

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**LPA-912-2016 (O&M)
along with other connected cases
Reserved on : 16.05.2022
Pronounced on : 20.07.2022**

Paramjeet Kaur and anotherAppellants

Versus

State of Haryana and othersRespondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present:- Mr. A.S. Talwar, Advocate,
for the appellant(s) in LPA-912-2016.

Mr. Vikas Chatrath, Advocate
and Vikram Sheoran, Advocate,
for the appellant(s) in LPA-94-2018.

Ms. Anu Chatrath, Sr.Advocate
with Ms. Daljit Kaur, Advocate
for the appellant(s) in LPA-712-2016.

Ms.Anu Garg, Advocate,
for the petitioner(s) in CWP-7344-2017.

Mr. Govind Tanwar, Advocate,
for Mr. Kanwal Goyal, Advocate,
for the petitioner in CWP-22826-2021.

Mr.Rajiv Atma Ram, Senior Advocate
with Mr.S.K.Nehra, Advocate,
for the respondents in LPA No.912 of 2016
and for the respondent-intervener in CWP-20405-2013.

Mr.Akshay Bhan, Sr.Advocate
with Mr.Jasbir Mor, Advocate
Mr.Shantanu Bansal, Advocate
and Mr.A.S.Rawaley, Advocate, for the non-applicants
in CM-896-2018 in CWP-20133 & 23719-2013.

Mr.D.S.Patwalia, Sr.Advocate with
Mr.A.S.Chadha, Advocate
for respondent No.5 in LPA-912-2018.

Mr.B.S.Rana, Sr.Advocate
with Mr.Nayandeep Rana, Advocate,
for the petitioner(s) in CWP-13878-2017.

Mr.Ashutosh Gupta, Advocate, for
Mr.Suvir Sidhu, Advocate
for the petitioner in CWP-13731-2017.

Mr.Puneet Bali, Sr.Advocate
with Mr.Jasbir Mor, Advocate,
for intervener in CWP-20405-2013.

None for the petitioner(s) in CWP-9766-2017.

Mr.R.K.Malik, Sr.Advocate
with Mr.Vikram Sheoran, Advocate, for the petitioners
in CWP-2203-2016, 13910, 13731 & 14070-2017.

None for the petitioner(s)/appellant(s)
in CWP-11592, 28501 of 2017
and LPA Nos.911, 900, 908 of 2017 and 242 of 2018.

Mr.Amit Jhanji, Sr.Advocate
with Mr.A.K.Premi, Advocate for the applicant in
CM No.7406-CWP of 2017 in CWP No.20405 of 2013
and for respondent Nos.17 & 18 in LPA-912-2017.

Mr.Gurminder Singh, Sr.Advocate
with Mr.S.K.Nehra, Advocate
and Mr.J.S.Gill, Advocate for the non-applicant/petitioner No.1
CM No.7406-CWP of 2017 in CWP No.20405 of 2013.

Mr.B.S.Sudan, Advocate,
for the petitioners in CWP-13733-2017.

None for the respondents in LPA No. 912 of 2016 and
for the review applicant (in CWP No. 20405 of 2013).

Mr. Lajpat Rai Sharma, Advocate,
for the petitioner in CWP-20809-2017.

None for the petitioner(s)
in COCP No.3211 of 2017 and CWP No.13624 of 2017.

None for the petitioner(s) in CWP No.13878 of 2017.
None for the petitioner(s) in CWP-13732-2017.

Mr.Azad Kamboj, Advocate, for
Mr.C.S.Bagri, Advocate,
for the petitioner in CWP-14059-2017.

None for the petitioner(s) in CWP-10485-2017.

Mr.Chanderhas Yadav, Advocate
for appellant(s) in LPA-155-2018.

Mr.Kuldeep Sharma, Advocate, for
Mr.A.K.Bhardwaj, Advocate,
for the applicant in CM-3355-LPA-2016 in LPA-1631-2016.
Mr.Aayush for petitioner(s)
in COCP-2768, 3246, 3247, 3248 & 3641-2017.

Mr.B.R.Mahajan, Advocate General, Haryana
with Ms.Shruti Jain Goyal, DAG, Haryana.

Mr. Anurag Goyal, Advocate
and Mr.Parth Goyal, Advocate for the applicant(s) in
CM No.7406 & 9556-CWP of 2017 in CWP No.20405 of 2013
CM No.896 to 898-CWP of 2018 in CWP No.346 of 2013
and for respondent Nos.17 & 18 in LPA-912-2017
for the petitioner(s) in CWP-13110, 13730 & 13735-2017,
COCP Nos.3759, 2852, 2480, 3299, 2341 and 3873 of 2017.

Mr. Mukul Aggarwal, Advocate
for the applicant(s)/respondent Nos.7 & 8 in
CM No.15720 & 15776-CWP of 2017
in CWP No.20405 of 2013, CM No.1248 & 1281-CWP of
2018 in CWP No.23153 of 2013.

None for the proposed respondents No.6 to 11 in CM-10013-
10014-CWP-2017 in CWP-13731-2017.

Mr.Raje Ram Kaushik, Advocate, for private-respondent.

G.S. Sandhawalia, J.

The present judgment shall dispose of 61 cases bearing
LPA Nos. 912, 686, 712, 720, 851, 852, 882 & 1631 of 2016; LPA Nos.
676, 783, 900, 908, 911 and 1057 of 2017; LPA No. 94, 155 & 242 of
2018; CWP No.23153 of 2013; CWP No. 21535 of 2014; CWP No.2203
of 2016; CWP Nos.7344, 9605, 13730, 13731, 13732, 13733, 13735,

13782, 13910, 14010, 9766, 10485, 13624, 13877, 13878, 15990, 14059, 14070, 20809, 15489, 13110, 19211 of 2017; CWP No. 21267 of 2018, CWP Nos.16831 and 22826 of 2021; and COCP Nos. 3656, 3657, 3246, 2341, 2480, 2852, 2768, 3211, 3247, 3248, 3270, 3299, 3641, 3759, 3873 of 2017; CM No.896 to 898-CWP of 2018 in CWP No.346 of 2013, CM No.11578, 15720 & 7406, 9556, 15776-CWP of 2017 in CWP No.20405 of 2013,

2. The background of litigation is chequered and therefore one will have to fall back on the chronology of the events for proper assessment of the issue in dispute.

3. The Haryana School Teachers Selection Board (HSTSB) had advertised posts of Primary Teachers (PRT) on 08.11.2012 vide advertisement No.2/12 which included 8763 posts for Rest of Haryana (ROH) category and 1107 for Mewat District cadre, the total of which would come to 9870. The cut-off date fixed for the said posts was 08.12.2012 and the candidates were to ensure that all eligibility conditions were fulfilled on the last date for the online applications. CWP-12938-2014 titled *Maha Singh Bhurania Vs. State of Haryana & others* had been filed whereby apprehension had been raised by candidates that the credentials of each candidate should be verified and same should be done before declaring the result and issuing the appointment orders. Directions were accordingly issued by the Coordinate Bench on 06.08.2014 that before issuing appointment letters to the selected candidates, initial verifications would be conducted in

respect of each of the candidates. Accordingly the result of the primary teachers and appointment letters were to be issued, after verifying the antecedents of each of the candidates. Since there was a requirement of clearing the Haryana Teachers Eligibility Test (HTET) certain set of candidates had also filed writ petitions, lead case of which was CWP-346-2013 titled *Antim Kumari Vs. State of Haryana & others* in which orders were passed for provisionally interviewing candidates who did not possess the HTET certificate and who had raised the issue that the HTET test had not been held in the year 2012 and therefore they had been prejudiced. Another set of candidates also claimed that they had passed the test held by the Central Teachers Eligibility Test (CTET) and therefore that certificate should be considered in their case. The third set of candidates who had acquired the essential qualifications of JBT/ETT Diploma after the cut off date but had qualified HTET held on 26.06.2013 also claimed parity on the same ground. Resultantly, various interim orders had been passed in their favour on 23.04.2013, 27.08.2013 and 23.10.2013 giving them liberty to appear and cut-off date was extended till 29.11.2013. The result was declared on 14.08.2014 and resultantly, recommendation of 9455 posts of PRT Teachers were sent on 20.08.2014 out of which, 8374 candidates belonged to Rest of Haryana (ROH) and 1081 belonged to Mewat District cadre.

4. The Board was disbanded on 24.12.2014. Eventually, Antim Kumari's case was decided along with the bunch of 110 writ petitions which were disposed of on 29.04.2015. The three set of candidates were

categorized as under by the Co-ordinate Bench:

“Set 1 where the petitioners are the candidates who possessed all the eligibility conditions as on the cut-off date in the advertisement i.e. 08.12.2012 except the certificate of HTET/STET, which they acquired in the test held on 26.06.2013 during the pendency of the writ petitions, the result whereof was declared on 17.07.2013.

Set 2 where the petitioners are the candidates who had qualified CTET before the cut-off date but have not qualified HTET test held in 2013.

Set 3 are those candidates who have acquired the JBT/ETT Diploma after the cut-off date in the advertisement i.e. 08.12.2012 but have qualified in the HTET held on 26.06.2013 the result whereof was declared on 17.07.2013.”

5. Qua set No.1 on account of a concession given by the State as per their letter dated 20.04.2015 the candidates who had got the certificate of HTET held on 26.06.2013, the result of which was declared on 17.07.2013 were granted the benefit for consideration for appointment without disturbing the selected candidates. Relevant portion of order dated 29.04.2015 reads as under:

“Regarding the candidates in the first set the Learned Advocate General, Haryana has placed on record a communication of the Government dated 20.04.2015. In the said communication, it has been stated that, if the Court permits, the Government is willing to consider giving appointment to those candidates, who have qualified the State Teachers Eligibility Test in 2013 after the cut-off date for submission of application i.e. 08.12.2012. It has been further stated that they will be offered appointments in case the candidates have obtained marks equivalent to or more than the cut-off marks of the category for which recommendation in respect of 9455 candidates have already been received from the erstwhile

Haryana School Teachers Education Board against 9875 advertised vacancies. It is stated that the Government has sufficient vacancies of Primary Teachers for consideration of the claims of the petitioners and in this way the competing claims of the petitioners and the selected candidates will be settled. However, before appointment scientific verification and verification of the antecedents of these candidates will be undertaken as ordered in CWP-12938-2014.

We do not see any reason not to permit the Government to act in the light of its decision contained in the communication of 20.4.2015.

Accordingly, considering that the claim of the petitioners in the first set of petitions has been conceded by the State Government, which has stated that it is willing to offer appointment to them, Learned counsel for the petitioners state that these petitions have become infructuous and may be disposed of as such.

Sh. Ram Kumar Malik, Sr. Advocate, appearing for the selected candidates expressed apprehension about the fate of the selected candidates. Learned Advocate General, Haryana referring to the communication dated 20.04.2015, assured that no selected candidates will be thrown out on the ground of non-availability of vacancies while adjusting the petitioners. Sh. Malik states that in view of this assurance he can have no grievance. Accordingly, the first set of petitions is disposed of as having become infructuous in view of the communication of the Government dated 20.04.2015.”

6. Regarding petitioners of Set No.2, teachers who had cleared the CTET before the cut-off date and had fulfilled all other eligibility conditions for appointment, the Division Bench had held that the State Government was within its rights to prescribe the qualifications for eligibility of the candidates and the applicants had to necessarily qualify

for the TET of the State. The State Government was the appropriate Government under the Right to Education Act, 2009 and thus, it was one of the essential qualifications for eligibility for appointment as Primary Teachers and the claim to be eligible on the basis of having the qualifications of CTET was accordingly rejected. Similarly, qua petitioners of set No.3 who had cleared the JBT/ETT after the cut-off date of 08.12.2012 but had qualified the HTET held on 26.06.2013 and the result of which was declared on 17.07.2013, it was held that they did not possess the basic qualifications before the cut-off date and had no claim. It is not disputed that the SLPs No.13149-13158-2015 titled *Anoop Singh Vs. State of Haryana*, filed against the Division Bench judgment in Antim Kumari (supra) qua persons who were in set No.3 pertaining to not having the essential qualifications, but having passed the HTET in 2013, were dismissed on 24.07.2015. Similarly SLPs No. 21921-21923 of 2015 titled *Sushil Kumar etc. Vs. State of Haryana* filed by candidates pertaining to Set-2, who had qualified CTET before the cut-off-date, but not qualified the HTET Test held in 2013, were also dismissed on 10.08.2015. The wait list candidates had also challenged the judgment of Antim Kumari (supra) in SLP (c) No.14795 of 2015 'Mandeep Singh and others Vs. State of Haryana', which was dismissed as withdrawn, by withdrawing the application for permission to file SLP on 21.08.2015.

7. It is pertinent to notice that in CWP-2201-2014 titled *Vikas Sharma Vs. State of Haryana & others*, interim order dated 06.02.2014 had been passed that any selections which are conducted by the Haryana

Staff Selection Board, Haryana Public Service Commission, Haryana Staff Selection Commission, only roll numbers of selected candidates were being published without disclosing the merit, marks, the details of the selected and unselected candidates such as name and parentage, criteria and other minimum details. The petitioners therein had thus contended that they had to file applications under the Right to Information Act, 2005 which was resulting in waste of time and energy and therefore the necessary details should be published on the website regarding the candidates who had participated with regard to the factual aspect qua their position vis-a-vis the other selected candidates. Thus, interim directions were issued to put on the website with the details of all the candidates (names, parentage and categories) who had participated in the selection, their respective merit, marks obtained by each candidates along with the break-up, criteria and further details as had been prayed for.

8. Further interim orders were passed on 26.04.2014 that the break-up of the marks obtained by the candidates and the detailed marks had not been given and displayed on the website and accordingly, the writ petition was disposed of on 22.05.2014 with directions that in order to bring transparency and dispel doubts in the minds of the candidates who had participated in the selection process, it would be proper to direct uploading of the information about the results to all public posts by all concerned public authorities.

9. The result was uploaded on 06.09.2015 and 10.09.2015 on

the website in pursuance of the said directions, which apparently has led to the present litigation. In pursuance of the directions issued by the Division Bench in Antim Kumari's case the Haryana Staff Selection Commission had recommended 2233 candidates for the post of Primary Teachers on 13.07.2015, which were in excess of the advertised posts. The said candidates were stated to have more marks, equivalent or more than the cut-off marks of the category of which the recommendation in respect of 9455 candidates whose name had already been sent by the HSTSB. Thus, against 9870 total posts which were advertised, 11688 candidates were recommended and total of 12732 candidates were included out of which 1044 candidates were in the waiting list. The relevant table as per the State's application reads as under:

CADRE	POST ADVERT- ISED BY HSTSB 08.11.2012	RECOMMENDATION (MAIN MERIT LIST)			WAITING LIST		
		HSTSB 20.08.2014	HSSC 04.08.2015	TOTAL	HSTSB 20.08.2014	HSSC 04.08.2015	TOTAL
ROH	8763	8374	1864	10238	674	231	905
Mewat Cadre	1107	1081	362	1443	89	50	139
Grand Total	9870	9455	2233	11688	763	281	1044
As above total recommended candidates with waiting are 12732 after receiving from HSTSB and HSSC.							

