

Neutral Citation No. - 2023:AHC-LKO:71094-DB

A.F.R.

Reserved

Court No. - 1

Case :- SPECIAL APPEAL No. - 613 of 2018

Appellant :- Mohit Kumr Dwivedi

Respondent :- Ram Janak Maurya And Ors.

Counsel for Appellant :- Apoorva Tewari, Anand Kumar Yadav, Paritosh Shukla, Sudeep Kumar, Sukh Deo Singh

Counsel for Respondent :- C.S.C., Amrendra Nath Tripathi, Durga Prasad Shukla, Gaurav Mehrotra, Himanshu Raghav, Ishita Yadu, Nand Kishore Patel, Onkar Singh, Pradeep Kumar Yadav, Sachin Kumar Srivastava, Sharad Nandan Ojha, Sudeep Kumar, Sudhir Mishra, Ujjwal Tripathi, Utsav Mishra, Vindhyawashini Kumar, Vivek Mishra

connected with

(1) **Case :-** SPECIAL APPEAL No. - 609 of 2018

Appellant :- Diwakar Singh And Ors.

Respondent :- State Of U.P. Throu. Secy. Basic Education Lucknow And Ors.

Counsel for Appellant :- Laltaprasad Misra, Man Bahadur Singh, Prafulla Tiwari

Counsel for Respondent :- C.S.C., atsapp web Amrendra Nath Tripathi, Vindheshwari Kumar

(2) **Case :-** SPECIAL APPEAL No. - 617 of 2018

Appellant :- Ritesh Singh And Ors.

Respondent :- State Of U.P. Throu. Secy. Basic Education Lucknow And Ors.

Counsel for Appellant :- Laltaprasad Misra

Counsel for Respondent :- C.S.C., Ajay Kumar, Amrendra Nath Tripathi, Apoorva Tewari, Durga Prasad Shukla, Vindhyawashini Kumar

(3) **Case :-** SPECIAL APPEAL No. - 619 of 2018

Appellant :- State Of U.P. Throu. Prin. Secy. Basic Edu. Lucknow And Ors.

Respondent :- Ram Janak Maurya And Ors.

Counsel for Appellant :- C.S.C.

Counsel for Respondent :- Amrendra Nath Tripathi, Anuj Singh, Lalta Prasad Misra, Neel Kamal Mishra, Onkar Singh, Prashant Vikram Singh, Raj Kumar Vishwakarma, Satya Narayan Mishra, Siddhant Mishra, Vinod Kumar Singh

(4) **Case :-** SPECIAL APPEAL No. - 634 of 2018

Appellant :- Siddharth Patel And Another

Respondent :- Ram Janak Maurya And Ors.

Counsel for Appellant :- Himanshu Raghav

Counsel for Respondent :- C.S.C.,Ajay Kumar,Amrendra Nath Tripathi,Durga Prasad Shukla,Vindhyawashini Kumar

(5) **Case :-** SPECIAL APPEAL No. - 670 of 2018

Appellant :- Devanand And Ors.

Respondent :- Ram Janak Maurya And Ors.

Counsel for Appellant :- Himanshu Raghav,Lalta Prasad Misra,Onkar Nath Singh

Counsel for Respondent :- C.S.C.,Ajay Kumar,Amrendra Nath Tripathi,Durga Prasad Shukla,Vindhyawashini Kumar

(6) **Case :-** SPECIAL APPEAL No. - 92 of 2020

Appellant :- Bhuwaneshwar Pandey

Respondent :- State Of U.P. Through Secy. Basic Education Lko. And Ors

Counsel for Appellant :- Vinay Prakash Tiwari,Ajay Pratap Singh,Piyush Mishra

Counsel for Respondent :- C.S.C.,Ajay Kumar,Amrendra Nath Tripathi

(7) **Case :-** SPECIAL APPEAL DEFECTIVE No. - 193 of 2020

Appellant :- Munna Lal Prasad

Respondent :- Ram Janak Maurya And Ors.

Counsel for Appellant :- Himanshu Raghav

Counsel for Respondent :- C.S.C.,Ajay,Amrendra Nath Tripathi,Durga Prasad Shukla,Onkar Singh,Vinay Awashini Yadav

(8) **Case :-** SPECIAL APPEAL DEFECTIVE No. - 207 of 2020

Appellant :- Brijesh Yadav And Another

Respondent :- Ram Janak Maurya And Ors.

Counsel for Appellant :- Dilip Mishra,Abhinav Mishra,Neel Kamal Mishra,Satyendra Chandra Tripath

Counsel for Respondent :- C.S.C.,Ajay Kumar,Amrendra Nath Tripathi,Durga Prasad Shukla,Onkar Singh,Vindhya Washini Kumar

(9) **Case :-** SPECIAL APPEAL DEFECTIVE No. - 276 of 2021

Appellant :- Ashish Kumar Tiwari And Anr.

Respondent :- Ram Janak Maurya And Ors.

Counsel for Appellant :- Himanshu Raghav,Satyendra Chandra Tripath

Counsel for Respondent :- C.S.C.,Ajay Kumar,Amrendra Nath Tripathi,Prashant Arora,Shailendra Singh Rajawat,Vindhya Washini Kumar

(10) **Case :-** SPECIAL APPEAL DEFECTIVE No. - 13 of 2022

Appellant :- Rajnesh Kumar And Others

Respondent :- Ram Janak Maurya And Others

Counsel for Appellant :- Himanshu Raghav, Aditya Vikram Shahi

Counsel for Respondent :- Amrendra Nath Tripathi, Ajay Kumar, Amrendra Nath Tripathi

(11) **Case :-** SPECIAL APPEAL DEFECTIVE No. - 267 of 2022

Appellant :- Raju Kumar And Others

Respondent :- Ram Janak Maurya And Others

Counsel for Appellant :- Himanshu Raghav, Aditya Vikram Shahi, Sushil Prakash Pandey

Counsel for Respondent :- Amrendra Nath Tripathi, Alok Kumar, C.S.C., Ram Raj Singh, Ran Vijay Singh, Vindhya Washini Kumar

(12) **Case :-** SPECIAL APPEAL DEFECTIVE No. - 65 of 2023

Appellant :- Shailendra Tiwari And Others

Respondent :- Ram Janak Maurya And Others

Counsel for Appellant :- Shreya Chaudhary, Lakshmi Kant Tripathi, Rinku Kumar Verma

Counsel for Respondent :- Amrendra Nath Tripathi, C.S.C., Onkar Singh, Ran Vijay Singh, Vindhya Washini Kumar

(13) **Case :-** SPECIAL APPEAL DEFECTIVE No. - 68 of 2023

Appellant :- Sandeep Kumar Vaishya

Respondent :- Ram Janak Maurya And Others

Counsel for Appellant :- Priyam Mishra, Rohit Kumar Singh

Counsel for Respondent :- C.S.C., Ran Vijay Singh, Vindhya Washini Kumar

(14) **Case :-** SPECIAL APPEAL DEFECTIVE No. - 377 of 2023

Appellant :- Anmol Kannaujiya And 406 Others

Respondent :- Ram Janak Maurya And Others

Counsel for Appellant :- Neel Kamal Mishra, Anuj Singh

Counsel for Respondent :- Amrendra Nath Tripathi, C.S.C., Durga Prasad Shukla, Ran Vijay Singh

(15) **Case :-** SPECIAL APPEAL DEFECTIVE No. - 379 of 2023

Appellant :- Priyanka And 189 Others

Respondent :- Ram Janak Maurya And Others

Counsel for Appellant :- Neel Kamal Mishra

Counsel for Respondent :- Amrendra Nath Tripathi, C.S.C., Ran Vijay Singh

(16) **Case :-** SPECIAL APPEAL DEFECTIVE No. - 387 of 2023

Appellant :- Ravi Pandey And 30 Others

Respondent :- Ram Janak Maurya And 12 Others

Counsel for Appellant :- Himanshu Raghav

Counsel for Respondent :- Amrendra Nath Tripathi,C.S.C.,Ran Vijay Singh,Vindhya Washini Kumar

(17) **Case :-** SPECIAL APPEAL DEFECTIVE No. - 399 of 2023

Appellant :- Ekta Verma And 107 Others

Respondent :- Ram Janak Maurya And 13 Others

Counsel for Appellant :- Sushil Prakash Pandey,Himanshu Raghav

Counsel for Respondent :- Amrendra Nath Tripathi,C.S.C.,Ran Vijay Singh

(18) **Case :-** SPECIAL APPEAL DEFECTIVE No. - 413 of 2023

Appellant :- Neha Singh And 195 Others

Respondent :- Ram Janak Maurya And Others

Counsel for Appellant :- Himanshu Raghav

Counsel for Respondent :- Amrendra Nath Tripathi,C.S.C.,Ran Vijay Singh

(19) **Case :-** SPECIAL APPEAL DEFECTIVE No. - 450 of 2023

Appellant :- Avanti Kushwaha And 284 Others

Respondent :- Ram Janak Maurya And 13 Others

Counsel for Appellant :- Durga Prasad Shukla,Vivek Mishra

Counsel for Respondent :- Amrendra Nath Tripathi,C.S.C.,Ran Vijay Singh

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Om Prakash Shukla,J.

