

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

LPA Nos. 1928 and 1963 of 2019

LPA Nos. 3 and 84 of 2020

Reserved on: 23.12.2022

CWP Nos. 32097, 32098, 32220, 32136 and 37588 of 2018

CWP Nos. 428, 1251, 3490 and 7649 of 2019 and

CWP Nos.4784, 11584 and 21265 of 2021

Reserved on: 22.12.2022

Date of Decision: 12.01.2023

Saneh Lata and others

.....Appellant(s)

Versus

State of Haryana and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr. Gurminder Singh, Sr. Advocate with
Mr. RPS Bara, Advocate, for the appellant
in LPA-1963-2019.

Mr. Rajiv Atma Ram, Senior Advocate with
Mr. R.S. Kalra, Advocate for the respondent Nos.4 and 6
and Mr. Bhagoti Singh, Advocate,
in LPA-1928-2019.

Mr. B.S. Rana, Senior Advocate with
Mr. Nayandeep Rana, Advocate,
and Mr. Maninderjit Singh, Advocate,
for the petitioners in CWP-4784-2021.

Mr. L.K. Narang, Advocate,
for the petitioners in CWP No. 11584 of 2021.

Mr. Anurag Goyal, Advocate for the petitioner (s)
in CWP No.21265 of 2021 and for respondent No.4 to 6
and 30 in LPA No.1963 of 2019.

None for the petitioners in CWP Nos. 1251 and 7649 of 2019.

Mr. Shalender Mohan, Advocate,
for the appellant in LPA-1928-2019.

Mr. Gagandeep Singh, Advocate,
for the appellants in LPA-84-2020.

Ms. Pratibha Yadav, Advocate,
for the petitioners in CWP-32097-2018.

Mr. Anil Kumar Sharma, Advocate for the petitioner (s)
in CWP No.32594 of 2018.

Mr. Ashok Bhardwaj, Advocate for the petitioner (s)
in CWP Nos.32098 and 32136 of 2018.

Mr. Jaivir Singh, Advocate,
for Mr. Ashish Rawal, Advocate,
for respondent No.4-NCTE in CWP-3490-2019.

Mr. Sandeep Jasuja, Advocate,
for respondent No.4-NCTE in CWP-3490-2019.

Ms. Shruti Jain Goyal, DAG, Haryana.

Ms. Palika Monga, DAG, Haryana.

Ms. Deepali Verma, Advocate, for
Ms. Mehak Sawhney, Advocate,
for respondent No.10 in LPA-1928-2019.

Mr. Kanwal Goyal, Advocate,
for respondent Nos.2, 10, 12, 15, 18 to 21 and 25 to 28
in LPA-1963-2019.

Mr. R.S. Kalra, Advocate and
Mr. Randeep Singh, Advocate for respondent No.1
in LPA No.84 of 2020.

Mr.S.K.Nehra, Advocate,
for the applicant in CM-1714-CWP-2019 in CWP-428-2019.

Mr.Vibhum, Advocate, for
Ms.Divya Sharma, Advocate,
for respondents No.37 & 38 in LPA-1963-2019.

Mr. Tejpal Singh Dhull, Advoate for the petitioners
In CWP Nos.32220 & 37588 of 2018 and
CWP Nos.428 and 3490 of 2019.

Ms. Bhawna Chaudhary, Advocate for the applicants
in CM-243-LPA-2020 in LPA-84-2020
CM-1714-LPA-2019 in LPA-428-2019 &
CM-930-LPA-2022 in LPA-1963-2019

G.S.SANDHAWALIA, J.

1. The present judgment shall dispose of 16 cases out of which, 4 are LPAs i.e. LPA Nos. 1928 and 1963 of 2019 and LPA Nos. 3 and 84 of 2020 and 12 are writ petitions i.e. CWP Nos. 32097, 32098, 32220, 32136 and 37588 of 2018; CWP Nos. 428, 1251, 3490 and 7649 of 2019 and CWP Nos.4784, 11584 and 21265 of 2021.

2. Facts of LPA No. 1928 of 2019 are being referred to, which is filed by the appellants (private respondents in the writ petition) challenging the judgment dated 06.11.2019 and as modified on 18.11.2019 passed in ***CWP No. 31702 of 2018, Rakesh Kumar and others vs. State of Haryana and others*** whereby, the learned Single Judge, while deciding 56 writ petitions, set aside the notice dated 09.12.2018 (Annexure P-10) and a direction was issued to the State to declare the result afresh by treating the writ petitioners as eligible. Resultantly, it was held that the amendment dated 23.06.2017 was to be applied retrospectively as it was explanatory and, therefore, by virtue of the same, this made the writ petitioners eligible for the

626 posts of PGT (Sanskrit) which had been advertised on 28.06.2015. Vide the application for modification filed on behalf of the applicant-respondent No.6 who was also impleaded as such, it was directed that since only 523 candidates had been found eligible for appointment as per the merit list dated 01.01.2019, the application was disposed of on 18.11.2019 with directions that the result be declared afresh by treating the petitioners eligible and the merit list be prepared accordingly and candidates be appointed as per new merit list consisting of 626 posts and, therefore, consideration was directed for filling up of the vacancies as per the advertisement in question.

REASONING OF LEARNED SINGLE JUDGE

3. Reliance was placed upon the judgment of the Apex Court in ***Zile Singh vs. State of Haryana, 2005 (2), RCR (Civil) 744*** to hold that the Court could deal with the provision while interpreting it to be either prospective or retrospective. Resultantly, the degree of Shiksha Shastri has been held equivalent to B.Ed. and, therefore, the writ petitioners could not be held ineligible on the sole ground that the amendment made in the year 2017 was prospective. The learned Single Judge had taken into consideration various instructions dated 02.09.1974, 12.08.1991, 09.08.1996, 30.04.1998, 15.10.2013 whereby, the issue of equivalence as such had been considered including instructions and the notification of the U.T. Administration dated 13.07.1992 apart from the UGC notification dated 05/11.07.2014. Resultantly, reference was made to various affidavits filed and the reports of the committees as such prior to the amendment of the Rules by coming to the conclusion that the benefit of amendment made in the year 2017 has to be given retrospectivity while rejecting the argument raised by the State that the benefit of amendment made in the year 2017 has to be given prospectivity

and the candidates could not be treated eligible for the advertisement of 2015. Accordingly, it was held that once the State was treating these qualifications equivalent, the candidates could not be denied the benefit and could not be held to be ineligible. The argument raised by the State was rejected that it was the prerogative of the employer to provide for qualifications for appointment and also the fact that the issue had already been decided. The factum of the amendment made in the year 2017 to be taken as retrospective was also decided that the Court could do so and construe the provisions on few touchstones and resultantly came to the conclusion that the judgment in *Sunita Rani's case (supra)* would not be a binding precedent. However, by virtue of the said order, the learned Single Judge opined on the fact that the qualification of Shiksha Shastri was equivalent to B.Ed. but deferred hearing with another connected set of cases qua the same advertisement pertaining to the equivalency of M.A. with Acharya, which was also intermingled with the same advertisement and had also been reserved for hearing alongwith the first bunch of cases namely the Shiksha Shastri. CWP No. 428 of 2019 titled Sandeep Kumar and others vs. State of Haryana and others, which had also been reserved was released from being part heard on 18.12.2019 but while issuing interim directions that candidates who have been selected would be issued appointment letters. However, their selection was to be subject to the final outcome of the case and resultantly vide the interim order as such also denied the benefit to Acharya students to be treated equivalent as M.A. Sanskrit. While issuing notice of motion in the present set of appeals on 12.12.2019, the co-ordinate Bench had ordered status quo as it existed which was to be maintained.

4. To get to the bottom of the controversy as such, the background as such will have to be traced. The rules governing the appointment of PGT (Sanskrit) are Haryana State Education School Cadre (Group B) Service Rules, 2012 (in short 'the 2012 Rules') which were notified on 11.04.2012, which provided that 67% of the said posts have to be filled by direct recruitment on contractual basis under Rule 7. As per Appendix B, the essential qualifications for direct recruitment provided M.A. Sanskrit with at least 60% marks and B.Ed. from a recognized university apart from having the matric with Hindi/Sanskrit or 10+2/B.A./M.A. with Hindi and the certificate of having qualified Haryana Teachers Eligibility Test (HTET) and School Teachers Eligibility Test (STET). The said provisions read thus:-

*“(i) M.A. Sanskrit with atleast 50% marks and B.Ed from recognised university; AND
(ii) Matric with Hindi/Sanskrit or 10+2/B.A./M.A. with Hindi as one of the subject; AND
(iii) Certificate of having qualified Haryana Teacher Eligibility Test (HTET)/ School Teachers Eligibility Test (STET).”*

5. It was further provided under Note (i) and (ii) that in case of direct recruitment, teachers working in privately managed government aided recognized schools were exempted to acquire qualifications of passing HTET, as provided above, if they had worked as a teacher for a minimum period of 4 years on the date of the enforcement of the Rules provided they passed HTET by 01.04.2015. Similarly, Note (ii) gave the benefit to persons having passed HTET/STET/qualification of B.Ed. before the notification of the rules who were considered eligible. The same reads thus:-

“(i) That in case of direct recruitment the teachers working in privately managed Government

aided, recognized and Government schools, are exempted to acquire qualifications of passing HTET as described in column 3 if they have worked as a teacher for a minimum period of four years on the date of enforcement of these rules. However, the said exemption is as a onetime measure and the said category of teachers on their appointment shall have to qualify HTET by not later than 1st April 2015, otherwise their appointment shall stand terminated automatically without giving any further notice.

(ii) A person who has passed STET/HTET without the qualification of B. Ed., before the notification of these rules, shall be considered eligible for the post of PGT in the case of direct recruitment.”

6. On 07.06.2012, advertisement No.1 of 2012 was published, having cut off date of 28.06.2012, wherein Post Graduate Teachers were sought to be recruited in various subjects including for PGT Sanskrit for which 1465 posts were advertised under Category No.10. The common eligibility as such was the basic qualifications as prescribed for i.e. Matric with Hindi/Sanskrit or 10+2/B.A./M.A. with Hindi as one of the subjects and the HTET/STET eligibility for the respective subject conducted by the Board of School Education, Haryana with one time exemption as per Note (ii). The same reads thus:-

“A one time exemption of HTET/STET has been granted to the candidates who have worked for minimum 4 years till 11.04.2012 in privately managed Govt. Aided Schools, Recognized Schools and Govt. Schools. Candidate must be in service on 11.04.2012 in addition to being in position on the date of applying for the said post. They will have to qualify HTET not later than 1st April 2015 otherwise their services will be

terminated automatically. Qualification / eligibility conditions and certificates will be determined with regard to last date fixed for submission of online applications also called as closing date given in the advertisement.”