10. Another set of candidates filed CWP-11796-2015 the lead case being titled *Meenakshi Malik & others Vs. State of Haryana* decided on 08.01.2016, who were duly qualified having the HTET certificate and who were in the waiting list as per the recommendation sent. They, accordingly, claimed appointment prior to the candidates who had

qualified the HTET after the cut-off date. The interim orders were passed on 21.07.2015 in the said case by the learned Single Judge that the State was restrained to giving appointments to candidates who had passed the HTET after the cut-off-date, but it was open to giving appointments to the candidates who were in the wait list. It is the case of the wait list candidates that they had withdrawn the SLP No.14795 of 2015 on 21.08.2015, in view of the interim order passed by the learned Single Judge. Applications had also been filed by them under Order 1 Rule 10 CPC to implead them as respondents No.5 to 69 seeking clarification of the judgment dated 29.04.2015 vide CM-7208 & 7209-CWP-2015. The same were dismissed on 29.05.2015 on the ground that once the main writ petition had been decided, the applicants could avail the remedy in accordance with law if they have any cause of action. However, a Learned Single Judge in Meenakshi Malik's case (supra) directed that the waiting list candidates be accommodated leaving the question of inter se seniority open after the candidates join the posts on account of the fact that there were vacancies and 31625 vacancies were lying available in the Department. Relevant portion of order dated 08.01.2016 reads as under:

“A perusal of the judgment (Annexure P-10) shows that counsel for the State had made a statement that there were sufficient number of vacancies available for candidates named in the waiting list as well as for the candidates who had passed the eligibility test in the year 2013 and in this way, the claim of the petitioners as well as selected candidates can be accommodated. This permission was granted by Division Bench in view of the communication dated 20.04.2015, to appoint all the candidates i.e. the petitioners out of the waiting list as well

as selected candidates.

Learned counsel for the State in order to clarify the number of vacancies available has placed on record the affidavit of R.S. Kharb, Director Elementary Education Haryana, Panchkula in CWP No.11796 of 2015.

A perusal of this affidavit shows that at present, as per, Management Information System (MIS) data, there are 16254 posts of Primary Teachers lying vacant in the Department. The Department has 44215 sanctioned posts of Primary Teachers including Head Teachers in the year 2014-15. It is further mentioned in the affidavit that Category No.1 belongs to District Cadre posts, except District Mewat, and there are total 8763 posts advertised for Primary Teachers.

Keeping in view the above facts and circumstances, this Court is of the considered opinion that all the petitioners who are in the waiting list (Annexure P-9) along with selected candidates (Annexure P-8), are ordered to be accommodated. However, the question of *inter se* seniority shall remain open after the present petitioners/candidates join the posts.

Disposed of, accordingly.”

11. Another set of candidates had also filed writ petitions challenging the declaration of the results the lead case being CWP-20046-2014 titled *Naresh Kumar Vs. State of Haryana*, in which 21 cases were decided on 31.03.2016 and the dispute was pertaining to the allocation of marks which had wrongly been given against the higher qualifications.

12. In LPA-686-2016 which arose against the dismissal of the writ petitions, Naresh Kumar (supra) on 31.03.2016 and a blanket stay was granted on 11.05.2016 against the appointments which was challenged unsuccessfully in SLP-16907-2016 titled *Som Dutt Vs. State*

of Haryana on 23.09.2016 and directions were issued to decide the main appeals. Similar order was passed in SLP No.6835 of 2017 titled *Reetu & others Vs. State of Haryana* on 07.04.2017. On 20.04.2017, the stay was modified to the extent that 54 posts of JBT were not to be filled up and the appointment was to be made directly on merit but not beyond the advertised posts. The said order reads as under:

“After hearing learned counsel for the parties, the interim order dated 11.05.2016 is vacated. The State of Haryana is directed to keep vacant 54 posts of JBT so as to accommodate the appellant-writ petitioners in the event of acceptance of their claim. The authorities shall be at liberty to fill up the remaining posts.

The appointment shall be made strictly in order of merit but not beyond the advertised posts.

Further, the appointments shall be subject to final outcome of the appeal.

List on 24.05.2017.

Photocopy of this order be placed on the record of other connected case(s).”

13. This was apparently primarily done only to protect the interests of the 54 candidates who were writ petitioners challenging the allocation of marks to ensure that the appointment of others would continue. However, on 08.05.2017 an order was passed by the Co-ordinate Bench that the total number of posts be identified which had to be filled vide order dated 20.04.2017 and also the number of selected candidates as per the original merit-list or the revised merit-list in terms of the directions of the Learned Single Judge, who would be entitled for appointment. As an interim measure, appointment was to be strictly

made as per merit and as per the revised merit-list but subject to final outcome of the writ petitions and the posts which remained unfilled were to be offered to the candidates who were in the waiting list. The total appointments were not to exceed the advertised posts. Relevant portion of the order dated 08.05.2017 reads as under:

“Heard learned counsel for the parties.

List for further consideration on 24.05.2017.

Meanwhile, State of Haryana is directed to identify the total number of posts to be filled in as per the order dated 20.04.2017, as also the number of selected candidates, who as per the original merit list or revised merit list or in terms of the directions issued by the learned Single Judge (s), are entitled for appointment. It is further directed that as an interim measure that appointments be offered strictly in order of merit as per the revised merit list but subject to final outcome of these proceedings. If some posts remain unfilled after appointing the candidates as per the revised merit list, the same may be offered to the candidates in waiting list provided that the total appointments do not exceed the advertised posts.

Let a copy of this order be placed in the files of connected matters.”

14. The said order is stated to be challenged before the Apex Court in SLP diary No.18777-2017 titled *Dhalvinder Kaur Vs. State of Haryana & others* and the appointments were to be subject to the outcome of the litigation. The interim order dated 28.07.2017 reads as under:

“Permission to file SLP granted.

Exemption from filing c/c of the impugned judgment is allowed.

Issue notice on the special leave petition as well as on

the prayer for interim relief.

It is made clear that any appointments will be made subject to the outcome of the petition.”

15. Due to the joint merit-list being prepared from the first list of the original eligible candidates and from the second list who were recommended in view of Antim Kumari's case 1259 candidates of the first list stood lower in merit and their appointment letters were withdrawn in violation of the orders of the Division Bench. Accordingly, challenge was raised to the show cause notices issued and eventually on 08.06.2017 in CWP-13110-2017 titled *Virender Kumar Vs. State of Haryana*, status quo was ordered. Accordingly, the Learned Single Judge recorded the submissions and the relevant part of the order reads as under:

“Having considered the submissions made by the counsel for the parties and keeping in view the various orders which have been passed by the Division Bench of this Court, which have been referred to above, *prima facie*, the issue which stands out in the case of the present petitioner is that his selection and appointment was never an issue before this Court nor had any adjudication taken place on that score. As of now, that select list is being accepted by the State as the primary select list, which was of the eligible candidates as per the rules governing the service as well as the cut off date fixed in the advertisement. Further, when seen in the context of the statement of the learned Advocate General as recorded in the order dated 29.04.2015 in *Antim Kumari's case* (supra), the said judgment further protects the right of the selected candidates. Rather the said judgment is not based on merits but is giving effect to the statement of the learned Advocate General, Haryana. Had there been no concession given by him,

Set-1 candidates could not have been appointed at all. Thus, the same cannot be read in isolation and has to be read as a whole and in that context i.e. There being no objection on behalf of the Set-1 candidates for appointment of the candidates in the primary select list.

Since the matter is still pending before the Division Bench of this Court in LPA No.686 of 2016 and other connected cases, this Court is of the *prima facie* view that status quo with regard to the service of the petitioner be maintained till the next date of hearing i.e. 26.07.2017. Let this writ petition be listed alongwith LPA No.686 of 2016 before the Division Bench of this Court on 26.07.2017.

It is made clear that this interim order shall not, in any manner, effect the issuance of the letter of appointment to the candidates in the revised merit list as per order of the Division Bench of this Court on 08.05.2017.”

16. In CWP-28501-2017 titled *Sonu Vs. State of Haryana*, in which letter dated 07.12.2017, was subject matter of challenge was regarding JBT Teachers/Guest Teachers/Low merit PRT/JBT Teachers by relaxation of the instructions dated 08.05.1991. The said order was quashed by the Learned Single Judge holding that the interim order of the Division Bench would be binding upon the respondents on 22.12.2017 and they had to prepare the merit list as they were bound in letter and spirit, which reads as under:

“Having considered the arguments of learned Senior counsel appearing for the petitioners, as also learned counsel for the State, in the opinion of this court, once a joint merit list has been prepared by the respondents themselves, after the orders of the Division Bench in LPA no.686 of 2016, thereafter, granting even ad hoc appointments to persons lower in merit in that 'joint list' would be highly improper

and wholly arbitrary, such action, in effect being a negation of the joint merit list prepared. Therefore, till the decision of LPA no.686 of 2016, interim directions having been recorded in that appeal, that even those who had passed the HTET after the cut off date in the selection process in question would be considered for appointment, the joint merit list obviously needs to be adhered to. Eventually if it is held that those who had not cleared the HTET by the cut off date cannot be appointed prior to those who had cleared the examination, naturally the Division Bench would pass orders as it deems appropriate. However, in the meanwhile, the interim orders of the Division Bench being binding on the respondents and they themselves having prepared a joint merit list accordingly, they are bound to implement it in letter and spirit.

Consequently, the impugned order, Annexure P-7, is hereby quashed and a direction is issued to the respondents to make appointments in terms of the combined merit list prepared by them, subject naturally to the outcome of LPA no.686 of 2016.”

First Bunch of Cases :

17. Thus, challenge in the present bunch of cases in LPA-242-2018, LPA-676, 783, 900, 908 & 911-2017, LPA-686, 712, 720, 851, 852, 882, 1631-2016, is to the judgment of the Learned Single Judge passed in CWP-20046-2014 titled *Naresh Kumar Vs. State of Haryana*, in which 21 cases were decided pertaining to the 54 candidates. The petitioners in those cases have sought quashing of the selection list for the candidates who have been selected for the post of Primary Teachers qua advertisement No.2/12 issued on 08.11.2012 on the ground that

allocation of marks had been wrongly given against higher qualifications.

Second Bunch of cases:

18. CWP-2203-2016, CWP-7344, 9605, 19211-2017, CWP-21267-2018, 21535-2014, CWP-23153-2013 also challenge the same selection list dated 14.08.2014 and the result of the Primary Teachers - PRT (Non-Mewat Cadre) issued by the HSTSB for the same advertisement. The said writs were to be heard along with the LPAs and had not been tagged along with the earlier writ petitions though reference has been made in the index of one such case to CWP-20046-2014. The tagging order dated 13.07.2016 reads as under:

“Since the Letters Patent Bench is already seized of the matter regarding selection, it would be appropriate that this case be heard by the Division Bench so that the petitioners are heard before final orders are passed in appeal. This would foreclose the petitioners' anxiety to be heard on their grounds of challenge before the Appellate Bench. Mr. Jasbir Mor to supply one extra set of the paper-book to the Registry so that the matter can be placed before the Division Bench for its consideration.

To be heard with LPA No.686 of 2016.

Let the papers be placed before Hon'ble the Acting Chief Justice for his Lordships consideration.”

19. LPA-912-2016 titled as '*Paramjeet Kaur and another Vs. State of Haryana and others*' arises out of the judgment of the Learned Single Judge dated 08.01.2016 passed in CWP No.11796 of 2015 Meenakshi Malik and others (supra) wherein 11 writ petitions were decided and directions were issued that candidates belonging to the wait

list be accommodated qua the said advertisement who had qualified the HTET test. The said appellants in the said appeals are stated to be candidates eligible to be appointed as PRT Teachers and aggrieved against the filling up of the posts beyond the number of posts advertised as per the advertisement. This is primarily on account of the fact that their chances would be adversely affected by the action of the Government as by another select list, persons who had obtained necessary qualifications as in 2013 were being accommodated in pursuance of the judgment of the Division Bench in Antim Kumari's case challenge has been raised.

20. LPA-1057-2017 titled as 'Vikas Kumar Vs. Virender Kumar and others' has been filed against the interim order dated 08.06.2017 passed in CWP-13110-2017 'Virender Kumar Vs. State of Haryana and others' wherein the candidates who had been appointed from the first list were being pushed out in view of the orders passed by the Division Bench in Antim Kumari's case. The primary ground to challenge the said order is on account of the fact that it was in contradiction to the orders dated 08.05.2017 passed in LPA-686-2016 whereby revised lists were to be uploaded.

Third Bunch of cases:

21. Similarly, in CWP-9766, 10485, 11598, 13110, 13624, 13730, 13731, 13732, 13733, 13735, 13782, 13877, 13878, 13910, 14010, 14059, 14070, 15990 & 20809-2017 challenge has been raised to order dated 27.04.2017 passed by the Additional Chief Secretary,

Haryana School Education Department which was passed in pursuance to the interim order dated 20.04.2017 passed in LPA No.686 of 2016 'Pardeep Kumar Vs. State of Haryana and others'. However, in the said order it was mentioned that the relative claim of the waiting list and that of the second list is yet to be established and some candidates are having inter se advantage viz-a-viz the candidates of the first list. Accordingly, the matter was directed to be placed before the same Division Bench bearing LPA-686-2016 vide order dated 25.07.2017 by one of us G.S. Sandhawalia, J. The said order reads as under:

“Challenge herein is to the order dated 27.04.2017, which has been passed in pursuance to the interim orders passed on 20.04.2017 (Annexure P-5) by the Division Bench in LPA-686-2016.

Mr.Nehra has brought to the notice of this Court that on a subsequent date, i.e., on 08.05.2017, fresh directions were also issued. It is also not disputed that in compliance of those directions, further orders were passed by the State Government, which were also subject matter of challenge in other bunch of writ petitions and now before the Division Bench.

It is, thus, apparent that the whole issue, as such, is already before the Division Bench and therefore, it would be appropriate that these writ petitions be also listed before the Division Bench, which is seized of LPA-686-2016, on 26.07.2017.

Photocopy of this order be placed on the record of the other connected case.”

Fourth Bunch of cases:

22. COCP-3246, 2341, 2480, 2768, 2852, 3211, 3247, 3248, 3270, 3299, 3641, 3759 & 3873-2017 have been filed by the candidates

who had filed the above-said writ petitions mentioned in the preceding para whereby challenge had been raised to the show cause notices issued to them on 05.07.2017 and they had been protected vide the interim order in the above writ petitions but inspite of that, the respondents were not paying salaries to them.

Fifth Bunch of cases:

23. LPA-94 & 155-2018 arise out of the judgment in CWP-28501-2017 titled *Sonu & others Vs. State of Haryana & another*, filed by the candidates who had not qualified the HTET test till the last cut off date. Letter dated 07.12.2017 was subject matter of challenge which was regarding JBT Teachers/Guest Teachers/Low merit PRT/JBT Teachers by relaxation of the instructions dated 08.05.1991. The said order was quashed on 22.12.2017 by holding that the interim order of the Division Bench would be binding upon the respondents and they had to prepare the merit list as they were bound in letters and spirit.

Sixth Bunch of cases:

24. CWP-20405-2013 was filed by the first set of candidates who sought the relief of consideration of the applications for the post of Primary Teachers on the ground that they had appeared in the HTET, 2013 and qualified the same. Therefore, they were entitled to be considered qua the advertisement dated 08.11.2012 in which interim protection was granted to the candidates. Same was decided along with CWP-346-2013 '*Antim Kumari Vs. State of Haryana and others*' on 29.04.2015. However, CM-7406-CWP-2017 was filed for recalling the

order dated 29.04.2015 affecting the rights of the applicants along with CM-9556-CWP-2017 to place on record additional affidavit in view of the query raised by the Co-ordinate Bench on 18.05.2017. Similarly, CM-11578-2017 was filed by non-appellants to be impleaded as interveners. CM-896 & 897-CWP-2018 were filed in January, 2018 after the judgment had been pronounced on 29.04.2015 for impleading respondents No.5 to 9 and 10 to 475. CM-898-CWP-2018 was also filed by the said set of persons challenging the concession given to persons in set No.1 in Antim Kumari's case. The said applications were ordered to be taken up along with LPA-686-2016 on 16.10.2016.

