

Court No. - 2

Case :- SPECIAL APPEAL No. - 79 of 2020

Appellant :- Alok Kumar And Another

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

Counsel for Appellant :- Ishita Yadu, Sridhar Awasthi

Counsel for Respondent :- C.S.C., Ajay Kumar, Gaurav Mehrotra, Utsav Mishra

along with

Case :- SPECIAL APPEAL No. - 88 of 2020

Appellant :- Naveen Kumar And Others

Respondent :- State Of U.P. Through Spl. Secy. Basic Education And Others

Counsel for Appellant :- Onkar Singh, Deepak Singh, Girish Kumar Dwivedi

Counsel for Respondent :- C.S.C., Ajay Kumar, Nand Kishore Patel, Om Prakash Nag, Rajesh Kumar Verma

along with

Case :- SPECIAL APPEAL No. - 18 of 2020

Appellant :- Aditya Kumar Pandey

Respondent :- State Of U.P. Through Spl. Secy. Basic Education And Others

Counsel for Appellant :- Atul Chander Dwivedi, Laltaprasad Misra

Counsel for Respondent :- C.S.C., Ajay Kumar

along with

Case :- SPECIAL APPEAL No. - 66 of 2020

Appellant :- Ashok Kumar Tripathi And Another

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

Counsel for Appellant :- Arun Kumar, Smt. Ranjana Tiwari

Counsel for Respondent :- C.S.C.,Ajay Kumar

along with

Case :- SPECIAL APPEAL No. - 67 of 2020

Appellant :- Abhai Singh And Others

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

Counsel for Appellant :- Avdhesh Shukla,Pramod Kumar Verma

Counsel for Respondent :- C.S.C.,Ajay Kumar

along with

Case :- SPECIAL APPEAL No. - 77 of 2020

Appellant :- Sandhya Verma

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

Counsel for Appellant :- Rayees Ahmad Khan

Counsel for Respondent :- C.S.C.,Ajay Kumar

along with

Case :- SPECIAL APPEAL No. - 78 of 2020

Appellant :- Yashpal Singh And Others

Respondent :- State Of U.P. Through Spl. Secy. Basic Education And Others

Counsel for Appellant :- Onkar Singh

Counsel for Respondent :- C.S.C.,Ajay Kumar

along with

Case :- SPECIAL APPEAL No. - 81 of 2020

Appellant :- Abdul Shahrukh And Ors.

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

Counsel for Appellant :- Yogeshwar Sharan Srivasta

Counsel for Respondent :- C.S.C.,Ajay Kumar

along with

Case :- SPECIAL APPEAL No. - 62 of 2023

Appellant :- Rishikesh Rav And Others

Respondent :- State Of U.P. Thru. Special Secy. Basic Edu.
Civil Sectt. Lko. And Others

Counsel for Appellant :- Pradeep Kumar,Prabhat Kumar
Mishra,Rahul Kumar Shukla

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

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 91 of 2020

Appellant :- Pawankumar And Others

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

Counsel for Appellant :- Avdhesh Shukla,Ashutosh

Counsel for Respondent :- C.S.C.,Ajay Kumar

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 106 of 2020

Appellant :- Avanish Kumar And Others

Respondent :- State Of U.P. Through Spl. Secy. Basic
Education And Others

Counsel for Appellant :- Yogeshwar Sharan Srivasta

Counsel for Respondent :- C.S.C.,Ajay Kumar

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 110 of 2020

Appellant :- Kumari Anupam

Respondent :- State Of U.P. Thru Special Secy.Basic Edu. Lko.
And Ors.

Counsel for Appellant :- Onkar Nath Tiwari

Counsel for Respondent :- C.S.C.,Ajay Kumar

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 115 of 2020

Appellant :- Rekha Verma And 44 Ors.

Respondent :- State Of U.P. Thru Special Secy. Basic Edu.
Lko. And Ors.

Counsel for Appellant :- Yogeshwar Sharan Srivasta

Counsel for Respondent :- C.S.C.,Ajay Kumar

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 19 of 2021

Appellant :- Sanjay Kumar Pal And Ors.

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

Counsel for Appellant :- Sanjay Kumar Verma,Nand Kishore
Patel

Counsel for Respondent :- C.S.C.,Ajay Kumar

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 28 of 2021

Appellant :- Shivendra Pratap Singh And Ors.

Respondent :- State Of U.P.Thru Prin.Secy. Primary Education
Lko And Ors.