7. On 02.07.2012, amendment was made in the said Rules wherein, Rule 19A was inserted under the heading transitional provision and under (i) and (ii) of Appendix 'B', the following substitution was made:-

“19. A. Transitional provision.- *The person fulfilling the conditions enunciated under note (i) or (ii)(a) of Appendix B to these rules and possess the qualifications under column 3 mentioned against the respective posts in the Haryana State Education Lecturer School Cadre (Group C) Service Rules, 1998, shall also be eligible for recruitment as a one time measure:*

Provided that such person shall have to qualify the Haryana Teachers Eligibility Test (HTET) and B.Ed. by 1st April, 2015 and if he fails to do so, his appointment shall stand terminated automatically without giving any further notice.”.

3. *In the said rules, in Appendix B, for note (i), the following note shall be substituted namely:-*

"(i) That in case of direct recruitment, the teachers working in privately managed Government aided, recognized and Government schools, are exempted from having qualifications of Haryana Teachers Eligibility Test or School Teachers Eligibility Test and B.Ed. as described in column 3, if they have worked as a teacher for a minimum period of four years on the date of enforcement of these rules."

4. *In the said rules, in Appendix B, for note (ii), the*

following note shall be substituted namely:-

“(ii) (a) A person who has passed Haryana Teachers Eligibility Test or Eligibility Test without the qualification of B.Ed., before the notification of these rules, shall also be considered eligible for the post of PGT in the case of direct recruitment as non-time measures in the first recruitment to be held after amendment of these rules.

(b) The condition of ‘Consistent Good Academic Record’ wherever appearing in Appendix B, under column 3 of these rules shall not be made applicable during the first recruitment made under these rules, in the case of candidates eligible under note (I) or (ii)(a)”

8. Thus, the benefit of eligibility to a HTET/STET candidate without qualifications of B.Ed. was granted if it was before the notification of the Rules as a one time measure in the first recruitment to be held after the amendment in the Rules. The corrigendum was issued on 03.07.2012 wherein, the cut off date was extended to 15.07.2012 and the eligibility was accordingly changed as per amendment which has been made in the Rules. Acharya qualified candidates filed CWP No. 19263 of 2012, Vikas Sharma and others vs. State of Haryana and others apprehending rejection at the time of interview on the ground of not possessing the M.A. Degree in Sanskrit and seeking a writ in the nature of mandamus to the Haryana School Teachers Selection Board to treat it equivalent to M.A. Sanskrit on the strength of a letter dated 10.05.1975. The learned Single Judge dismissed the writ petition on 20.01.2014 by holding that it would be the prerogative of the employer to provide for qualifications and it could insist upon the qualifications

prescribed under the statutory Rules relying upon the Full Bench judgment in ***Som Dutt vs. State of Haryana and another, 1983 (3) SLR 141.*** It was furtherheld that there is nothing to suggest that M.A. in Sanskrit from Maharishi Dayanand University or Kurukshetra University was equal to that of Acharya over the candidates who possess the same degree from a State University namely Sampuran Anand University which was recognized by UGC. Resultantly, the claim upon the Central Government letter dated 21.11.1990 was also rejected. The order dated 20.01.2014 reads thus:-

“Reliance upon the Central Government letter dated 21.11.1990 issued by the Ministry of Personnel, PG & Pensions (Department of Personnel & Training, New Delhi, to contend that the Acharya degree is equivalent to the M.A. degree, cannot be pressed into service to the benefit of the petitioners as it is the right, privilege and prerogative of the employer to accept a particular qualification as equivalent or not. In any case, in the present case, there is no question of treating an equivalent qualification when there is no such discretion provided for under the statutory rules. The qualification under the statutory rules being clear and specific i.e. M.A. Sanskrit with at least 50% marks, the Court cannot import such a condition/qualification which would make the candidate possessing an equivalent degree eligible for appointment when the statutory rules do not permit so. In any case, the letter dated 21.11.1990 issued by the Department of the Central Government which is not ipso facto applicable. There is no decision of the State of Haryana adopting the said letter.

In view of the above, finding no merit in the writ petitions, the same stand dismissed.”

9. The said judgment was upheld in LPA No. 1121 of 2014, Satish Kumar vs. State of Haryana on 10.09.2014 by holding as under:-

*“In our considered view the argument, that is being advanced, lacks conviction and cannot be imbibed. Concededly, the advertisement and the 2012 Rules clearly postulate, that the requisite qualification for appointment to the post of PGT(Sanskrit) is **“M.A. Sanskrit with atleast 50% marks and B.Ed. from recognized University.”** And appellants before us, possess a degree in Acharya from Kurukshetra University. Indisputably, the statutory rules do not envisage any equivalence clause. Still further, the recognition/equivalence list issued in April, 2011, by the MDU, Rohtak, nowhere stipulates that Acharya degree of MDU, Rohtak, would be equivalent to M.A.(Sanskrit). Likewise, the list of equivalence of examinations/degrees/ diplomas, corrected upto 2011, issued by the Kurukshetra University reveals that, Acharya degree from Rashtriya Sanskrit Sansthan New Delhi, was/is treated to be equal to Acharya degree of Kurukshetra University. Nothing was brought on record to show that any decision was ever taken by the Kurukshetra University declaring Acharya degree of the said University equal to M.A.(Sanskrit) of the same University. Rather, stand set out by the University was that M.A.(Sanskrit) of Kurukshetra University was not equal to Acharya degree of the same University. The letter dated 23.01.1964 issued by the Government of India and the decision of the Hon'ble Supreme Court in **Ramphalit Vyakaran Acharya's case** (supra), upon which the claim of the appellants was predicated, would also not advance their cause as subsequently with the promulgation of the 2012 Rules, specific qualifications,*

without any equivalence clause, were prescribed for appointment to the post of PGT(Sanskrit). Thus, in our considered opinion, the learned Single Judge has rightly concluded that there was no occasion to treat Acharya degree as an equivalent qualification, since there was no such discretion provided under the statutory rules. Further, it was prerogative of the State to determine as to what qualifications are required to be prescribed for a particular post and the State was well within its domain to insist upon the said qualifications as were so provided under the statutory rules.

That being so, we hardly find any ground, least plausible in law, to interfere with the order being assailed in the present appeals. The same being devoid of merit are, accordingly, dismissed.”

10. A similar view was also taken by another learned Single Judge of this Court in CWP No. 20616 of 2013, Shiv Kumar and others vs. State of Haryana and others, decided on 01.10.2014 while placing reliance upon the order of the Division Bench also in *Satish Kumar's case (supra)*.

11. Advertisement No.4 of 2015 with which we are concerned the cut off date of which was 21.09.2015, thereafter was issued on 28.06.2015 wherein 626 posts of PGT Sanskrit were notified to be filled up under category No.16 having the eligibility qualifications of 50% marks in M.A. (Sanskrit) and B.Ed. from a recognized university. The eligibility prescribed was as under:-

“(a) Matric with Hindi/Sanskrit or 10+2/B.A./M.A. with Hindi as one of the subject.

(b) Certificate of having qualified Haryana Teacher Eligibility Test (HTET)/School Teachers Eligibility Test (STET) of respective subject for the post applied,

conducted by Board of School Education Haryana, Bhiwani.

Note- The candidates those who are having/passed HTET till the date of interview after advertisement will be allowed for interview on the basis of acquiring HTET (Test) till the date of interview.

(c) Consistent good academic record (See Note-2)."

Cat. No.16 626 posts (Included 89 Post of Backlog of SC) of PGT Sanskrit

E.Q. M.A. Sanskrit with at least 50% marks and B.Ed. from recognized university."

12. Another important aspect that is to be noted is that as per Note-1, it was provided that category Nos.1 to 34 (except category Nos.11 and 27) had been advertised earlier by the Haryana School Teachers Selection Board, Panchkula vide advertisement No.1 of 2014. On account of the recruitment process not being initiated for those posts and thereafter on withdrawal of requisition by the Education Department, the same were cancelled by the Haryana Staff Selection Commission vide public notice dated 12.05.2015. But candidates who had earlier applied against the said categories and whose details were available on the website were eligible to apply against the re-advertised posts. This aspect is important in as much as an argument is being raised, which will be dealt at a later stage, as to the right of such candidates who are consistently trying for appointment since the year 2014 which the State is wanting to scuttle. Note 1 reads thus:-

"Note 1. The posts indicated at category No.1 to 34 (Except Cat. No.11 & 27) were advertised earlier by the Haryana School Teacher Selection Board, Panchkula vide advertisement No. 1/2014 but against these posts no recruitment process could be initiated

and thereafter on the withdrawal of requisition by the Education Department, Haryana, the same were Cancelled by the Haryana Staff Selection Commission, Panchkula vide Public Notice dated 12.05.2015. The candidates who had earlier applied against the above categories and whose detail is available on the web site of HSSC i.e. www.hssc.gov.in will also be eligible against the re-advertised posts and such candidates will be exempted from the payment of application fee. However, such candidates will have to apply online afresh alongwith proof of depositing the application fee. They are required to upload the e-Challan alongwith the fresh application form and will produce the original e-challan at the time of interview/test/verification.”

13. A perusal of the above would go on to show that the requirement of passing the HTET was till the date of interview after the advertisement and it further provided that the short listing of candidates would be done for interview purposes by holding a written examination. The notice for the written test is stated to have been issued on 24.05.2016 and written test was held on 15.06.2016. CWP No. 24595 of 2015, Deepak Sharma and others vs. State of Haryana and others came to be filed by Acharya candidates claiming equivalency to M.A. and wherein rules were challenged. An interim order was passed on 05.08.2016 by a Division Bench directing that an Expert Committee would be constituted and who would give the recommendation whether the qualification of M.A. is also equivalent. The said order reads thus:-

“(1) The candidates who have obtained degrees equivalent to MA in Sanskrit from some of the renowned institutions of national stature where education is

imparted exclusively in Sanskrit, have been ousted by the State of Haryana from the zone of consideration for the appointment as Sanskrit Teachers, by virtue of the Rules enacted in exercise of powers under proviso to Article 309 of the Constitution. This has been done apparently at the instance of the candidates who have passed out from the local State Universities. It is difficult to reconcile as of now as to how a candidate who has done Acharya (which is equivalent to MA), from Institutions like Sampurnanand Sanskrit Vishwavidyalaya, Varanasi or Shri Lal Bahadur Shastri Rashtriya Sanskrit Vidyapeetha etc. (unless it is found that such qualification has been obtained through dubious means) can be rendered ineligible for appointment as Sanskrit Teacher. Whether the authorities, while doing so, have served the cause of Sanskrit or harmed it in circuitous manner, is an issue which must draw the State's attention at the earliest. We thus suggest to constitute an Experts Committee comprising renowned Sanskrit scholars, other than the 'Professors' or 'Heads' of Sanskrit Departments of State run Universities, as they can be the best impartial Arbiters to compare the curriculum and determine the standards of Degrees in question vis-à-vis the level of Sanskrit education in State Universities.

(2) The Principal Secretary, Education Department, Government of Haryana is directed to take up the matter with the Minister-in-charge or other higher authorities in the State, in accordance with the Rules of Business and apprise this Court about the decision, if an, taken in this regard.

(3) The team of Experts, if constituted, would keep in view the fact that NCTE has recommended the qualification of MA in the subject concerned as also

“equivalent” thereto, as a valid qualification.

(4) Post again for further consideration on 31.08.2016.

