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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 422/2025 and CM APPL. 39491/2025

SHIVA RATHOUR

.....Appellant

Through: Mr. Sourbh Ahuja, Advocate.

versus

UNION OF INDIA AND ORS

.....Respondent

Through: Ms. Anju Gupta and Mr. Bhuvan
Goel, Advs. for R-1/UoI.

Mr. M.A. Niyazi and Ms. Nehmat
Sethi, Advocates for R-2.

Ms. Kirti Bhardwaj, Advocate for
CBSE/R-4 to 6.

Mr. Vipin Kumar, Joint
Commissioner (VC).

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+ LPA 443/2025 and CM APPL. 41862/2025, CM APPL. 50909/2025

NATIONAL EDUCATION SOCIETY FOR TRIBAL STUDENTS

.....Appellant

Through: Mr. M.A. Niyazi, Ms. Anamika Ghai,
Ms. Kirti Bhardwaj, Ms. Nehmat
Sethi and Mr. Adnan, Advocates.

versus

RAHUL KUMAR YADAV AND ORS

.....Respondent

Through: Mr. A.K. Behra, Sr. Advocate with
Mr. Sourbh Ahuja, Advocate.

Mr. Vipin Kumar, Joint
Commissioner (VC).

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV



ORDER

26.11.2025

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1. The instant appeals have been filed assailing the impugned order dated 28.04.2025 passed by the learned Single Judge, one bearing LPA No. 422/2025 filed by Mr. Shiva Rathour, a candidate and the other one bearing LPA No. 443/2025 filed by the National Education Society for Tribal Students/ appointing authority.

2. Vide the aforesaid order of learned Single Judge, one Mr. Rahul Kumar Yadav was ordered to be granted appointment out of numerous petitioners of the Writ Petition and the appellant in the present **LPA No. 422/2025** (who was one of the petitioners in the said writ petition) also seeks appointment. It will not be out of place to reproduce the prayers sought by the appellant, which are as follows:

- a. Allow the instant Appeal. And*
- b. Quash and set aside the order dated 28.04.2025 (to limited extent qua the appellant) passed by the Single Judge of this Hon'ble Court in W.P.(C) No. 2546 of 2025. And*
- c. Quash and set aside Communication / letters / orders dated 27.01.2025 qua the appellant. And*
- d. Direct the respondents to consider the appellant's candidature as his merit and if he is found 'FIT', 'ELIGIBLE' and 'SUITABLE' then he should be appointed as TGT (Maths) with all consequential benefits viz. Seniority, Promotion, Pay and Allowances etc. And*
- e. Award cost in favor of the Appellant and against the respondents. And/or*

3. Whereas, the appellant in LPA No. 443/2025 has sought relief in the following prayers:

- 1. Set aside the order dated 28.04.2025 passed in W.P.(C)*



2546/2025 to the extent it directs appointment of Respondent No. 1, Rahul Kumar Yadav;

2. Dismiss the Writ Petition, W.P.(C) 2546/2025 titled Rahul Kumar Yadav & Ors. v. UOI & Ors;

4. Pursuant to order passed by us on 06.11.2025, respondent Nos. 2 and 3 have filed a categorical affidavit, indicating therein that the candidates, namely, Rahul Kumar Yadav and Shiva Rathour secured 74.50 marks in the first result, whereafter, on revision of the result, which was done *suo motu* by the respondent No. 2 itself, their marks got increased to 75.75. Then came the decision in the case being **W.P.(C) 14638/2024** titled **Vinay Kumar v. Union of India & Ors.**, whereafter their marks remained at 75.75
5. Learned Single Judge allowed writ petition being Writ Petition No. 2546/2025 *qua* Rahul Kumar Yadav, however, writ petition *qua* Shiva Rathour (the appellant herein), was dismissed.
6. It was argued by learned counsel for the appellant that the respondent's stand that pursuant to the third result, the cut-off was increased to 76 marks, is wholly untenable and an attempt to deprive him from his right inasmuch as learned Single Judge in the case of **Vinay Kumar(supra)** had categorically held that the revision of marks will be confined to only **Vinay Kumar (supra)** and not to others. He added that the action on the part of the respondents in checking the answers and revising the result of all the candidates *qua* question No. 104, Set-P, was illegal and contrary to the judgment of this Court in case of **Vinay Kumar (supra.)** He argued that there could not have been any increase in the cut-off marks (from 75.75 to 76).
7. Learned counsel further submitted that since the appellant had secured



74.50 marks as per the cut-off marks of the first list whereafter, his marks increased to 75.75, the appellant should have been declared successful and given appointment.