Arguments of counsels:

25. Mr. R.K. Malik, Senior Advocate in CWP-2203-2016 has raised an issue that as per the essential qualifications of the advertisements under Clause (ii) there was an alternative of giving the benefit for 4 years teaching experience of Primary Teachers, who were exempted from passing HTET/STET. It was submitted that the candidate had to be in service till 11.04.2012 and if he had worked for minimum number of 4 years in Privately Managed Government Aided School, Recognized Schools and Government Schools, he was exempted from qualifying HTET till 01.04.2015. As per the criteria fixed on 08.12.2012 by the Commission, nothing was granted for experience and, therefore, they had been short changed by 10 marks not being given, whereas other candidates being granted the benefit of the essential qualifications right from senior secondary upto graduation and

postgraduation/M.Phil. Etc. were being given marks. Reference was made to paragraph 18 (vi) of the writ petition.

26. Ms. Jain, counsel for the State, in order to rebut the said argument has firstly submitted that selected candidates had not been impleaded and the benefit cannot be granted to the detriment of the selected candidates in their absence. It was submitted that as per the Rules of 2012, the benefit of 4 years experience has to be granted as per Note (i). Candidates who were exempted had to qualify the HTET by April, 2015, which was extended time and again and the said rule had been upheld in '**Shivani Gupta and others Vs. State of Haryana and others**', 2013 (1) SCT 545 by the Division Bench. It is submitted that a mere concession was given by relaxing the eligibility criteria. No marks were given for experience even to other candidates and the marks were given for educational qualification, higher education and not for experience to any category.

27. In the first bunch of cases pertaining to LPA No.720 of 2016 and CWP No.2203 of 2016 of the second bunch, it has been argued by Mr. Manjeet Singh and Mr. Talwar, Advocates while referring to the merit list which was uploaded by the HSTSB on 14.08.2014 that requests for the benefit of post-graduation marks were made and rectification of an error was sought on 14.08.2014. As per the criteria which had been fixed by the Board itself on 08.12.2012 the benefit of two marks had to be granted for Graduation, post-graduation/Masters in Education and three marks to be granted for M.Phil/Ph.D. It is, accordingly, contended that

vide proceedings of the Board dated 09.09.2014, it was also noticed that two marks of the post-graduation had been added in interview column instead of the academic column due to programming error while uploading on the Board's website. Therefore, the decision was taken to resolve this mistake and after rectification revised information was to be uploaded. It is, thus, submitted that revised results were uploaded on 10.09.2014.

28. Reference was made to the meeting of the Board held on 24.11.2014 that the process of recruitment was to be put on hold subject to the directions of the Government. Therefore, the instructions dated 28.10.2014 of the Government were implemented wherein it had taken decision in principle to put on hold the appointments and recruitment. It is pointed out that reply was filed in CWP No.20046 of 2014 Naresh Kumar (supra) on 03.11.2014 wherein the said fact was also admitted that there was a mistake as such regarding the uploading of the information on the website of the two marks of the post-graduation. Reference was made to the additional affidavit filed by the Secretary of the Board wherein also it was mentioned that inadvertently post-graduation was put in the formula of viva-voce instead of academic marks. It is contended that resultantly on 26.08.2015 five computers had been sealed under the orders of the learned Single Judge alongwith two hard-disks and on 01.09.2015 an order had been passed that the Director, Central Forensic Science Laboratory, Chandigarh, would give his opinion on the veracity of the explanations given by the respondents as also of the computer

programmer in their affidavits filed before the Court. Reliance is placed upon the report dated 30.09.2015 of the CFSL, Chandigarh and the supplementary report dated 20.10.2015 to contend that the difference of 3 and 5 marks could not be dragged by taking the formula of viva voce since the marks of post-graduation were two.

29. Similarly, reliance is placed upon the order dated 01.03.2016, whereby Manoj Kumar, Assistant had produced the data base soft copy and also the soft copy in the PDF format of the original result sheet, which was supported by the affidavit which had been filed on 16.02.2016 by the Secretary of the Haryana Staff Selection Commission (HSSC). The pen-drive was, thus, to be handed over to the CFSL who was to analyze the data and submit the detailed report. Accordingly, reliance is placed upon the report dated 20.10.2015 of the CFSL, to submit that pen-drive was submitted under the seal of the Ex-Secretary of the HSSC and the result there was not a positive report in favour of the Government.

30. Reliance is placed upon the orders passed on 28.11.2015 by the learned Single Judge, wherein affidavits were sought of the Chairman and the members of the interviewing committee, since the learned Single Judge had come to the conclusion that the compilation result was too neat and tidy and interviews had taken place over a prolonged period of about six months. It is contended that the affidavit dated 17.12.2015 in pursuance of the said orders as such did not give any explanation by the Board officials and were evasive as such. Accordingly, reliance is placed

upon the order dated 05.02.2016 wherein the learned Single Judge had dealt with the report dated 30.09.2015 and 20.10.2015 and the affidavit given by the Savita Achint, Programmer. The fact that information had been transferred to another computer by one confidential assistant and had been put on website on 06.09.2014 and rectified on 10.09.2014 had been noticed. The factum of the result being declared on 14.08.2014 and sent to the department on 20.08.2014 for the purpose of issuing the appointment letters and disbanding had been noticed.

31. It was, accordingly, contended that on 01.03.2016, the Court had noticed that Manoj Kumar was having backup data of the result dated 14.08.2014 and an explanation had been asked for that as to whom he had given the possession of confidential computer, which was handed over to the Director, Secondary Education, when charge had been handed over. It is submitted that third report as such was submitted on 28.03.2016 by the CFSL. Reference is made to the supplementary report dated 31.03.2016 wherein the pen-drive as such had been analyzed to submit that it was assessed on 07.03.2016 to show doubt on the said pen-drive and the conduct of the officials. It was, accordingly, contended that the learned Single Judge had not dealt with the issue of 5+3 marks in the judgment under challenge and that all the candidates had been awarded 11 marks and the result had been revised and there was tampering as such in the result.

32. Mr.A.S.Talwar has accordingly contended that CWP-2203-2016 was filed on account of the facts coming to the notice of the

petitioners in Naresh Kumar's case (supra) wherein interim orders had been passed to put the recruitment process on hold and additional affidavits had been filed and the opinion of the Central Forensic State Laboratories had been taken. Thus, there was no explanation worth the name regarding the dragging of 3+5 marks and he pointed out that the result-sheet was last written on 18.12.2014. The data was created and last written on 01.09.2012 which is before the advertisement in question and placed reliance upon the supplementary report dated 31.03.2016 of the CFSL. He relied upon the judgment passed in **Poonam Rani @ Poonam Vs. State of Haryana & another, (2012) 6 SCC 596**, to submit that if the recruitment made was vitiated by manipulation and fraud, the same was liable to be set aside. Similarly reliance was placed upon **Sachin Kumar & others Vs. Delhi Subordinate Service Selection Board (DSSSB) & others, (2021) 4 SCC 631**, that if there were flaws in the process of selection, then judicial review could be invoked for cancelling the entire process and once the credibility in public confidence has been eroded, cancellation of the same was the correct option. He also placed reliance upon **Ramjit Singh Kardam & others Vs. Sanjeev Kumar & others, (2020) SCC Online SC 448**, wherein the orders passed by the Learned Single Judge of this Court and maintained by the Division Bench setting aside the selection of the candidates to the post of Physical Training Instructors had been upheld, to submit that the downgrading of the merit or tinkering of merit in the present case was not justified while uploading the result and therefore, the selection process

should be scrapped.

33. Mr.Ashwani Bakshi, Advocate, appearing in CWP-21535-2014 has also challenged the said selection list dated 14.08.2014 and the result on the ground that there was illegality in the same as candidates who had higher marks had found place neither in the list of selected candidates nor in the list of General Category though the last selected candidate had secured 62.27 marks. Similarly, it is submitted that certain other candidates whose roll numbers had specifically been mentioned in para No.11(i) had been selected however the left over posts of ESM(General) had not been filled up. It is submitted that in the reply filed now by the State, the offer of appointment had been made to those candidates vide letter dated 10.02.2022, which would go on to show that the State has accepted the fact that the candidates who were qualified by merit had not been granted the benefit of the criteria which was fixed on 08.12.2012 by the Staff Selection Commission which had already been challenged.

34. Mr.Ashwani Bakshi, in CWP-21535-2014 also supported the arguments raised by the other counsels that the data could not be accessed and it was only lying in the pendrive and adopted the arguments of Mr.Manjit Singh and Mr.Talwar regarding the pendrive which was handed-over to the CFSL and in the manner it was handed-over. It was further contended that the persons with higher merit were not being selected and the Commission was still recommending candidates for selection to the post of PRT as per its letter dated 10.02.2022 wherein 8

persons falling in the selection zone from the general waiting list were being given the benefit of appointment. It is accordingly submitted that selection list was liable to be quashed.

35. To rebut the arguments raised by Mr. Manjeet Singh and Mr.A.S.Talwar, Advocates, Mr. Gurminder Singh, Senior Counsel, has submitted that as per the criteria fixed, award for 67 marks was to be physically filled up and 33 marks had to be given separately. Thus, marks had to be incorporated in one document and in a PDF format. Reliance is placed upon the proceedings held on 14.08.2014 wherein it was noticed by the Board that since the verification had been done by the Government and the appointing authority, the result was to be finalized against Category No.1 of the Advertisement No.2/2012. That candidates who had been provisionally interviewed in pursuance of the interim order passed in Antim Kumar's case (supra) their result was to be kept in a sealed cover, subject to disposal of the writ petition. Therefore, result was declared of 8763 posts (ROH) and selection was made of 8374 persons and vacancies of 389 were shown and direction was given to publish the result in newspaper and forward the result to the Education Department. It is, accordingly, contended that in pursuance of the same, the result was published on 15.08.2014 roll number wise.

36. Reliance is placed upon the letter dated 20.08.2014 whereby the recommendation was made of the said number of candidates for rest of Haryana to the Director General, Elementary Education. Similarly, on the same date recommendation was made of 1081 candidates under

Category No.2 of Mewat Cadre. It was only on account of the interim directions issued in CWP No.2201 of 2014 'Vikas Sharma Vs. State of Haryana' on 06.02.2014 and other interim orders which were passed on 22.05.2014, decision was taken by the Board on 05.09.2014 to comply with the same. It is submitted that in pursuance of the said directions, all the selection agencies had been directed to put on the website the details of the candidates i.e. name, parentage and category, who had participated in the selection, their respective merits, marks obtained by each candidate alongwith breakup, criteria and further details had to be also uploaded. A decision had been taken that due to paucity of space, it was not possible to put the whole data on the website and, therefore, the roll number, name, category, father's name, mother's name, academic marks, interview marks and grand total marks, selection list, criteria was to be uploaded. The roll numbers from 666 & 999 were not to be uploaded, as the matter was pending before this Court. The uploading had, thus, taken place on 06.09.2014.

37. Ms. Jain State Counsel has also submitted that the Learned Single Judge has examined the whole issue in detail and rightly relied upon the reports of the CFSL. It is submitted that opinion of the experts had been taken as to how the mistake has occurred and once it has rightly been justified that it was just a mistake which was rectified and the result had also been declared. Only on account of the directions issued in Vikas Sharma's case (supra), the uploading was taking place in which there was a mistake in dragging the marks from one column to the other and there

was no mala fide that a particular set of candidates had been benefitted in any manner.

38. It is also contended that the writ petitions were filed subsequently in the year 2016 and were belated and only taking the benefit of the interim orders passed in the case of Naresh Kumar (supra). The interim orders had merged with the final order and, therefore, reliance upon the same was not justified and uncalled for, in view of the order of the Learned Single Judge dismissing the writ petitions and therefore, there was no valid reason for interference in the well reasoned order passed by the Learned Single Judge.

39. Counsel for the State, on the other hand, to rebut the argument of Mr.Ashwani Bakshi, has argued that as per the merit, the candidates have been duly appointed and submitted that there was no averment that candidates lower in merit have been adjusted than the petitioners. It is also submitted that the posts of Ex-serviceman having remaining unfilled, have been filled up by the General Category as per instructions dated 02.07.2010 and therefore, no fault can be found in the action of the State and there is no merit in the writ petition.

40. The appeals, bearing LPA-912-2016 and other connected matters arising out of the judgment passed in CWP-9979-2016 decided on 18.01.2016 are the said set of appeals which have been filed by the aspirants who were not party to the litigation wherein the Learned Single Judge had directed to make appointment on the basis of a combined merit-list as per the wait-lists along with the selected candidates leaving

the question of inter-se seniority to remain open.

41. Mr.Talwar has submitted that the appellants herein are aspirants who are agitating against the directions of the Learned Single Judge wherein wait-list candidates have been given opportunity to compete in the selection process over and above the advertised posts for vacancies which are arising later which could not be filled up on the basis of affidavit submitted. It is submitted that vide letter dated 20.04.2015 only 415 seats were left which were to be adjusted and not beyond that, and filling up of the seats beyond that was not permissible. It is submitted that Antim Kumari's case (supra) is not a binding precedent and the State cannot go beyond the advertised posts as the Division Bench only noticed the concession given by the State Counsel. He placed reliance upon **Smt.K.Lakshmi Vs. State of Kerala & others, (2012) 4 SCC 115** and **State of U.P. & others Vs. Rajkumar Sharma & others, (2006) 3 SCC 330**, in support of the said proposition and thus submitted that filling up posts beyond the advertised posts would be violative of Articles 14 & 16 of the Constitution of India and wrong concession given by the State could not be binding, as such.

42. Mr.Salil Sagar, Senior Advocate, appearing in CWP-16831-2021 titled *Sanjay Kumar & others Vs. State of Haryana*, contended that they were persons appointed on ad-hoc basis and the candidates over and above the advertised posts had a right in view of the fact that it was an extraordinary situation and they could thus seek the enforcement of the order of Antim Kumari's case (supra). They had applied in pursuance of

the advertisement dated 15.11.2013 whereby the last date had been extended in pursuance of the interim orders passed by this Court and therefore, appointments made in view of the advertised posts were held to be justified. Reliance was placed upon the judgment in **Pankjeshwar Sharma & others Vs. State of Jammu & Kashmir & others, (2021) 2 SCC 188**. It was accordingly contended by Mr.Sagar that it was a policy decision and they could seek enforcement of the same and therefore the argument that rules of the game has been changed as has been held in **K.Manjusree Vs. State of A.P. & another, 2008 (2) SCT 6**, could not come into play and they having been in employment for a considerable long period are not liable to be disturbed.

43. Mr. Anurag Goyal, Advocate for the wait list candidates of the original selection, who filed CM-898-CWP-2018 in CWP No.346 of 2013, for recalling the judgment in Antim Kumari's case (supra), qua Set-1 has submitted that the march over the candidates had been given on account of the statement of the learned Advocate General. He pointed out that the same was not justified, keeping in view the fact that CWP No.25740 of 2013 had been filed by one Renu, wherein similar plea was taken that the test had not been held in 2012, which had been rejected by the learned Single Judge of this Court that merely because the test was not held in 2012 or that the petitioner passed such test in 2013 would not entitle her to be eligible retrospectively. It is submitted that the order was subject matter of challenge in LPA in a bunch of cases, in **LPA No.1397 of 2013 'Rita Kumar Vs. State of Haryana and another'**, wherein the

said order had been upheld. In spite of the same, concession had been wrongly granted on 29.04.2015. It is, accordingly, contended that the issue already stood decided by the Coordinate Bench and was not brought to the notice of the Division Bench by the Government. Reliance is placed upon the interim order passed on 02.04.2014 in Antim Kumari's case (supra) to submit that the petitioners therein had been directed to file affidavits whether they had appeared in the STET/HTET at any time and what was the result and whether they had any opportunity to appear in the examination before 2012. It is submitted that necessary affidavit was never filed, though candidates appeared in the earlier examination, but had not qualified. Reliance is also placed upon the factum recorded by the Division Bench itself in Antim Kumari (supra) that on an earlier occasion the HTET result had been declared on 15.10.2008. Another test had been held in 2009 and result had been declared on 17.08.2009 and a similar test held in the same year, result of which was declared on 12.12.2009 and in the year 2011 a test was held and result was declared on 02.12.2011. It is further submitted that the validity of the test is for 5 years and if the candidates had not cleared four tests between the year 2008 onwards, they had no right as such to seek exemption against candidates, who were already qualified.