(5) Let a dasti copy of this order be handed over to Ms. Palika Monga, learned DAG Haryana for information and necessary compliance .”

14. The result was declared on 06.02.2017 and the candidates were called for scrutiny of documents between 17.04.2017 to 20.04.2017. The State then took the step of incorporating Acharya as an equivalent to M.A. (Sanskrit) and Shiksha Shastri as a B.Ed. alongwith Language Technical Course (LTC) in Sanskrit from a recognized university by amending the 2012 Rules on 23.06.2017. The same reads thus:-

*“HARYANA GOVERNMENT
SCHOOL EDUCATION DEPARTMENT*

Notification

The 23rd June, 2017

No. GSR-7/Const/Art. 300/2017- In exercise of the powers conferred by the proviso to article 309 of the Constitution of India, the Governor of Haryana hereby makes the following rules further to amend the Haryana States Education School Cadre (Group B) Service Rules, 2012, namely :-

1. These rules may be called the Haryana State Education School Cadre (Group B) Service (Amendment) Rules, 2017.

2. In the Haryana State Education School Cadre (Group B) Service Rules, 2012, in Appendix-B, against serial number 9, under columns (3) and (4), for item (1) existing thrice, the following item shall be substituted, namely :-

(I) M.A. Sanskrit/Acharya with at least 50% marks and B.Ed./Shiksha Shastri/ Language Teachers Course

(L.T.C.)/Oriental Training (O.T.) in Sanskrit from a recognized university or conducted by the Haryana Education Department or an equivalent qualification recognized by Haryana Education Department, and.”

*P.K. DAS
Additional Chief Secretary to Government Haryana,
School Education Department*

15. On 11.09.2017, *Deepak Sharma's case (supra)* was disposed of on the ground that the equivalence as such had been granted. The order passed by the co-ordinate Bench reads thus:-

“The substantive prayer made in the petition stands answered by the State by accepting (Group B) M.A Sanskrit / Acharya, B.Ed / Shiksha Shastri / Language Teachers Course (LTC) / Oriental Training (O.T), (Group C) Shastri and Shiksha Shastri / Language Teachers Course (LTC) / Oriental Training (O.T) as equivalent to the qualifications prescribed under the Rules to enable the writ petitioners to the benefits of employment. In view of the above, the petition stands disposed of.”

16. Resultantly, the State issued notices on 12.09.2018 even calling candidates who had Acharya and Shiksha Shastri qualifications alongwith the LTC Oriental Training for scrutiny of documents for 24.09.2018 and 25.09.2018. The said notices were challenged by the candidates who had M.A. in Sanskrit and B.Ed. etc. as per the advertisement in CWP No. 25958 of 2018, *Saneh Lata and others vs. State of Haryana and another*, which writ petition was disposed of on the ground that the earlier notices issued by the Commission had been withdrawn and a fresh notice would be issued to the candidates who possess the qualification as per advertisement dated

28.06.2015. The said order dated 11.10.2018 reads thus:-

“Learned State counsel has informed that the notice dated 23.06.2017 sic (12.09.2018) issued by the respondent-Commission has since been withdrawn and a fresh notice will be issued to the candidates, who possess the qualification as per advertisement dated 28.06.2015 (Annexure P-2).

In view of the above statement, no further orders are required to be passed in this petition.

Disposed of accordingly. However, the petitioners are at liberty to approach this Court in case they are aggrieved against the second notice, which is to be issued.”

17. Accordingly, interview notices were issued on 09.12.2018 wherein candidates equal to twice the number of vacancies were called for interview on 15th and 16th December, 2018.

18. In the meantime, CWP No. 31702 of 2018, Rakesh Kumar and others vs. State of Haryana and others was filed by Shiksha Shastri candidates, in which they claimed being eligible having qualification of Shiksha Shasrti (B.Ed.) and provisional interview was permitted on 14.12.2018 by the learned Single Judge. The challenge in the said case was to the action of the respondent-Commission of not considering candidature of petitioners who were having qualifications of Shiksha Shastri (B.Ed.) as eligible for the post of PGT Sanskrit and also quashing the impugned notice dated 09.12.2018 wherein, the said petitioners had not been called for interview against the advertisement.

19. Acharya candidates and Shiksha Shastri candidates together filed CWP No. 30805 of 2018, Sunita Rani vs. State of Haryana and others and CWP No. 33525 of 2018, Mukesh Kumar and others vs. State of

Haryana and others challenging the essential condition of M.A. Sanskrit provided in Appendix B of the 2012 Rules and also challenging not treating the equivalent examinations as eligible qualification for the post advertised. The claim was based on the ground that the same were in violation of the Rules issued by the Government of India, State of Haryana and Kurukshetra University, University Grants Commission and National Council for Teachers Education. Challenge had also been raised to the notice dated 08.10.2018 being in violation of the order dated 11.09.2017 passed in *Deepak Sharma's case (supra)*. A writ in the nature of certiorari was also prayed for to modify the essential condition of M.A. Sanskrit and B.Ed. to M.A. Sanskrit/Acharya and B.Ed./Siksha Shastri as required in essential condition for appointment to the advertised posts. Resultantly, prayer was made to quash and modify the notification dated 23.06.2017 and to make it operative from the date of enforcement of the main Act i.e. from the year 2012 and for directions to consider the petitioners eligible for appointment to the post of PGT Sanskrit with all consequential benefits.

20. ***COCN No. 239 of 2018, Satish Kumar vs. Smt. Jyoti Arora, Principle Secretary, Department of Higher Education, Government of Haryana and another*** was also filed praying that there was a violation of the order dated 11.09.2017 passed in *Deepak Sharma's case (supra)*. The contempt petition was dismissed on merits on 16.02.2018 by rejecting their claim as such that since an amendment had been made on 23.06.2017, it was with retrospective effect. It was rather held that the petitioners' qualifications of equivalence to the post of M.A. Sanskrit could not be considered for the advertisement which was issued prior to the amendment made in the aforesaid Rules. It was categorically held that the petitioner

ought to have agitated his grievance before the Division Bench qua the prospective application of the amendment and having accepted the said order, the clamour for the retrospectivity could not be acceptable. The said order reads thus:-

“Petitioner has alleged violation of order dated 11.09.2017 (Annexure P-1) passed by Division Bench of this Court, whereby the petitioner was held entitled for benefits for employment.

Learned Counsel for petitioner contends that Haryana Staff Selection Commission had advertised posts of Post Graduate Teacher of “Sanskrit” (“PGT Sanskrit” for short). Petitioner duly applied for the said post and cleared the written examination as well. However, at the time of conducting his interview, the candidature was wrongly rejected by the Commission on the ground that petitioner was not in possession of essential qualification i.e “M.A Sanskrit”. Consequently, petitioner filed CWP No 21770 of 2016 challenging the service rules as well as the clause of the advertisement whereby “M.A in Sanskrit” was made as an essential qualification. The said writ petition was ultimately disposed off alongwith other writ petitions vide order dated 11.01.2017 (P-1), whereby the State accepted the prayer of petitioner and conceded that the equivalent qualifications, as suggested by the expert committee constituted for the purpose of re-examining the qualifications required for the post of PGT Sanskrit, would be considered for the post in question. Since petitioner’s qualification was also held to be equivalent to M.A Sanskrit, therefore petitioner did not agitate his claim further. It is argued that despite the said order having been passed in favor of petitioner, the respondents have not called petitioner

for interview and therefore, the present contempt has been filed as there is willful default on part of respondents by still not considering petitioner eligible for the post of PGT Sanskrit.

I have learned counsel for the petitioner at length and am of the considered opinion that present petition is completely devoid of merit and therefore liable to be dismissed.

On the asking of the Court State has filed a short affidavit, whereby it has been categorically stated that the essential qualification for PGT Sanskrit in the concerned Service Rules i.e Haryana State Education School Cadre (Group B) Service rules, 2012 and Mewat District School Education (Group B) Service Rules, 2012, has been revised vide notification dated 23.06.2017 with prospective effect. Consequently, petitioner's qualifications cannot be considered for the advertisement, which was issued prior to the amendment made in the aforesaid service rules.

In the opinion of this court, petitioner ought to have agitated his grievance before the Hon'ble Division Bench qua the prospective application of the amendment. However, for reasons best known to him, petitioner kept quiet and accepted the decision passed by the Division Bench. Respondents are justified in not considering the petitioner eligible for the post of PGT Sanskrit, which was advertised prior to amendment in the aforesaid Rules of 2012.

In this view of the matter, no contempt is made out against the respondents and accordingly the present contempt petition is hereby dismissed."

21. The writ petitions were decided on 19.12.2018 by the co-ordinate Bench by noting that vide interim order dated 05.08.2016, this Court

had directed to revisit the aspect regarding equivalence of qualifications but the amendment dated 23.06.2017 could not be read retrospectively and was only prospective. A concession was also given by the State of Haryana by the Advocate General, Haryana that fresh advertisement be issued for candidates who would be covered under the Rules. The said relevant observations dated 19.12.2018 read thus:-

“5. It is not in dispute that 626 posts for Post Graduate Teachers (PGT) in Sanskrit were advertised on 28.06.2015 and the petitioners herein were eligible on that date for making application. Due to the litigation, the result of the said selection process could not be declared and thus, large number of posts are lying vacant. Now after the amendment to the Rule as aforesaid, the challenge is that the said amended Rule should be read retrospectively and not prospectively. The contention of the State Government further is that the Rule has been amended prospectively and therefore, there should be no impediment in going ahead with the selection pursuant to the advertisement dated 28.06.2015. The disposal of the writ petition bearing CWP No.24595 of 2015 should thus, be treated as the termination of the litigation. According to Mr. Baldev Raj Mahajan, learned Advocate General for the State of Haryana, the amendment is prospective and not retrospective. Learned Advocate General has made a categorical statement on instructions from the Government that even after said amendment to the Rule w.e.f. 23.06.2017, many posts have become vacant because of retirement and so on and so forth and within a period of 2 months from the result of the selection process pursuant to the said advertisement dated 28.06.2015, such candidates would definitely be

considered in the light of the amended Rule, if they are otherwise eligible as on 28.06.2015 and if in fact, they had applied pursuant to the said advertisement, in which event if they are age barred, they will be granted exemption and considered in the process of selection. To repeat, fresh advertisement will be issued for fresh available posts within a period of 2 months from the date of result of selection process pursuant to the said advertisement dated 28.06.2015.

*6. The submission made by the learned counsel for the petitioners that the insertion of the word 'substituted' in the amendment should necessarily mean retrospectively, is not correct as the Apex Court itself in the case of **Gottumukkala Venkata Krishnamraju versus Union of India and others**, 2018 LawSuit (SC) 866, in Para-14 stated thus:-*

“14. No doubt, in certain situations, the Court having regard to the purport and object sought to be achieved by the Legislature may construe the word “substitution” as an “amendment” having a prospective effect. Therefore, we do not think that it is a universal rule that the word 'substitution' necessarily or always connotes two severable steps, that is to say, one of repeal and another of a fresh enactment even if it implies two steps.....”