Counsel for Appellant :- Avdhesh Shukla,Ajeet Singh,Pramod
Kumar Verma

Counsel for Respondent :- C.S.C.,Ajay Kumar

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 138 of 2021

Appellant :- Amit Kumar Mishra And Ors.

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

Counsel for Appellant :- Mulayam Singh Yadav,Pradeep Singh
Somvanshi

Counsel for Respondent :- C.S.C.

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 273 of 2021

Appellant :- Pushpendra Kumar Yadav And Ors.

Respondent :- State Of U.P. Thru. Spl. Secy. Basic Education

And Ors.

Counsel for Appellant :- Yogeshwar Sharan Srivasta,Gaurav Mehrotra,Hemant Kumar Pandey,Utsav Mishra

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

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 439 of 2021

Appellant :- Sanjeet Kumar Shukla And Ors.

Respondent :- State Of U.P. Thru. Prin. Secy. Primary Education Lko.And Ors.

Counsel for Appellant :- Avdhesh Shukla,Ashutosh,Pramod Kumar Verma

Counsel for Respondent :- C.S.C.,Ajay Kumar

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 456 of 2021

Appellant :- Jawahar Singh And Ors.

Respondent :- State Of U.P. Thru. Spl. Secy. Basic Education And Ors.

Counsel for Appellant :- Amit Kr. Singh Bhadauriya,L.B.Singh Bhadauria,Vivek Verma

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

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 465 of 2021

Appellant :- Jai Singh Verma And Ors.

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

Counsel for Appellant :- Amit Kr. Singh Bhadauriya,L.B.Singh Bhadauria,Vivek Verma

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

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 496 of 2021

Appellant :- Ankit Kumar Mishra And Ors.

Respondent :- State Of U.P. Thru. Spl. Secy. Basic Education And Ors.

Counsel for Appellant :- Atul Chander Dwivedi

Counsel for Respondent :- C.S.C., Ajay Kumar

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 526 of 2021

Appellant :- Ajeet Singh And Ors.

Respondent :- State Of U.P. Thru Prin. Secy. Primary Education Lko And Ors.

Counsel for Appellant :- Avdhesh Shukla, Pramod Kumar Verma

Counsel for Respondent :- C.S.C., Ajay Kumar

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 546 of 2021

Appellant :- Salman Ansari

Respondent :- State Of U.P. Through Prin. Secy. Primary Education And Ors

Counsel for Appellant :- Shanker Lal Pandey, Ajay Kumar

Counsel for Respondent :- C.S.C.

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 547 of 2021

Appellant :- Satya Brat Pandey And Others

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

Counsel for Appellant :- Onkar Singh, Lal Bahadur Singh Bhadori, Vivek Verma

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

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 12 of 2022

Appellant :- Sushil Kumar Gupta And Ors.

Respondent :- State Of U.P. Through Principal Secretary Primary Education And Ors.

Counsel for Appellant :- Prashant Vikram Singh, Anshuman Singh

Counsel for Respondent :- C.S.C., Ajay Kumar

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 21 of 2022

Appellant :- Krishna Sahani And Ors (In Wria 6000 Of 2020)

Respondent :- State Of U.P Thru. Special Secy. Basic Education And Ors

Counsel for Appellant :- Yogeshwar Sharan Srivastava, Hemant Kumar Pandey

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

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 41 of 2022

Appellant :- Atul Pal And Another

Respondent :- State Of U.P Thru. Special Secy. Basic Education, Anubhag-4 And 3 Others

Counsel for Appellant :- Manisha Trivedi, Vanshraj Dubey

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

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 32 of 2023

Appellant :- Vinay Kumar Pandey And Others

Respondent :- State Of U.P. Thru. Prin. Secy. Basic Edu. Govt. U.P. Lko. And Others

Counsel for Appellant :- Chetan Kumar Tiwari, Ashutosh Chaurasia

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

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 41 of 2023

Appellant :- Mohd. Mustafa Ahmad And Others

Respondent :- State Of U.P. Thru. Special Secy. Basic Edu. Anubhag-4 U.P. Civil Sectr. Lko. And Others