44. It is pointed out that CM-7406-CWP-2017 was filed in CWP-20405-2013 'Rajesh Kumar and others Vs. State of Haryana and others', which was decided alongwith Antim Kumari's case (supra), for recalling of the order dated 29.04.2015 qua Set-1, since the rights of the

applicants had been adversely affected but the same had not been decided on merits. The matter had come up before the First Division Bench on 25.10.2017 and no order had been passed on the same on the ground that the review had been sought of a common judgment of 110 petitions and the applicants could decide whether they wish to file review in all other cases as well. It is submitted that the said application was, thereafter, ordered to be tagged with the pending LPA No.686 of 2016 'Pardeep Kumar Vs. State of Haryana and others', which was before another Division Bench, which arises out of the judgment passed in Naresh Kumar (supra) decided on 31.03.2016. It is, accordingly, contended that CM-7208-7209 of 2015 had been filed at that point of time for being impleaded the applicants as respondent Nos.5 to 69 in Antim Kumari's case and for clarification, wherein order was passed on 29.05.2015 that if the applicants have any cause of action, they would avail the remedy in accordance with law, since the main case had already been decided.

45. It is submitted that CM-5058-CWP-2015 had been filed in Antim Kumari's case (supra) by the wait list candidates for impleadment, which had been listed at Sr. No.108 before the said Division Bench on 22.04.2015, but no orders were passed on the said application and their interest was not kept in mind. Reference is, accordingly, made to the letter dated 20.04.2015 issued by the Principal Secretary to Government, School Education Department, Haryana to the Advocate General that neither there was any provision of law mentioned in the said communication that how the provisions of the rules could be relaxed and

neither the Division Bench had discussed the issue. It is, thus, submitted that the State had neither taken any specific stand in Meenakshi Malik's case (supra), but allowed the ineligible persons on two occasions before the Division Bench in Antim Kumar's case (supra) and even before the Single Bench in Meeankshi Malik's case (supra) to be appointed. It is submitted that in the absence of any policy the Secretary could not have violated the rules by giving consent vide communication dated 20.04.2015 which had further been acted upon by the learned Advocate General. Reliance is placed upon the settled principles of law in Ashok Kumar Sonkar's case (supra) as to the sacrosanctity of the cut-off-date and the fact that ineligible candidates could not be directed to appear as it would open a flood gate for the authorities.

46. Mr.Rajiv Atma Ram, Senior Counsel appearing for the respondents in LPA-912-2016 has repelled the arguments raised by Mr.Goyal and submits that it would not be permissible for this Bench to have a re-look at the order dated 29.04.2015 passed in Antim Kumari's case (supra). It is submitted that being a Co-ordinate Bench, the said view cannot be disagreed with. He has placed reliance upon the judgment of the Apex Court in this regard in **S.I.Rooplal Vs. Lt. Governor through Chief Secretary, Delhi, 2000 (1) SCT 630**, **Dr.Vijay Laxmi Sadho Vs. Jagdish, AIR 2001 SC 600**, **Ravinder Singh Vs. Sukhbir Singh & others, JT 2013 (1) SC 515** and judgment of the Constitutional Bench in **Chandra Prakash Vs. State of U.P., 2002 (2) SCT 776**, to this extent. While supporting the judgment passed by the

Learned Single Judge in Meenakshi Malik's case (supra) on 18.02.2012, it is contended that the wait-list was rightly ordered to be operated and the learned Single Judge was well justified in issuing directions to fill up the vacancies in view of the communication dated 20.04.2015 and by directing that the petitioners who are on the wait-list along with the other candidates were rightly to be accommodated and the question of inter-seniority was to remain open after they had joined the posts. It is submitted that the communication dated 20.04.2015 was a policy decision of the State and if that was so, exemption from the normal rule could be granted and the State was free to make appointment beyond the advertised posts and mould the relief accordingly, since it was an extraordinary situation. Reliance has been placed upon the judgment in **Prem Singh Vs. Haryana State Electricity Board, (1996) 4 SCC 319** to that extent, which has been followed in **Arup Das & others Vs. State of Assam & others, (2012) 5 SCC 559**.

47. It was accordingly contended that interim directions had already been issued on various dates whereby the cut-off date had been extended from 08.12.2012 for the advertisement in question uptill 29.11.2013. Therefore, once a public notice had been issued and it was put to notice of one and all that there was going to be a deviation from the advertisement therefore, no fault could be found with the order of the learned Single Judge dated 08.01.2016 since it was passed only subsequently, i.e. after passing of the order of the Division Bench passed on 29.11.2013. It is submitted that the candidates, who were

beneficiaries of Antim Kumari's case (supra) no order could be passed to their prejudice in the present round of litigation and reliance was placed upon the judgment of the Apex Court in **Ku.Rashmi Mishra Vs. Madhya Pradesh Public Service Commission & others, 2006 (4) SCT 792**, regarding this aspect, even though the appointments were subject to the final decision of the writ petitions. Reliance was also placed upon the judgment passed in **Tridip Kumar Dingal & others Vs. State of West Bengal & others, 2009 (1) SCT 440** to contend that candidates were liable to be protected on account of being appointed in 2017. It is also argued that this Bench would have no jurisdiction to take up the misc.applications pertaining to Antim Kumari's case (supra) wherein the same had been filed for recalling of the order dated 29.04.2015 wherein the rights of the applicants had been affected which applications have been ordered to be taken up along with LPA-686-2016 on 16.10.2016. It is accordingly contended that as per the provisions of Order 47 Rule 5 CPC, only original Members of the Bench could hear the matters and separate Bench could not decide applications. It is submitted that even subsequent to the decision, several orders were passed by the Coordinate Bench, of which Harinder Singh Sidhu J. was a Member, being the original Member of the Bench which decided Antim Kumari's case (supra) and therefore, the principle of *Coram-Non-Judice* was sought to be put into play. Reliance was placed upon the judgment of the Apex Court in **Malthesh Gudda Pooja vs State of Karnataka and others, (2011) 15 SCC 330**, that even if one Judge is available the matter should

be heard by the said Judge.

48. It was further argued that the appellants in LPA-912-2016 who were not party to the litigation had not qualified the HTET and were not eligible on the cut-off date as extended and had cleared the HTET only in 2015. It is thus submitted that they were identically placed as Set No.3 whose SLP had been dismissed. Similarly SLPs against the first set had also been dismissed as withdrawn bearing SLP 1479 of 2015 on 21.08.2014, placed on record as Annexure A-14 in CM-9556-CWP-2017 in CWP-20405-2013. It was submitted that the wait-list candidates have no right and the revised record had to be operated as per the order dated 08.05.2017 and there was delay on the part of the candidates in filing the applications. Similarly, reliance was placed upon the principle of constructive res-judicata and the judgment of the Apex Court in **State of U.P. Vs. Nawab Hussain, 1997 (2) SLR 1**, to submit that the wait-list candidates who had filed miscellaneous applications would have no legal vested right, in view of the judgment of the Apex Court in **Sankarshan Dash Vs. Union of India, (1991) 3 SCC 47** and they would have only a right of consideration and no absolute right of appointment.

49. Mr.D.S.Patwalia, Senior Counsel appearing for the writ petitioners in Meenakshi Malik's case (supra) and for the respondents in LPA-912-2016 submits that the argument raised by Mr.Rajiv Atma Ram, Senior Counsel is not sustainable since while passing judgment on issue No.1 in Antim Kumari's case (supra) the Division Bench did not decide any issue and it was only on the basis of the concession given by the

Advocate General, the same had been disposed of. There was no ratio-decidenti laid down and therefore this Court could always examine the fact as to whether concession given is wrong in law and whether there is any legal vested right of the candidates to seek appointment on the basis of not being qualified within the cut-off date. He relied upon the judgment of Three Judge Bench of the Apex Court in **Municipal Corporation of Delhi Vs. Gurnam Kaur, (1989) 1 SCC 101** and the Constitution Bench in **Dr.Shah Faesal & others Vs. Union of India & another, (2020) 4 SCC 1**. It is accordingly pointed out from Annexure P-8 in Meenakshi Malik's case (supra) that it was the revised list in pursuance of the interim order and interim orders necessarily merge with the final order and there is no legal vested right of the writ petitioners of Antim Kumari's case and all the rights would settle while passing the final order.

50. Senior Counsel has contended that persons who are wait-list candidates in the first waiting list which had to be operated were fully qualified and entitled for consideration against the posts advertised. They had to be given prior right over the ineligible candidates who have been appointed on the concession given by the Advocate General. It is thus contended that the learned Single Judge was not correct in Meenakshi Malik's case (supra) by directing posts to be filled up and leaving seniority to be seen at the subsequent point of time and the matter should have been decided on merits, as such.

51. Mr.B.S.Rana, Senior Counsel appearing in CWP-13878-

2017 has contended that his clients are the successful candidates of the originally selected and recommended candidates. Challenge has been raised to the orders passed by the Government on 02.06.2017 and it is pointed out from the orders dated 27.04.2017 placed on record with CM-17212-CWP-2014 that inspite of the opinion of the learned Advocate General appointments in pursuance of the first list i.e. 20.08.2014 had not been adhered to. It is accordingly submitted that corrigendum was issued only in view of the interim order and the result was subject to final decision of the writ petition which was eventually disposed of, in view of the concession given. It is accordingly contended that the eligibility is to be seen on the cut-off date and inspite of the protection granted as per the undertaking given by the Advocate General in Antim Kumari's case (supra), the State was disturbing the merit list and appointed persons were being asked to move out on the ground of revision of the merit list. It is thus contended that the first right for consideration and appointment vests with his clients. Reliance has been placed upon the judgment passed by the Apex Court in **Ashok Kumar Sonkar Vs. Union of India & others, (2007) 4 SCC 54**, to contend that candidates not eligible by the cut-off date are not liable to be considered as per the settled law.

52. Mr. R.K. Malik, Senior Advocate in CWP No.13910 of 2017 has also adopted the arguments raised by Mr. B.S. Rana, Senior Advocate, since his clients have also raised challenge to the order of the Government dated 02.06.2017 and he submits that even before the Division Bench in Antim Kumari's case (supra), he had apprehended that

the State as such would push out persons who had been appointed on merits, on the basis of the recommendations of the Board. The said apprehension has come true and, therefore, prayed that the directions be issued to the State to firstly adjust the petitioners, who were fully eligible in all respects as per the rules and regulations and thereafter, adjust the candidates as per the undertaking given and show cause notices as such which had been issued to the candidates be set aside.

53. The following questions will thus arise in our considered opinion, keeping in view the abovesaid history of the litigation:-

(A) Whether the decision of the learned Single Judge whereby the writ petitions were dismissed in Naresh Kumar's case (supra) on 31.03.2016 is justified or the whole selection process has to go on account of the fact that the merit list had been wrongly revised and it was tinkered with?

(B) If the answer of question (A) is in the negative, whether the directions are liable to be issued in favour of candidates, who were eligible as per the advertisement No.2/2012 and had already passed their HTET Examination earlier and whether they are entitled for appointment in pursuance of the same in preference to candidates who had got the benefit of the letter of the State Government dated 20.04.2015 when the Coordinate Bench had disposed

of the cases as infructuous qua Set-I in Antim Kumari's case (supra)?

(C) Whether the wait listed candidates of the original merit list had a preferential right for appointment keeping in view the observations made by the Coordinate Bench in Antim Kumari's case (supra) qua Set-I and whether the decision of the State to push out candidates, who had already been appointed on the basis of their merit as per the original list can be said to be justified in any manner?

(D) Whether the order dated 27.04.2017 passed by the Additional Chief Secretary, Haryana School Education Department in pursuance of the interim order dated 20.04.2017 in LPA No.686 of 2017 'Pardeep Kumar Vs. State of Haryana and others' can be justified in the facts and circumstances and would have any sanctity beyond the tenure of the litigation?

(E) Whether the judgment of the learned Single Judge in CWP-28501-2017 titled *Sonu & others Vs. State of Haryana & another*, dated 22.12.2017 which was based on the interim orders dated 20.04.2017 and 08.05.2017 was justified in the facts and circumstances and whether the learned

Single Judge was correct in disposing off the writ petitions, rather than tagging them alongwith the appeals which were still pending, keeping in view the principle that the tenure of the interim orders will run till the currency of the litigation?

(F) Whether the learned Single Judge in Meenakshi Malik's case (supra) was justified to direct that candidates who had passed eligibility test in the year 2013 and the candidates who were in the wait list and belonged to Set-I could be directed to accommodated on account of subsequent vacancies available, which would thus be in excess of the ones which had been notified in the advertisement No.2/2012 dated 08.11.2012?

(G) What would be the fate of contempt petitions, which would necessarily be governed by the answers given on the abovesaid issues?

Question (A)

54. Whether the decision of the learned Single Judge whereby the writ petitions were dismissed in Naresh Kumar's case (supra) on 31.03.2016 is justified or the whole selection process has to go on account of the fact that the merit list had been wrongly revised and it was tinkered with?

Answer

55. The dispute herein as noticed earlier was that 21 cases were filed and the controversy was regarding the allocation of marks and to prepare the merit list in accordance with the criteria which had been fixed by the Board itself on 08.12.2012. The academic criteria was fixed @ 67 marks with Essential Qualifications (Academic) Senior Secondary or Equivalent being given maximum 20 marks. Essential Qualifications (Professional) maximum were fixed as 30 marks and for STET/HTET 10 marks were to be awarded.

56. The dispute pertained mainly to the higher qualifications for 7 marks which had been earmarked for which graduation 2 marks, postgraduation 2 marks and for M.Phil/Ph.D there were 3 marks. The ground as such of the counsels is that 2 marks for postgraduation had been added in the interview column and the writ petitioners have not been awarded the said marks for postgraduation for which they were entitled as per the criteria. It is their case that marks had been deducted and added in the academic qualification and decreased from the ones which had been obtained in the interview. The private respondents' marks had remained unchanged and it was in such circumstances they had sought the quashing of the selection process. Reliance had been placed upon various interim orders passed by the learned Single Judge regarding sealing of the computers and the opinion of the Director, Central Forensic Science Laboratory, Chandigarh.