7. We, therefore, dispose of these petitions permitting the respondent-Government to go ahead and complete the selection process pursuant to the advertisement dated 28.06.2015 and also declare the result of the selection pursuant to said advertisement. We make it clear that from the date of declaration of such result, fresh advertisement for the vacant posts shall be issued as stated before us. We also make it

clear that those who had applied pursuant to the advertisement dated 28.06.2015 shall not be debarred from consideration on the ground of age limit as stated before us provided they are otherwise qualified and does not have any disqualification.

8. CWP No.30805 of 2018 and CWP No.33525 of 2018 are disposed of in the above terms.”

22. SLP bearing Nos.2931 and 2932 of 2019, Sunita Rani vs. State of Haryana and others were dismissed as withdrawn on 11.02.2019. Accordingly, the result was declared on 01.01.2019 for the posts of PGT Sanskrit (rest of Haryana) since the challenge to the Rules was over before the Division Bench except other litigation pending which was pertaining to the confidential result issue which was subject matter before the Apex Court in ***Haryana Staff Selection Commission vs. Priyanka and others, 2021 (4) SCT 80*** which has been finally decided on 01.09.2021 and the bunch of *Rakesh Kumar's cases*.

23. Resultantly, the Commission recommended only 523 persons who were found eligible for appointment against the 626 posts to appear before the Documentation Verification Committee on 26.02.2019 and 27.02.2019 in pursuance of the result which had been declared. CWP No. 428 of 2019, Sandeep Kumar and others vs. State of Haryana and others then came to be filed wherein, an order of *status quo* was passed on 11.01.2019 regarding the issuance of the appointment letters for the posts of PGT Sanskrit in pursuance of the advertisement dated 28.06.2015. In the said writ petition, the selected candidates as such had not been impleaded as respondents and it was only thereafter when the cases had been clubbed by this Court they filed an application for impleadment on 10.01.2022 and have

been impleaded as applicant Nos.5 to 31. The prayer made in the said writ petition was that the selection being made under the advertisement in question was contrary to the Regulations issued by the National Council for Teachers Education (in short 'NCTE') and that the posts should be re-advertised and the result should be stayed. The petitioners in the said case claim to be having passed qualification of Acharya/M.A. Sanskrit from institutes and universities recognized by the NCTE.

24. The review applications being R.A. Nos.100, 126 and 129 of 2019 in *CWP No. 33525 of 2018, Mukesh Kumar's case (supra)* were dismissed by the Division Bench by holding that the object or the rule does not say it would have retrospective effect in ordinary course and the interpretation made by the Court would be wrong and illegal. The relevant portion of the order dated 27.03.2019 reads thus:-

“7. We have heard learned counsel for the rival parties at length in the present review applications. At the outset, we find that the judgment dated 19.12.2018 under review, was put to challenge before the Apex Court and the SLP was dismissed as withdrawn. Nevertheless, we have heard the learned counsel for the rival parties to find out if there is error apparent on the face of record. It is not in dispute that prior to the amendment w.e.f. 23.06.2017, i.e. the Haryana State Education School Cadre (Group B) Service (Amendment) Rules, 2017, the qualification was not recognized as equivalent qualification. It is for the first time this Court had made order in the form of directions dated 05.08.2016 and steps to make amendment to the Rule were taken by the Government of Haryana which issued notification dated 23.06.2017. The said notification does not say that the amended Rule would

be retrospective in operation. Secondly, we find that the word “substituted” in the amendment was the matter of contest. But then this Court found that the dictum laid down by the Apex Court, in Para 14, of its judgment in the case of Gottumukkala Venkata Krishnamraju versus Union of India and others, 2018 LawSuit (SC) 866, could be applied and therefore, it was held that Rule would be read prospectively. This Court found that there was no equivalence recognized by the Government of Haryana prior to coming into force of amended Rule. The notification amending the Rule does not anywhere say that it would be retrospective. The object sought to be achieved, obviously, was to make equivalence of those from the date when the notification was issued in the wake of order dated 05.08.2016 made for the first time. Thus, taking into consideration the object for which the Rule was amended coupled with the fact that the Rules itself does not say that it would be having retrospective effect in ordinary course, the interpretation was required to be made that it was having prospective effect. We, therefore, made interpretation accordingly. If according to the review applicants, the interpretation made by this Court is wrong and illegal, the same cannot be the matter of error on the face of record as the question of law by making interpretation also considering order/direction dated 05.08.2016 the said direction has been decided by this Court. But then that cannot be the ground for review of the impugned judgment.

8. Not only that it is clear from the judgment under review that the learned Advocate General, Haryana had made a statement, on instructions from the Government, that even after the amendment w.e.f. 23.06.2017, many posts have become vacant and within

a period of two months from the date of result of the selection process, such candidates would definitely be considered in the light of the amended Rule provided they are otherwise eligible as on 28.06.2015, i.e. the date of advertisement and further provided that they had applied pursuant to the said advertisement. The learned Advocate General also made a statement that even if they are age barred, they will be granted exemption. In the light of the above statements, we were satisfied that those who were not before the Court and could be the affected were well taken care of by the Government by making such statements. Accordingly, we took up the said statement and stated thus, in Para 7 of judgment under review:-

“7. We make it clear that from the date of declaration of such result, fresh advertisement for the vacant posts shall be issued as stated before us. We also make it clear that those who had applied pursuant to the advertisement dated 28.06.2015 shall not be debarred from consideration on the ground of age limit as stated before us provided they are otherwise qualified and does not have any disqualification.”

9. The quintessence is that if this Court has made a wrong interpretation by holding the Rule to be prospective rather than retrospective, the same cannot be the ground for review. In the result, we do not think that a case for review is made out as contended by the learned counsel for the review applicants.

10. Hence, RA-CW-100 of 2019 (O&M), RA-CW-126 of 2019 (O&M) and RA-CW-129 of 2019 (O&M) are dismissed. In view of the dismissal of these review applications, applications i.e. CM No.3338-CWP of 2019 IN RA-CW-100 of 2019, CM No.4287-CWP of

2019 in RA-CW100 of 2019, CM No.4275-CWP of 2019
IN RA-CW-126 of 2019 and CM No.4366-CWP of 2019
IN RA-CW-129 of 2019 for impleadment in the
main/original writ petitions are consequently
dismissed.”

25. In CWP No. 428 of 2019, Sandeep Kumar's case (*supra*), though a status quo order was passed with regard to appointment letters to the candidates for the post of PGT Sanskrit on 11.01.2019 but it is pertinent to notice that the result had already been declared on 01.01.2019. Since the matter was pending before the Division Bench in review, the learned Single Judge proceeded to adjourn the matter to await the decision in the review application on 12.03.2019. The order reads thus:-

“The matter is being adjourned to await the
decision in Review Application No. 100 of 2019.

Adjourned to 26.03.2019.

A photocopy of this order be placed on the files
of the connected cases.”

26. Resultantly, thereafter the review application was dismissed on 27.03.2019 as mentioned above and the matter was reserved on 22.10.2019 by the learned Single Judge and thereafter pronounced on 06.11.2019 in Shiksha Shastri matters allowing the writ petitions and setting aside the notice dated 09.12.2018 which had called the candidates who were eligible as per the advertisement. Vide the application for modification filed on behalf of the applicant-respondent No.6 who was also impleaded as such, it was directed that since only 523 candidates had been found eligible for appointment as per the merit list dated 01.01.2019, the application was disposed of on 18.11.2019 with directions that the result be declared afresh by treating the petitioners eligible and the merit list be prepared accordingly

and candidates be appointed as per new merit list consisting of 626 posts and, therefore, consideration was directed for filling up of the vacancies as per the advertisement in question.

27. The matter pertaining to Acharyas was taken up on 06.11.2019 and State was directed to file detailed reply as to whether any candidate has been appointed while treating the qualification of Acharya as equivalent to M.A. (Sanskrit) and stay order dated 11.01.2019 was modified that the candidates who had been selected can be issued appointment letters subject to the final decision. Eventually, the matter was released as part heard on 18.12.2019.

28. Resultantly, LPA Nos. 1928 and 1963 of 2019 came to be filed wherein on 12.12.2019, *status quo* order as it existed was to be maintained. On 11.02.2021, it was noticed that the Government had taken a decision to cancel advertisement No.4 dated 28.06.2015 for category No.16 and also alongwith it the requisition for the 626 posts of PGT Sanskrit, which was the subject matter of litigation. The State had never challenged the judgment of the learned Single Judge but issued a notice dated 10.02.2021 whereby, it chose to cancel the 626 posts which had been advertised. Thereafter on 11.02.2021, on the very next day, it chose to issue fresh advertisement bearing No.1 of 2021 wherein, 534 posts of PGT Sanskrit were advertised for which essential qualifications as per the amendment made on 23.06.2017 which was subject matter of consideration in the earlier litigation. The same had already been upheld as having prospective effect and the claim of retrospectivity had been denied but was made the said essential qualification keeping in view the fact that the Rule as such already had been amended on

that date.

29. The said action as such is subject matter of challenge in *CWP No. 4784 of 2021, Meenu and others vs. State of Haryana and others* and in *CWP No. 11584 of 2021, Sube Singh vs. State of Haryana and others*. The claim of the said persons was that they were among those set of persons who were already on the recommendee list dated 22.02.2019 of the Commission of 523 candidates attached as Annexure P-4/A in CWP No. 11584 of 2021 and figured at Sr. Nos.4, 11, 69, 153 and 214.

30. Keeping in view the above, this Court on 03.11.2021 had stayed the selection process regarding advertisement No.1 of 2021 and that it was not to continue in pursuance to the fresh advertisement. Resultantly, the records of the writ petitions which had been released from part heard by the learned Single Judge were also called for hearing before this Court since the qualification of Acharya to be equivalent to M.A. Sanskrit was also subject matter of consideration. Mr. B.S. Rana, Sr. Advocate has also pointed out from the reply filed by the Government through the Joint Secretary Sh. Vivek Kalia in CWP No. 11584 of 2021 that the stand taken was that on account of the delay as such due to litigation, the fresh advertisement had been issued since the study of the students is being badly effected and Government is unable to finalise the appointments and, therefore, a fresh requisition has been sent to the Commission on 10.02.2021 for selection of 534 candidates.

31. Thus, it has been pointed out on account of the fact that at the time of conclusion of the hearing, somersault has been taken by the Government now by way of filing affidavit of Dr. Anshaj Singh, Special Secretary to Government of Haryana, School Education Department, Haryana that it had never preferred any appeal but on account of

PGT Sanskrit to the extent of 176 and there were vacant posts against the promotion quota which needed to be filled up. Therefore, it was proposing to make promotions to the posts rather than resort to the direct recruitment and the DPC has already been held for promotion for the posts of PGT Sanskrit and 602 candidates had been found eligible.

