent on the part of the State Government to revive the training institutes for imparting pre-service teachers training of two years duration leading to award of diploma.”

E Insofar as the recruitment process initiated by the issue of advertisement dated 2nd December 2005 by the State Government, granting preference to the trained teachers was concerned, the High Court observed that since the Amendment Rules, 2005, which had now been adjudged as illegal and ultra vires the Act, were in force when the said advertisement was issued, if the State is inclined to complete the recruitment process initiated pursuant to the said advertisement, it may be completed in terms of the said advertisement. However, henceforth and in the future, the process of recruitment of teachers in the lower Primary Schools will have to conform to the requirement of academic and professional qualifications spelt out by the National Council for Teachers Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001.

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11. Being aggrieved with the observations in respect of advertisement dated 2nd December 2005, the diploma holders are before us in these appeals.

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12. At the outset, it is pertinent to note that the State Government has not questioned the correctness of the impugned judgments. However, in the counter affidavit filed on behalf of the State, it is stated that in furtherance of the recruitment process, a select list had been prepared by the District Committees but the same could not be published because of certain directions by the Gauhati High Court in another set of cases filed for regularization of OBB teachers.

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13. We have heard Mr. R.F. Nariman, learned senior counsel appearing for the appellants and Mr. Avijit Roy, learned counsel for the State.

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14. It was submitted by learned counsel for the appellants that having declared the Amendment Rules, 2005 as illegal, the High Court fell into an error in not setting aside the entire selection process initiated vide employment notice dated 2nd December, 2005. It was asserted that once the Amendment Rules, 2005, on the basis whereof the said notice was issued, had been declared as null and void, the High Court had no option but to quash the entire recruitment process.

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15. Learned counsel appearing for the State, on the other hand, submitted that since the High Court had left it to the State to take decision in respect of the selection process initiated vide advertisement dated 2nd December 2005, the State Government in its own wisdom decided to go ahead with the said selections, though appointment letters had not yet been issued to the selected candidates.

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16. Having bestowed our anxious consideration to the matter, we are of the opinion that the decision of the High Court, permitting the State Government to continue with the recruitment process, initiated on the basis of the Amendment Rules, 2005

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A which have been declared by it to be illegal is clearly
 B indefensible. Having clearly held that “the requirement of
 adherence to the Statutory Regulations framed by the NCTE
 C cannot be left to be determined at the discretion of the
 D authorities of the State Government and that there was no
 E compelling reason with the State to justify a departure from the
 Statutory Regulations, any action under illegal rules would be
 null and void”, the High Court could not have permitted the State
 Government to perpetuate an illegality. To say the least, we are
 equally amazed by the stand of the State Government. Having
 failed to sustain the Amendment Rules, 2005 before the High
 Court, it would be improper for the State to go ahead with the
 recruitments under the said amended Rules which have been
 declared null and void, particularly when the decision of the High
 Court on that issue has not been questioned by it. We are of
 the view that the impugned observation by the High Court would
 be clearly inimical to the rule of law. While it is trite that Courts
 can exercise judicial discretion in moulding the relief, however,
 such discretion cannot be exercised to perpetuate and
 encourage an illegality. (See : *M.I. Builders Pvt. Ltd. Vs.
 Radhey Shyam Sahu & Ors.*¹)

17. For the foregoing reasons, the appeals are allowed;
 the leave granted by the High Court to the State to complete
 the selection process in terms of employment notice dated 2nd
 December, 2005 is set aside and the said notice (dated 2nd
 F December, 2005) is also quashed.

18. However, in the facts and circumstances of the case,
 we make no order as to costs.

G R.P. Appeals allowed.

1. (1999) 6 SCC 464.