57. The response of the State was that the merit list had been

finalized strictly as per the criteria fixed by the Board and the marks awarded by the interview Committee and on the basis of the overall performance of the candidates at the time of the interview. In pursuance of the order passed in CWP-2201-2014 titled *Vikas Sharma Vs. State of Haryana & others*, on 06.02.2014 uploading of the list of all candidates i.e. selected/unselected/absentee/rejected and Court cases and a separate list containing roll number, name, mother's name, gender, category, marks obtained by the candidates in academic as well as in the interview and grand total marks of the candidates who participated by creating a temporary table had to be done and, accordingly, result had been declared on 06.09.2014 and uploaded on the official website as per merit. The same was done as per the Resolution dated 05.09.2014. It had come to the notice of the Board that academic marks available on the website of some candidates who were postgraduate was not as per the original sheet dated 14.08.2014 and it had been found that the information available on the website of all the candidates who were having postgraduation were not as per original result sheet available with the Board. While uploading the information on the website two marks of Postgraduation were shifted in the column of viva voce due to an inadvertent human error. The Board had removed the list from the website on the same day vide Resolution No.35 dated 09.09.2014 and had resolved that the mistake of 2 marks had occurred which was to be rectified and uploaded as per the order passed in **Vikas Sharma's case (supra)**. The same is substantiated vide resolution No.29 by the Board in its meeting held on 14.08.2014, wherein

a decision had been taken that the Secretary would publish the result and upload on the website of the Board and forward the recommendation list to the Education Department for the 8374 selected candidates out of the total post of 8763 and there were vacancies due to non-availability of eligible candidates to the tune of 389. The recommendation had to be forwarded to the Education Department and the result card of those candidates who had participated was to be uploaded on the website of the Board. Similarly resolution No.30 of even date was also passed regarding 1107 posts for Mewat cadre and out of which the selection was of 1081 candidates and vacancies were 26 in number.

58. Thus, it is apparent that only 415 (389 of ROH and 26 of Mewat) vacancies remained for both the categories. Resultantly on 20.08.2014 the necessary recommendations for 8374 candidates (ROH) and 1081 (Mewat) were forwarded to the Director General, Elementary Education. On 05.09.2014 it was noticed by the Board that in compliance of the judgment passed in **Vikas Sharma's case (supra)** due to paucity of space, it was not possible to put the whole data on the website and, therefore, the roll number, name, category, father's name, mother's name, academic marks, interview marks and grand total marks, selection list, criteria was to be uploaded on the website of the Board. On 09.09.2014 it was noticed that two marks of the post-graduation/M.Ed had been added in interview column instead of the academic column due to programming error while uploading on the Board's website. Therefore, it was resolved that mistake be rectified as per the result sheet/record and

after rectification revised information be uploaded on the Board's website. Relevant part of the Resolution No.35 reads as under:-

Resolution No.35:- Regarding rectification in the information upload PRT Cat No.1 & 2, Advt. No.2/2012 all candidates result on Board website.

In compliance of orders dated 06.02.2014 passed by the Hon'ble Punjab & Haryana High court in CWP No.2201 of 2014-Vikas Sharma Vs. State of Haryana and others, the Board vide Resolution No.34 dated 05.09.2014 decided that information regarding Roll Nos., Name, Category, Father's Name, Mother's Name, Academic Marks, Interview Marks and Grand Total Marks, Selection List, Criteria of all candidates for the post of PRT Category No.1 & Category No.2 be uploaded on the website of the Board. Accordingly, the same was uploaded by the office on the website on 06.09.2014.

It has come to the notice of the Board that 2 marks of Post Graduation/M.Ed. were added in the interview marks column instead of academic marks column due to programming error while uploading on the Board website. Therefore the Board unanimously resolves that this mistake be rectified as per Result Sheet/Record and after rectification the revised information be uploaded on the Board website shortly.”

59. Apparently on account of the said revision the litigation had ensued and the result was uploaded on 10.09.2014. In the list which is appended it was mentioned that on account of technical error at the time of uploading information on the Board's website, the mistake had occurred, which had been rectified and uploaded. It accordingly resulted in filing of **CWP No.20046 of 2014 'Naresh Kumar and another Vs. State of Haryana and others'**, wherein specific dispute was qua

respondent Nos.4 & 5 only in the writ petition, which had lead to passing of an interim order initially that no appointment order would be issued to any of the selected candidates and the original record had been called for. The Computer Operator Ms. Savita Anchit had also been directed to be present who had uploaded the results and on 26.08.2015 before the learned Single Judge she had explained that initially the result uploaded on the website was faulty and because she had read the column two marks were for postgraduation certificate and wrongly added in the interview score. The mistake was stated to be rectified and accordingly two hard discs and computers were directed to be kept sealed in the custody of Registrar (Administration) of this Court. Thereafter, the matter had been referred to Director, Central Forensic Science Laboratory, Chandigarh on the veracity of explanation given by the Secretary of the Department and also the Computer Programmer.

60. As per the report dated 30.09.2015 of the Central Forensic Science Laboratory, Chandigarh, it was opined that the viva voce marks originally mentioned in the member sheet of Committee-C are the same as entered in the result sheet with the respective names of the candidates and viva voce marks had not been altered/increased/decreased in the result sheet. Relevant part of the opinion which came in favour of the State reads as under:-

11. The Viva voce marks mentioned in the original hard copy of the Result Sheet, which are available in 14 bound registers each of having 300 pages to a total of 4249 pages for 28, 676 candidates, were randomly verified along with their respective Member Sheet of Committee-C, which are

also available in 10 bound registers to a total of 2256 pages, wherein Viva voce marks was awarded.

The Viva voce marks originally mentioned in the Member Sheet of Committee-C are the same as entered in the Result Sheet with the respective names of the candidates. Hence, Viva voce marks have not been altered/increased/decreased in the Result Sheet. The randomly selected pages/copies of the original Result Sheet with their respective Viva voce marks mentioned in the Member Sheet of Committee-C is enclosed vide Annexure-III, Page No.1-20 and 21-39.

12. From the above practical and experimental findings by working with the software, Crystal Report ver 9.0 and SQLEXP (Sequencer View 2005), which was used to create the data base and the manual verification of the original Result Sheet and Member Sheet of Committee-C wherein Viva voce marks awarded, it has been conclusively arrived that:

a) The software, SQLEXP (Sequencer View 2005), used to make a data base of the candidates.

b) The software, Crystal Report ver 9.0, used to prepare the details of the candidates by calling the data base made using the software, SQLEXP (Sequencer View 2005).

c) The data base fields defined in the formula (a type of equation which shows relationship between different variables) to prepare the details of the candidates and their marks in the erroneous report were wrongly applied by selecting only five base fields, i.e. 10+2, D.Ed, STET, Graduation and M.Phil Ph.D., instead of selecting all the six base fields, i.e. 10+2, D.Ed, STET, Graduation, Post Graduation/M.Ed and M.Phil Ph.D to a total as Academic marks.

d) The data base fields defined in the second formula to make a total as interview marks in the

erroneous report were again wrongly applied by selecting two base fields i.e. Post Graduation/M.Ed with Viva voce marks instead of selecting only one base fields i.e. Viva voce marks.

e) This error could have been avoided while defining the consecutive formula (enclosed vide Annexure -II, Page No.4) by selecting the only one base field i.e. Viva voce marks to a total as Interview marks as the Viva voce marks is having only one base field for which formula definition is not at all necessary and also redefining the first formula by selecting all the six base fields i.e. 10+2, D.Ed, STET, Graduation, Post Graduation/M.Ed and M.Phil Ph.D to a total as academic marks.

f) The facility for dragging the data base fields to make a formula is available in the software, Crystal Report ver 9.0, and the facility used to make a formula is not correct in action while defining these formula for summing up the base fields to a total as academic marks and interview marks which are leading to Grand Total.

g) The base fields were dragged to define the formula in the equation for adding the marks to a total as academic marks instead of individually typing the base fields for adding the academic marks. The dragging of base fields to make an equation can only lead as a short cut and an easy way for handling the equation.

h) The equation, in a formula, for defining the base fields to add the marks to a total as academic marks leaving one base field i.e. Post Graduation/M.Ed, is erroneous and due to which two less mark resulted in the total of academic marks.

i) Adding the missed base field, Post Graduation/M.Ed, in the first equation with Viva Voce marks in the second consecutive equation defined to a total as interview marks is also erroneous and due to

which two more marks added in the total of interview marks.

13. Due to subtraction of two marks awarded for the base field, Post Graduation/M.Ed, from the total of academic marks and the addition of the same two marks to a total of interview marks lead to change in Grand Total but increasing two marks with the viva voce marks which is more than actually awarded viva voce marks found to be the basic reason for this discrepancy.

12. After the examination the parcel (s) containing the exhibits/remnants have been sealed with the seal impression as per the specimen provided below”

61. The said exercise was done after associating the programmer and concerned officials, who had prepared the result. Thereafter, a supplementary report was also given on 20.10.2015 by the same official Dr. B.M. Bhaskar, Deputy Director Physics, on which stress had been laid and interim order led to said report, which had been highlighted by the counsels. The supplementary report was mainly required on account of the fact that on 09.10.2015 when the report dated 30.09.2015 had been filed, the learned Single Judge was of the view that it was not in terms of the order dated 01.09.2015. A perusal of the said order would also go on to show that after considering the pleadings on record at that point of time, the Court had come to the conclusion that whether the difference in the originally declared result and the amended declared result is more than 2 marks, had not been addressed by the report. It was also noted that the Court being no expert in computer programming, the opinion was required after analyzing the data etc. Relevant part of the said report reads as under:-

Hence, my conclusion is as under:-

1. As far as the affidavit of Ms. Savita Achint as mentioned in the order dated 01.09.2015 to the effect “Formula name academic total was used for adding all marks of academic qualification and dragged the above relevant field i.e. 10+2, d.ed, sted, Graduation, Post Graduation/M.Ed., M.Phil, Ph.D in report but in advertently the field of post graduation was dragged/clicked in the formula of viva voce instead of academic total” is not correct, in the case of marks difference 3 and 5, because the marks under postgraduation is 2 or 0.

Therefore, the difference of marks 3 and 5 as depicted above in III (1 and 3) and the reasons given in the affidavit are not possible. It is, further, stated that if simplicitor PG marks were dragged into viva voce, then the result of four applicants and similarly others as mentioned in para III (2), where the difference is of 3, and in the case of Baljinder Singh, where the difference is of 5, cannot be reconciled.

2. As far as the difference of 0.01 is concerned, as stated in para III (5 and 6) above, the same is self-explanatory and is possible and due to the original sheet value in the third decimal places having being rounded off to hundredth and some of the instances are mentioned, therein, to support this version.”

62. The learned Single Judge, vide interim order dated 28.11.2015, had directed the State of Haryana to file individual affidavits of the Members of the Interviewing Committee and its Chairman and the criteria adopted by each of them for interviewing candidates and how many days the interview was done. Further direction was issued that the affidavits should further spell out the dispatch and receipt numbers in the respective registers and how the result was transmitted to the Head

Office. It was noticed that the same was done on account of the fact that the compiled result which had been shown to the Court showed that it was too neat, tidy and orderly. It is thus apparent that the issue went off on a tangent and a roving enquiry was thus being conducted and an effort was being made by the petitioners to find fault in the recruitment process even though there were no specific allegations against any such Members and neither they had been made party. The matter was then listed before another Single Bench since the earlier Bench had recused from hearing the said issue on 12.01.2016. Thereafter, it was noticed that the information was transferred from one computer to another by one Confidential Assistant and the main computer was not available since the Board had been disbanded and the computer had been transferred to the Secondary Education Department. Resultantly, directions had been issued to file an affidavit as to who was handling the custody of the confidential assistant's computer when it was given to transfer the information which was available with Ms.Savita Achint and that the official being in custody of the said computer to identify the same with the computers which were lying with this Court. On 10.02.2016, it was noticed that the back-up of the data of the result was still with Manoj Kumar, Confidential Assistant and remained in his custody which had been noticed in the report dated 30.09.2015. Resultantly, direction was given to hand-over the pendrive and the data passed in soft copy and also the soft copy in the PDF format to the CFSL, Chandigarh which was to analyze the data and submit a detailed report, as per the order dated

01.03.2016.

63. On 28.03.2016, the same official in comparison came to the conclusion that result sheet previous and result sheet pdf were accordingly one and the same and mistake of incorrect data entry and also excess marks for higher qualification had not been found anywhere in any of the files compared and verified. Relevant part of the said report reads as under:-

On the basis of comparison and verification of the respective data in the files, **result sheet previous**, **result sheet current**, with the file, **resultsheet.pdf** (retrieved from the exhibit-PEN1), it has been found that:

a. The respective data, **Higher** (Grad/2, P.G/M.Ed/2, M.Phil Ph.D/3) and Grading (Total/67, Viva/33 and G.Total/100), present in the file, **result sheet previous** and **resultsheet.pdf**, are, accordingly, the one and the same.

b. The respective data, **Higher** (Grad/2, P.G/M.Ed/2, M.Phil Ph.D/3) and **Grading** (Total/67, Viva/33 and G.Total/100), present in the file, **result sheet current** and **resultsheet.pdf**, are, accordingly, the one and the same.

c. Missing and incorrect data entry and also excess marks in the data, **Higher** (Grad/2, P.G/M.Ed/2, M.Phil Ph.D/3) and **Grading** (Total/67, Viva/33 and G.Total/100), have not been found anywhere in any of the files compared and verified.

d. The data for the candidates, **Chiter Rekha**, **Hema**, **Shiv**, **Kalpna**, **Shakuntla Devi** and **Baljinder Sinngh**, has been found correct in accordance with the respective data in the files compared and verified.”

12. After the examination the parcel (s) containing the exhibits/remnants have been sealed with the seal impression as per the specimen provided below:

Specimen Seal.”

64. Resultantly, vide supplementary report dated 31.03.2016 he had given the following conclusion which was arrived at.

“Supplementary Report

This is in continuation of the CFSL, Report No.CFSL/516/16/Phy/156/16/765 dated 28.03.2016, regarding the case on the direction of the Hon'ble Punjab and Haryana High Court, Chandigarh further finding is, hereby, submitted.

The date and time of the **database backup** file and the **resultsheet** retrieved from the exhibit-PEN1 is as given below:

Name of the file	Last accessed	File Created	Last Written
prtalldata.bak	07.03.2016	18.02.2016 11:15:02 AM	01.09.2012 01:51:48 AM
resultsheet1.pdf	07.03.2016	18.02.2016 11:15:35 AM	18.12.2014 12:16:16 PM

The report of the files, prtalldata.bak and resultsheet1.pdf, is enclosed vide Annexure-I (Page No.1-4).

The name of the file, resultsheet1.pdf, has inadvertently been mentioned as resultsheet1.pdf in the CFSL, Report No.CFSL/516/16/Phy/156/16/765 dated 28.03.2016. The file name, resultsheet1.pdf, may be read as resultsheet1.pdf throughout the entire report.”

65. The learned Single Judge eventually while examining all the reports came to the conclusion that the original result which was prepared on 14.08.2014 had not been changed in sum and substance and the result sheet previous and result sheet PDF was one and same. It was noticed that the result was in the custody of Manoj Kumar, Assistant, Haryana State Staff Selection Commission and he along with Ms.Savita Achint, Programmer of the Commission were present before the CFSL on 16 to 18/21/29.09.2014. It was also noticed after taking the opinion of M.Baskar, Deputy Director, Physics that when information in the

pendrive is transferred from PDF file along with the data it would show the date on which the information was transferred to the pendrive. As per the report, there were 2 files and the result showed it was retrieved from the pendrive and it showed that it was written on 18.12.2014 and the data back-up was last retrieved on 01.09.2012. The official result had been prepared on 14.08.2014 which had been transferred to the pendrive on 18.12.2014 and thus, information had been transferred from the pendrive. Resultantly, a finding was arrived at that the original result was prepared on 14.08.2014 and there was no change. Resultantly, a finding was arrived at that there was no manipulation in calculation of mistakes and marks in the academic qualification and the viva voce and, therefore, the selection process as such was upheld.

66. The above sequence of events would go on to show that only on account of the error made by the Computer Operator, challenge as such had been raised by the un-successful candidates. The opinion of the scientific experts had also come forth that there was no tampering and there was a mistake and in such circumstances, we are of the opinion that learned Single Judge had also gone deep into the issue and therefore, the argument raised that the data was corrected and last written on 01.09.2012 as per the supplementary report dated 31.03.2016, is just an attempt to scuttle the recruitment process.