Counsel for Appellant :- Yogeshwar Sharan Srivastava

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

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 64 of 2023

Appellant :- Jagdish Prasad Gangwar And Others

Respondent :- State Of U.P. Thru. Prin. Secy. Primary Education Lko. And Others

Counsel for Appellant :- Dinesh Kumar,Ajeet Singh

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

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 69 of 2023

Appellant :- Govind Prasad Sahani And Others

Respondent :- State Of U.P. Thru. Special Secy. Basic Education Lko. And Others

Counsel for Appellant :- Onkar Singh

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

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 72 of 2023

Appellant :- Indrapal And Others

Respondent :- State Of U.P. Thru. Secy. Primary Education Lko. And Others

Counsel for Appellant :- Surya Narayan Mishra

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

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 78 of 2023

Appellant :- Mohd. Farhan And Others

Respondent :- State Of U.P. Thru. Spl. Secy. Basic Education Anubhag-4 , Govt. Of U.P. Lko. And Others

Counsel for Appellant :- Pankaj Kumar Tiwari

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

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 89 of 2023

Appellant :- Neeraj Kumar

Respondent :- State Of U.P. Thru. Secy. Primary Education
Lko. And Others

Counsel for Appellant :- Surya Narayan Mishra

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

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 134 of 2023

Appellant :- Priyanka Chaurasiya And Another

Respondent :- State Of U.P. Thru. Prin. Secy. Basic Education
Shiksha Anubhag-2 Lko. And Others

Counsel for Appellant :- Ram Sewak,Purshottam Chaurasia

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

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 305 of 2023

Appellant :- Priyanka Bajpai @ Priyanka Mishra And Others

Respondent :- State Of U.P. Thru. Prin. Secy. Primary
Education Lko. And Others

Counsel for Appellant :- Dinesh Kumar

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

along with

Case :- SPECIAL APPEAL DEFECTIVE No. - 259 of 2024

Appellant :- Arati

Respondent :- State Of U.P. Thru. Prin. Secy. (Basic
Education) Shiksha Anubhag Lko. And Others

Counsel for Appellant :- Deepak Singh

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

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

1. Heard Shri Sudeep Seth, learned Senior counsel assisted by
Shri Sridhar Awasthi, Shri Gaurav Mehrotra along with Shri

Utsav Mishra, Shri Avdhesh Shukla, Shri Yogeshwar Sharan Srivastava, Shri Onkar Singh, learned counsel and other counsel appearing in various connected appeals as also Shri Ran Vijay Singh, Additional Chief Standing counsel as also Counsel for the Basic Education Board and Shri Nishant Shukla, Learned Standing counsel for the State.

2. This is a bunch of appeals arising out of a common judgment dated 07.01.2020 by which the writ petitions filed by the appellants challenging a Government Order dated 20.02.2019 have been dismissed.

3. In this bunch of special appeals, some of the special appeals have been filed with delay. The counsel for the respondents have not opposed the application for condonation of delay in filing the appeal, especially as, the other appeals against the same judgment have been filed within the time prescribed. We find that the explanation offered in the affidavit filed in support of the application for condonation of delay to be satisfactory. We accordingly allow the application for condonation of delay in those appeals in which it has been filed and condone the delay.

4. Learned counsel for the parties are *ad idem* that the facts and issues are similar, therefore, all the appeals be decided by a common judgment.

5. We have taken up Special Appeal No. 79 of 2020 as leading appeal.

6. Facts of the case in brief are that the UP Basic Education (Teachers) Service Rules, 1981 as amended by the 2020 amendment contains a provision for Assistant Teacher Recruitment Examination (hereinafter referred as "ATRE").

This examination is prescribed as an eligibility acquiring examination for the purposes of recruitment to the post of Assistant Teacher, meaning thereby, the examination by itself is not an examination for recruitment, but an examination which qualifies the successful candidates for appearing in the recruitment examination as and when it is advertised subsequently and separately with regard to the vacancies determined therein.

7. On 09.01.2018, a Government Order was issued laying down guidelines for holding ATRE for 68,500 vacancies on the post of Assistant Teacher. As per the said Government Order, minimum qualifying marks were to be 40% (60 out of 150) and 45% (67 out of 150) for Reserved and Unreserved categories, respectively. This Government order was obviously a precursor to the advertisement for holding ATRE 2018. Another Government Order dated 17.01.2018 was issued prescribing the time schedule for conducting ATRE 2018. This was followed by an advertisement dated 23.01.2018 for holding ATRE as per the schedule mentioned therein.

8. Some amendments were made on 15.03.2018 in the Rules by the 22nd Amendment. Requirement of passing the ATRE as contained in Rule 8 was removed but was retained or included in Rule 14. On being asked, Shri Ran Vijay Singh, learned counsel appearing for the Board submitted that Rule 8 pertained to qualification, therefore, provision of ATRE was removed from there, but was retained/ added in Rule 14 as it was a provision requiring the persons to qualify the said ATRE in order to be eligible for Recruitment. The time schedule for ATRE 2018 was amended on 08.05.2018.

9. On 21.05.2018, the State Government issued a Government Order lowering the minimum qualifying marks as fixed by the

earlier Government order dated 09.01.2018, from 40% and 45% for the Reserved and Unreserved categories respectively to 30% and 33% for the said categories respectively.

10. Admit cards were issued on 27.05.2018 and ATRE was held on 27.05.2018. Answer key was published online on 05.06.2018, which was amended on 18.06.2018.

11. On 24.07.2018, a writ petition bearing No.20404 (S/S) of 2018 was filed by one Diwakar Singh challenging the Government Order dated 21.05.2018, by which the minimum qualifying marks earlier fixed vide Government Order dated 09.11.2018 were further lowered as already mentioned. Appellants herein as claimed were not arrayed as opposite party therein. Be that as it may, an interim order was passed on 24.07.2018 staying the operation of subsequent Government Order dated 21.05.2018.

12. A special appeal was filed by the appellants herein challenging the said order, which was disposed of on 24.09.2018 with observation that they could approach the learned Single Judge for deciding the writ petition itself finally. Some of the appellants filed application for impleadment in Diwakar Singh's petition.

13. Thereafter, on 08.08.2018, the State Government issued a Government order deciding to comply the interim order dated 24.07.2018 passed in above-mentioned writ petition and to declare the result of the examination held on 27.05.2018 as per the minimum qualifying marks prescribed in Government Order dated 09.01.2018.

14. Result of ATRE, 2018 was accordingly declared on 13.08.2018. As claimed, out of 1,07,873 students only 41,556

candidates qualified. Appellants before us could not qualify in the ATRE Examination, result of which was declared on the basis of the minimum qualifying marks prescribed in the Government Order dated 09.01.2018 and not the Government Order dated 21.05.2018. This was done during the pendency of Writ Petition No.20404 (S/S) of 2018, wherein the interim order had been passed staying the implementation of the Government Order dated 21.05.2018. It is informed that various other writ petitions similar to one filed by Diwakar Singh were also filed and remained pending.

15. Be that as it may, the fact of the matter is that none of the appellants herein challenged the Government Order dated 08.08.2018, nor the declaration of the result dated 13.08.2018. Consequently, not only the advertisement for holding the ATRE 2018 dated 23.01.2018 was acted upon and the examination was held, but, the result was also declared on 13.08.2018, wherein the appellants herein did not qualify.

16. ATRE is not an examination for recruitment per se, but an eligibility acquiring examination, which qualifies the successful candidate and makes him eligible for appearing in the recruitment examination. Now, the recruitment examination was advertised subsequently on 20.08.2018 for filling up 41,556 posts i.e. the posts commensurate to the number of persons who had qualified the ATRE 2018 and in which the appellants herein did not qualify.

17. This advertisement dated 20.08.2018 was issued after permission was granted by the State Government to the Director, Basic Education Parishad vide Government Order dated 18.08.2018 to his letter dated 16.08.2018.

18. Neither these letters/ permissions of the Director/ State

Government nor the advertisement dated 20.08.2018 were ever put to challenge by the appellants herein.

19. Now, what is apparent from the facts as noticed hereinabove is that one examination was to be held for determining the qualified candidates for filling up as many as 68,500 vacancies. This examination was held on 27.05.2018 on the basis of qualifying marks as determined by Government Order dated 09.01.2018 during pendency of the writ petition filed by Diwakar Singh. The examination was held and the result was declared as already observed and this process was never put to challenge by the appellants, although, they could have challenged the decision dated 08.08.2018 and the declaration of result of ATRE 2018 on 13.08.2018 on the ground that during pendency of Writ Petition No.20404 (S/S) of 2018 filed by Diwakar Singh, while the interim order was operative, if the examination is allowed to be held, then a *fait accomplie* could be presented to the Court and to the candidates.

20. Now, the fact of the matter is that the examination was held and the criteria on which it was held is as prescribed in the Government Order dated 09.01.2018.

21. Against the aforesaid background, even though the State of U.P. filed a counter affidavit in the aforesaid writ petition of Diwakar Singh on 24.08.2018 and a supplementary counter affidavit on 04.12.2018 justifying its Government Order dated 21.05.2018, but, subsequently, obviously in view of the fact that the examination was already over on the basis of the Government Order dated 09.01.2018, it took a decision as referred in the Government Order dated 20.02.2019 that the Government Order dated 21.05.2018 had been rendered ineffective.

22. Being aggrieved the appellants for the first time filed

petitions, out of which these appeals arise challenging the said Government Order dated 20.02.2019 before the Writ Court.

23. Learned counsel for the appellants laid great emphasis on the fact that the Government order could not be treated as ineffective during pendency of the writ petition wherein its validity had been challenged and it had been stayed especially as, on account of stay order, the appellants herein, some of whom belong to reserved category, were deprived of a consideration on the basis of the marks lowered by the Government Order dated 21.05.2018. For this reason the Government Order dated 20.02.2019 was erroneous. According to them, learned Single Judge did not appreciate this aspect of the matter and proceeded to decide the petitions on a wrong premise as if it was a selection for recruitment and the Rules of recruitment could not have been changed after the selection process had been initiated whereas it was an examination for acquiring eligibility/ qualification for recruitment.

24. The argument appeared to be attractive at first blush but, we find that the ATRE 2018 has already been held on 27.05.2018 and the appellants herein did not seek any remedy before the Court at the appropriate stage for stopping the said examination held in pursuance to the Government Order dated 08.08.2018 nor did they challenge the result declared on 13.08.2018 and the said examination was completed on the basis of qualifying marks prescribed in Government Order dated 09.01.2018, therefore, obviously once the entire examination has been held on the basis of Government Order dated 09.01.2018, the Government was entitled to say that veritably and for all practical purposes, the subsequent Government Order dated 21.05.2018 has lost its efficacy and had become infructuous. The reason for it is that for the same examination there cannot

be two criteria as far as the qualifying marks are concerned. It cannot be that out of 68,500 candidates, 41,556 candidates would be considered and declared qualified on the basis of the qualifying marks prescribed in the Government Order dated 09.01.2018 as has been done, whereas for the remaining candidates, the further lowered qualifying marks as prescribed in the Government Order dated 21.05.2018 would be applicable. This would be apparently erroneous, unfair and unreasonable. As such, the contention of the learned counsel for the appellants that the reason given in the Government Order dated 20.02.2019 cannot be accepted on facts and in law, is not acceptable. The Government Order may not be happily worded but from the facts as noticed hereinabove, it cannot be said to be unreasonable.

25. Moreover, the question before us is what is the constitutional or statutory right available to the appellants-petitioners herein for a further lowering of minimum qualifying marks as initially fixed in the Government Order dated 09.01.2018 and also to insist that in the facts and circumstances of the case, the State Government should consider the appellants based on the subsequent Government Order dated 21.05.2018. We do not find any such constitutional or statutory right in their favour.

26. Learned counsel for the appellant laid emphasis on the '*Doctrine of Legitimate Expectation*' and relied upon the decisions reported in *Punjab Communications Ltd. Vs. Union of India and Others* (1999) 4 SCC 727, *K.S. Bhoopathy and Others Vs. Kokila and Others* (2000) 5 SCC 458, *Executive Officer, Arthanareswarar Temple Vs. R. Sathyamoorthy and Others* (1999) 3 SCC 115, *Shree Chamundi Mopeds Ltd. Vs. Church of South India trust Association CST Cinod Secretariat,*

Madras (1992) 3 SCC 1. We have gone through the said judgments but considering the facts of the case as noticed hereinabove, we fail to understand as to how the Principle of Legitimate Expectation will help the appellants herein especially in the absence of any challenge made by them to the Government Order dated 08.08.2018 and to the result declared on 13.08.2018.

27. The writ petition filed by Diwakar Singh (supra), as referred above, has been dismissed as infructuous on 28.02.2019. No appeal has been filed challenging the said order, however, in this regard, the explanation is that liberty was granted to the appellants herein to raise their grievances separately, which they did by means of the different writ petitions, which have given rise to these appeals, but unfortunately, their stand before the learned Single Judge did not find favour, but this is also of no avail in view of the facts and reasons already discussed.

28. The other contention in this regard is that the learned Single Judge was primarily persuaded on the wrong factual premises as if the qualification examination was part of the recruitment process, therefore, he opined that once the advertisement had been issued and the recruitment process had been set into motion, then the rules of the game or the conditions of the recruitment could not be changed, whereas according to the counsel for the appellants, this was not an advertisement for recruitment, but only an advertisement for qualifying examination.