ARGUMENTS

32. Mr. Gurminder Singh, Sr. Advocate appearing for the appellants in LPA No. 1963 of 2019, accordingly argued that the legal issue had been raised and decided by the co-ordinate Division Benches of this Court and, therefore, the learned Single Judge was not justified in taking a different view and specially once the Division Bench had also settled the issues qua the same advertisement which were no more *res integra*. It was, thus, contended that the foray into the arena by the learned Single Judge was against the principle of stare decisis and binding precedent and would result in disastrous consequences amounting to judicial indiscipline. It was accordingly argued that the issue had already been answered against the equivalence of Shiksha Shastris and the issue of eligibility which is up for consideration was in the teeth of the statutory rules and the learned Single judge was not justified in coming to the conclusion that the Division Bench had not considered the issue in proper prospective. It accordingly amounted to sitting in review over earlier judgment which was decided by the Bench of two Judges and, therefore, it amounted to the Single Judge over ruling the earlier judgment on the same set of facts. It was also submitted tht the rules of game could not be allowed to be changed after the game has started and the notification had already been held to be prospective and having been issued after the date of the advertisement. The learned Single Judge could

not have granted the benefits to persons who had lost the litigation. It is accordingly submitted that the case now being built up that the equivalent degrees were being possessed and the candidates were not being entertained was incorrect. The factual matrix had wrongly been referred to while referring to another certificate from the Kurukshetra University to show that B.Ed. certificates by the said University were different from the ones of Shiksha Shastri. It is, thus, contended that now a contrary argument was being raised and estoppel would apply and, therefore, under Order 2 Rule 2, if an argument had not been made before the Division Bench on an earlier occasion, it could not be adjudicated afresh by the learned Single Judge. It is submitted that the judgments/instructions prior to the 2012 Rules would be of no consequence and not relevant which had been relied upon by the learned Single Judge wherein, the issue was different and was qua the promotion to the post of Headmaster. Once equivalence was not provided in the Rules, the candidates could not claim that they had the prescribed qualification and the earlier judgments passed by the Division Bench could not be said to be *per incuriam* in any manner as the statutory provisions had been duly considered. Reliance upon the instructions which were prior to the Rules of 2012 would be of no help to the candidates once the statutory Rules provided otherwise and the Government was conscious of the same and had amended the Rules which would come into force later.

33. The argument raised by Mr. B.S. Rana, Senior Counsel is that it was a *mala fide* cancellation which affected the selected candidates and who had a vested right in view of Note 1 in the advertisement itself since their rights were accruing from advertisement No.1 of 2014 also. Reliance was

2018, Nidhi Sharma vs. State of Haryana and others wherein, similar action of the State as such had not been appreciated that the State could choose to withdraw the recruitment process without filing any appeals and sit as a silent spectator at the cost of persons who were in the select list. Reliance was also placed upon the judgment in *Director, SCTI for Medical Science and Technology and another vs. M. Pushkaran, (2008) 1 SCC 448* and *Asha Kaul vs. State of Jammu and Kashmir, (1993) 2 SCC 573*. Resultantly, it is submitted that it is an arbitrary action which is not maintainable.

34. Mr. Rajiv Atma Ram, Sr. Advocate, defending the judgment as such submitted that the Division Bench of this Court in *Ram Bhagat Sharma vs. State of Haryana, 1997 (4) SCT 820* had directed that a Committee be appointed which would go into the issue of equivalence and recognition of examination/diploma/certificates and detailed evaluation of various examinations and degrees had to be done and a policy decision had to be taken. Reliance was placed upon the instructions dated 02.11.1999 issued by the Government wherein degree, diploma and certificate examinations of the various universities of the State were to stand recognized for admission and recruitment purposes including the NCTE courses also and that the opinion of the State Universities and School Education Board or the Technical Education Board would be sought while imparting recognition/equivalence to any examination in the State. Similarly, reliance was placed upon the Book of Equivalence of Kurukshetra University and the decision dated 14.10.2015 that the Lal Bahadur Shastri Shiksha Sanskrit Vidyapeeth, New Delhi examination conducted in Acharya was equivalent to

to B.Ed. and Shastri three years with the subject of English was equivalent for the purposes of admission in Post Graduate Courses except Post Graduate Course in English. Resultantly, the minutes of the meeting dated 16.01.2019 of the said university were also stressed upon. It is accordingly argued that the interim order dated 05.08.2016 passed in *Deepak Sharma's case (supra)* directed the Expert Committees being formed and in pursuance of the same, the notification was issued on 23.06.2017 and the Division Bench had disposed of the writ petition on 11.09.2017 with the observation that there was a right for consideration for employment.

35. Accordingly, it was argued that the pleadings in the writ petition before the learned Single Judge was of having B.Ed. from recognized institutions while referring to the certificates and, therefore, they had been called for interview accordingly. Thus, reliance was placed upon the certificates issued by Shri Lal Bahadur Shastri Rashtriya Sanskrit Vidyapeeth on the ground that it was recognized by the NCTE for B.Ed. Similar is the argument raised regarding the certificates issued by the Rashtriya Sanskrit Sansthan, New Delhi to contend that they were deemed universities. Reference was made to the Information Bulletin of the Board of School Education, Haryana issued for the HTET 2012-13 to submit that Clause IV provides the eligibility and persons who were post graduate teachers and fulfilled the minimum qualifications were entitled to sit in the said examination. It is submitted that it was only a nomenclature as such with the Sanskrit sounding works and the degrees which were equivalent as such. Reliance was placed upon various notifications which had already been relied upon by the learned Single Judge dated 12.08.1971, 09.08.1996,

Administration regarding the equivalence issue. Resultantly, it was contended that that State had also realized that the certificates were equivalent and thus amended the Rules. Reliance was placed upon the judgments relied upon by the learned Single Judge in ***CWP No. 1681 of 2002, Ajit Sen vs. State of Haryana and others*** followed in ***CWP No. 16674 of 2006, Bahadur Singh and another vs. State of Haryana*** and the judgments of the co-ordinate Bench passed in *Sunita Rani's case (supra)* and *Mukesh Kumar's case (supra)* were sought to be distinguished that they did not take into consideration the instructions of the Government and the formation of the Committees and reliance was placed upon the judgment in ***State of Sikkim and others vs. Adup Tshering Bhutia and others, (2014) 12 SCC 507***. It was, thus, argued that the amendment as such was only clarificatory and explanatory and was reasonable and, therefore, the learned Single Judge correctly allowed the writ petitions.

36. It was accordingly argued that the State had the power to retrospectively amend the Rules and, therefore, on account of the substitution of the Rules, it amounted to granting it retrospectively. Reliance was accordingly placed upon the judgment in ***Narmada Bachao Andolan vs. State of M.P., AIR 2011 SC 1989, K.S. Panduranga vs. State of Karnataka, AIR 2013 SC 2164*** and ***Dr. Shah Fasil and others vs. Union of India and another, (2020) 4 SCC 1*** that on the earlier occasions, the Division Bench's did not keep the equivalence issue in mind and had wrongly come to the conclusion that the order dated 05.08.2016 was the only occasion as such wherein, the Expert committee had been constituted whereas, it has also been done earlier in *Ram Bhagat's case (supra)*. On the principle of the rules of

would be only applicable if somebody was being excluded and not if the zone of consideration was being widened. Reliance was placed upon the judgment in *State of U.P. vs. Karunesh Kumar, 2019 (4) SCT 47* and *Dr. Sridip Chatterjee vs. Dr. Gopa Chakraborty and others, (2019) 4 SCT 47*. Reliance was also placed upon the judgment in *Nidhi Sharma's case (supra)* decided on 11.05.2022.

37. Mr. Tejpal Singh Dhull, Advocate appearing in the writ petitions submitted that the challenge in the writ petitions was to the withdrawal of notice dated 11.10.2018 wherein, the earlier notice dated 30.09.2018 wherein candidates had been called for interview was subject matter of consideration. He submitted that the petitioners were liable to be considered as duly qualified as they had the requisite post graduate degree in M.A. Sanskrit from the Rashtriya Sanskrit Sansthan and the Lal Bahadur Shastri Sanskrit Universities. Resultantly, he contended that once they were M.As. and merely because the certificates showed the nomenclature as such of Acharya, they were not to be adversely effected. It was contended that they were duly qualified as per the NCTE guidelines for equivalence for post graduate level and the advertisement was not in consonance with the guidelines of NCTE. It was submitted that NCTE had also, in its reply filed in CWP No. 3490 of 2019, admitted the equivalence factor and, therefore, the State was not justified in rejecting their cases. Reliance upon the letter of the Government of India dated 02.10.2013 where the certificates awarded by RSKS as equivalent in as much as to Shastri being equivalent to B.A., Acharya being equivalent to M.A., Shiksha Shastri being equivalent to B.Ed. and Shiksha Acharya being equivalent to M.Ed. was relied upon.

38. In our considered opinion, the following questions would arise for consideration:-

(i) That whether the notification dated 23.06.2017 whereby, the 2012 Rules were amended by substituting the same and having been held to be prospective by the Division Bench for the same advertisement, the learned Single Judge could hold to the contrary and proceed to decide the writ petitions once the select list had already been issued without impleading all the selected candidates?

(ii) Whether instructions issued on an earlier occasion and prior to the Rules of 2012 could have been applied by the learned Single Judge and whether the writ petitioners were estopped from filing repeated litigation on the same issue and carry on parallel proceedings for the same advertisement in question till they were successful and the writ petitions filed by them were liable to be dismissed?

(iii) Whether the action of the State Government would amount to changing the rules after the game had started and by including certain set of persons who were not eligible as per the terms of the advertisement and whether the writ petitions decided earlier could be ignored by the learned Single Judge?

(iv) Whether the State Government is justified to cancel the recruitment process once the select list has been issued without having challenged the orders of the learned Single Judge only on account of the pendency of the litigation?

(v) Whether the candidates of the said select list have a vested right of appointment and cannot be put to any disadvantage on account of the

act of the Court and whether advertisement No.1 of 2021 advertising 534

posts of PGT Sanskrit is liable to be quashed.

OUR FINDINGS ON QUESTION NOS. (i) AND (ii)

39. The advertisement dated 28.06.2015 prescribing the requisite qualifications for PGT (Sanskrit) for the 626 posts as M.A. (Sanskrit) with at least 50% marks and B.A. from a recognized university was issued by the State which was as per the 2012 Rules at that point of time. The candidates had thereafter duly applied and sat in the written test being aware as such of what was the essential qualification and written test had been held on 15.06.2016. Earlier for the advertisement of 2012, CWP No. 24595 of 2015, *Deepak Sharma's case (supra)* had been filed by candidates who had obtained the degrees and claimed themselves to be equivalent to M.A. and from institutes outside the State of Haryana and, therefore, being Acharyas as such, sought equivalence. The prayer was made to modify the condition of M.A. (Sanskrit) to “M.A. (Sanskrit) or its equal” in the 2012 Rules and mandamus was sought to consider them fully eligible for appointment for the post of PGT (Sanskrit). Vide the interim order as such, as reproduced above in Para No.13, directions were issued on 05.08.2016 to take up the matter by the minister incharge or other higher authorities and look into the issue whether the candidates would be rendered ineligible for appointment. The recruitment process was never stayed by the Division Bench and eventually the writ petition was disposed of on 11.09.2017 on account of the fact that the amendment had been notified on 23.06.2017 wherein the necessary benefit had been given to candidates having Acharya, B.Ed./Shiksha Shastri/Language Teachers Course (LTC)/Oriental Training (OT), (Group-C) Shastri and Shiksha Shastri/Language Teachers Course (LTC)/Oriental Training (OT) as being equivalent to the qualification provided under the

Rules. The purpose having been achieved, the writ petitioners were held entitled to the benefit of employment. No observation was made by the Division Bench at that point of time that the recruitment process which was already underway would be adversely effected on account of amendment as such.