67. It is important to notice that there were no allegations of malafides that certain set of persons were sought to be benefitted and neither the writ petitioners had impleaded the members of the Selection

Committee and raised any allegations of malafide. The settled position of law is crystal clear on this issue that specific allegations had to be raised against the members of the Selection Committee and role played by them and whether certain set of candidates were sought to be upgraded. Reliance can be placed upon the judgment of the Apex Court passed in **Ramjit Singh Kardam (supra)** though relied upon by the counsel for the writ petitioners, wherein the law on this issue was discussed in detail under issue No.(VI) and it was held that there were two concepts of malice, one of fact and one of law. In the said case it was found that there was malice in law and exercise had been done without lawful excuse and criteria had been made to affect the merit selection to the extent that meritorious candidates had performed poorly in the interview and got configured in the average candidates, whereas the ones who had poor academic records had been given between 20 to 27 in the viva voce out of 30 to make sure that they will come in the zone of consideration. Reliance was then placed upon the judgment passed in **Ratnagiri Gas and Power Private Limited Vs. RDS Projects Limited and Others, (2013) 1 SCC 524** that the burden is heavy on the persons alleging malafides and in the present case as noticed there was no such allegation.

68. It was rightly submitted that it was not within the jurisdiction of the Court to go into the issue whether the marks could be dragged into the other field or not while placing reliance upon the judgment of the Apex Court in **Sajeesh Babu K. Vs. N.K.Santhosh & others, 2012 (12) SCC 106**, wherein, it was held that reverence has to be shown to the

experts, until there was any allegation of mala fide. Relevant portion of the judgment reads as under:

“18. It is clear that in a matter of appointment/selection by an Expert Committee/Board consisting of qualified persons in the particular field, normally, the Courts should be slow to interfere with the opinions expressed by the experts, unless there is any allegation of mala fides against the experts who had constituted the Selection Committee. Admittedly, in the case on hand, there is no allegation of mala fides against the 3 experts in the Selection Committee. In such circumstances, we are of the view that it would normally be wise and safe for the courts to leave the decision of selection of this nature to the experts who are more familiar with the technicalities/nature of the work. In the case on hand, the Expert Committee evaluated the experience certificates produced by the appellant herein, interviewed him by putting specific questions as to direct sale, home delivered products, hospitality/service industry etc. and awarded marks. In such circumstances, we hold that the High Court ought not to have sat as an appellate Court on the recommendations made by the Expert Committee.”

69. Therefore, we are of the considered opinion that on account of an error which had been made by the clerical staff, the whole selection process cannot be short-circuited, in the manner the petitioners seek to do. Resultantly, we come to the conclusion that the learned Single Judge did not err in any manner in dismissing the bunch of said writ petitions, which had challenged the rectification of the marks given.

70. The argument raised by Mr.R.K.Malik, Senior Advocate, challenging the selection dated 14.08.2014 of the Primary Teachers on the ground that the criteria fixed by the Commission was wrong and

benefit was not granted for the experience, is liable to be rejected on the ground that the selected candidates had not been impleaded who had got the benefit and advantage, to the detriment of the petitioners. The criteria which was adopted was only by way of a concession and exemption from qualifying the HTET if the candidate had worked for a minimum number of years and no marks had been given to other candidates also for the experience. Thus, all candidates had been put at the same pedestal and no marks had been granted for the experience and therefore, in the absence of any mala-fide the criteria fixed by the Commission could not be the subject matter of challenge as it cannot be said to be arbitrary and discriminatory in any manner and on that ground, challenge to the merit-list is not justified.

Question (B)

71. If the answer of question (A) is in the negative, whether the directions are liable to be issued in favour of candidates, who were eligible as per the advertisement No.2/2012 and had already passed their HTET Examination earlier and whether they are entitled for appointment in pursuance of the same in preference to candidates who had got the benefit of the letter of the State Government dated 20.04.2015 when the Coordinate Bench had disposed of the cases as infructuous qua Set-I in Antim Kumari's case (supra)?

Answer

72. The argument of the counsel for the writ petition in the 6th bunch of cases seeking writ of mandamus to be issued to them on account

of the fact that they were already eligible as per advertisement No.2/2012 is well justified, wherein successful candidates who were originally selected and recommended are being sought to be moved out. It is settled principle that candidates have to be eligible on the cut-off-date, which in the present case was 08.12.2012. Admittedly, persons who were not having the requisite qualifications as per the rules had approached this Court and a wrong concession given by the learned Advocate General, Haryana, on the basis of communication dated 20.04.2015 which will be discussed under Question (C). The Apex Court in **Ashok Kumar Sonkar (supra)** discussed the law on this issue while placing reliance upon the judgment passed in **Bhupinderpal Singh & others Vs. State of Punjab & others, (2000) 5 SCC 262, Shankar K. Mandal and others Vs. State of Bihar and others, (2003) 9 SCC 519, M.A. Murthy Vs. State of Karnataka & others, (2003) 7 SCC 517 and Kendriya Vidyalaya Sangathan and others Vs. Sajal Kumar Roy and Others, (2006) 8 SCC 671.**

“16. Possession of requisite educational qualification is mandatory. The same should not be uncertain. If an uncertainty is allowed to prevail, the employer would be flooded with applications of ineligible candidates. A cut-off date for the purpose of determining the eligibility of the candidates concerned must, therefore, be fixed. In absence of any rule or any specific date having been fixed in the advertisement, the law, therefore, as held by this Court would be the last date for filing the application.”

73. A three Judge Bench of the Apex Court in **Ashok Kumar Sharma and others Vs. Chander Shekhar and another, (1997) 4 SCC**

18 and recently in **Suman Devi and others Vs. State of Uttarakhand and others, 2021 (6) SCC 163** has held that eligibility is to be seen on the cut-off-date and, therefore, the persons who were not qualified as such could not have claimed to be eligible for appointment and list could not be revised to the detriment of the persons, who had already been selected. It is a matter of record that HTET examination had been held earlier on repeated occasions and the result had been declared firstly on 15.10.2008. Similarly, on 17.10.2009 another result had been declared and in the same year on 22.12.2009 for a similar test held result had been declared. Prior to the advertisement in question result was declared on 02.12.2011 of another test and, therefore, once the validity of the tests prescribed is 5 years, therefore, there were sufficient candidates available from the results declared for four tests starting from firstly on 15.10.2008, since the cut-off-date was 08.12.2012.

74. It is also pertinent to mention that the Division Bench itself had also noticed in **Antim Kumari's case (supra)** that the petitioners should give the details as to whether they had appeared in the HTET Examination at any time and what was the result and whether they had any opportunity to appear in the examination before 2012. Necessary affidavits were not filed and the State Government had wrongly acted upon the said concession, though no directions had been issued. The same was to the detriment of the candidates, whose names had already been sent for appointment vide letter dated 20.08.2014 for both rest of Haryana and Mewat Cadre. The issue at that point of time before the

Coordinate Bench was also regarding only 415 vacancies, which had not been filled up, which would be clear from the letter dated 20.04.2015 and, thus, show cause notice issued to candidates on account of the revision of the list was not justified, in the facts and circumstances and interest of the said candidates are liable to be protected, who had requisite qualifications and had already passed the HTET Examination prior to the cut-off-date.

Question (C)

75. Whether the wait listed candidates of the original merit list had a preferential right for appointment keeping in view the observations made by the Coordinate Bench in Antim Kumari's case (*supra*) qua Set-I and whether the decision of the State to push out candidates, who had already been appointed on the basis of their merit as per the original list can be said to be justified in any manner?

Answer

76. The law is settled regarding the right of appointment of a candidate in the selection process to the extent that the consideration is required, but no infeasible right is there for appointment. The Constitution Bench in the case of **Sankarshan Dash (*supra*)** held that the State is under no legal duty to fill up all or any of the vacancies and notification is only an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. The caveat as such was put however that the State cannot act in an arbitrary manner and if vacancies are to be filled up, the comparative

merit list of the candidates as reflected is to be taken into consideration.

Relevant part of the said judgment reads as under:-

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha, (1974) 1 SCR 165, Miss Neelima Shangla v. State of Haryana, (1986) 4 SCC 268, or Jitendra Kumar and others v. State of Punjab and others, (1985)1 SCR 899.”

77. The said judgment was followed in **S.S. Balu & another Vs. State of Kerala & others, (2009) 2 SCC 479** and recently in **Commissioner of Police & another Vs. Umesh Kumar, (2020) 10 SCC 448**. However, the State has apparently acted in an arbitrary manner and against the settled principles, that the eligibility criteria cannot be altered against the prevalent rules, on the basis of which the advertisement itself

was issued and in such circumstances, we are of the considered opinion that the State could not give any concession which is against the rules and in such circumstances the Coordinate Bench had observed that the writ petitions have become infructuous qua the relief of Set-I. No specific mandate or law had been laid down by the Coordinate Bench that on account of the communication dated 20.04.2015, the State could fill up the posts dehor the rules.

78. A perusal of the note 15 of the advertisement in question would go on to show that it was based on the service rules which are titled as 'The Haryana Primary School Education (Group-C) District Cadre Service Rules, 2012', the essential qualifications of the Primary Teachers read as under:-

“Essential Qualification/ Eligibility:-

- (i) Senior Secondary (or its equivalent) with at least 50% marks and 2 year Diploma in Elementary Education; OR
Senior Secondary (or its equivalent) with at least 45% marks and 2-year Diploma in Elementary Education 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. EI. Ed.); OR
Senior Secondary (or its equivalent) with at least 50% marks and 2-year Diploma in Education (Special Education); OR
B.A./B.Sc./ B.Com and 2-year Diploma in Elementary Education (by whatever name known).
(For recognition of Diploma/Degree see note-2].
- (ii) Certificate of having qualified Haryana Teacher Eligibility Test (HTET)/ School Teachers Eligibility Test (STET) of Haryana for Primary Teacher.

Four years teaching experience as Primary Teachers as One time exemption of HTET/STET (See Note-3).

- (iii) Matric with Hindi/ Sanskrit or 10+2/B.A./ M.A. With Hindi as one of the subject.”

79. The Division Bench in the case of Antim Kumari (supra) on 29.04.2015 had disposed off the writ petitions of Set-I as infructuous, in view of the communication of the Government dated 20.04.2015. The said communication reads as under:-

Sub:- Consideration of claim of the petitioners in CWP 346/2013 and other connected matters.

Sir,

The above matter has been considered by the Government and it has been decided that if the Hon'ble High Court permits, the Government is willing to consider giving appointment to those candidates, who have qualified the State Teachers Eligibility Test in 2013 after the cut-off date for submission of the applications i.e. 08/12/2012 subsequently in 2013. They will be offered appointments in case the candidates have obtained marks equivalent to or more than the cut-off marks of the category for which recommendation in respect of 9455 candidates have already been received from the erstwhile Haryana School Teachers Education Board against advertised vacancies of 9870. The department has sufficient vacancies of Primary Teachers for consideration of the claims of the petitioners and in this way, the competing claims of the Petitioner and the selected candidates will be settled. However, before appointment scientific verification and verification of the antecedents of these candidates shall also be undertaken as ordered by the Hon'ble High Court vide order dated 06.08.2014 in CWP No.12938/2014 titled as Maha Singh Bhurania Vs. State of Haryana and others. You are requested to bring this stand of the Government to the notice of the Hon'ble High Court and get these Writ Petitions decided so that the

necessary action for appointment of Primary Teachers can be undertaken. It is pertinent to mention that large number of vacancies are existing in the Department because of which, studies of the students in Govt. School in Haryana is suffering and therefore, there is an urgency to appoint the recommended candidates against the vacant positions.

2. Attention is also drawn towards the orders of the Hon'ble High Court dated 05.02.2015 passed in these cases. The Ld. Deputy General, Haryana has wrongly stated that the detailed inquiry in the alleged irregularities committed in the conduct of qualifying test and the selection process will be completed within a period of six weeks because the scientific verification is being done by the State Crime Record Bureau which will take some time. The thumb impressions of the selected candidates in terms of the ibid orders of the Hon'ble High Court in Maha Singh Bhurania's case have already been collected by the Department and handed over to state Crime Record Bureau. They have paucity of staff and therefore, the Police Department has moved a case to the Home Department for engaging additional contractual Finger Print Experts to compare the thumb impressions of the selected candidates. This process would take time and any definite time frame came only be given by the State Crime Record Bureau and not by the School Education Department. It seems that the Ld. Deputy Advocate General, Haryana who appeared in this case on the last date of hearing made this statement without consulting any Senior Officer of the Department. It is requested that same may kindly be clarified to the Hon'ble High Court at the time of hearing.”

80. A perusal of the same would go on to show that it was only a proposal that the government was willing to consider giving appointment to those candidates who had qualified the teachers eligibility test in 2013 after the cut-off-date and there was no such policy decision taken to relax

the rules and it was only a letter, which was addressed from the Principal Secretary, Government of Haryana, School Education Department to the Advocate General, Haryana. It is pertinent to notice at that point of time 9455 posts had already been filled up as per the requisition sent on 20.08.2014 by the Board against the total posts advertised which were 9870. At that point of time only 415 vacancies were available for both rest of Haryana and Mewat Cadre, which had not been filled up and a vested right had already accrued to the said set of persons whose names had already been recommended vide the erstwhile Board and the dispute was only qua 415 vacancies. The persons who were not even eligible had staked the claim and the State of Haryana unwittingly gave a concession which was against the law and which could not be permitted to the detriment of the candidates, who were duly qualified and eligible.

81. Thus, the action of the State can be termed to be totally arbitrary and cannot be justified or condoned in any manner. The persons who were eligible and were in the wait list were accordingly to be offered the appointments in preference to the others. Reliance can be placed upon the judgments of the Apex Court regarding the wrong concession of law in **State of Rajasthan and another Vs. Surendra Mohnot and others, (2014) 14 SCC 77**, that the concession being against law could not bind the State and it was open to the State to withdraw it while placing reliance upon an earlier judgment passed in **B.S. Bajwa and another vs. State of Punjab and others, (1998) 2 SCC 523**. Thus, the concession given by the learned Advocate General was against the rules

and was wrongly acted upon by the State, though the writ petitions had been dismissed as infructuous. Reliance can also be placed upon the judgment passed in **Union of India Vs. Hira Lal and others, (1996) 10 SCC 574** and **V. Lavanya & others Vs. State of Tamil Nadu & others, (2017) 1 SCC 322**, wherein it was held that by policy decision taken by the State in exercise of Article 162 of the Constitution of India, there can be relaxation provided by the State Government.

82. We are of the considered opinion that the communication reproduced above does not fall within the ambit of said relaxation. Reliance can be placed upon the judgment of the Apex Court passed in **Union of India and others Vs. Mohanlal Likumal Punjabi and others, (2004) 3 SCC 628**, **Union of India and another Vs. S.C. Parashar, (2006) 3 SCC 167**, **U.P. Power Corporation Ltd. Vs. Ayodhya Prasad Mishra and another, (2008) 10 SCC 139** and **LIC of India and others Vs. Krishna Murari Lal Asthana and another, (2016) 6 SCC 515**.