29. While it is true that the examination in question was not an examination or selection for recruitment but one for qualifying or acquiring eligibility, we fail to understand as to why the said principle which is applicable to a recruitment process could not apply to such a process. However, even if assuming that it does

not apply, it makes no difference in the facts of this case for the reasons given hereinabove, which need not be reiterated. Even if the reasoning given by the Writ Court is held to be erroneous on this ground, the result of the proceedings would not change for the reasons given by us, as discussed earlier.

30. The fact that the State Government in its counter affidavit before the writ petition filed by Diwakar Singh (supra) and similar matters tried to justify the Government Order dated 21.05.2018 also does not enure to the benefit of the appellants as thereafter, this examination process was over and the result was declared, therefore, it was justified in withdrawing the said Government order on 20.02.2019 for the reasons already discussed hereinabove.

31. As regards the contentions of the appellants' counsel that the purpose of issuing the Government order dated 21.05.2018 was to fulfill all the posts which have been advertised for qualifying examination, we find that according to another counsel appearing for the appellants Sri Shukla, the purpose was to justify the judicial mandate as contained in the decision of Hon'ble Supreme Court in the case of State of U.P. Vs. Anand Kumar Yadav passed in S.L.P. No. 32599 of 2015. The Government Order dated 21.05.2018 does not mention any of such object or purpose. Moreover, how could the State Government have pre-supposed that the posts, which had been advertised for qualifying examination, would not be filled as by then the examination had not been held, therefore, we do not find any merit in this contention also.

32. For all these reasons, though we appreciate the efforts made by the learned counsel for the appellants but howsoever attractive their arguments may appear, purely on facts, this is not a case where this Court should interfere with the judgment

of the Writ Court in an Intra Court appeal. Even if some of the reasonings given by the Writ Court are erroneous, the dismissal of the writ petitions by the Writ Court is sustained for the reasons given hereinabove, therefore, all the appeals fail and are accordingly dismissed.

33. At this stage, learned counsel for the applicants submitted in unison that almost all the appellants have become overage. Shri Shukla, learned counsel appearing in one of the appeals submitted that most of the appellants before this Court are "*Shikshamitras*" and Hon'ble Supreme Court in Anand Kumar Yadav (supra) had issued directions for relaxation in age for two recruitments, which they have already availed, therefore, some direction be issued in this regard. If any of the appellants herein are entitled to any benefit under the judgment of Hon'ble the Supreme Court passed in the case of Anand Kumar Yadav (supra), then needless to say, the same would be available to them irrespective of this judgment.

34. It is further provided that if there is any provision in any Rule for relaxation of maximum age and there is no legal impediment in considering such relaxation in the context of the appellants herein, then the State Government may consider this as per law.

35. There is another aspect of the matter which requires our consideration. Out of 68,500 vacancies, for which qualifying examination was held, only 41,556 candidates were qualified, who may have appeared in the subsequent recruitment process initiated by the advertisement dated 20.08.2018. Moreover, it is informed that thereafter, another recruitment process for filling up 69,000 posts of Assistant Teacher was initiated/ advertised on 05.12.2018, but these posts were not included 27,713 posts against which the qualifying examination ATRE 2018 was held

and which are the subject matter of these appeals. We asked the learned counsel for the Board and the State as to why another ATRE has not been held after 2018. They submitted that there was some litigation pending in respect of other advertisements. We see no justification for not holding another ATRE after 2018. We therefore direct the State Government and the Board, whosoever may be responsible in this regard, to take immediate steps for holding ATRE in terms of the relevant rules, unless there is any legal impediment in this regard. We further direct that if there is no legal impediment, the said examination should be held at the earliest and decision with regard to holding of ATRE shall be taken within a period of two months from today and in that context, the relaxation of age pertaining to the appellants herein shall be considered as far as it may be permissible as per the law. If there are any legal impediments, then an advertisement to this effect should be published in at least two newspapers (one in Hindi and another in English) having wide circulation through out the State of U.P., so that the candidates may at least know as to why the said examination is not being held.

36. Subject to above, all the appeals are dismissed.

37. Shri Nishant Shukla, Additional C.S.C. as also Shri Ran Vijay Singh, learned counsel appearing for the Board shall communicate this order to the concerned Authority for compliance.

(Om Prakash Shukla,J.) (Rajan Roy,J.)

Order Date :- 27.8.2024

Gurpreet Singh