8. On the previous date of hearing, this Court had directed the respondents to file affidavit, while observing thus:-

*“During the course of submissions, learned counsel for the Respondent Nos. 2 and 3 submitted that during the pendency of the writ petition before the Rajasthan High Court, the Respondents at their own have revised the result qua the question which was under challenge therein, though said writ petition is pending before the Rajasthan High Court. He added that after the decision of this Court in **Vinay Kumar v. Union of India & Ors.** in W.P.(C) 14638/2024, the result was again revised qua the other question, however, for all the candidates.*

*Learned counsel for Respondent Nos. 2 and 3 argued that though the result has been revised, but in view of the clear stipulation made in the case of **Vinay Kumar (supra)**, that such direction shall apply only qua the petitioner in the said case, the appellant in the present case cannot claim any benefit despite of the revision of marks.*

Learned counsel further argued that, in any case, the cut off marks secured by the appellant in the first result, second result and in third result are less than the respective cut-off marks.

In order to make the position clear, Respondent Nos. 2 and 3 are directed to file a categorical affidavit about the marks secured by all the three appellants in each of the result and the respective cut off marks.”

9. Mr. M.A. Niyazi, learned counsel for respondent Nos. 2 and 3 submitted that it was the first recruitment undertaken by the respondent Nos. 3 and it being their first experience, there were certain errors and omissions in preparation of the result, which gave rise to some litigation.

10. Learned counsel submitted that now on 19.09.2025, a fresh advertisement has been issued by respondent Nos. 2 and 3 and the examinations are scheduled to be held on 13.12.2025. He also submitted that respondent Nos. 2 and 3 quite understand the concern expressed by the



Court and the appellant Shiva Rathour.

11. Heard learned counsel for the parties. According to us, learned Single Judge was not justified in non-suiting the appellant/Shiva Rathour, on the ground that the cut-off marks of his category, i.e. in OBC, got increased to 76 marks. Since, in light of the judgment in **Vinay Kumar (Supra)**, the adjudication made therein was meant to be confined only to the petitioner-Vinay Kumar, the respondents could not have given effect to the correction of the above-referred question number 104, set-P in the result of all other candidates.

12. That apart, considering the fact that the cut-off, according to the respondents got increased to 76 marks, but the same was not actually acted upon, as it would have led to correction of results for those candidates, who were already appointed, we are of the view that the appellant/Shiva Rathour, has a case-worth acceptance.

13. In any case, he having secured 74.50 marks at the first instance which were equal to the cut-off marks and the fact that 23 vacant seats were required to be filled by operating waiting list/reserve list or at least by calling the persons who were having marks equal to the cut-off.

14. We are told that no other candidate except Shiva Rathour has preferred Letters Patent Appeal or any other writ petition.

15. The appeal is therefore allowed.

16. The impugned order of learned Single Judge dated 28.04.2025 is set aside *qua* Shiva Rathour.

17. Appeal *qua* Rahul Yadav stands disposed of in terms of the order above.

18. Our acceptance of the appeal is guided by the fact that the appellant



had preferred the present appeal in May 2025, much prior to the third revision and issuance of the subsequent advertisement (which was issued on 19.09.2025).

19. Needless to observe that the adjudication made herein shall remain confined to Shiva Rathour, (the appellant herein) and shall not be a precedent in any manner, because now, a new advertisement has been issued.

20. LPA No. 422/2025 filed by Shiva Rathour is allowed, while LPA No. 443/2021 preferred by National Education Society for Tribal Students/ appointing authority is rejected. All interlocutory, application is disposed of.

21. The appellant Shiva Rathour as well as Rahul Kumar Yadav will have to get their documents verified and undergo medical examination in accordance with law and they shall be given appointment only if they are otherwise eligible.

22. It shall be required of the respondents to intimate the date of document verification and medical examination to both the candidates well in advance. The entire process pursuant to the recruitment dated 18.08.2023 stands concluded accordingly.

DINESH MEHTA, J.

VIMAL KUMAR YADAV, J.

NOVEMBER 26, 2025/MR