PRELUDE

- (1) Heard extensively at length **Sri Anil Tewari**, learned Senior **Advocate** assisted by Sri Apoorva Tiwari, learned Counsel for the appellant in Special Appeal No. 613 of 2018, **Dr. L. P. Mishra** assisted by Sri Onkar Singh and Sri Man Bahadur Singh, learned Counsel for the appellants in Special Appeals Nos.609 of 2018 and 617 of 2018, **Sri Himanshu Raghav**, learned counsel for the appellants in Special Appeal No. 634 of 2018, 670 of 2018, 193 of 2020 as also in Special Appeal Defective Nos. 276 of 2021, 13 of 2022, 267 of 2022 387 of 2023 and 413 of 2023, **Sri Vinay Prakash Tiwari**, learned Counsel for the appellants in Special appeal No. 92 of 2020, **Sri Dilip Mishra**, learned counsel for the appellants in Special Appeal Defective No. 207 of 2020, **Ms. Shreya Chaudhary**,

learned counsel for the appellants in Special Appeal Defective No. 65 of 2023, **Sri Priyam Mishra**, learned counsel for the appellants in Special Appeal Defective No. 68 of 2023, **Sri Upendra Nath Mishra, learned Senior Advocate** assisted by Sri Neel Kamal Mishra, learned counsel for the appellants in Special Appeal Defective No. 377 of 2023 and 379 of 2023, **Sri Sushil Pandey**, learned counsel appearing for the appellants in Special Appeal Defective No. 399 of 2023 and **Sri Durga Prasad Shukla**, learned Counsel for the appellants in Special appeal No.450 of 2023, **Sri Ran Vijay Singh**, learned Additional Chief Standing Counsel appearing for the State-respondents in Special Appeal No. 319 of 2018 and **Sri J. N. Mathur, learned Senior Advocate** assisted by Sri Amrendra Nath Tripathi, Sri Gaurav Mehrotra and Sri Sanjeev Kumar Mishra, learned Counsel appearing for the respondent Nos. 1 to 6 in most of the Special Appeals, who were the original writ petitioners.

- (2) In Special Appeal Defective Nos. 276 of 2021, 13 of 2022, 267 of 2022, 65 of 2023, 68 of 2023, 377 of 2023, 379 of 2023, 387 of 2023, 399 of 2023, 413 of 2023 and 450 of 2023, applications for condonation of delay supported by an affidavit have been filed on account of appeals being instituted with an inordinate delay.

Without delving into the merits, all the parties have urged that the applications may be allowed.

In view of above, all the applications for condonation of delay filed in Special Appeal Appeal Defective Nos. 276 of 2021, 13 of 2022, 267 of 2022, 65 of 2023, 68 of 2023, 377 of 2023, 379 of 2023, 387 of 2023, 399 of 2023, 413 of 2023 and 450 of

2023 are allowed and the delay in filing the appeals are **allowed**.

- (3) An application for leave to file Special Appeal has been filed in Special Appeal No. 634 of 2028, Special Appeal No. 670 of 2018, Special Appeal No. 92 of 2020, Special Appeal Defective No. 193 of 2020, Special Appeal Defective No. 207 of 2020, Special Appeal Defective No. 276 of 2021, Special Appeal Defective No. 267 of 2022, Special Defective No. 68 of 2023, Special Appeal Defective No. 377 of 2023, Special Appeal Defective No. 379 of 2023, Special Appeal Defective No. 399 of 2023, Special Appeal Defective No. 413 of 2023 and Special Appeal Defective No. 450 of 2023 for the reason that either the appellants could not succeed in the selection for appointment on the post of Assistant Teacher or the appellants belong to D.Ed./ B.El.Ed and all of them have not filed writ petition before this Court. In these circumstances, they have prayed that they may be granted leave to file Special Appeal as they have not been heard before the Writ Court.

Since sufficient cause has been shown by the applicants/ appellants, the application for leave to file Special Appeal moved in Special Appeal No. 634 of 2028, Special Appeal No. 670 of 2018, Special Appeal No. 92 of 2020, Special Appeal Defective No. 193 of 2020, Special Appeal Defective No. 207 of 2020, Special Appeal Defective No. 276 of 2021, Special Appeal Defective No. 267 of 2022, Special Defective No. 68 of 2023, Special Appeal Defective No. 377 of 2023, Special Appeal Defective No. 379 of 2023, Special Appeal Defective No. 399 of 2023, Special Appeal Defective No. 413 of 2023 and Special Appeal Defective No. 450 of 2023 is **allowed**.

- (4) The aforesaid Special Appeals filed under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 assails the judgment and order dated 01.11.2018 passed in a bunch of writ petitions, leading being Writ Petition No. 11375 (SS) of 2018, *Ram Janak Maurya and others v. State of U.P. and others*, whereby the learned Single Judge has set aside the entire selection on the post of Assistant Teachers against 12,460 vacancies initiated in pursuance of the advertisement issued on 21.12.2016 with certain directions. The operative portion of the judgment and order dated 01.11.2018 reads as under:-

“The respondent Nos.3 and 4 are directed to initiate fresh proceeding of selection by fixing a cut of date to appear in the counselling for selection and appointment on the post of Assistant Teachers in accordance with Rule 14 of U.P. Basic Education (Teachers) Service Rules, 1981 as existing on the date of initiation of selection proceeding by issuing notice in the widely circulated newspapers of the state level as well as of the locality permitting the eligible and qualified candidates to appear in the counselling.”

CATEGORIZATION OF APPEALS

- (5) Different categories of appellants have challenged the impugned judgment and order dated 01.11.2018 and the said categories are enumerated herein under for ready reference:

- (i) The **first** category is of the appellants of Special Appeal Nos. 609 of 2018 and 617 of 2018, **who are already working on the post of Assistant Teacher** based on the selection in question.

(ii) The **second** category is of the appellants of Special Appeal No. 613 of 2018 and Special Appeal Defective Nos. 207 of 2020, 276 of 2021, 13 of 2022, 377 of 2023, 379 of 2023, 387 of 2023 and 450 of 2023 **who belong to '0' district vacancy and succeeded in the selection process** but are yet to be appointed.

(iii) The **third** category is of the appellants of Special Appeal Defective Nos. 267 of 2022, 68 of 2023, 399 of 2023 and 413 of 2023 **who belong to 'O' district vacancy and could not succeed** in the selection process based on merit.

(iv) The **fourth** category is of the appellants of Special Appeal No. 634 of 2018 and 670 of 2018 as also Special Appeal Defective No. 193 of 2020, **who are having the requisite qualification of D.Ed./B.El.Ed. and have not filed the writ petition.**

(v) The **fifth** category is of the appellant, who belongs to **'zero vacancy district'** i.e., Special Appeal No. 92 of 2020 and has joined on the post of Assistant Teacher on the strength of interim order passed in writ proceedings on 03.05.2018. **It is a peculiar case where the appointment order of the appellant, who belongs to 'o' vacancy district, has been issued by mistake and it is said that it is a human error.**

(vi) The **sixth** category is that the appellants of Special Appeal Defective No. 65 of 2023 who belong to 'o' vacancy district and have not been permitted to participate in the counselling.

(vii) The **seventh** category is that the State has challenged the impugned judgment and order in the Special Appeal No. 619 of 2018.

SUBJECT MATTER

- (6) Succinctly, the common case of the parties is that vide Government Order dated 15.12.2016, the U.P. Basic Shiksha Parishad, Allahabad initiated a selection process for appointing of 12,460 Assistant Teachers in the Primary Schools. Pursuant to the said Government Order dated 15.12.2016, the Secretary, U.P. Basic Shiksha Parishad, Allahabad issued a Letter dated 20.12.2016 declaring the schedule as also the vacancies in the districts across the State of U.P. Subsequently, online applications were invited from eligible candidates for the post of Assistant Teachers by the respective District Basic Education Officers. It also gave a chart of district-wise vacancies which shows that out of 75 districts in the state of Uttar Pradesh, in 24 districts no vacancies were advertised. These 24 district were termed as “0” vacancy districts.
- (7) Pursuance to the Circular dated 20.12.2016, the advertisement was issued on 21/22.12.2016 and the Board then issued detailed guidelines vide notification dated 26.12.2016. Apparently, the Secretary, U.P. Basic Education Board issued guidelines on 26.12.2016, providing necessary instructions in Clause 6 (ख), wherein it is provided that candidates from the districts, where no vacancies has been notified, could apply from anyone district of their first preference across the State. It is also allowed that the candidates with D.Ed. (Special Education) and four years B.L.Ed. could apply in similar manner.

- (8) Thereafter, the Secretary, U.P. Basic Shiksha Parishad, Allahabad issued another Circular dated 02.03.2017 fixing schedule from 18.03.2017 to 20.03.2017 for First round Counselling. After first round of counselling, **combined select lists of home district candidates and the outside/zero district candidates were prepared and published for all districts on 21.03.2017 and 22.03.2017.**
- (9) However, in the interregnum the recruitment process was withheld by the Board vide its order dated 23.03.2017 till further orders only on the ground that after the Legislative Assembly Elections, there is change of Government and on the oral instructions of the State Government, the entire process of recruitment has been abruptly stopped. It is stated herein that a bunch of writ petitions came to filed challenging the said order, the lead being Writ Petition No. 27870 of 2017, *Neeraj Pandey v. State of U.P. and others*, wherein a Single Bench of this court vide judgment and order dated 03.11.2017 found that the withholding of the recruitment process to be not justifiable and without any reasons and thus set-aside the said order dated 23.03.2017. The said order of the Single Bench was taken by the State Government in Special Appeal No. 648 of 2017.
- (10) In the meantime, Clause 9(Ka) of the Circular/guidelines dated 26.12.2016 issued by the Board was challenged by some candidates in Writ Petition No. 3293 of 2017, *Gyan Chandra & others v. State of U.P. & Others*, which was disposed of vide judgment and the order dated 16.05.2017 quashing the Clause 9(Ka) of the said guidelines. It may be mentioned herein that Clause 9(Ka) specified the procedure of selection and provided that the selection was to be made on the basis of quality point marks which was dependent on the division obtained by a

candidate. Apparently, the concept of division on the basis of percentage of marks obtained for the trainee of 2012 BTC was changed to Grades for 2013 BTC and thus an anomaly crept in the quality marks methodology for candidates of 2012 and 2013 batch of BTC, which led to the said challenge in the aforesaid writ petition. Subsequently, the judgment and order dated 16.05.2017 passed by the Single Bench was challenged in Special Appeal Defective No. 365 of 2017 which was finally disposed of vide judgment and order dated 06.02.2018 whereby Clause 9(Ka) of the guidelines was restored and the State Government was directed to take a decision in respect of recruitment of 12,460 Assistant Teachers as per the then existing Rules within four weeks from the date of passing of the order.