40. As noticed, on account of the fact that COCP No. 239 of 2018 was also filed by Satish Kumar whereby he claimed violation of the order of the Division Bench whereby the writ petition had been disposed of. The learned Single Judge of this Court rejected the said contention by passing the detailed order which has already been noticed above in Para No.20, and rejected the claim that there was a retrospective effect of the amendment on 16.02.2018. In spite of that, the state had called ineligible students against the terms of the advertisement vide notices dated 12.09.2018.

41. Resultantly, CWP No. 25958 of 2018, *Saneh Lata's case (supra)* came to be filed, which was disposed of on the statement of counsel for the State on 11.10.2018 as reproduced in Para No.16 that the notice would be issued to candidates who possess the qualification as per advertisement dated 28.06.2015. Thereafter, a fresh round of litigation was initiated in *Rakesh Kumar's case (supra)* in which provisional interview was permitted by the same learned Single Judge who disposed of *Saneh Lata's case (supra)* and which has now eventually been allowed whereas other set of candidates, both from the Acharya's stream and the Shiksha Shastri's stream also filed writ petitions challenging the condition prescribed in 2012 Rules itself and seeking equivalence and also sought retrospective effect to the amendment which had been made.

42. The Division Bench had decided the issue against the said

candidates and held that the amendment was not retrospective and only prospective. The state government had also conceded to the said fact and protected the interests of the candidates to the extent that those who had applied in pursuance to the same would not be debarred from consideration on account of the age limit. The specific claim by the Division Bench regarding the substitution and the retrospective effect was rejected as noticed above on 19.12.2018. The SLP also stood withdrawn on 11.02.2019 by Sunita Rani. Thereafter the issue was again sought to be agitated by way of review application in which the same argument had been raised by Mr. Rajiv Atma Ram, Senior Advocate but rejected by noting that the amendment was prospective and not retrospective. Therefore, it does not lie in the mouth of the senior counsel as such now to contend to the contrary that the degrees as such were equivalent and raise a new argument which had never been raised at that point of time and thus, the candidates as such were estopped from raising the new issue as such.

43. Rather, the learned Single Judge being aware that the matter was pending before the Division Bench had also at that point of time adjourned the decision on 12.03.2019 to await the proceedings in the review application. It was always open to the learned Single Judge to refer the matter to the Division Bench and once the issue has been decided on the same advertisement in question that the amendment was not retrospective, we are of the considered opinion that the learned Single Judge was not correct in taking a view to the contrary while relying upon the instructions of the Government which were prior to the notification of the 2012 Rules. The learned Single Judge was bound by the decision of the co-ordinate Bench and reliance can be placed upon the judgment of the Apex Court in *G.L.*

Batra vs. State of Haryana and others, (2014) 13 SCC 759 wherein, the Apex Court noticed that the co-ordinate Bench also could not overrule the judgment of the learned Single Judge which had already been confirmed by another co-ordinate Bench. It was accordingly held that the matter could only be referred to a larger Bench and the doctrine of merger would apply and it was inadmissible procedure. The relevant portion from *G.L. Batra's case (supra)* read as under:-

“14. We find that the above-mentioned facts were brought to the knowledge of the Division Bench of the Punjab and Haryana High Court when they rendered the impugned judgment but the Division Bench, however, over-ruled the judgment in Ram Phal Singh’s case (supra), which was also affirmed by another Division Bench in LPA No.115 of 2005 vide its judgment dated 19.03.2007. We fail to see how a coordinate bench of the High Court could over-rule a judgment of a learned Single Judge which was already affirmed by another coordinate bench. The Division Bench has committed a serious error of the highest order. The Division Bench should have referred the matter to a larger Bench, if it was in disagreement with the judgment of the learned Single Judge which had already been affirmed by a co-ordinate bench and on the doctrine of merger, the judgment of the Single Judge had merged with that of the Division Bench. Thus, in essence, the Division Bench has overruled the judgment of a co-ordinate bench which is clearly inadmissible. Over and above, it may also be noted that the judgment in Ram Phal Singh’s case (supra) was followed by another coordinate Division Bench of the High Court in M.P. Pandove (supra). Special Leave

Petition (C) No.12336 of 2005 filed against that judgment was also dismissed by this Court. In the impugned judgment, all these aspects are conveniently sidetracked and overlooked.”

44. Similarly in ***Bhargavi Constructions and another vs Kothakapu Muthyam Reddy and others, (2018) 13 SCC 480***, the Apex Court while discussing the law on judicial precedents held that it would not be right in by-passing the law laid down by it by opining that the suit could be filed to challenge the award if it was on the allegations of fraud and thus it would not be correct for the writ Court to decide as to what orders need to be passed on the facts arising in the case. The learned Single Judge has done exactly the same by trying to distinguish the judgment of the Division Bench which on two occasions came to be valid conclusion that the amendment in question as such was prospective and not retrospective and therefore could not be applied to the recruitment process which had already reached to an advanced stage in as much as the list of the appointees had already been forwarded by the Commission to the Government for appointment. Precedents are sated to be the valued and indispensable bedrock, which creates certainty upon which reliance can be placed for institutions and individuals to conduct their affairs, as it plays an indispensable role for promoting stability and is tool steering the continuity of the legal system and the established tenants of law. The effect of not following precedent makes the law uncertain and the result is that two conflicting authorities stand side by side. Without the appointees being made party also, the learned Single Judge ordered *status quo* to be maintained in CWP No. 428 of 2019 filed by Sandeep Kumar with regard to the issuance of the appointment letters to the

candidates on 11.01.2019, in spite of the fact that they had not been arrayed as parties which has led to grave prejudice to them. Reliance can be placed upon the judgment of the Apex Court in ***Khetrabasi Biswal vs. Ajaya Kumar Baral and others, 2004 (1) RSJ 642.***

45. In such circumstances, we are of the considered opinion that the learned Single Judge was incorrect in coming to the conclusion that the qualifications were equivalent as such and the amendment was retrospective. Merely because an argument has not been raised on an earlier occasion, in a subsequent litigation, a fresh argument cannot be raised which has now been sought to be done as per the law laid down by the Apex Court in ***Ambika Prasad Mishra and others vs. State of U.P. and others, (1980) 3 SCC 719.*** It was held that a new novel argument could not permit a Court to reopen a binding precedent, however badly argued, inadequately considered and fallaciously reasoned. Reliance can also be placed upon the judgment in ***Directorate of Settlements A.P. and others vs. M.R. Apparao and another, (2002) 4 SCC 638*** wherein, the Apex Court held that a binding precedent under Article 141 of the Constitution of India could not be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court. The said proposition of law was also noted by the Full Bench of this Court in ***Maharana Pratap Charitable Trust (Regd.) vs. State of Haryana and others, 2015 (1) RCR (Civil) 451***

Relevant portion reads thus:-

“25. *The Court in Ambika Prasad Mishra's case (supra) held that the every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent. The submissions sparkling with creative ingenuity and*

presented with high pressure advocacy, cannot persuade to reopen a binding precedent. It was observed as under:-

"5.....That decision binds, on the simple score of stare decisions and the constitutional ground of [Article 141](#). Every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent. In this view, other submissions sparkling with creative ingenuity and presented with high pressure advocacy, cannot persuade us to reopen what was laid down for the guidance of the nation as a solemn proposition by the epic Fundamental Rights case, (1973)4 SCC 225.

6. It is wise to remember that fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose its authority "merely because it was badly argued, inadequately considered and fallaciously reasoned".[Salmond : Jurisprudence, p 215 (11th Edition). And none of these misfortunes can be imputed to [Kesavanand Bharti v. State of Kerala](#), (1973)4 SCC 225....."

26. In Director of Settlements' case (supra), three Judge Bench held as under:-

"7. So far as the first question is concerned, [Article 141](#) of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law

like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has "declared law" it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An "obiter dictum" as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under [Article 141](#) would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the

notice of the Court.

18. Coming to the last question, Mr Rao vehemently urged that Shenoy & Co. v. C.T.O., (1985)2 SCC 512 requires reconsideration inasmuch as it had not taken into account the various principles including the principle of res judicata. But on examining the judgment of this Court, more particularly, the conclusion in relation to the provisions of [Article 141](#) of the Constitution, and applying the same to the facts and circumstances of the present case, we do not think that a case has been made out for referring Shenoy case (supra) to a larger Bench for reconsideration. On the other hand, we respectfully agree with the conclusion arrived at by the three-Judge Bench of this Court in Shenoy case. In Shenoy the Court was considering the applicability of [Article 141](#) of the Constitution and its effect on cases, against which no appeals had been filed. A law of the land would govern everybody, and the non- consideration of the principle of res judicata will not be a ground to reconsider the said judgment.”

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42. The decision rendered by a Bench of the Supreme Court is binding on the Bench of co-equal strength. However, in the event of any reservation, the matter can be referred to the Larger Bench by a Bench of the equal strength. However, it is the Larger Bench, which can take a view contrary to the view expressed by a Bench of lesser Quorum. But the judgments of the Supreme Court are binding on the High Courts in terms of [Article 141](#) of the Constitution of India. Mere fact that an argument was not raised or reasoning is

fallacious in the opinion of the higher Court or a particular provision of the statute was not specifically noticed by the Bench, is not a ground on the basis of which the binding precedent can be ignored. The proper course for the High Court is to find out and follow the opinion expressed by the Larger Bench in preference to those of the smaller Benches of the Court. The opinion expressed by the Larger Bench is to be arrived at but by not reading a line here and there but on reading of the entire judgment. In case, there is a conflict between the judgments of the co-equal strength Benches of the Supreme Court, both being binding precedents, it is open to the High Court to follow the judgments, which it considers appropriate.

46. A three Judge Bench in ***Official Liquidator and others vs. Dayanand and others, (2008) 10 SCC 1***, wherein the issue of binding precedents was discussed and it was held that a two Judge Bench could not doubt the correctness of the 7 Judge Bench judgment. Reliance can be placed upon the observations of the Apex Court to the following extent which read as under:-

“90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It

must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the judgment lay down the correct law and which one should be followed.”

47. It is a matter of record that for advertisement No.1 of 2012, the said posts had been advertised as per the Rules of 2012, which was subject matter of challenge in *Vikas Sharma's case (supra)* and the writ petition had been dismissed on 20.01.2014 and upheld in LPA No. 1121 of 2014, *Satish Kumar's case (supra)* orders have been reproduced in Para No.9. Another writ petition i.e. *Shiv Kumar's case (supra)* had been decided by the learned Single Judge who had further relied upon the judgment in *Satish Kumar's case* and repelled the said argument of equivalence. Though the Division Bench had directed the formation of the Expert Committee vide order dated 05.08.2016 in *Deepak Sharma's case (supra)* after the advertisement dated 28.06.2015 had been issued but the recruitment process was never halted at any point of time. The said writ petition had been disposed of on 11.09.2017 on the ground that the necessary benefit had been granted of equivalence which would enable the writ petitioners for the benefits of employment but it was not directed that the same would be applicable to the recruitment process which was already underway. Thereafter the another learned Single Judge in the contempt proceedings in *Satish Kumar's case (supra)* rejected the claim that they were liable to be considered for the said advertisement in question as the amendment was made post the advertisement and once the recruitment process was underway. Thereafter, the Division Bench specifically held in

Sunita Rani's case (supra) that the amendment was prospective and not retrospective and the matters were going on side by side and the learned Single Judge had even deferred the hearing to await the decision in the review petition which was also dismissed but preferred to take a different view and tried to distinguish the judgment of the learned Division Bench, which we find is not permissible in view of the principle of binding precedent as such. The learned Single Judge while placing reliance upon the instructions failed to notice the fact that the said instructions were issued prior to the new Rules of 2012 coming into force and, therefore, until the Rules were quashed, the instructions could not prevail over the statutory Rules. We accordingly find that the writ petitioners were estopped from filing repeated litigation on the same issue and to carry on parallel proceedings against the same advertisement in question. Rather, as noticed, without impleading the selected persons, the select list was subject matter of challenge and the order of *status quo* on the issuance of the appointment letters on 11.01.2019 could not have been passed as the selected candidates had a vested right and could not be put to any disadvantage and denied the benefit of appointment.

48. It is settled principle that instructions as such cannot be contrary to the statutory Rules and are only for filling up the yawning gaps, if any, in the provisions and, therefore, the heavy reliance upon the same by the learned Single Judge would go contrary to the statutory Rules which were binding. In *Union of India and another vs. Ashok Kumar Aggarwal, (2013) 16 SCC 147*, the said position in law was noted by keeping in mind the observations made by the Constitutional Bench in *Sant Ram Sharma vs.*

supplement the statutory Rules but cannot supplant them and have to be subservient to the same and the same instructions cannot be inconsistent with the Rules already framed and, therefore, the reliance upon the said instructions was without any basis.

48.A Rather by not deciding the Acharya matters which were also pertaining to the same post and by issuing interim directions on 18.12.2019 kept the appointments to be made in a state of void, by directing that candidates who had been selected would be issued appointment orders subject to final decision. Thus, this was in contradiction to the directions issued earlier in the Shiksha Shastri matters wherein 626 persons were to be appointed as per new merit list. Rather, it was the duty of the State to seek clarification at this point of time rather than cancel the whole recruitment process.

49. Resultantly, question Nos.(i) and (ii) are answered in favour of the appellants while holding that the learned Single Judge, on the same issue, could not take a different view by distinguishing the judgments of the learned Division Bench which were binding and secondly, the writ petitioners could not be allowed to carry on parallel proceedings in the form of repeated litigation and to get stay orders against the selected candidates without impleading them.

OUR FINDINGS ON QUESTION NO. (iii)

50. Though the State has itself been defending the recruitment process before the learned Single Judge but the learned Single Judge failed to notice that by the amendment introduced, the Advocate General had given a concession before the Division Bench that the persons who had applied were

affected and not having requisite qualifications at the time of the

advertisement would be given an opportunity. The effect of the order of the learned Single Judge would thus amount to altering the rules of the game once the game had started. The persons who were not eligible could not be made eligible after the advertisement and specially in view of the fact that the question of law had already been decided against them not on one occasion but on two occasions by the Division Benches.

51. The said view was taken in ***N.T. Devin Katti and others vs. Karnataka Public Service Commission, 1990 (3) SCC 157*** that if the process of recruitment had already commenced and the Government order had been issued subsequently on 09.07.1975 then on amendment of Rules during the pendency of the selection, unless the amended Rules are retrospective in nature, the same had to be completed under the old Rules and, thus, earlier view as such was followed.

52. Reliance can be placed upon the judgment in ***Parmender Kumar and others vs. State of Haryana and others, (2012) 1 SCC 177*** which was the case pertaining to admission for the post graduate courses. It was held that if Government orders were already in force when the prospectus was published, it would have a bearing on the admission process but once the results had been declared and the select list prepared, it was not open to the State to alter the terms and conditions just a day before counselling to deny the candidates who had already been selected.

53. In the present case, as noticed, the select list had already been issued of 523 candidates and by virtue of the order of the learned Single Judge, the said list has been set aside and 626 persons who have been held to be having equivalent qualifications are to be given appointment and,

therefore, the judgment would as such be applicable and the argument raised

that it has widened the field of consideration is without any basis as ineligible candidates have been made eligible. Reliance can also be placed upon the judgment in *Karunesh Kumar's case (supra)* whereby, it was held that the rule cannot be brought in to disqualify a candidate to participate in the selection process and the principle would not have any application of the change in respect of the selection process but could not be applied to the qualification or eligibility which has resulted by virtue of the impugned order. The relevant portion from *Karunesh Kumar's case (supra)* reads thus:-

“32.The respondents have also placed reliance on the decision of this Court in the case of K. Manjusree (supra). However, in our considered view, the facts of the aforesaid decision are quite different from the present case. A change was introduced for the first time after the entire process was over, based on the decision made by the Full Court qua the cut off. Secondly, it is not as if the private respondents were non- suited from participating in the recruitment process. The principle governing changing the rules of game would not have any application when the change is with respect to selection process but not the qualification or eligibility. In other words, after the advertisement is made followed by an application by a candidate with further progress, a rule cannot be brought in, disqualifying him to participate in the selection process. It is only in such cases, the principle aforesaid will have an application or else it will hamper the power of the employer to recruit a person suitable for a job.”

54. Thus, we are of the considered opinion that by allowing the writ petition, the rules having been changed after the advertisement could not

have been pressed into service by the learned Single Judge to give the benefit as such to the writ petitioners and the judgment as such cannot sustain on this ground.

OUR FINDINGS ON QUESTION NO.(iv)

55. The action of the State Government as such to cancel the recruitment process once the select list had been issued without having challenged the orders of the learned Single Judge only on account of the pendency of the litigation also cannot as such be appreciated in any manner. Apparently, the State Government had contested the matter before the learned Single Judge but never challenged the judgment and, therefore, its decision dated 10.02.2021 where it chose to cancel the 626 posts apparently on account of the pendency of the litigation was unwarranted for. On very next day i.e. On 11.02.2021, it chose to issue fresh advertisement wherein 534 posts were advertised and the essential qualifications were changed to the extent to bring it in consonance with the amendment made on 23.06.2017 which was already subject matter of the present appeals and the State had already successfully defended it before the co-ordinate Bench. Rather, a concession had also been given by the Advocate General, Hayana that a fresh advertisement would be issued protecting the interests of the others who had applied earlier and since more posts would fall vacant on account of the retirement and the candidates were to be considered in the light of the amended Rule as eligible on 28.06.2015, the date of the advertisement. Benefit was also to be granted if they were age barred and they were to be granted exemption and considered in the process of selection and the same was to be done within a period of 2 months from the date of the result of the selection process. Thus, once the result was declared and was subject matter

of litigation, the same could not be cancelled at the detriment to the persons who were already in the select list. Reliance can be placed upon similar controversy which arose in *LPA No. 1861 of 2018, Nidhi Sharma and others vs. State of Haryana and others (supra)* wherein, the issue as such was regarding the English (Compulsory) being equivalent to English (Optional) for the post of PGT (English). It was also noticed that the recruitment process was at an advanced stage and candidates had been called for scrutiny in pursuance of the written examination and, therefore, to withdraw the recruitment process for PGT English was not justified in the facts and circumstances once the appeal had not been preferred against the order of the learned Single Judge. It was also noticed that on account of an act of the Court, no prejudice should be caused to any person as per maxim “*Actus Ciriae Neminem Gravabit*” and the fact that it would be an arbitrary action of the State. The relevant portion in *Nidhi Sharma's case (supra)* reads thus:-

“It is also to be noticed that the candidates who had applied in pursuance of the said advertisement have given the written examination and had been called for scrutiny and the recruitment process was at an advanced stage. The action of the State to withdraw the recruitment process for the posts of TGT English vide the communication dated 22.02.2021 is not justified in the facts and circumstances, specially once it itself had not preferred any appeal against the order of the learned Single Judge. It is to be noticed that this Court is faced with a barrage of the service litigation right from the point of time an amendment is made in the service Rules till advertisement is issued for filling up posts and the selection process is finalized. If the State is to sit as a silent spectator and withdraw the

advertisements as such without having opted to challenge the order in accordance with law, its action can be termed as highly arbitrary. It would lead to unfettered litigation resulting in scuttling the recruitment process and leaving many candidates high and dry as the fresh advertisement after a period of 5 or 7 years would entail many of them have become ineligible to apply.

*It is settled principle that the act of Court is to prejudice no person as per the maxim “Actus Curiae Neminem Gravabit”. Merely because at one stage there was a stay of the recruitment process, would not be a ground as such to withdraw the recruitment notice to the prejudice of concerned. It is the duty of the State to defend the litigation and by taking appropriate steps rather than resort to scuttling the process. Reliance can also be placed upon **South Eastern Coalfields Ltd. Vs. State of M.P. (2003) 8 SCC 648** and **Mohammed Gazi Vs. State of M.P. 2000(4) SCC 342** apart from the celebrated judgment of the Apex Court in **Karnataka Rare Earth and another Vs. Senior Geologist, Department of Mines & Geology and another (2004) 2 SCC 783**. The relevant portion 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.”

*It is also settled principle that candidates have no vested right of appointment and reliance can be placed upon the law laid down by the Apex Court in **Shankarsan Dash vs. Union of India, 1991 (3) SCC 47** wherein, it was held that they do not have any indefeasible right to be appointed. The caveat was that the State does not have a license to act in an arbitrary manner and there has to be bona fide reasons why vacancies are not being filled up. As noticed, posts of TGT English are subject matter of consideration. It is in the interest of the State as such to ensure that the vacancies are filled up at the earliest in view of the fact that the cause of action is to be seen at the time when the advertisement was issued and the requirement at that*

point of time.

*Merely on account of pending litigation, the State cannot wriggle out of the invitation given to the candidates once it is at an advanced stage. The action as such on account of the fact that litigation had ensued and which was not even decided as such but defended by the State before the learned Single Judge cannot be a ground for withdrawal of the said advertisement. Reliance can be placed upon the judgment of three Judgment Bench of the Apex Court in **P. Mahendran vs. State of Karnataka, 1990 (1) SCC 411** wherein, the appeal was allowed and directions were issued to make appointments to the posts of Motor Vehicle Inspectors. The issue before the Apex Court was that merely because there was an amendment as such in the Rules and the process of selection could not be completed on account of interim orders, the amendment could not be held to be with retrospective effect and the right of the candidates on the date of making the appointment as well as on the date of scrutiny by the Commission once they had qualified for appointment had to be kept in mind and the same could not be defeated on that account. The relevant portion reads thus:-*

“In view of the above the appellants' selection and appointment could not be held as illegal as the process of selection had commenced in 1983 which had to be completed in accordance with law as it stood at the commencement of the selection. The amended Rule could not be applied to invalidate the selection made by the Commission. Strangely the Tribunal did not follow the latest authority of this Court as laid down in Calton's case, on the ground that the view taken in that case was contrary to the Constitution Bench

decision of this Court in State of Andhra Pradesh v.T. Ramakrishna Rao, [1972] 2 SCC 830. We have carefully considered the decision but we do not find anything therein contrary to the view taken in Calton's case.”