83. The argument raised by Mr. Rajiv Atma Ram, Senior Advocate that the present bench is seeking to review the orders of the coordinate bench of which Harinder Singh Sidhu, J. was one of the member and available for hearing of the matters is without any substance, since the coordinate bench in **Antim Kumari's case (supra)** never issued any positive mandate in the nature of writ of mandamus directing the State to fill up the posts against the rules. The writ petitions qua Set-I were only dismissed as infructuous and if any relaxation had to be provided thereafter, it had to be in accordance with law by taking a policy

decision by the State Government. None has been shown to this Court that such a decision was taken to appoint candidates who were not eligible on the cut-off-date after the matters had been disposed off as infructuous. This Court is only examining the rights of the candidates who were appointed and their appointment orders were being set aside by the State vide order dated 27.04.2017 under the guise of the interim orders passed by this Court. In such circumstances writ petitions filed by them raising challenge to the show cause notices issued to them on the basis of the impugned orders passed by the State are subject matter of consideration and, therefore, this Court as such is within its jurisdiction to decide the issue and the matter need not to be placed before the Bench of which Harinder Singh Sidhu, J. is a member. Rather the order of the coordinate bench in **Antim Kumari's case (supra)** would go on to show that the protection was given to the selected candidates and an assurance was given that none of them would be thrown out on the ground of non-availability of vacancies by adjusting the petitioners.

84. Similarly the argument raised that all the concerned are not party is without any basis. The interim orders would go on to show that the appointment was to be subject to final outcome of the litigation and, therefore, it was always open to all concerned to file appropriate applications to be impleaded as party if they had any apprehension that their service would be dispensed with. Even otherwise a battery of lawyers including a large number of senior counsels have appeared to represent all concerned parties and put forth their arguments and we are,

thus, of the considered opinion that all possible views, which can be taken have been duly projected before us during the marathon sessions, which had taken place during the hearing.

85. The argument of Mr.Salil Sagar, Senior Advocate in support of the fact that persons appointed on ad-hoc basis and candidates over and above the advertised posts had a right to continue as they had applied in pursuance of the advertisement dated 15.11.2013 which had been issued in view of the interim orders passed by this Court and being in employment for considerable period, was not liable to be disturbed.

86. It is to be noticed that initially while issuing notice of motion in Antim Kumari's case the order had been passed by the Coordinate Bench that petitioners who after clearing the minimum eligibility qualifications should get an opportunity to pass the said Teachers Eligibility Test in the year 2013 and should be permitted to be interviewed provisionally. The said order dated 27.08.2013 reads as under:

“Reply filed by respondent No.3 is taken on record.

We have heard learned counsel for the parties at some length.

We find no rhyme or reason for the authorities in not granting at-least one time concession to the candidates, like the petitioners who, after acquiring the minimum eligibility qualification, got an opportunity to pass the State Teacher's Eligibility Test in the year 2013 only.

List on 16.09.2013.

Meanwhile, respondent-Board is directed to interview the petitioners and/or other similarly situated candidates provisionally. The Board shall, however, not declare the result

of the selection.

A copy of this order be supplied Dasti to learned State Counsel for information and compliance thereof.

Office to retain a photo copy of this order to the files of the connected cases.”

87. The Bench noticed on 25.09.2013 that it was not possible for the State Government to grant one-time relaxation and resultantly, directions were issued to file additional affidavits giving details of the previous advertisements of the posts which were held. The said order was modified on 23.10.2013, protecting the candidates who had cleared the certificate of HTET after the cut-off date, to be eligible provisionally.

Relevant part of the order dated 23.10.2013 reads as under:

“[8] Meanwhile, in modification of the order dated 27.08.2013, it is directed that the candidates possessing all other eligibility conditions on the cut-off date as mentioned in the advertisement, except the certificate of STET which they have acquired after the cut-off date shall also be treated eligible, though provisionally. The Board may complete the selection process and declare the result, subject to final outcome of these proceedings. However, the 'Selection Criteria' to be adopted by the Board and the original records of selection shall be produced before us on the date fixed. The Department shall not offer offer appointments without prior permission of this Court.”

88. Apparently, in view of the said order, an advertisement was also issued inviting applications from the ineligible candidates in view of the interim order dated 25.10.2013. Relevant part of the said advertisement reads as under:

HARYANA SCHOOL TEACHERS SELECTION BOARD

HARTRON BHAWAN, BAYS NO. 73-76, SECTOR-2,
PANCHKULA-134105 Phone No.01722584130, Website
www.hstsb.gov.in

NOTICE

(Reference to Advt.2/2012 for the posts of PRT)

Only for those candidates who have passed HTET examination
in the year 2013 and also possessing other eligibility conditions
on the cut-off date i.e. 08.12.2012

In pursuant to the order of the Hon'ble Punjab and Haryana High Court dated 23.10.2013, obtained via internet on 08.11.2013, passed in CWP No.346 of 2013-Antim Kumari V/S State of Haryana and ors. and other connected LPAs/CWPs, wherein the Hon'ble High Court has passed the order that the candidates possessing all other eligibility conditions on the cut off date i.e. 08.12.2012 as mentioned in the advertisement, except the certificate of STET which they have acquired after the cut off date shall also be treated eligible, though provisionally.

2. Therefore, in compliance of above said orders of Hon'ble High Court and in continuation of Advertisement No.2/2012 for the post of PRIMARY TEACHERS (PRT) Cat. No.1 and 2, which was published in The Tribune, The Hindustan Time, Dainik Bhaskar, Dainik Jagran newspapers on 08.11.2012 and also available on HSTSB and CDAC-Mohali website, the Haryana School Teachers Selection Board invites online application through the website www.recruitment-cdacmohali.in from such candidates who have passed the Haryana Teachers Eligibility Test (HTET) held in June, 2013 and possessing all other eligibility conditions on the cut-off date i.e. 08.12.2012 as per HSTSB Advertisement No.2/2012. The eligibility of such candidates shall be treated provisionally subject to the outcome of the above said CWPs. The online application can be filled from 19th November, 2013 to 29th November, 2013 till 5.00 P.M., thereafter website link will be disabled. After the date of publication of this Notice no offline

application form or copy of download application form will be accepted by this office. The printed copy of the online form alongwith necessary certificates will be brought at the time of verification/scrutiny-cum-interview.

3. The rate of fee is Rs.300/- for General Candidates and Rs.75/- for SC/BC Candidates of Haryana. However fee for ESM and PHC Candidates of Haryana is exempted. The fee should be deposited in any branch of State Bank of India 48 hours after registration of application form latest by 02nd December, 2013 till 4.00 P.M.

4. All other eligibility conditions regarding age, academic qualification, District Cadre, Choice of Districts from 01 to 06 etc. for the post will remain unchanged.

Note-1: The petitioners/candidates who have already applied offline in view of the order of Hon'ble Punjab and Haryana High Court passed in these CWPs need not apply afresh online. Their interview schedule and Roll Numbers will be available on the HSTSB website i.e. www.hstsb.gov.in. Therefore, such candidates can collect their Roll Numbers personally from HSTSB, Office on any working day, otherwise the same will be handed over to them at the time of interview.

Note-2: The petitioners/candidates who have applied offline in view of the order of Hon'ble Punjab and Haryana High Court passed in these CWPs and already interviewed they need not apply afresh online.

Note-3: The candidates who have already been interviewed on the basis of experience and now passed the HTET examination held in June, 2013 should deposit their HTET pass certificate in the HSTSB, office, need not apply again.

Note-4: Detailed instructions for filling the online application form are available on the website www.recruitment-cdacmohali.in and advertisement No.2/2012 dated 08.11.2012, Special Instructions, Appendix-A and above notice is also available at HSTSB and C-DAC, Mohali's websites i.e. www.hstsb.gov.in and www.recruitment-cdacmohali.in

respectively.

Note-5: Verification/Scrutiny of Documents-cum-Interview Call Letter will be sent by post. These should be downloaded by the Candidates from the website www.recruitment-cdacmohali.in and absentees on the date of Verification/Scrutiny of Documents-cum-interview will not be given second chance and no further correspondence will be entertained in this regard.

Note-6: In case of any guidance/information/clarification regarding the online filling of application the candidate may call at CDAC-Mohali helpline Nos.0172-6619054 and 0172-6619055 on all working days from 10.00 A.M. to 5.00 P.M.

Attention: Applicants are advised to check HSTSB and CDAC-Mohali website regularly for information of Verification/Scrutiny of Documents-cum-Interview Schedule.

Sd/-

Place:- Panchkula

Secretary

Dated, the 15th November, 2013 Haryana School Teachers
Selection Board, Panchkula”

89. It is not disputed that thereafter the judgment in Antim Kumari's case was passed on 29.04.2015 and the Coordinate Bench did not pass any order in favour of the ineligible candidates and therefore, any concession granted during the interim period merged in the final order. Therefore, it cannot be contended by Mr.Sagar that the interim orders would continue to prevail once the lis had been decided against the ineligible by only noting that the State was willing to give concession but no such policy decision was taken, which could not have been done to the detriment of the ones eligible.

90. Accordingly, we answer question (C) against the State that it is not justified to give concession against the rules and neither any

appointments could be made dehor the rules, of the candidates who were not even eligible on the cut-off-date.

Questions (D & E)

91. (D) Whether the order dated 27.04.2017 passed by the Additional Chief Secretary, Haryana School Education Department in pursuance of the interim order dated 20.04.2017 in LPA No.686 of 2017 'Pardeep Kumar Vs. State of Haryana and others' can be justified in the facts and circumstances and would have any sanctity beyond the tenure of the litigation?

92. (E) Whether the judgment of the learned Single Judge in CWP-28501-2017 titled *Sonu & others Vs. State of Haryana & another*, dated 22.12.2017 which was based on the interim orders dated 20.04.2017 and 08.05.2017 was justified in the facts and circumstances and whether the learned Single Judge was correct in disposing off the writ petitions, rather than tagging them alongwith the appeals which were still pending, keeping in view the principle that the tenure of the interim orders will run till the currency of the litigation?

Answer

93. The abovesaid questions can be decided together as reasoning would be the same as apparently the challenge in the third bunch of cases as mentioned above is in pursuance to the order which was passed by the Coordinate Bench in LPA No.686 of 2016 on 20.04.2017 as reproduced above in paragraph No.13, wherein directions have been issued that appointments were to be made strictly in order of

merit but not beyond the advertised posts and the same were to be subject to the final outcome of the appeal. Challenge was made to the order dated 02.06.2017, which was addressed by Additional Chief Secretary Haryana School Education Department, Chandigarh to District Elementary Education Officers to give appointment to those who are now higher in the merit and give a notice to those who are not entitled and their appointments were being cancelled w.e.f. 06.06.2017.

94. The same was purported to be on the ground that an order dated 08.05.2017 had been passed by this Court, whereby revised merit list had to be prepared subject to the final outcome of the proceedings, which has been reproduced in para No.97. Thus, apparently it was held that 1225 teachers who had given/offered appointments in the first instance were no longer entitled to appointment as their relative position in the combined merit list does not entitle them for appointment, if it is limited to the advertised number.

95. Similarly, show cause notice dated 05.06.2017 regarding the removal from service was issued, in view of the interim directions of the Coordinate Bench dated 08.05.2017 as the merit was low as per the combined merit list and the reply was sought of the candidates.

96. The same was challenged on the ground that an assurance had been given in **Antim Kumari's case (supra)** by the State as per the letter dated 20.04.2015 and, therefore, stay on the termination of the services of the petitioners was prayed for. The said order was stayed on 08.06.2017 and the status-quo was directed to be maintained and similar

orders were passed on 12.06.2017 etc. with directions that the case be listed before the Division Bench, which had passed the order dated 08.05.2017. During the pendency of the said writ petitions order dated 27.04.2017 was sought to be placed on record vide CM-17213-CWP-2018 in CWP-13878-2017 and for directions to the State not to fill up the posts as per the combined merit list.

97. A perusal of the order dated 27.04.2017 of the Additional Secretary School Education for Additional Chief Secretary Haryana School Education Department, Chandigarh, would go on to show that against the old requisition of 9870 posts, recommendation of 9455 posts had been made and out of the waiting list 763 persons had been appointed and, therefore, total persons selected were 10218 while referring to the various orders passed by this Court and narrating the history and keeping in view the advice given by the Advocate General, Haryana, the following directions were issued:-

“12. In view of the advice given by the AG, Haryana, the Directorate may take following steps with approval of Government:-

(i) 54 posts of the categorywise which the petitioners in LPA No.686 of 2016 titled as Pardeep Kumar Vs. State of Haryana, belongs, will be withheld and kept vacant as per the High Court directions.

(ii) The first list of recommendations by the Haryana Staff Selection Commission will be used to offer appointments.

(iii) As regards, these candidates about who a clear finding of impersonation has been received from SCRB/FSL, their candidatures will be cancelled and they will not be offered appointment.

(iv) There are some candidates whose genuineness has not yet been fully established, they are not to be offered appointment till their issues are decided substantially. Such no. of posts will be kept vacant till the verification is finished.

(v) The AG's advice suggests that after the first list dated 20.08.2014 is exhausted, the 2nd list dated 04.08.2015 may be used to give appointments till the permitted number that is (9870-54) 9716. However, this has some complications, the relative claim of the waiting list of the first list and that of the 2nd list including its waiting lists is yet to be established.

There are some candidates who seems to be having inter-merit advantage vis-a-vis the candidates in first list in view of this, the candidates in 2nd list have also not been allocated cadre by Haryana Staff Selection Commission.

In view of this, for the time being only candidates from 1st list are to be offered appointment till further clarifications are available either from Advocate General or from Hon'ble High Court.

In the light of above, the districtwise list of candidates who are to be given appointment now is attached as Annexure-1 (lists of 21 district). The DEEO may issue appointment letters to these candidate and facilitate their joining after due verification of record/antecedents.

13. The candidates whose thump (sic. thumb) impressions were not found identical by SCRB, the candidates whose signature were not found same by FSL, the candidate against whom FIR was lodged due to fake HTET Certificate and candidates who were selected but their HTET was for the TGT posts and not for the post of JBT shall be considered as rejected candidates which are shown at Annexure-III. It is pertinent to mention here that against these rejected candidates legal penal action may be taken under IPC at the earliest.

14. It is further clarified that the candidates who have been selected in the list of rest of Haryana and in Mewat Cadre, they may choose to in either of these places. Meaning thereby that they can

join in Mewat district or in district allotted to them in rest of Haryana.

15. The districts allotted to all the candidates are provisional in nature and will be subject to the re-allotment rationalisation of posts.

16. It is also pertinent to mention here that the Haryana School Teacher Selection Board, Panchkula while issuing the selection list vide letter No.2/1/2013-HSTSB/CA/507 dated 20.08.2014 advised to this directions in his letter that a condition to the effect that the merit of selected candidates in their respected (sic. respective) categories will be further subject to final outcome of SLP No.7820/2013 and other connected SLPs pending for adjudication in the Hon'ble Supreme Court of India be incorporated in the appointment letter of the candidates.

17. It is also mention here that as per discussion with higher authorities with regard to police verification of the candidates it is informed that vide instruction No.52/3/2005-6S (1) dated 18.11.2005 the Government decided that policy of prior verification of character and antecedents will also be adhered to in respect of persons to be appointed to Class III i.e. Group 'C' (including teachers) posts in Education Department. Hon'ble High Court in CWP No.12938/2014 titled as Maha Singh Bhurania & ors. vide his order dated 06.08.2014 and 13.03.2015 also ordered to verify the antecedents before issuing appointment letters (copy of orders placed below).

18. It is also submitted here that the validity of the selection is expired due to continuous litigation and stay orders of Hon'ble Punjab & High Court on the selection process. So, it is also proposed that the validity of list may also be got extended by the office of Chief Secretary, Haryana. File is already submitted in his office.

19. A separate notification will be issued specifying the time limit by which candidates selected on the basis of teaching experience will have to clear the HTET examination.

20. It is hereby ordered that requirement of verification of

Character and antecedents of candidates selected against advertisement No.2/2012 Cat. No.1 and Cat. No.2 on the post of PRT's/JBT's in year 2014 may be Completed after joining.”