- (11) The state Government, after taking into account the aforesaid judgment and order dated 06.02.2018 passed in Special Appeal Defective No. 365 of 2017, issued a Government Order dated 11.04.2018 directing the respondent Nos.2 and 3 of the aforesaid Appeal to proceed with the recruitment of 12,460 Assistant Teachers as per U.P. Basic Education (Teachers) Service (15th Amendment) Rules, 1981 subject to the final decision of Special Appeal No. 648 of 2017, *State of U.P. v. Neeraj Kumar Pandey & others*. The said Appeal was ultimately dismissed vide order dated 12.04.2018 directing the respondent authorities to complete the selection process within two months.
- (12) In compliance of the order dated 12.04.2018, the Board issued a Circular dated 16.04.2018 directing the District Basic Education Officers to conduct counselling of the selected candidates on 23.04.2018 and to issue appointment orders on 01.05.2018.

- (13) In pursuance of the Circular dated 16.04.2018, the District Basic Education Officers concerned made advertisements in their respective districts on 19.04.2018 whereby they had directed the candidates to appear again for the first counselling on 23.04.2018.
- (14) When the intra-district candidates who had lower merit than that of the inter-district candidates got edged out in 51 districts (having vacancy) and could not be selected, some candidates of Gonda District filed Writ Petition No. 11375 (SS) of 2018, *Ram Janak Maurya and others v. State of U.P. and others*. Subsequently, the writ petitions filed were tagged with the aforesaid writ petition. In three petitions, namely, Writ Petition No. 11947 (SS) of 2018, 12656 (SS) of 2018 and 5734 (SS) of 2018, the petitioners prayed for issuance of a writ of Certiorari quashing instruction No. 6(Kha) issued on 26.12.2016 to the extent it allows the candidates of other districts where there are 'O' vacancies and notification dated 15.03.2017 to the extent it allows the candidates of other districts, where there are 'O' vacancies to be eligible for selection in other districts on the basis of first preference.
- (15) In Writ Petition No. 11375 (SS) of 2018, an interim order was passed directing the authorities to verify the original documents of the candidates pursuant to the notification dated 18.04.2018 published in the newspapers on 19.04.2018 but the appointment letters of the candidates who obtained BTC Training from other than Gonda district shall not be issued till the next date of listing and if it is required, it may be issued after seeking leave from the Court.

- (16) In compliance of the interim order dated 19.04.2018, the Secretary of the Board of Basic Education issued a Circular dated 27.04.2018 restraining all the District Basic Education Officers from issuing appointment orders to the selected candidates of 'Zero Districts' who had participated in the first round of counselling.
- (17) The aforesaid bunch of writ petitions was allowed vide impugned judgment and order dated 01.11.2018, which set-aside the entire selection process on the ground that there was no provision under the rules permitting the candidates from '0' vacancy districts to participate in the selection proceeding and therefore, their participation is contrary to Rule 14(1)(a) of U.P. Basic Education (Teachers) Service Rules, 1981.
- (18) The present bunch of special appeals have been filed by the respective parties against the aforesaid impugned order dated 01.11.2018.

ARGUMENTS OF LEARNED COUNSEL FOR THE PARTIES

- (19) Dr. L. P. Misra, learned counsel appearing for the appellants submits that the Secretary of the Board issued detailed guidelines dated 26.12.2016 for conducting the selection process. In order to accommodate the candidates from Zero Vacancy districts, the Secretary of the Board inducted Clause 6(Kha) wherein it was provided that the candidates having D.Ed. (Special Education)/4 Years B.El.Ed. and the candidates belonging to Zero Vacancy districts may apply from any of the districts having vacancies as their first preference districts. According to the learned Counsel, the said arrangement made by the Secretary of the Board was without any authority of law and rather, it was in violation of Rule 14(1)/14(1)(a) of the

Rules, 1981. Not only this, the Secretary of the Board was also not a competent authority to issue any such guidelines.

- (20) Dr. L.P. Misra, learned counsel in his usual maverick manner, further submits that as per guidelines dated 26.12.2016, a select list containing 12,460 candidates was prepared wherein the candidates from Zero Vacant districts were also included. Almost 6,470 candidates from the district of Zero Vacancies were included in the select list and almost 5,990 candidates including the appellants of Special Appeal Nos. 609 of 2018 and Special Appeal No. 617 of 2018 and similarly situated meritorious candidates, who have completed their B.T.C. training from 51 districts, where the vacancies were advertised, have been selected on the post of Assistant Teachers. In the Special Appeal No. 617 of 2018, a Co-ordinate Bench of this Court, vide order dated 17.11.2018 directed the respondent-State not to give effect to the directions given by the learned Single Judge with regard to selection and appointments qua appellants till the next date of listing, which has been extended till further orders by subsequent interim order dated 22.07.2019.
- (21) He further submits that the result of the aforesaid interim order is that the interim order dated 19.04.2018 passed by the Single Bench during the pendency of the impugned writ petition has been restored along with the Circular dated 27.04.2018 issued by the Board and as such the appointment letters, which were issued to these 5,990 selected candidates of home districts in the first week of May, 2018 also stands restored and as a matter of fact & records, these aforesaid appellants and similarly situated selected candidates who gave their joining in their allocated schools are continuing working as such till date.

- (22) Next he submitted that the selection/appointment of the aforesaid 5,990 meritorious candidates has never been challenged in any of the writ petitions before the learned Single Judge nor they had been impleaded in any of the writ petitions even in the representative capacity and the writ petitions filed before the learned Single Judge had been disposed of without their representation.
- (23) Considering the aforesaid aspect of the matter, Dr. L. P. Misra has contended that **since the selection and appointment of 5,990 candidates had been made in accordance with the Rules existing on the date of initiation of selection process, they had substantiated their rights of selection on the post of Assistant Teacher, therefore their appointment deserves to be protected.**
- (24) Elaborating his submissions on Clause 6(Kha) of the guidelines dated 26.12.2016, Dr. L.P. Mishra has submitted that this clause has three-fold instructions. Firstly, B.T.C. trained candidates are to apply in the district of their training (as per Rule 14 (1)(a) of Rules, 1981); Secondly, B.Ed. (Special Education) and B.El.Ed. trained candidates to apply in any district of their choice as first priority district and thirdly, candidates having passed B.T.C. training from 24 Zero Vacancy districts were also allowed to apply in any district of their choice as first priority district (which according to him was in violation of Rule 14(1)(a) of Rules, 1981).
- (25) Next he has contended that the petitioners/respondents herein belonging to 24 zero vacancy districts participated in the recruitment and when they failed to secure selection, they challenged Rule 14(1)(a) of Rules, 1981 and Clause 6 (Kha) of the guidelines dated 26.12.2016 so far as it provides preference

to the candidates having completed their training from the district concerned. Further, **candidates of 51 districts, who failed to secure selection on account of participation of candidates of zero vacancy districts, challenged Clause 6(Kha), so far as it opened window for the participation of candidates of 24 Zero vacancy districts by means of Writ Petition No. 11375 (SS) of 2018 and the learned Single Judge restrained the authorities from issuing appointment letters who obtained B.T.C. training from ‘Zero Vacancy Districts’ and the said writ petition was finally allowed vide impugned judgment and order dated 01.11.2018 setting aside the entire selection.**

- (26) Attacking the impugned judgment and order dated 01.11.2018, preliminary objections of Dr. L.P. Mishra are that (i) impugned order has been passed beyond the scope of writ petition, (ii) cancellation of entire selection *en block* was unjustified, (iii) there was no challenge to the selection and appointment of working teachers, (iv) comparatively, 5,990 selected and appointed teachers have higher merit as they have substantiated their rights on their posts (v) writ petitions suffer from the defect of non-joinder of parties, (vi) cancellation of entire selection is without any cogent finding and lastly, (vii) order passed is in violation of principles of natural justice.
- (27) Dr. L.P. Mishra has further submitted that a Division Bench of this Court in a bunch of writ petitions, leading Writ Petition No. 5320 (MB) of 2017, Ambrish Kumar and 20 others v. State of U.P. others, vide judgment and order dated 13.01.2020, dismissed the writ petitions upholding the validity/vires of Rule 14(1)/14(1)(a) of the Rules, 1981. Thus, he submits that this Court is to test the validity of the impugned judgment and order dated 01.11.2018 in light of Rule 14 as it existed on the date of

initiation of the selection proceeding of 12,460 recruitment, i.e., 15.12.2016 and the validity of guidelines dated 16.12.2016 which has been issued by an incompetent authority in utter violation of Rule 14 (1)(a) as existing on the date of selection of Assistant Teaches.

- (28) To sum up his arguments, Dr. L.P.Misra has submitted that the selection and appointment of 5,990 candidates who had been selected in the districts from where they completed their B.T.C. training are absolutely in accordance with the provisions of Rule 14(1)/14(1)(a) of the Rules, 1981 and accordingly, they had been appointed. The learned Single Judge was not justified to set aside the entire selection of 12,460 recruitment *en block* merely on the ground that Clause 6(Kha) of the Guidelines dated 26.12.2016 providing an opportunity for participation and consideration of selection to the candidates from 24 Zero Vacancy Districts was *per se* illegal and is in violation of Rule 14 (1)/14(1)(a) of Rules, 1981. Further, he submits that the entire selection cannot be cancelled *en block*. To buttress his submissions, he has relied upon the citation of Apex Court in the case of ***Girjesh Srivastava v. State of M.P. [(2010) SCC (10) 707]***, wherein in para – 25 it has been reported as under:-

“25. On a more detailed analysis of this issue, in *Union of India and others v. Rajesh P.U., Puthuvalnikathu and another [(2003) 7 SCC 285 at p. 290, paragraph 6]*, this Court held that "In the light of the above and in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of an all pervasive nature, which could be really said to have undermined the very process itself in its entirety or as a whole and it was impossible to weed out the beneficiaries of one or other of irregularities, or illegalities, if any, there was hardly any justification in law to deny

appointment to the other selected candidates whose selections were not found to be, in any manner, vitiated for any one or other reasons. Applying an unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go bye to contextual considerations throwing to winds the principle of proportionality in going farther than what was strictly and reasonably required to meet the situation. In short, the Competent Authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational".

- (29) Sri Anil Tewari, learned Senior Advocate assisted by Sri Apoorva Tewari, learned Counsel appearing for the appellant in Special Appeal No. 613 of 2018 has submitted that the appointment of Assistant Teachers in Junior Basic School is regulated by the U.P. Basic Education (Teachers) Service Rules, 1981 as well as The Right of Children to Free and Compulsory Education (RTE) Act, 2009. Before enforcement of RTE Act, Rule 8 and Rule 14 of Rules, 1981 were in force for academic qualification and procedure of selection respectively. However, after enforcement of RTE Act, minimum qualification to be appointed as an Assistant Teacher is in the domain of Central Government who has authorized the National Council under Section 23 (1) of the RTE Act.
- (30) In continuation of his submissions, he has submitted that the State Government issued a Government Order on 15.12.2006

for appointment of Assistant Teachers on vacant posts of 12,460 in Basic Schools of U.P. run and managed by the U.P. Basic Education Board. He next submitted that the Secretary, Basic Education has further issued guidelines on 26.12.2016 providing necessary instructions wherein it has been mentioned that in view of Harsh Kumar's judgment passed in Special Appeal Defective No. 130 2014, para 6(Kha) has been included for those candidates who have obtained B.El.Ed. and D.Ed. Qualification as also for those candidates who have obtained B.T.C. training from the districts where no vacancies have been advertised.

- (31) The appellant/Mohit Kumar Dwivedi of Special Appeal Defective No. 613 of 2018, who is the resident of Gonda and has obtained B.T.C. training from Lucknow has applied for appointment on the post of Assistant Teacher. On 15.03.2017, the District Basic Education Officer, Gonda and other District Basic Education Officers had published a notice for participation for those candidates who had applied in their districts in the first counselling to be held from 18.03.2017 to 20.03.2017.
- (32) Pursuant to the above notice, the appellant and respondent Nos.1 to 6 of Special Appeal Defective No. 613 of 2018 had participated in the first round of counselling and on 20.03.2017, cut-off was declared by the Basic Education Officer, Gonda in which the appellant was declared successful whereas respondent Nos.1 to 6 were declared unsuccessful. He has further pointed out that original documents of the appellant and other successful candidates were retained whereas the original documents of respondent Nos.1 to 6 were returned on the next date.

- (33) Sri Tewari has brought to our notice that on 23.03.2017, when the State Government has issued a Circular for halting the current selection process until further order, on intervention of High Court in Writ Petition No. 27870 of 2017, the aforesaid Circular was quashed vide judgment and order dated 03.11.2017 directing the State Government to complete the selection process within two months. In compliance of the order dated 03.11.2017, the State Government has issued a Government Order dated 11.04.2018 for completing the selection process by 15.06.2018.
- (34) Next he has pointed out that in the meantime, on 08.02.2018, the State Government has amended Rule 14 (1)(a) of Rules 1981 to the effect that the condition 'District concerned' has been deleted.
- (35) Pursuant to the Government Order dated 11.04.2018, when the Secretary, Basic Education Board has issued a Circular on 16.04.2018 declaring the successful candidates, Writ petition No. 11375 (SS) of 2018, *Ram Janak Maurya v. State of U.P. and others* with the following prayer came to be filed:-

“(i) To issue writ of Mandamus commanding the respondent Nos. 3 and 4 to prepare fresh cut off mark after 1st round of counselling by excluding the persons who had obtained B.T.C. Training from outside the district Gonda and accordingly a fresh cut off of 1st round of counselling to be declared in pursuance of the Government Order dated 15.12.2016/11.04.2018 and notification of respondent No.3 dated 26.12.2016, 02.03.2017 and 16.04.2018 for appointment of 12460 posts of Assistant Teachers by allowing only the persons who had completed B.T.C. degree from the District Gonda only and outsiders to be allowed in subsequent rounds of counselling only as per policy of the State Government reflected in counter affidavit filed by it in Writ

Petition No. 10131 of 2015 (M/B) Om Prakash Singh and others v. State of U.P.

(ii) *To issue any other writ or direction, which this Hon'ble High Court may deem fit in the circumstances of the case."*

- (36) He has next pointed out that from perusal of the above prayers made by the respondents, it is crystal clear that the respondents have not challenged the provision of Clause 6(Kha) of Circular dated 26.12.2016 and the only prayer made by them is to exclude the candidates who had obtained training from outside district Gonda in the first round of counselling and permit them in the subsequent round of counselling.
- (37) The contention of the learned counsel for the appellant is that the writ petition filed by the respondent Nos.1 to 6 is not maintainable on the ground that in view of the judgment passed by the Apex Court in ***Dhananjay Malik v. State of Uttaranchal and others [(2008) 4 SCC 171]***, the unsuccessful candidates have no right to question the selection proceedings. Further, he has submitted that in order to maintain the writ of Mandamus, they must make a clear demand before the competent authority, but in the instant case, they have had never made any demand before the competent authority. To buttress his submissions, he has drawn our attention towards the judgments of the Apex Court in ***D. N. Jeevaraj v. Chief Secretary, Government of Karnataka and others [(2016) 2 SCC 653]*** and ***State of Haryana and another v. Chanan Mal and others [(1977) 1 SCC 340]***. In both the judgments, it has been held that the petitioner shall first call upon the authority concerned to discharge its legal obligation and show that it has refused or neglected to carry it out within a reasonable time before

approaching the Court for such an order even where the alleged obligation is established.

- (38) Further, he has submitted that the writ petition filed by the respondents is also not maintainable on the ground of non-joinder of parties as they have not impleaded any selected candidate in the representative capacity.
- (39) The next submission of Sri Anil Tewari is that the writ petition filed by the respondents has been allowed by the learned Single Judge mainly on the ground that **the Secretary, Basic Education Board was not competent to issue Circular dated 26.12.2016 containing clause 6(Kha) which permitted the candidates of Zero Vacancies to participate in the selection process, specifically when there was no such provision under the Rules and the State Government has not authorized the Board to issue such a Circular.** However, according to the learned Counsel, the learned Single Judge, while passing the impugned judgment, has failed to appreciate the fact that the said circular was issued strictly in consonance of the judgment passed by this Court in Special Appeal Defective No. 130 of 2014, *Harsh Kumar and another v. State of U.P. and others*.
- (40) Learned Counsel for the appellant has further drawn our attention towards the dismissal order dated 13.01.2015 passed by the Apex Court in Special Leave Petition No. 12060-12061 of 2014 preferred against the order passed in Special Appeal Defective No. 130 of 2014.
- (41) Lastly, he has submitted that in these circumstances, U.P. Basic Education Board has included the provision of Clause 6(Kha) in the Circular dated 26.12.2016, therefore, there was no infirmity

in the Circular dated 26.12.2016 and the impugned judgment and order dated 01.11.2018 is liable to be set aside paving a way for the appellant to participate in the counselling process.

- (42) Sri Upendra Nath Mishra, learned Senior Advocate assisted by Sri Neel Kamal Mishra, learned counsel appearing for the appellants in Special Appeal No. 207 of 2020 has submitted that the main ground on which the entire selection has been set aside by the learned Single Judge was that the Board of Basic Education was not competent to issue the Circular dated 26.12.2016 containing Clause 6(Kha) permitting the candidates from 'O' vacancy districts to participate in the selection proceedings, especially when there was no such provisions under the Rules and the State Government had not authorized the Board to issue such a circular. According to the learned Senior Counsel, the said Circular issued by the Board was strictly in consonance with Rule 23 of RTE Act enacted by the Parliament read with Office Memorandum dated 23.08.2010 alongwith similar other notifications of Government of India and he submits that there is no infirmity in the aforesaid Circular dated 26.12.2016 due to which the entire selection was quashed. Thus, he prays that the appellants who have been selected on the basis of their higher merit deserves to be appointed.
- (43) Sri Ran Vijay Singh, learned Additional Chief Standing Counsel appearing for the State-respondents in Special Appeal No. 619 of 2018 has submitted that once the petitioners have participated in the selection process, they have no right to challenge it. In support of this, he has placed reliance on the judgment of the Apex Court in ***Ranjan Kumar v. Stat of Bihar [(2014) 16 SCC 187]***.

- (44) He has contended that no pleading is made in the entire writ petition that the petitioners were unaware of the circulars issued by the State Government whereby participation of 'Zero Vacancy District Candidates' was permitted. Since they have participated and declared unsuccessful, they cannot take the nosedive stand.
- (45) Further, he has submitted that Section 23 of the RTE Act has an overriding effect. As per Entry 25 in the List III Concurrent List of the Constitution of India, it covers 'education' including technical education, medical education and universities, subject to the provisions of Entries 63, 64, 65 and 66 of List I; Vocational and Technical Training of Labour. Since this entry covers education, by implication both Center and State Legislatures are competent to enact a law with regard to it. However, as per the Scheme of the Constitution under Article 254 (1), it is provided that if any legislation enacted by the State Legislature is repugnant to the legislation enacted by the Parliament, then the State Legislation will be declared void and the legislation enacted by the Parliament will prevail over the former as the legislation enacted by the State has to give way to the Central legislation.
- (46) He further submits that on 26.08.2009, the Parliament enacted the Statute which provides for free and compulsory education to all children of the age of 06 to 14 years, namely, The Right of Children to Free and Compulsory Education Act, 2009. Section 23 of the RTE Act provides for qualification for appointment and terms and conditions of service of Teachers.
- (47) Section 23 of the RTE Act grants the mandate of determining eligibility of the person to be appointed as a Teacher to an academic authority authorized by the Central Government. The

National Council for Teachers Education (NCTE) is an authorized academic authority under Section 23 of the RTE Act which is competent to issue notification determining the eligibility of persons to be appointed as Teacher. The NCT is constituted under NCTE Act, 1993 and in this regard, it has issued notifications on 23.08.2010, 29.07.2011, 12.11.2014 and 28.11.2014.

- (48) As per U.P. Basic Education Act, 1972, it provides establishment of Board of Basic Education and Section 19 empowers the State Government to make Rules for carrying out the purposes of this Act by notification including Rules pertaining to the recruitment and conditions of service of persons appointed to the post of Teacher under Section 6 of the Act.
- (49) In exercise of powers conferred under Section 19 of Act, 1972, the State Government has notified the U.P. Basic Education (Teachers) Service Rules, 1981 and are subservient to the legislation or Rules made under the Right to Education (RTE) Act, 2009.
- (50) The said Rules under Part IV provide for qualification. Rule 8 provides 'academic qualifications' for the purpose of appointment as Mistress of Nursery Schools and Assistant Master and Assistant Mistress of Junior Basic Schools. However, Rule 14 deals with the determination of vacancies and preparation of list and Clause I of it provides for inviting applications from candidates possessing prescribed training qualification from the district concerned. Apparently, the said Rule is meant to provide for the procedure and manner of determining the vacancies and making the list of candidates to be appointed as 'Teacher'. The said Rule is only of procedural

nature but through Clause I it fixes an additional qualification of the person to have the prescribed training qualification from the district concerned only where the vacancy has arisen.

- (51) Therefore, Rule 14(1)(a) is in consistent with Section 23 of the RTE Act inasmuch as both of them determine the qualification of the candidates to be appointed as Teachers in primary schools. RTE Act being Central Act would prevail over the **Executive Rules.**
- (52) Since the guidelines dated 26.12.2016 are in consonance with the NCTE Notifications providing for the qualification of the candidate to be appointed as a Teacher in Primary Schools and therefore, the guidelines are valid in the eyes of law and cannot be set aside on the premise of being in conflict with Rule 14(1) (a).
- (53) Section 8 of the RTE Act deals with duties of appropriate Government and clause (g) casts a duty upon appropriate Government to ensure good quality elementary education conforming to the standards and norms specified in the schedule.
- (54) Section 9 of the RTE Act deals with duties of local authority and clause (h) provides for ensuring good quality elementary education conforming to the standards and norms specified in the schedule.
- (55) From the above provisions of law, it emanates that the duty cast upon the Central Government as well as upon the State Government is to impart quality elementary education conforming to the standards and norms specified in the schedule.

- (56) In the present case, when the candidates from the zero vacancy districts are allowed to participate in the selection process, the merit would certainly go up and the present scheme is in tandem with the mandate of Section 8 (g) and Section 9(h) of RTE Act which would ultimately benefit the students.
- (57) He has further submitted that the U.P. Board of Basic Education is competent under Section 4 of the Act, 1972 to issue guidelines dated 26.12.2016 whereby candidates from zero vacancy districts have been allowed to participate in the selection process which has caused the induction of more meritorious Teachers in the service. Further, he has submitted that the Board being a statutory authority cannot be said to be subservient to the executive rules. Thus, the guidelines dated 26.12.2016 are not inferior in comparison to the Rules 1981 inasmuch as stating the qualification of the candidates.
- (58) Learned Additional Chief Standing Counsel has further submitted that earlier when the writ petitions were filed challenging Rule 14 (I) of Rules 1981, the State Government has taken a stand that the said Rules are made in order to provide teachers fluent in local dialect at the primary level. However, the State realized that the said Rule is discriminatory as it provides employment on the basis of place of training of the candidate and therefore, it is repugnant to the Scheme of RTE Act. Subsequently, the said Rule stands amended inasmuch as it now provides equal opportunity to all the candidates irrespective of the place of training. Thus, he has submitted that it is a settled law that the State can alter its stand and is not barred by principle of estoppel in case of policy decisions. To strengthen his submission, he has relied upon the judgment and order dated 13.01.2020 passed in Writ Petition No. 5320 (MB)

of 2017, *Ambrish Kumar and 20 others v. State of U.P. and others* in which Rule 14 (i) of Rules, 1981 had been challenged.

- (59) He has next contended that the writ petition challenging the selection process cannot succeed without impleading all the successful candidates as held by the Apex Court in the case of *Rajan Kumar v. State of Bihar [(2014) 16 SCC 187]*.
- (60) Learned Additional Chief Standing Counsel has strenuously emphasized that **this Rule was made when there was single Teachers Training Institute in one district, but since now multiple institutions have opened in each district, the rule has become onerous in itself and meaningless.**
- (61) The impugned judgment is in conflict with the earlier judgments rendered in the cases of (1) *Special Appeal Defective No.130 of 2014, Harsh Kumar and other v. State of U.P. and others*; (2) *Writ Petition No. 47490 of 2017, Km. Pallavi v. State of U.P. and others* and (3) *State of U.P. v. Shiv Kumar Pathak [(2018) 12 SCC 595]*.
- (62) The grounds of attack of the impugned judgment and order dated 01.11.2018 are that no prejudice has been caused to any other candidates and Rule 14(1)(a) of Rules 1981 restricting the vacancies to the candidates who have done their training from the same district has become redundant after the qualifications required for the post of Assistant Teacher have been laid down by the NCTE by its notification dated 23.08.2010 allowing all those candidates who have done two years Diploma in Elementary Education from NCTE recognized institution whether from the State of U.P. or any other State. Any person who hold such qualification could not be ousted on the ground of restrictions in the Rule or Circular as has been held by the

Apex Court in *State of U.P. v. Shiv Kumar Pathak [(2018) 12 SCC 595]*.

- (63) On the other hand, Sri J. N. Mathur, learned Senior Advocate assisted by Sri Amrendra Nath Tripathi and Sri Gaurav Mehrotra, learned counsel for the respondent/intervenor in Special Appeal No. 613 of 2018 has submitted that the appellants in the instant bunch of Special Appeals has vehemently pleaded that Rule 14(1)(a) of the Rules, 1981 as amended by the 15th Amendment of Rules 1981 is repugnant to Section 23 of the RTE Act, in light of Article 254 of the Constitution of India, and as such, the same is nullity in the eyes of law. According to him, the validity of Rule 14(1)(a) of the Rules 1981 was challenged in a bunch of Writ Petitions, leading Writ Petition No. 5320 (MB) of 2017, *Ambrish Kumar and others v. State of U.P. and others*, which was dismissed by a Co-ordinate Bench of this Court vide judgment and order dated 31.01.2020. In the S.L.P. (Civil) No. 8536 of 2020, *Umesh Chandra v. State of U.P. and others*, filed against this judgment, notice has been issued and the matter is still pending adjudication before the Hon'ble Supreme Court.
- (64) He has further submitted that once the validity of Rule 14 (1)(a) of the Rules 1981 has been upheld by a Co-ordinate Bench of this Court, it is not open for the appellants to agitate the issue of vires of the aforesaid Rule.
- (65) He has further submitted that the plea of repugnancy has to be specifically taken before the Writ Court where the Constitutionality of provision has to be tested by inviting counter affidavit from the stakeholders. In absence of any specific pleading, the issue of repugnancy cannot be raised. He

has placed reliance on the judgment of Apex Court in ***Dhanraj v. Vikram Singh and others* [2023 SCC OnLine SC 724]**.

- (66) The question of repugnancy arises only when there is overlap in the relevant provisions of the Central Legislation and the State Legislation as has been held by the Apex Court in ***Ch. Tia Ramji and others v. State of Uttar Pradesh and others* [1956 SCC OnLine SC 9]**.
- (67) According to the learned Counsel, repugnancy arises only when there is inconsistency between the Central Act and the State Act which is absolutely irreconcilable. In this regard, he has relied on the judgment of Apex Court in ***M. Karunanidhi v. Union of India and another* [(1979) 3 SCC 431]**.
- (68) Further, placing reliance on ***Ashish Kumar v. State of Uttar Pradesh and othes* [(2018) 3 SCC 55]** and ***Malik Mazhar Sultan and another v. U.P. Public Service Commission and others* [(2006) 9 SCC 507]**, he has stated that in case of conflict between the relevant statutory rule and the advertisement, it is statutory rule which shall prevail.
- (69) Principle of estoppel by conduct is not applicable in cases where unsuccessful candidates challenge the selection procedure, which was conducted contrary to the statutory rules, as has been held by the Apex Court in the cases of ***Dr. (Major) Meeta Sahai v. State of Bihar and others* [(2019) 20 SCC 17]**, ***Raj Kumar and others v. Shakti Raj and others* [(1997) 9 SCC 527]** and ***Dharmendra Kumar and others v. Abhishek Kumar and others* [(2017) SCC OnLine All 2716]**.
- (70) In support of the submission that judgment will not lose binding precedent even if inadequately considered and/or fallaciously reasoned, he has relied on the judgment of Constitution Bench

of the Apex Court in *Ambika Prasad Mishra v. State of U.P. and others* [(1980) 3 SCC 719].

- (71) This Court has given its anxious consideration to the submissions made by the learned Counsels for the parties and perused the material placed on record including the impugned judgment and order dated 01.11.2018. The selection to the post of Assistant Teachers against 12,460 vacancies initiated in pursuance of the advertisement issued on 21.12.2016 has a chequered history and has been marred by controversy. Several round of litigation has been filed pertaining to the said selection process.

ANALYSIS

- (72) Apparently, for the purpose of advertisement, vacancies were determined district-wise and the total number of posts having been found vacant were decided at the state-level for being filled-up and a direction was accordingly issued to advertise the same as per Rules. However, a decision was taken by the State Government with the issuance of Government Order dated 20.12.2016 and thereafter, the requisite process was initiated at the district level for advertisement of the vacancies which came to be determined at the district-level. Some of the districts did not report any number of vacancies as available, therefore, those districts where no vacancies existed for being filled-up were classified as ‘**zero vacancy districts**’. The vacancy position can be gathered from the letter dated 20.12.2016 and a brief chart indicating the vacancy district-wise is extracted below:-

Sl. No.	Name of the District	Number of posts allocated
01.	Meerut	0
02.	Baghpat	0

03.	Bulandshahar	0
04.	Ghaziabad	0
05.	Hapur	0
06.	Gautambudh Nagar	0
07.	Agra	0
08.	Firozabad	105
09.	Mainpuri	195
10.	Aligarh	125
11.	Etah	335
12.	Kasganj	252
13.	Hathras	535
14.	Mathura	216
15.	Bareilly	0
16.	Badaun	60
17.	Pilibhit	189
18.	Shahjahanpur	0
19.	Allahabad	0
20.	Fatehpur	252
21.	Pratapgarh	360
22.	Kausabi	108
23.	Varanasi	36
24.	Chandauli	216
25.	Gazipur	0
26.	Jaunpur	108
27.	Mirzapur	180
28.	Sonbhadra	216
29.	Badohi	324
30.	Lucknow	0
31.	Hardoi	288
32.	Sitapur	1268
33.	Raibareli	126
34.	Unnao	126
35.	Lakhimpur Kheri	0
36.	Gorakhpur	0
37.	Deoria	324

38.	Kushinagar	104
39.	Maharajganj	360
40.	Basti	324
41.	Sant Kabir Nagar	0
42.	Siddharth Nagar	389
43.	Jhansi	0
44.	Lalitpur	36
45.	Jalaun	72
46.	Chitrakoot	288
47.	Banda	270
48.	Mahoba	126
49.	Hamirpur	206
50.	Faizabad	108
51.	Barabanki	287
52.	Sultanpur	288
53.	Amethi	382
54.	Ambedkar Nagar	72
55.	Gonda	788
56.	Balrampur	158
57.	Bahraich	251
58.	Shravasti	79
59.	Moradabad	0
60.	Sambhal	0
61.	Rampur	432
62.	Bijnor	180
63.	Amroha	72
64.	Kanpur Nagar	0
65.	Kanpur Dehat	144
66.	Etawah	0
67.	Auraiya	29
68.	Farrukhabad	180
69.	Kannauj	144
70.	Azamgarh	0
71.	Balia	720
72.	Mau	0

73.	Saharanpur	0
74.	Muzaffar Nagar	0
75.	Shamli	27

- (73) Rule 14(1)(a) of the U.P. Basic Education (Teachers) Service Rules, 1981, (in short '1981 Rules') provides the appointing authority to invite applications from candidates possessing prescribed training qualification from the district concerned. The whole controversy erupted with the issuance of condition 6 (Kha) as contained in the guidelines dated 26.12.2016 issued by the Secretary, U.P. Basic Shiksha Parishad, Allahabad. Apparently, the said conditions 6(kha) says that the candidates doing B.T.C. Training shall be allowed to apply in the district of their training alone in the first instance and the said clause also permitted the candidates from 'O' Vacancy districts to participate in the selection proceedings of any district chosen by their first preference.
- (74) As far as the first controversy relating to the conditions imbibed in clause 6(kha) of the circular dated 26.12.2016 relating to allowing those candidates doing B.T.C. Training in the district of their training alone to apply in the first instance in the said district is concerned, a Division Bench of this Court has already settled the said issue vide a detailed judgment dated 13.01.2020 passed in a bunch of Writ Petitions, leading being 'Misc Bench No. 5320 of 2017 (Ambrish Kumar & 20 Ors. V/s State of U.P Thru Prin. Secy. Basic Education & Ors.), which *inter alia* framed the following questions to be answered:

“34. The instant bunch of writ petitions have been filed before this Court to answer the following substantial questions:

"(1) Whether in view of the frame and

purport of The Right of Children to Free and Compulsory Education Act, 2009, the engagement or appointment of Assistant Teachers (Primary) by preparing a merit list at District Level, not at State Level is against the provisions of Articles 14, 15, 16 and 21-A of the Constitution of India as stated by the petitioners?

(2) Whether in view of the frame and purport of The Right of Children to Free and Compulsory Education Act, 2009, the engagement of the Assistant Teachers (Primary) giving preference to the place of domicile or residence and/or local area is permissible in law?"

Thereafter, the Division Bench had been pleased to record its discussion and findings as herein below

"64. In view of the aforesaid discussions, we are of the view that the 1981 Rules contains a provision that a candidate who has obtained training from a district will be given preference in selection and appointment on the post of Assistant Teacher in the district concerned. The said provision has got a purpose and object i.e. the children are taught by a person who is very well familiar with the local habitat and also speaks local dialect. Further the first preference for appointment is given to the candidates who have undergone the training qualification from the district concerned because such candidates are already acquainted with the demographic conditions, local dialect and traditions from where the children who are to be taught come from. The knowledge and understanding of local dialect is essential for a teacher in the rural areas for a better classroom transaction with small children and their parents. The preference in appointment of a candidate who completed his training from a particular district is justified for the reason that if a candidate who has completed his training from Mathura where Braj Bhasha is spoken, is appointed in Gorakhpur where Bhojpuri is spoken will face difficulty in communicating the small children of that area and also their parents and due to lack of communication between the teacher and the child including parents, the quality of education will certainly

be affected and, therefore, the provisions of preference is not at all violative of Article 14 and 16 of the Constitution of India.

65. In the present case, the State has shown that the purpose of a region/ district wise recruitment is to ensure that the teachers in local primary schools are attuned to the local requirements, which, needless to say, differs from district to district and region to region in a vast state like Uttar Pradesh. Moreover, to reiterate, the petitioners cannot contest that any discrimination has been meted out to them, since the region/ district wise selection process was open to all candidates. Therefore, the State has discharged its burden by demonstrating that there were cogent reasons for prescribing region/ district wise recruitment, which is open to all candidates, and that no discrimination/ arbitrariness resulted from prescribing such a process.

66. In view of the discussions made above, the preparation of merit list at District Level is not against the provisions of Articles 14, 15, 16 and 21-A of the Constitution of India and the engagement of the Assistant Teachers (Primary) on the basis of domicile or place of residence in the selection process is not violative of Articles 14 and 16 Constitution of India.

67. Accordingly, all the writ petitions being devoid of merit are hereby dismissed. No order as to costs."

- (75) It has been contended that the aforesaid Judgment has been interdicted in S.L.P. (Civil) No. 8536 of 2020 being *Umesh Chandra v. State of U.P. and others*, wherein notice has been issued and the matter is still pending adjudication before the Hon'ble Supreme Court. On a specific query of this court as to whether there is any stay of operation of the order, it has been stated that there is no stay of the said impugned order dated 13.01.2020. In any case, judicial propriety warrants that this bench should follow the judgment passed by a coordinate bench of equal strength and in case of difference, may refer the same to a larger bench. However, this court finds that, the issue

adjudicated by the Division bench in the said matter, is merely an ancillary issue only to the present issue engaging the attention of this court.

- (76) Be that as it may, as aforesaid, a Division Bench of this court has already repelled all the arguments and contentions, which ran contrary to the analogy of permitting only those candidates doing B.T.C. Training in a particular district to apply for that district in the first instance. This court finds that Dr. L.P Mishra, learned Counsel appearing for some of the parties has submitted that as per guidelines dated 26.12.2016, a select list containing 12,460 candidates was prepared wherein the candidates from Zero Vacancy districts were also included. According to Dr. L.P. Mishra, learned Counsel, almost 5,990 candidates including the appellants of Special Appeal Nos. 609 of 2018 and Special Appeal No. 617 of 2018 and similarly situated meritorious candidates, who have completed their B.T.C. training from 51 districts, where the vacancies were advertised, have been appointed on the post of Assistant Teachers.
- (77) According to this court, as far as the selection of 5990 candidates, who had completed their BTC training from 51 districts, where the vacancies were advertised is concerned, the same is severable from the selection of the total number of candidates and there was no legal impediment in their selection and appointment. Thus, to cancel even their candidature is overreaching the judgment passed by the Division bench mentioned (supra) and also amounts to Judicial Impropriety. This court finds that the selection of these candidates of 51 districts to be in consonance to the judgment of this court in *Ambrish Kumar* Case (supra). Apparently, the learned Single Judge finding fault in the issuance of clause 6(kha) in the direction dated 26.12.2016 relating to participation of those

candidates belonging to the “O” vacancy districts in any other district by giving their first preference has held the same to be in the teeth of the U.P. Basic Education (Teachers) Service Rules, 1981 and as such has cancelled the entire selection process, without appreciating the fact that a coordinate Division bench of this Court has already upheld clause 6(kha) of the direction dated 26.12.2016 issued by the Secretary, U.P. Basic Shiksha Parishad, Allahabad and as such the setting aside of the entire selection process was not correct in the peculiar facts of the present case. Thus, it is right on the part of the Learned Counsel to argue that these candidates, who had been selected in the counseling’s by virtue of their B.T.C. Training in the respective district has to be protected, however needless to say, the same would always be subject to the outcome of the Umesh Chandra case (supra) presently pending before the Hon’ble Apex Court.

- (78) As far as the second controversy relating to the conditions imbibed by clause 6(kha) of the circular dated 26.12.2016 relating to permitting the candidates from “O’ Vacancy districts to participate in the selection process of any other district by giving their first preference to the said district is concerned, various arguments have been put forth by the learned Counsels. However, the fulcrum of the argument rests on the fact that the said condition was supposedly inserted because of purposive understanding of the judgment of a coordinate Division Bench of this Court passed in Special Appeal Defective No. 130 of 2014, *Harsh Kumar and another v. State of U.P. and others*, which was also subsequently upheld by the Apex Court vide dismissal order dated 13.01.2015 passed in Special Leave Petition No. 12060-12061 of 2014 preferred against the said Special Appeal Defective No. 130 of 2014.

(79) This court finds that the Division bench in the aforesaid judgment dated 5th of February, 2014 of Harsh Kumar has extensively dealt with the provisions of the RTE. The said judgment gives for an interesting reading and it would be profitable to quote the said judgment in extenso. The said Judgment was dealing with an aspect, wherein selection/appointment of Assistant Teachers in the Primary Schools run by the Basic Shiksha Parishad as part of a special drive for the recruitment of ten thousand teachers was engaging the attention of the said Division Bench. The contention of the appellants in that case, was that in view of notifications that were issued by the National Council for Teacher Education (NCTE) on 23 August 2010 and 29 July 2011, the minimum qualifications have been prescribed by the NCTE for appointment of Assistant Teachers in primary schools for Classes I to V and hence, it was not open for the State Government to exclude persons, such as the appellants who hold the Diploma in Education (Special Education), which is otherwise recognized as an eligible qualification for appointment as Assistant Teachers in primary schools for teaching Classes I to V. The Appellant in that case, also placed their reliance on a judgment of a Full Bench of this Court in ***Shiv Kumar Sharma Vs. State of U.P. & Ors.*** (2013 (6) ADJ 310 (FB), in which it was held that the notification dated 23 August 2010 of the NCTE would have an overriding effect and could not have be ignored. The Division Bench after hearing the parties, held inter-alia:

“8. On 23 August 2010, the NCTE prescribed the minimum qualifications for a person to be eligible for appointment as a teacher for Classes I to VIII in a school referred to in Section 2 (n) of the Act of 2009 with effect from the date of notification. This notification was

amended by the notification dated 29 July 2011. As per the amended notification, the minimum qualifications which have been prescribed for appointment of an Assistant Teacher for teaching students from Classes I to V are now as follows:

“(i) Classes I-V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Elementary Education (by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure) Regulations, 2002

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4-year Bachelor of Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education)

OR

Graduate and two year Diploma in Elementary Education (by whatever name known)

AND

Pass in the Teacher Eligibility Test (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.”

9. At this stage, it may also be necessary to note that the Parliament enacted the National Council for Teacher Education (Amendment) Act, 2011 to provide that the Act shall apply, inter-alia, to schools imparting pre-primary, primary, upper primary, secondary or senior secondary education and to colleges providing senior secondary or intermediate education and to teachers of such schools and colleges. Similarly, the expression 'school' was defined in Section 2(ka) to mean any recognised school imparting pre-primary, primary, upper

primary, secondary or senior secondary education, or a college imparting senior secondary education. Section 12A was inserted into the principal legislation to empower the NCTE to determine the qualifications of persons to be recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognised by the Central Government or by a State Government⁷ or a local or other authority. The provisions of the Act and Regulations have been held to be binding by a Full Bench of this Court in Shiv Kumar Sharma (*supra*). Prior to the enforcement of the amending Act, the Supreme Court had referred for consideration by a larger Bench of three Hon'ble Judges, an earlier view taken in Basic Education Board, U.P. Vs. Upendra Rai & Ors. (2008)3 SCC 432 in which it had been held that the NCTE Act does not deal with ordinary educational institutions like primary schools, high schools, intermediate colleges or universities and would, consequently, not override the U.P. Basic Education Act and the Rules made thereunder. In view of the amending Act, a Bench of three learned Judges of the Supreme Court, while deciding the reference on the correctness of the view in Upendra Rai (*supra*), observed that during the pendency of the appeals, the Amending Act had rendered the issues for consideration referred to the larger Bench as academic. These developments have been taken due note of in a recent judgment of a Full Bench of this Court in Ram Surat Yadav & Ors. Vs. State of U.P. & Ors. (Spl. Appeal No. 12342013 decided on 19 December, 2013)

10. Thus, the point to be noted is that after the enforcement of the Act of 2009 and the issuance of the notification of 23 August 2010, the qualifications which have been prescribed for appointment of primary teachers must necessarily be those that are stipulated in the notification dated 23 August 2010, as amended by the notification dated 27 August 2011.

11. Undoubtedly, the Rules of 1981 do prescribe the essential qualification for appointment of Assistant Teachers in Junior Basic Schools where education is imparted from Classes I to V. The relevant qualifications which are prescribed in Rule 8 are as follows: “(ii) Assistant Master and Assistant Mistress of Junior Basic School A Bachelor's Degree from a University

established by law in India or a Degree recognised by the Government as equivalent thereto together with the training qualification consisting of a **Basic Teacher's Certificate, Vishist Basic Teachers Certificate (B.T.C.) two years BTC Urdu Special Training Course, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other training training course recognised by the Government as equivalent there:**

Provided that the essential qualification for a candidate who has passed the required training course shall be the same which was prescribed for admission to the said training course.

12. The qualifications, which have been prescribed by the NCTE in the notification dated 29 July 2011 include Senior Secondary with at least 50% marks together with a 2-year Diploma in Education (Special Education). 9 Once, these qualifications have been prescribed by the NCTE, this would necessarily be binding and it is not open to the State Government to exclude (from the zone of eligibility) the persons who are otherwise qualified in terms of the notification dated 23 August 2010 as amended on 29 July 2011.

13. In this view of the matter, we are of the opinion that the learned Single Judge was in error in coming to the conclusion that since the recruitment was in pursuance of a special drive, the Government was justified in confining the eligibility qualifications only to those who held the BTC qualifications for the reason that such candidates could not be adjusted earlier for want of TET qualification. The passing of the TET was introduced as a mandatory requirement by the notification dated 23 August 2010 issued by the NCTE. Persons who did not fulfill the eligibility conditions prescribed in the notification dated 23 August 2010, as amended on 29 July 2011, were not qualified for consideration for appointment as primary school teachers. Hence, there was no occasion for the State to contend or for that matter the learned Single Judge to accept the submission that in order to adjust such BTC qualified candidates, the present advertisement had been issued. The learned Single Judge held that the appellants could not claim equivalence with those candidates who possess BTC qualification. This, in our view, begs the question because once the Diploma in Education (Special

Education) is held to be a qualification which is recognized for appointment of Assistant Teachers for teaching Classes I to V, it would be impermissible for the State Government to exclude them from being considered for appointment. In a special drive or otherwise, it is not open to the State Government to exclude one class of teachers who fulfill the qualifications for eligibility prescribed by the NCTE. Any such action would be impermissible for the simple reason that the exclusive power to prescribe eligibility qualifications for such teachers is vested in the NCTE. Once the NCTE has spoken on the subject, as it has through its notification, those qualifications must govern the eligibility requirement. Jurisdiction and power of the NCTE to do so is now settled beyond any doubt, as noted by the Supreme Court”

(80) The aforesaid judgment of the Division Bench, which was also upheld by the Hon’ble Apex Court, in clear and loud terms says that it is not right for the State Government to exclude one class of teachers who fulfill the qualifications for eligibility prescribed by the NCTE from the zone of consideration. In other words, the class of candidates, who belonged to the “O” vacancy district cannot be simply excluded from the consideration zone because the district from where they had completed their BTC training did not report any vacancy. As rightly pointed out by the Division Bench, any such action would be impermissible for the simple reason that the exclusive power to prescribe eligibility qualifications for such teachers is vested in the NCTE. Once the NCTE has spoken on the subject, as it has through its notification, those qualifications must govern the eligibility requirement. Jurisdiction and power of the NCTE to do so is now settled beyond any doubt, as noted by the Supreme Court.

(81) It may be noted that it is nobody’s case that these candidates belonging to the “O” vacancy districts do not satisfy the minimum qualification as prescribed by the NCTE nor it is the

case that they have been given any advantage in the counseling's process as they come from the "0" vacancy districts. The only ground to discriminate these candidates from participating in the counseling's is the mere fact that they belong to "0" vacancy district. **Based on residence or training from a particular district, this Court cannot discriminate the candidates in public employment, save as provided under Article 16(3) of our constitution. In any case, when these candidates meet the minimum qualification as prescribed by NCTE and no vacancies have been reported of their respective district, this Court sees no valid reason as to why they should not be allowed to participate and come within the consideration zone for appointment of Assistant Teachers in other district for which they have exercised their preferences.**

- (82) Further, as rightly contended by the learned Senior Counsel Sri Upendra Nath Mishra that the said circular of 26.12.2016 issued by the Board was strictly in consonance with Section 23 of RTE Act enacted by the Parliament read with notifications of 2010 & 2011 of Government of India and as such there was no infirmity in the aforesaid Circular dated 26.12.2016, which in any case gives prominence to higher merits as the consideration zone stands enlarged to more candidates coming from the "0" vacancy districts. Further, this court is not able to find any reasoning accorded by the learned Single Judge, which points towards the factum of compromising the merits of the candidates, in case a candidate of "0" vacancy district is allowed to participate in the counseling's or for that matter any reasons as to their meeting the minimum qualification etc.
- (83) In the present case, when the candidates from the zero vacancy districts are allowed to participate in the selection process, the

merit would certainly go up and the present scheme is in tandem with the mandate of Section 8 (g) and Section 9(h) of RTE Act which would ultimately benefit the students.

(84) The reliance of the learned Additional Standing counsel Mr. Ran Vijay Singh, is also noteworthy. The said learned Counsel has raised a very valid technical point. According to him, it is not the case of those candidates, who have sought to challenge clause 6(kha) of the circular dated 26.12.2016 at this belated stage, that they are more meritorious than the already selected candidates from "0" vacancy district nor it is the case of these petitioners that they were unaware of such a clause or circular and still went ahead with the counseling's/selection process. Thus, it is right on the part of the learned Addl. Standing counsel to contend that since these petitioners have participated and failed in the selection process, they have no right to challenge the said process in view of the judgment of the Apex Court in ***Ranjan Kumar V/s State of Bihar, (2014) 16 SCC 187.***

(85) Moreover, there is another aspect of the matter, in as much as it has also been argued that the circular dated 26.12.2016 issued by the secretary, Secretary, U.P. Basic Shiksha Parishad, Allahabad was subservient to the rules. According to the impugned order, since, the rules and specifically Rule 14(1) or Rule 14(1)(a) does not permit participation of candidates belonging to "0" vacancy districts, therefore it was held that the very participation of these candidates have adversely effected the entire selection proceeding and consequently the entire selection process was set-aside. According, to this court the said analogy drawn by the learned Single Judge is flawed as the U.P. Board of Basic Education is competent under Section 4 of the Act, 1972 to issue guidelines dated 26.12.2016 whereby

candidates from zero vacancy districts have been permitted to participate in the selection process, thereby causing induction of more meritorious Teachers in the service. This court has already held that increasing the consideration zone of candidates by permitting candidates of “0” vacancy district to participate in the counseling’s for any district by marking their preference has been for the betterment of the students only and is in conformity to section 23 of the RTE Act as it increases the chances of engaging more meritorious candidates in the selection process. Further, the Board being a statutory authority is duty bound to act taking a holistic view of the statute and Rules applicable. The guidelines dated 26.12.2016 conforming to the standards laid down by the NCTE are not inferior in comparison to the Rules 1981 as far as it permits the candidates of the “0” vacancy district to participate in the counseling’s process. In any case, the learned Additional Chief Standing Counsel is right in submitting that the rule of permitting candidates to participate in their respective district of training might have held good, when there was single Teachers Training Institute in one district, but since now multiple institutions have opened in each district, the rule has become onerous in itself and meaningless. Further, restricting the vacancies to the candidates who have done their training from the same district has even become redundant after the qualifications required for the post of Assistant Teacher have been laid down by the NCTE by its notification dated 23.08.2010 allowing all those candidates who have done two years Diploma in Elementary Education from NCTE recognized institution whether from the State of U.P. or any other State. This court finds force in the judgment of the Apex Court in ***State of U.P. v. Shiv Kumar Pathak [(2018) 12 SCC 595]***, which held that any person who

hold such qualification could not be ousted on the ground of restrictions in the Rule or Circular.

- (86) It is no longer debatable that elementary education for children is today a Fundamental Right enshrined under Article 21A of Part III of the Constitution of India. Every child (upto 14 years of age), has a fundamental Right to have ‘free’ and ‘compulsory’ elementary education. But then ‘free’ and ‘compulsory’ elementary education is of no use unless it is also a ‘meaningful’ education. In other words, elementary education has to be of good ‘quality’, and not just a ritual or formality! A robust foundation has to be laid for a brighter and glorious future. Elementary education must sustain the basic foundation for any education system.
- (87) In order to fulfil the above mandate Right to Education Act, 2009, was passed by the Parliament on August 20, 2009, which became effective from 01.04.2010. The object and reasons of the Act declared loud and clear that what the Act seeks to achieve is not merely ‘free’ and ‘compulsory’ elementary education, but equally important would be the ‘Quality’ of this education! The Preamble to the Act states “that every child has a right to be provided full time elementary education of satisfactory and equitable ‘quality’ in a formal school which satisfies certain essential norms and standards.
- (88) It is quite historical to note that when the validity of the Act was challenged before the Apex Court, the Hon’ble Supreme Court, while upholding its validity emphasized that the Act, was intended not only to impart “free” and “compulsory” education to children, but the purpose was also to impart ‘quality’ education. A 3-Judge Bench of the Apex Court in *Society for*

unaided Private Schools of **Rajasthan Vs. Union of India & Anr. (2012) 6 SCC 1**), held at para 8 as follows:

“The provisions of this Act are intended not only to guarantee right to free and compulsory education to children, but it also envisages imparting of ‘quality’ education by providing required infrastructure and compliance of specified norms and standards in the schools.”

- (89) Since the children are entitled for good quality education under the provisions of the RTE Act and as also held by the Hon’ble Supreme Court, the same cannot be achieved without appointing meritorious candidates. Our State or for that, our country has an abundance of talent, skill and knowledge and no particular, state or district can claim a monopoly on the said talent. It ought to be equally distributed and as such even distribution of proper opportunity and employment for all the meritorious students should be applied, so that they can reach to their fullest potential. This equality of opportunity cannot be scuttled by a candidate’s place of training juxtaposed to his skill, merit or excellence, which should be the only criteria for his selection.
- (90) As far as the appointment of Assistant Teachers by the Basic Sikha parishad is concerned, so far, three advertisements were issued for filling up the posts of Assistant Teachers. The first selection was held in the year 2014 where there was no district with ‘0’ vacancy. Thereafter, on 16.06.2016 second selection was held for 16,448 vacancies of Assistant Teachers and the guidelines were issued by the Board on 25.06.2016. In the said selection, almost 3 districts were reported as ‘0’ vacant districts, namely, Baghpat, Hapur and Jalun, thus the Board had supplemented the procedure by adding two provisions in Clause

6(Kha) and 6 (Cha). This was done to fill-up the yawning gap in statutory provisions as the State Act and Rules were silent about the situation of '0' vacancy in a district. Next, the advertisements in the instant matter were issued in the year 2016 for filling up of 12,460 Assistant Teachers for which schedule of selection was issued on 20.12.2016.

- (91) It is evident from the record that after first round of counselling, combined select lists of home district candidates and the outside/zero district candidates were prepared and published in all districts on 21.03.2017 and 22.03.2017.
- (92) Apparently, as an aftermath to tide over the aforesaid controversy, the State Government in the year 2018 has already amended Rule 14(1)(a) and has completely done away with the provisions of district preference. Thus, there is no longer any requirement for a candidate to have B.T.C. qualification from the same district from where he applies. However, since this amendment was to be applied only prospectively, the present controversy erupted leading to several rounds of litigations.
- (93) It is an admitted position that the advertisement has been issued for appointment of 12,460 Assistant Teachers in the Junior Schools. As stated here-in-above, 5,990 candidates are already working on the said posts, meaning thereby 6,470 posts are still left to be filled.

CONCLUSION

- (94) Merit should always be promoted for ensuring quality education as proposed by the RTE Act in its preamble itself and the Courts have always promoted this cause, denial of appointments to meritorious candidates is prejudicial to the interest of meritorious candidates, who are future of our Nation.

Thus, this court does not find any error in the preparation of merit list at District Level of the Assistant Teachers on the basis of candidates of “0” vacancy district to participate in the counseling’s for any district by marking their preference, which needless to say is in conformity to section 23 of the RTE Act. The said provisions is also not in breach of the touchstone as devised by the Apex Court for infringement of the provision of Articles 14, 15, 16 and 21-A of the Constitution of India.

- (95) Before we part, this court wishes to record that vide an order dated 07.05.2022, a Co-ordinate Bench of this Court has passed the following order:-

*“Sri Abhinav N. Trivedi, learned Chief Standing Counsel has submitted that **all the issues engaging attention of this Court in this Bunch of Special Appeals are under active consideration of the State Government at an appropriate level.** He has stated that the State Government in the department of Basic Education has instructed him to make a prayer to the Court to adjourn the matter for four weeks so that process of resolution which is pending in the State Government may be expedited and appropriate decision may be taken for resolving the issues.*

The other learned counsel representing the rival parties have though welcomed the suggestion given on behalf of the State Government for resolution of the issues at the level of the State Government itself, however, they simultaneously have expressed their apprehension that such requests in this matter have been made earlier also at the instance of the State Government, however, till date no solution could be found and presented before the Court.

Sri Abhinav N. Trivedi, learned Chief Standing Counsel allays such apprehensions and has submitted that the State Government is serious

to find out some solution of the issues which are pending consideration in this matter.

Thus, on the prayer made by learned Chief Standing Counsel, we adjourn this case to 26.05.2022, on which date, learned State Counsel shall bring on record if any decision is taken at the end of the State Government to resolve the issues.

We express our solemn hope and trust that during this intervening period the State Government shall make all its honest and sincere endeavour to find out a solution. We also make it clear that no further time shall be granted and in case no solution is found by the next date, the matter shall not be adjourned and shall be argued finally.

List this case on 26.05.2022.”

Thereafter, number of times the case has been taken up, but the stand of the Government has not come forward. The callousness approach of the Basic Education department in resolving the present issue is apparent from the aforesaid facts. The state has neither come forward with a solution nor have suggested a via media for resolving the issue and the only thing which can be depicted from the various orders of this court is that they have been seeking adjournment after adjournment and had been delaying the hearing and decision in the present matter, without appreciating the fact that the recruitment process had been notified some seven years ago in the year 2016.

- (96) In view of what has been stated above, while setting aside the impugned order dated 01.11.2018 passed by the Single Bench, we **dispose of** all the Special Appeals with a direction to the authorities concerned to take a decision to fill-up all the posts inclusive of residual 6,470 by preparing a common merit list of all the eligible Assistant Teachers as per NCTE Notifications

read with Notification/Circular dated 26.12.2016 in the respective districts as discussed here-in-above, within a period of three months from the date of production of a certified copy of this order. Subject to the preparation of merit list as directed, the interim order dated 17.11.2018 & extended vide order dated 22.07.2019 shall remain in operation for three months or till preparation of said merit list, whichever is earlier.

(Om Prakash Shukla, J.) (Attai Rahman Masoodi, J.)

Order Date :- 31.10.2023

lakshman