56. Resultantly, merely because the order of the Division Bench dated 05.08.2016 had suggested that an Expert Committee be set up and the matter be looked into, it would not as such give rise to the fact that the recruitment process which was mid stream would have to be tinkered with. Resultantly, when the case was disposed of finally on 11.09.2017, no such directions were issued and, therefore, it was not justified for the State Government to cancel the recruitment process. It has been rightly pointed out that all along the State has been opposing the plea taken by the writ petitioners and never as such had at any stage taken the plea that there were surplus posts of PGT Sanskrit. Even during the course of arguments and finalization of the pleadings from 03.11.2021 when stay had been granted of the selection process regarding advertisement No.1 of 2021 not to proceed with the fresh advertisement, this Court had never been apprised as such that the posts were surplus in any manner. It is, thus, submitted that it is only once the matters were being argued on a day-to-day basis, the written statement has now been filed by the Joint Secretary. The right as such had accrued to the candidates at the time when the advertisement was issued and the litigation had been initiated and, therefore, the affidavit which has now been filed by the State whereby the total somersault has been taken that they are planning to fill up the posts by way of promotion is in contradiction to the concession also which was given by the Advocate General before the Division Bench. It is, thus, such a non-tenable stand of the State which now

cannot be accepted at this stage.

OUR FINDINGS ON QUESTION NO. (v)

57. It is settled principle that normally there is no right of appointment and selected candidates have no right to seek writ in the nature of mandamus directing their appointments subject to the action of the State being examined on account of the arbitrariness in view of the principle laid down in *Shankarsan Dash's case (supra)*, the relevant portion of which has already been referred above while considering question No.(iv).

58. In the present case, as noticed, the respondent-Commission had already sent a list of 523 candidates against the 626 posts finding them eligible and the selection process was complete to that extent and, therefore, the candidates had a vested right to claim that they should be given appointments and their rights could not have been jeopardised without even impleading them as parties, as noticed above. Their right was continuing since the year 2014 in view of Note-I in the advertisement, as noticed above, and therefore, the writ petitions filed by them are very much maintainable for enforcement of their legal rights as it is settled principle that a writ of mandamus can be issued where there is a statutory right or a legal right which the writ Court can enforce. Reliance can be placed upon the judgment in *M. Pushkaran's case (supra)* wherein, an advertisement had been issued for the post of Security Guards against the 3 permanent posts. The writ petitioner had approached the High Court and the learned Single Judge had failed to interfere in the decision of the management which was wanting to fill out one of the posts thereafter on contractual basis. The Division Bench as such noticed that there was existence of a vacancy and accordingly, an argument that the selectees do not have any legal right of appointment on the

ground of a bona fide action on the part of the State was repelled by holding that there were 3 posts vacant and the decision to abolish the posts had not been taken when the writ petition had been filed. The relevant portion in *M. Pushkaran's case (supra)* reads thus:-

“16. It is, therefore, evident that whereas the selectee as such has no legal right and the superior court in exercise of its power of judicial review would not ordinarily direct issuance of any writ in absence of any pleading and proof of mala fide or arbitrariness on the part of the employer. Each case, therefore, must be considered on its own merit.

17. In All India SC & ST Employees' Association and Another v. A. Arthur Jeen and Others, 2001(2) SCT 737 : [(2001)6 SCC 380], it was opined :

"10. Merely because the names of the candidates were included in the panel indicating their provisional selection, they did not acquire any indefeasible right for appointment even against the existing vacancies and the State is under no legal duty to fill up all or any of the vacancies as laid down by the Constitution Bench of this Court, after referring to earlier cases in Shankarsan Dash v. Union of India.

[See also Malkiat Singh (supra), Pitta Naveen Kumar and Others v. Raja Narasaiah Zangiti and Others, 2006(4) SCT 320 : (2006)10 SCC 261, State of Rajasthan & Ors. v. Jagdish Chopra, 2007(4) SCT 188 : 2007(10) SCALE 470, Union of India & Others v. S. Vinodh Kumar & Others, 2007(4) SCT 479 : 2007(5) RAJ 610 : 2007(11) SCALE 257 and State of M.P. & Ors. v. Sanjay Kumar Pathak & Ors., 2007(4) SCT 616 : 2007(12) SCALE 72]

18. *The application of law would, therefore, depend upon the fact situation obtaining in each case. The judgment of the High Court in view of the aforementioned authoritative pronouncements cannot be said to be perverse. The respondent was to be offered with the appointment at a point of time when no policy decision was taken. There was, thus, no reason not to offer any appointment in his favour. Why the select panel was ignored has not been explained. Even the purported policy decision was not in their contemplation. We, therefore, do not see any reason to interfere with the impugned judgment.*

19. *Furthermore, the respondent is an ex-serviceman. He in ordinary case should have been offered appointment particularly when three posts were vacant. The decision to abolish posts was not taken at a point of time when he had filed the writ petition. It was expected that on 16.06.2005 when the third candidate refused to join the post, he should have been offered the same.*

20. *The policy decision to abolish the posts as also contracting out the security services was taken by the appellant much thereafter, viz., on or about 29.12.2005. We are, therefore, of the opinion that it is not a fit case where we should interfere with the impugned judgment. The appeal is dismissed. No costs. Appeal dismissed."*

59. Similarly, in *Asha Kaul's case (supra)* the issue was regarding the setting aside of the judgment of the learned Single Judge pertaining to the publication of the select list of the District Munsif. The Public Service Commission had prepared and recommended a select list. It was accordingly held that the Government had no power to sit in judgment and the action was

arbitrary and capricious. Resultantly, not approving the 7 names in the select list but giving appointments to the others was held to be not sustainable and only on account of the fact that there was a delay in approaching the High Court for 20 months, the benefit of appointment was not granted by the Apex Court. The relevant portion in *Asha Kaul's case (supra)* reads thus:-

“7. Construed in the above light, Rule 39, in our opinion, does not confer an absolute power upon the government to disapprove or cancel the select list sent by the public service commission. Where, however, the government is satisfied, after due enquiry that the selection has been vitiated either on account of violation of a fundamental procedural requirement or is vitiated by consideration of corruption, favouritism or nepotism, it can refuse to approve the select list. In such a case, the government is bound to record the reasons for its action, and produce the same before a Court, if and when summoned to do so, apart from placing the same before the Legislature as required by clause (2) of [Article 323](#). Indeed, clause (2) of [Article 323](#) obliges the Governor of a State to lay a copy of the annual report received from the commission before the Legislature "together with a memorandum explaining, as respect the cases, if any, where the advice of the commission was not accepted (and) the reasons for such non-acceptance." Evidently, this is meant as a check upon the power of the government. This provision too militates against the theory of absolute power in the government to disapprove or reject the recommendations of the commission. For the same reason, it must be held that the government cannot pick and choose candidates out of the list. Of course, where

in respect of any particular candidate any material is discovered disclosing his involvement in any criminal activity, the government can. always refuse to appoint such person but this would not be a case touching the select list prepared and recommended by the commission. It is equally not open to the government to approve a part of the list and disapprove the balance. In this case, it may be remembered that the government itself had asked for a list of twenty and the commission had sent a list of twenty. (we are not concerned with the waiting list sent by the commission, at this stage). It could not have been approved in part and rejected in part. The number of vacancies available on the date of approval and publication of the list is not material. By merely approving the list of twenty, there was no obligation upon the government to appoint them forthwith. Their appointment depended upon the availability of vacancies. A reading of Rule 41 makes this aspect clear. The list remains valid for one year from the date of its approval and publication. If within such one year, any of the candidates therein is not appointed, the list lapses and a fresh list has to be prepared. In this case, no doubt, a number of complaints appears to have been received by the government about the selection process. We have seen the note file placed before us. It refers to certain facts and complaints. But if the government wanted to disapprove or reject the list, it ought to have done so within a reasonable time of the receipt of the select list and for reasons to be recorded. Not having done that and having approved the list partly (thirteen out of twenty names) they cannot put forward any ground for not approving the remaining list. I indeed, when it

approved the list to the extent of thirteen, it ought to have approved the entire list of twenty or have disapproved the entire list of twenty. The objection, the government have pertains to the very process of selection i.e., to the entire list, and not individually to any of the remaining seven candidates.

60. In the present case, as noticed, once the select list had been forwarded to the Government, the rights of the selected candidates could not have been adversely effected by cancelling the advertisement as noticed in question No.(iv) above and, therefore, the candidates had a vested right as such to press for the relief of appointment and contend that the action in cancelling the recruitment process was arbitrary in the absence of the State choosing to file any appeal. Thus, the candidates had a vested right at the time the litigation was initiated being on the select list when the names had been forwarded by the Commission and now the State cannot take the stand that the posts are surplus. Even otherwise, only 523 persons have made the cut against the 626 posts advertised. Resultantly, it is held that the writ petitions are maintainable on behalf of the selected candidates. Accordingly, the present bunch of cases are disposed of with the following directions:-

(1) LPA Nos. 1928 and 1963 of 2019 and LPA Nos. 3 and 84 of 2020 are allowed and the judgment of the learned Single Judge dated 06.11.2019 and as modified on 18.11.2019 is set aside and the 56 writ petitions in those cases are dismissed.

(2) Similarly, CWP No. 1251 of 2019 wherein the petitioners had not been appointed in spite of being selected by the Commission as per the result dated 01.01.2019 and CWP Nos.4784, 11584 and 21265 of 2021 are allowed and the notice dated 10.02.2021 cancelling the advertisement No.4

dated 28.06.2015 for category No.16 for the post of PGT Sanskrit and challenging the notices dated 09.12.2018 whereby their names had been deleted for the purpose of interview and the subsequent advertisement issued dated 10.02.2021 notifying the recruitment of 534 posts is quashed and the respondents shall fill up 523 posts as per the recommendation of the Commission.

(3) Similarly, challenge to the non-consideration for the posts of PGT Sanskrit through CWP Nos. 32097, 32098, 32220, 32136 and 37588 of 2018 and CWP Nos. 428, 3490 and 7649 of 2019 is repelled keeping in view the fact that question No.(ii) has already been decided against them as parallel proceedings could not be allowed to be continued and their claim for re-advertising the posts of PGT Sanskrit against advertisement No.4 of 2015 is repelled.

61. After completing the recruitment process of the 523 candidates, it will be open to the State to issue fresh advertisement in terms of the concession given on an earlier account on 19.12.2018 before the Division Bench in *Sunita Rani's case (supra)*.

(G.S. SANDHAWALIA)
JUDGE

12.01.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes
Yes