98. As noticed earlier the order dated 08.05.2017 had already been challenged before the Apex Court in **Dhalvinder Kaur (supra)**. CM-7887-CWP-2017 was also filed in CWP-2203-2016 for modification of the said order by applicant/respondent No.6 on the ground that candidates who had passed HTET prior to 2011 were being denied appointment in the schools. The Coordinate Bench on 28.07.2017 had disposed off the applications while observing that the order did not determine the lis on merits and all the contentions sought to be raised be raised at the time of final hearing. Apparently similar applications had also been filed in LPA No.686 of 2016 seeking vacation of the order dated 20.04.2017 and to keep 54 posts vacant and the same were also disposed vide two orders on 28.07.2017, which read as under :-

“This application seeks to recall/modify the order dated 08.05.2017.

Heard learned counsel for the parties.

The aforesaid order was passed as a workable solution so that the State Government was able to fill up thousands of vacant posts as the students as a whole were/are suffering for want of sufficient teachers. The said order did not determine the lis on merits. All the contentions sought to be raised in the applications are available to the parties at the time of final hearing.

With these clarifications, the application stands disposed of.

XXXXXXXXXXXXXXXXXXXXX

In these batch of applications, the applicants seek (i)

modification of the order dated 20.04.2017 whereby the State of Haryana was permitted to make appointments after keeping 54 posts vacant for the adjustment of writ petitioners/appellants in case they succeed in their respective claim. The applicants seek to keep reserve more than 54 posts; and (ii) for their impleadment as party respondents.

In our considered view, both these can be considered by the Bench where the matters are to be listed as per roster.

Released from part heard.

Be listed as per roster after obtaining appropriate orders from Hon'ble the Chief Justice.

Photocopy of this order be placed on the record of other connected case(s).

CM-5089-LPA-2016

As prayed for, dismissed as withdrawn.”

99. Apparently, the learned Single Judge in the case of **Sonu and others (supra)** relied upon the interim orders of the Division Bench dated 20.04.2017 and 08.05.2017, which were clarified by the Division Bench as noticed above and directed that the joint merit list needs to be adhered to and the State was bound to implement it in letter and spirit. The said judgment is subject matter of appeal in the 5th bunch of cases. The decision, thus, on merits when the matter was still pending adjudication cannot be held to be justified as it is settled principle that the interim orders always merge in the final order and interim directions are only to make temporary arrangements to preserve the status-quo till the final hearing. Reliance can be placed upon the observations made by the Apex Court in **State of Assam Vs. Barak Upatyaka D.U.Karmachari Sanstha, (2009) 5 SCC 694**, which read as under:-

“21. A precedent is a judicial decision containing a

principle, which forms an authoritative element termed as ratio decidendi. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. Any interim directions issued on the basis of such prima facie findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The observations and directions in Kapil Hingorani (I) and (II) being interim directions based on tentative reasons, restricted to the peculiar facts of that case involving an extraordinary situation of human rights violation resulting in starvation deaths and suicides by reason of non-payment of salaries to the employees of a large number of public sector undertakings for several years, have no value as precedents. The interim directions were also clearly in exercise of extra-ordinary power under [Article 142](#) of the Constitution. It is not possible to read such tentative reasons, as final conclusions, as contended by the respondent. If those observations are taken to be a final decision, it may lead to every disadvantaged group or every citizen or every unemployed person, facing extreme hardship, approaching this Court or the High Court alleging human right violations and seeking a mandamus requiring the state, to provide him or them an allowance for meeting food, shelter, clothing, salary, medical treatment, and education, if not more. Surely that was not the intention of Kapila Hingorani (I) and (II).”

100. Thus, in the considered opinion of this Court in view of the binding precedent there has to be a final decision and interim directions issued in a pending case would go with the final decision and could not have been taken into consideration by the learned Single Judge. The

principle of *ratio-decidendi* will only come in when there was a binding element of final judgment laying down the precedent, which was to be taken into consideration. The learned Single Judge should have stayed his hands while deciding the matter and rather should have tagged the cases alongwith the present set of cases. On that ground alone the judgment of the learned Single Judge is not sustainable. It would have been binding upon the State in principle, if the case had been decided and, therefore, to have banked heavy reliance upon the interim orders was not justified, as law had not been declared and it was only an interim observation, which itself was clarified on 28.07.2017 as reproduced above.

101. Challenge before the learned Single Judge was to the letter dated 07.12.2017, whereby appointments were being made on *ad hoc* basis of low merit PRT/JBT Teachers by relaxation of the instructions dated 08.05.1991 issued by the Government. Resultantly, directions as such issued to make appointments in terms of the combined merit list as ordered by the Division Bench cannot be held to be justified. Similarly order dated 27.04.2017 would also go on to show that it was an interim order passed due to the directions issued by the Coordinate Bench and the same will, accordingly, have to give way in terms of the final directions issued by this Court in the relief clause.

Question (F)

102. Whether the learned Single Judge in Meenakshi Malik's case (*supra*) was justified to direct that candidates who had passed eligibility

test in the year 2013 and the candidates who were in the wait list and belonged to Set-I could be directed to accommodated on account of subsequent vacancies available, which would thus be in excess of the ones which had been notified in the advertisement No.2/2012 dated 08.11.2012?

Answer

103. It is a matter of record that the total 9870 number of vacancies were advertised i.e. 8763 posts for Rest of Haryana (ROH) category and 1107 for Mewat District cadre. The argument raised by Mr. A.S. Talwar, Advocate to this extent that the appellants are aggrieved by the directions issued by the learned Single Judge in the case of **Meenakshi Malik's case (supra)** that the vacancies beyond the ones which were advertised could not be directed to be filled up, merely on account of the fact that the same were available. Thus, the blanket directions that all the writ petitioners who are in the waiting list alongwith the selected candidates as per the revised list were directed to be accommodated, whereby leaving the question of *inter se* seniority open was not justified. It is settled principle that by filling up such posts the provisions of Articles 14 & 16 of the Constitution of India would stand violated, as rights of the candidates who had not even applied would be prejudiced. Reliance can be placed upon the observations made in the case of **Rajkumar Sharma (supra)**, which read as under:-

“12. Filling up of vacancies over and above the number of vacancies advertised would be violative of the fundamental rights granted under Articles 14 and 16 of the Constitution.

(See: Union of India & Ors. v. Ishwar Singh Khatri & Ors. (1992 Supp (3) SCC 84), Gujrat State Dy. Executive Engineers, Association v. State of Gujarat & Ors. (1994 Supp (2) SCC 591); State of Bihar & Ors. v. the Secretariat Assistant S.E. Union, 1986 & Ors. (AIR 1994 SC 736); Prem Singh & Ors. v. Haryana State Electricity Board & Ors. (1996 (4) SCC 319); Surendra Singh & Ors. v. State of Punjab & Anr. (AIR 1998 SC 18), and Kamlesh Kumar Sharma v. Yogesh Kumar Gupta & Ors. (AIR 1998 SC 1021)).

104. Similarly, in **Rakhi Ray & others Vs. The High Court of Delhi & others, (2010) 2 SCC 637**, it was held that recruitment of candidates in excess of notified vacancies would amount to change in selection process and violative of Articles 14 and 16 of the Constitution of India. Reliance was also placed upon the earlier judgment passed in **Hoshier Singh Vs. State of Haryana and others, 1993 Supp (4) SCC 377**. In **Smt.K.Lakshmi (supra)** it was held as under:-

“18. In the light of the above pronouncements the power vested in the Government under Rule 39 (supra) could not have been invoked for filling up the vacancies which had not been advertised and which had occurred after the issue of the initial advertisement much less could that be done for purposes of protecting the service of someone who had found a place in the merit list on account of additional marks given to him and who was bound to lose that place by reasons of the judgment of the Court.

19. The upshot of the above discussion is that the number of vacancies notified for recruitment remained limited to six and did not get increased to ten as the condition precedent for such increase had failed not only because no decision was taken by the Government to invoke its power

under Rule 39 but also because even if a decision had been taken the same would have had no effect in the face of the judgement in Jayachandran's case. Besides the power vested in the Government was not exercisable so as to utilise subsequent vacancies for the purpose of saving someone who had no legitimate right to continue even after being removed from the merit list.

105. Recently in **The High Court of Kerala Vs. Reshma A. and others, (2021) 3 SCC 755**, the Apex Court also reiterated the said principle while keeping in mind the earlier law laid down in the case of **Prem Singh (supra)**, and it was held that the authority cannot be allowed to retrench upon the candidates for future vacancies which would arise in succeeding years and it would be a constitutional error to permit such an exercise. Relevant observations of the said judgment read as under:-

“45 The constitutional principle which finds recognition in the precedents of this Court is that the process of selection in making appointments to public posts is subject to the guarantees of equality under Article 14 and of equality in matters of public employment under Article 16. The process of selection must comport with the principles of reasonableness. Where the authority which makes a selection advertises a specific number of posts, the process of selection cannot ordinarily exceed the number of posts which have been advertised. While notifying a process for appointment, the authority may take into consideration the actual and anticipated vacancies but not future vacancies. Anticipated vacancies are the vacancies which can be reasonably contemplated to arise due to the normal exigencies of service such as promotion, resignation or death. Hence, in notifying a given number of posts for appointment, the public authority may legitimately take into account the number of vacancies which exist on the date of the notification and

vacancies which can reasonably be accepted to arise in the exigencies of the service. While the exact number of posts which may fall vacant due to circumstances such as promotion, resignation or death may be difficult to precisely determine the authority may make a reasonable assessment of the expected number of vacancies on these grounds. However, future vacancies conceptually fall in a distinct class or category. Future vacancies which arise during a subsequent recruitment year cannot be treated as anticipated vacancies of a previous selection year. Vacancies which would arise outside the fold of the recruitment year would not fall within the ambit of anticipated vacancies. For it is only the vacancies, actual and anticipated which would fall within the course of the selection or recruitment year that can be notified when the selection process is initiated. These are constitutional principles to which statutory edicts are subordinate.”

106. In such circumstances, directions to fill up the posts beyond the advertised posts, merely on account of vacancies available at the time of decision of the learned Single Judge cannot be acted upon and given legal sanctity. Accordingly, the said directions are set aside to the extent that only the candidates who are part of the original wait list would have a right of consideration and who were duly qualified and had passed the HTET Test before the cut-off-date of the advertised posts.

107. The argument which has been raised by the counsels in opposing the candidates who were in the wait list that they had filed applications for clarification of the order or for protection of their right at a subsequent point of time is without any basis. As noticed above they had filed SLP in the case of **Mandeep & others (supra)** which was dismissed as withdrawn by withdrawing the application for permission to

file SLP on 21.08.2015 after interim orders had been passed on 21.07.2015 in **Meenakshi Malik's case (supra)**. Thereafter, they filed appropriate application before this Court for recalling the judgment in **Antim Kumari's case (supra)** qua Set-I. Their applications have been pending as CM-7406-CWP-2017 in CWP-20405-2013, which was tagged with LPA No.686 of 2016 and they had also filed application for impleadment being wait listed candidates, on which no orders had been passed, though the application had been listed before the Division Bench. Thus, they have been agitating for their grievances for all these long years and have a vested right with them on account of being duly qualified and pushed out from the zone of consideration, on account of the wrong concession given by the State against the rules. Thus, they would be entitled for the benefit of the principle as per the maxim "*Actus Curiae Neminem Gravabit*", as it is settled principle that the act of Court is to prejudice no person. As noticed above on account of the interim orders passed by this Court, the list was being revised and, therefore, the interim orders have to merge alongwith the final orders. Therefore, reliance can be placed upon the judgment passed in **South Eastern Coalfields Ltd. Vs. State of M.P., (2003) 8 SCC 648, Mohammed Gazi Vs. State of M.P., (2000) 4 SCC 342** and the judgment passed in **Karnataka Rare Earth and another Vs. Senior Geologist, Department of Mines & Geology and another, (2004) 2 SCC 783**, relevant portion of which reads as under:-

“10. In South Eastern Coalfields Ltd. (supra), this Court dealt with the effect on the rights of the parties

who have acted bona fide, protected by interim orders of the Court and incurred rights and obligations while the interim orders stood vacated or reversed at the end. The Court referred to the doctrine of *actus curiae neminem gravabit* and held that the doctrine was not confined in its application only to such acts of the Court which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the Court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution which is attracted. When on account of an act of the party, persuading the Court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the Court would not have been passed. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the Court, or (b) to make restitution for what it has lost.”

Question (G)

108. What would be the fate of contempt petitions, which would necessarily be governed by the answers given on the abovesaid issues?

Answer

109. The contempt petitions are primarily arising out of violations of orders passed in the civil writ petitions of third bunch, wherein interim stay had been granted by the learned Single Judge in the month of June,

since the termination orders as such were sought to be issued and show cause notices have been issued by the State and status-quo had been ordered. Keeping in view the various different orders passed by different Benches and since the interim orders had been passed by the Coordinate Bench, we are of the considered opinion that the contempt proceedings are not liable to be initiated or continued against the respondents in question. Applications had been itself filed by the affected parties seeking the modification of the order dated 20.04.2017 and 08.05.2017 and as noticed in paragraph No.97, the applications were disposed of on 28.07.2017 by the Coordinate Bench by noting that directions were issued only to have a workable solution as such in the facts and circumstances, so that the vacancies could have been filled up at the earliest.

110. In such circumstances, on account of the pendency of the litigation, the matter has remained fluid and, therefore, the State cannot be held to have intentionally disobeyed the orders of the Court. Accordingly, the contempt petitions are disposed off as having been rendered infructuous, in view of the directions which are being issued in the relief clause.

111. **Relief:-**

- i. Keeping in view the above discussion, we are of the considered opinion in order to put a quietus to the litigation which is going from the last 7 years, it would be appropriate that the State shall fill up all the vacancies which were

advertised for rest of Haryana and Mewat Cadre i.e. 8763 and 1107, respectively. The same shall be done on the basis of the original merit list drawn up by the Board and sent for recommendation on 20.08.2014 to the Director General, Elementary Education, Haryana. The balance of the vacancies, if any, shall be filled up by the original wait listed candidates on the strength of the merit list over and above the candidates, who did not have the prescribed eligibility and had not passed the HTET examination prior to the cut-off-date.

- ii. Mere appointment of such candidates and who have held such posts earlier and who have been offered such posts in pursuance of the interim orders being subject matter of litigation was always subject to the final orders as has been mentioned in the order dated 20.04.2017 and, therefore, they can have no grouse that they have served for a considerable period, on account of the fact that they were not qualified as per the advertisement on the cut-off-date and, thus, could not have a march over the ones who were duly qualified.
- iii. The State shall not fill up the vacancies beyond the numbers which were advertised as mentioned above. Any vacancies which are now left shall be advertised afresh in accordance with law.
- iv. Candidates who had already been issued show cause notices

and were not allowed to join duties and who were part of original merit list and were duly qualified shall be entitled for all financial benefits from the date of their appointments which were originally offered to them. If they have not been paid any salary during the pendency of the litigation, they shall be entitled for all the arrears, which shall become payable within a period of 3 months from today.

v. Candidates who were duly qualified at the time of advertisement and had not been given the benefit of appointment, will also be given the benefit of appointment within a period of 3 months from today after complying with the directions of the Coordinate Bench in the case of **Maha Singh Bhurania (supra)**.

vi. Contempt petitions are disposed off as infructuous.

vii. All pending civil miscellaneous applications are, accordingly, disposed off, in view of the above directions. All the applications for impleading stand allowed by treating the applicants as interveners.

(G.S. SANDHAWALIA)
JUDGE

20th July, 2022
Naveen/sailesh

(VIKAS SURI)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes