

Neutral Citation No. - 2024:AHC:5922

AFR

Reserved on 09.01.2024

Delivered on 12.01.2023

Court No. - 36

1. Case :- WRIT - A No. - 17129 of 2023

Petitioner :- Vinay Kumar Pandey And 9 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Agnihotri Kumar Tripathi

Counsel for Respondent :- C.S.C.,Archana Singh

2. Case :- WRIT - A No. - 19784 of 2023

Petitioner :- Ashok Maurya And 4 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Ashutosh Tiwari

Counsel for Respondent :- C.S.C.

3. Case :- WRIT - A No. - 21232 of 2023

Petitioner :- Mohammad Imran Siddiqui

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Dinesh Kumar Singh

Counsel for Respondent :- C.S.C.,Archana Singh

4. Case :- WRIT - A No. - 19965 of 2023

Petitioner :- Shree Prakash Shirvastava And 12 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Utkarsh Pandey

Counsel for Respondent :- C.S.C.,Archana Singh

5. Case :- WRIT - A No. - 19768 of 2023

Petitioner :- Satya Prakash Singh

Respondent :- State Of U.P. And 2 Others

**Counsel for Petitioner :- Sumit Kumar,Neelabh Srivastava,Vijai
Kumar Singh**

Counsel for Respondent :- C.S.C.,Archana Singh

6. Case :- WRIT - A No. - 18086 of 2023

Petitioner :- Vinay Kumar Pandey And 31 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Hemant Kumar,Deeksha Gupta

Counsel for Respondent :- CSC,Archana Singh

7. Case :- WRIT - A No. - 17994 of 2023

Petitioner :- Ram Prasad Vishwakarma And 50 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Indresh Dubey,Sr. Advocate

Counsel for Respondent :- CSC,Archana Singh

8. Case :- WRIT - A No. - 18812 of 2023

Petitioner :- Rahul Kesarwani And 104 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Jamil Ahmad Ansari,Sushil Kumar
Pandey

Counsel for Respondent :- C.S.C.,Archana Singh

9. Case :- WRIT - A No. - 18017 of 2023

Petitioner :- Ram Prakash Mourya And 218 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Jamil Ahmad Ansari,Rameshwar Prasad
Mishra

Counsel for Respondent :- CSC,Archana Singh

10. Case :- WRIT - A No. - 18671 of 2023

Petitioner :- Rajendra Kumar Narula And 7 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Agnihotri Kumar Tripathi

Counsel for Respondent :- C.S.C.,Archana Singh

11. Case :- WRIT - A No. - 20101 of 2023

Petitioner :- Vinay Kumar Pandey

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Pradeep Kumar Tiwari,Ravindra
Prakash Srivastava

Counsel for Respondent :- CSC,Archana Singh

12. Case :- WRIT - A No. - 19397 of 2023

Petitioner :- Dileep Kumar Yadav And 61 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Indresh Dubey

Counsel for Respondent :- C.S.C.,Archana Singh

13. Case :- WRIT - A No. - 19149 of 2023

Petitioner :- Ramesh Chandra Shukla And 4 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Anshuman Singh

Counsel for Respondent :- C.S.C.,Archana Singh

14. Case :- WRIT - A No. - 19579 of 2023

Petitioner :- Ram Babu And 152 Others

Respondent :- State Of U.P. And 2 Others

**Counsel for Petitioner :- Jamil Ahmad Ansari,Sushil Kumar
Pandey**

Counsel for Respondent :- C.S.C.,Archana Singh

15. Case :- WRIT - A No. - 18300 of 2023

Petitioner :- Arun Kumar 705 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Indresh Dubey,Anurag Shukla

Counsel for Respondent :- C.S.C,Archana Singh

16. Case :- WRIT - A No. - 18526 of 2023

Petitioner :- Man Bahadur Singh And 37 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Agnihotri Kumar Tripathi

Counsel for Respondent :- CSC,Archana Singh

17. Case :- WRIT - A No. - 19589 of 2023

Petitioner :- Dharendra Kumar Tiwari And 8 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Shamsuddin Ahmad,Shahid Ali Siddiqui

Counsel for Respondent :- C.S.C.,Archana Singh

18. Case :- WRIT - A No. - 18266 of 2023

Petitioner :- Pankaj Kumar Shrivastava And 150 Others

Respondent :- State Of U.P. And 2 Others

**Counsel for Petitioner :- Jamil Ahmad Ansari,Sushil Kumar
Pandey**

Counsel for Respondent :- C.S.C,Archana Singh

19. Case :- WRIT - A No. - 19826 of 2023

Petitioner :- Ramesh Pathak

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Narendra Kumar Pathak

Counsel for Respondent :- C.S.C., Archana Singh

20. Case :- WRIT - A No. - 19827 of 2023

Petitioner :- Govind Vishnu Pandey And 7 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Hemant Kumar

Counsel for Respondent :- C.S.C., Archana Singh

21. Case :- WRIT - A No. - 19434 of 2023

Petitioner :- Deepak Kumar And 2 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Mahima Sahai, Anurag Agrahari, Vinod Tripathi

Counsel for Respondent :- C.S.C., Archana Singh

22. Case :- WRIT - A No. - 19555 of 2023

Petitioner :- Vidya Kant Mishra And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ram Suphal Shukla, Om Prakash Shukla, Shivendra Shukla

Counsel for Respondent :- C.S.C., Archana Singh

23. Case :- WRIT - A No. - 18773 of 2023

Petitioner :- Kuldeepak Tiwari And 53 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Agnihotri Kumar Tripathi, Vinay Kumar Pandey

Counsel for Respondent :- C.S.C., Archana Singh

24. Case :- WRIT - A No. - 19856 of 2023

Petitioner :- Vivekanand

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Vijay Kumar

Counsel for Respondent :- C.S.C., Archana Singh

25. Case :- WRIT - A No. - 21274 of 2023

Petitioner :- Rakesh Kumar Rai And 262 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Seemant Singh

Counsel for Respondent :- C.S.C., Archana Singh

26. Case :- WRIT - A No. - 19669 of 2023

Petitioner :- Manish Kumar Mishra And 28 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Agnihotri Kumar Tripathi, Vinay Kumar Pandey

Counsel for Respondent :- C.S.C, Archana Singh

27. Case :- WRIT - A No. - 20657 of 2023

Petitioner :- Rama Nand Tripathi And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ram Kishun Misra, Bijendra Kumar Mishra

Counsel for Respondent :- C.S.C., Archana Singh

28. Case :- WRIT - A No. - 19901 of 2023

Petitioner :- Virbrat Singh

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Prabhakar Nath Tripathi

Counsel for Respondent :- CSC, Archana Singh

29. Case :- WRIT - A No. - 18666 of 2023

Petitioner :- Ajeet Kumar Baranwal

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- V.K. Baranwal

Counsel for Respondent :- C.S.C., Archana Singh

30. Case :- WRIT - A No. - 20186 of 2023

Petitioner :- Ashish Dixit

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ashutosh Sharma

Counsel for Respondent :- C.S.C., Archana Singh

Hon'ble Saurabh Shyam Shamsbery, J.

1. The dispute in present bunch of writ petitions is arising out of an advertisement issued by State of Uttar Pradesh dated 30.11.2011, i.e., more than a decade ago, for recruitment of 72885 Trainee Teachers for Junior Basic Schools run by Board of Basic Education, Uttar Pradesh.

2. The dispute has already been travelled up to the Supreme Court and Civil Appeals were disposed of vide order dated 25.07.2017 and thereafter contempt petitions were also disposed of vide order dated 13.12.2019. Later on some of the petitioners approached Supreme Court by way of filing Writ Petition under Article 32 of the Constitution which was disposed of vide order dated 27.09.2023 and on basis of observations made therein petitioners have approached this Court by filing present writ petitions.

3. Before advertng to rival submissions, a brief history of litigation till date alongwith relevant part of various orders passed is mentioned hereinafter.

4. Above referred advertisement and proceedings thereof were cancelled by State Government by issuing a Government Order dated 21.08.2012 and by subsequent Government Order dated 05.12.2012 fresh procedure was initiated for recruitment in accordance with relevant amended rules.

5. Aforesaid Government Order dated 05.12.2012 was subject matter of challenge before this Court by means of several writ petitions. A Single Bench of this Court vide judgment dated 16.01.2013 passed in bunch of writ petitions, leading being Writ-A No. 39674 of 2012 (Akhilesh Tripathi and others vs. State of U.P. and others) has uphold the above referred Government order of State Government.

6. Aforesaid judgment was challenged by means of several special appeals and Division Bench of this Court vide judgment dated 20.11.2013 allowed bunch of special appeals, leading being Special Appeal (Defective) No. 237 of 2013 (Shiv Kumar

vs. State of U.P. and others) and judgment of Single Bench was modified. Relevant part of judgment is reproduced hereinafter:

“In the result all the Special Appeals are allowed to the following extent:

1. The Government Order dated 26.7.2011 insofar as it directs for restoration of criteria for selection as was prevalent prior to 12th amendment rules is set-aside.

2. The U.P. Basic Education (Teachers) Service Amendment Rules, 2012 (15th Amendment Rules dated 31.8.2012) in so far as Rule 14 (3) is concerned is declared to be ultra-vires to Article 14 of the Constitution and are struck down. Consequently, the Government Order dated 31.8.2012 as well as the communication dated 31.8.2012 issued by the board of Basic Education are set-aside.

3. Respondents are directed to proceed and conclude the selection as per the advertisement dated 30.11.2011 as modified on 20.12.2011 to its logical end within the time allowed by the Central Government vide its notification issued under Section 23 (2) of the Act, 2009.

4. The judgment of the learned Single Judge is modified to the above extent.”

7. In aforesaid circumstances number of Special Leave Petitions were filed before Supreme Court against aforesaid judgment dated 20.11.2013.

8. During pendency of litigation before Supreme Court various interim orders were passed. Relevant part of interim orders and judgments passed by Supreme Court are reproduced hereinafter:

(I) Order dated 25.03.2014 in Civil Appeal Nos. 4347-4375 of 2014

“Leave granted ”

Hearing expedited

By this interim order, we direct the State of Uttar Pradesh to fill up the vacancies of Assistant Teachers in the schools pursuant to the advertisement issued on 30.11.2011 as per the directions issued by the Division Bench of Allahabad High Court in the case of Shiv Kumar Pathak & Ors. [Special Appeal (Defective) No. 237 of 2013] and connected matters as expeditiously as possible at any rate within 12 weeks' time from today.

Further, the State in the letter of appointment that will be issued to the successful candidates shall mention that their appointment is subject to the result of the civil appeals that are pending before this Court.

The appointee(s) shall not claim any equities at the time of final disposal of the civil appeals. All actions/proceedings of the State Government will be subject to the final result of these civil appeals.”

(II) Order dated 17.12.2014 in Civil Appeal Nos. 4347-4375 of 2014

“Primary education can be equated to the primary health of a child. When a child is educated, the Nation marches towards civilization. No student can inculcate or cultivate education without guidance. Definitely not a child, who is supposed to get primary guidance from a teacher, for him he is like a laser beam. The State, as the guardian of all citizens and also with a further enhanced and accentuated responsibilities for the children, has a sacrosanct obligation to see that the children are educated. Almost two thousand years back, Kautaliya had stated that the parents who do not send their children to have the teachings, deserves to be punished. Similar was the climate in England almost seven centuries back. Thus, the significance of education can be well recognized. In such a situation, we cannot conceive that the posts would lie vacant, students go untaught and the schools look like barren in a desert waiting for an oasis. The teacher shall serve the purpose of oasis in the field of education. Hence, the aforesaid direction The competent authority shall file a compliance report, failing which they shall face the consequences as the law provides and the law does not countenance disobedience of the law and orders of the court.

Let the matter be listed on 25th February, 2015, for further hearing.”

(III) Order dated 25.05.2015 in Civil Appeal Nos. 4347-4375 of 2014

“At this juncture, we may note with profit that we have fixed the percentage for persons belonging to Schedule Castes/Schedule Tribes/Other Backward Classes at 65%. It is urged by Mr. Sharma and learned counsel whose names appear hereinabove, that the persons who have obtained 60% marks should also be considered. As we find, as of today, 29174 vacancies are available to be filled up. If the persons belonging to Scheduled Casts/Scheduled Tribes/Other Backward Classes have secured 65% marks and their number meets the requirement, the vacancies meant for their quota, shall be filled up by taking into consideration the said percentage. If the candidates of that percentage are not available, the State shall offer appointments to the candidates who have secured 60% of the marks. Be it noted, if the candidates belonging to Scheduled Castes/Scheduled Tribes/Other Backward Classes who have secured 65% of the marks are available, the candidates who have secured 60% of the marks cannot be allowed to compete with them.

The State Government is directed to issue the public notice within four weeks from today requiring the selected candidates in respect of 29174 vacancies to join and if any candidate fails to join within the stipulated period provided in the public notice, he will forfeit his right of appointment in this selection. To clarify, we may add that the public notice shall be published in widely circulated newspapers and the candidates shall be given three weeks time to join failing which the conditions prescribed hereinabove shall follow.

At this juncture, we have been apprised by the learned counsel for the respondents that some candidates who have applied in more than one districts and secured the requisite marks which have been fixed by this Court on the previous occasion, have joined in two posts, though not working. The competent authority of the State Government shall verify the same and restrict the appointment to one place and count the

said vacancies and fill up the same by following the criteria fixed by us.

We will be failing in our duty if we do not take note of the submission which has been advanced before us that though certain posts are reserved in the category of horizontal quota, no steps have been taken to fill up the said. Regard being had to provisions contained in the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the Rules in vogue in the State of Uttar Pradesh, we direct that the posts in those categories shall be filled up as per the Rules relating to relaxation in respect of the said category. That apart, if any quota and relaxation are available for any other horizontal category, that may also be applied.

Let the matter be listed on 22.04.2015. It is hereby made clear that it shall be finally heard on that day and no adjournment shall be granted to any counsel.”

(IV) Order dated 27.07.2015 in Civil Appeal Nos. 4347-4375 of 2014

“Presently, we shall proceed to deal with our initial order passed on 25th February, 2015, in connection with the appointments. It reads as under:

"This Court, on 17.12.2014, after hearing the learned counsel for the parties, apart from other directions, had issued the following direction :

"... After length has not hearing the on various CA 4347-4375/14 occasions, we are inclined to modify the order passed on 25th March, 2014, and direct that the State Government shall appoint the candidates, whose names have not been weeded out in the malpractice and who have obtained/ secured seventy percent marks in the Teacher Eligibility Test (TET). candidates belonging to Scheduled The Caste/ Scheduled Tribe/ Other Backward Classes and the physically handicapped persons, shall be appointed if they have obtained/secured sixty-five percent marks. If there is any policy of the State Government covering any other category for the purpose of reservation, it may be given

effect to with the same percentage. It shall be mentioned in the appointment letter that their appointment shall be subject to the result of these appeals and they shall not claim any equity because of the appointment, for it is issued direction passed by this Court. on the basis of the The letters of appointment shall be issued within a period of six weeks."

Mr. Venkataramani, learned senior counsel appearing for the State of Uttar Pradesh, has filed an affidavit sworn by the Joint Secretary, Basic Shiksha Parishad, Allahabad indicating, thus :

"3. That in view of the said order dated 25.03.2014 passed by this Hon'ble Court, the State Government vide its order dated 27.06.2014 and 1.7.2014 decided to make the selection and appointment against 72,825 post of trainee teachers in parishadiya primary schools initiated in the year 2011; and accordingly the counseling have been done in following manner :

(i) Ist counseling 29.08.2014 to 31.08.2014

(ii) IInd Counseling 22.09.2014 to 30.09.2014

(iii) IIIrd counseling 05.11.2014 to 13.11.2014

(iv) IVth counseling 09.01.2015 to 14.01.2015

4. That pursuant to order dated 17.12.2014 of this Hon'ble Court only the candidates who have secured 70% (105 marks) amongst general category and 65% (97.5 marks) amongst the reserved category have been permitted to participate in the said counseling.

5. That amongst the candidates who ave been permitted to CA 4347-75/14 10 participate in the counseling during the period of aforementioned schedule have also been offered the appointment letters and they have also joined post in their institutions.

6. That some of the candidates were repeatedly offered appointment letters from different districts on the account of their participation in counseling in such district but it is clarified that here that they have been permitted to join their post only once. Accordingly

although 83983 appointment letters were issued, however, the joining has been taken only by 43651 candidates. The process of filling up the remaining 29174 vacancies is also on."

Relying on the said affidavit, it is put forth by Mr. Venkataramani, learned senior counsel, that the State may be granted four weeks time to issue public notice to the candidates to join in the vacancies failing which the Court may issue appropriate directions.

At this juncture, Mr. V.K. Sinha, learned senior counsel, Mr. V.K. Sharma, Mr. Ajay Jain, Mr. Jayant Mehta, Mr. Arvind Shrivastava, Mrs. Rachana Shrivastava, Mr. Abhishek Shrivastava, learned counsel, submitted that this Court may ask the State Government to file an affidavit about the number of vacancies still available. Mr. Venkataramani, learned senior counsel, submitted that an affidavit to that extent will be filed by the next date.

At this juncture, we may note with profit that we have fixed the percentage for persons belonging to Schedule Castes/Schedule Tribes/Other Backward Classes at 65%. It is urged by Mr. Sharma and learned counsel whose names appear hereinabove, that the persons who have obtained 60% marks should also be CA 4347-75/14 11 considered. As we find, as of today, 29174 vacancies are available to be filled up. If the persons belonging to Scheduled Casts/Scheduled Tribes/Other Backward Classes have secured 65% marks and their number meets the requirement, the vacancies meant for their quota, shall be filled up by taking into consideration the said percentage. If the candidates of that percentage are not available, the State shall offer appointments to the candidates who have secured 60% of the marks. Be it noted, if the candidates belonging to Scheduled Castes/Scheduled Tribes/Other Backward Classes who have secured 65% of the marks are available, the candidates who have secured 60% of the marks cannot be allowed to compete with them.

The State Government is directed to issue the public notice within four weeks from today requiring the selected candidates in respect of 29174 vacancies to join and if any candidate fails to join within the stipulated period provided in the public notice, he will forfeit his right of appointment in this selection. To clarify, we may add that the public notice shall be published in widely circulated newspapers and the candidates shall be given three weeks time to join failing which the conditions prescribed hereinabove shall follow.

At this juncture, we have been apprised by the learned counsel for the respondents that some candidates who have applied in more than one districts and secured the requisite marks which have been fixed by this Court on the previous occasion, have joined in two posts, though not working. The competent authority of the State Government shall verify the same and restrict the appointment to one place and count the said vacancies and fill up the same by following the criteria fixed by us.

We will be failing in our duty if we do not take note of the submission which has been advanced before us that though certain posts are reserved in the category of horizontal quota, no steps have been taken to fill up the said. Regard being had to provisions contained in the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the Rules in vogue in the State of Uttar Pradesh, we direct that the posts in those categories shall be filled up as per the Rules relating to relaxation in respect of the said category. That apart, if any quota and relaxation are available for any other horizontal category, that may also be applied.

Let the matter be listed on 22.04.2015. It is hereby made clear that it shall be finally heard on that day and no adjournment shall be granted to any counsel."

It is submitted by Mr. Prashant Bhushan, learned counsel appearing for the petitioners in Writ Petition (C)

No.89 of 2015, that persons who were declared failed in the entrance examination, after the order passed, for some unfathomable reason, have been declared to have passed and some of them have been allowed to be appointed. Mr. Prashant Bhushan, learned counsel, undertakes to file the additional affidavit containing the particulars relating to the aforesaid aspect.

Mr. H.L. Gupta, Secretary, Basic Education, Uttar Pradesh, who is present in Court today, shall file a reply duly supported by personal affidavit to the said assertions and also to the additional affidavit to be filed by Mr. Bhushan, within four weeks from today.

Let the matter be listed on 2nd November, 2015 at 2.00 p.m.

The Secretary and the Special Secretary, Basic Education, Uttar Pradesh, shall remain personally present on the next date of hearing.

At this juncture, we may note that Mr. R. Venkataramani, learned senior counsel, who has been appearing since beginning in this matter for the State of U.P., has submitted that some other counsel will be appearing for the State in the case. Be that as it may, we request Mr. R. Venkataramani, learned senior counsel, to assist the Court in the matter”

(V) Order dated 02.11.2015 in Civil Appeal Nos. 4347-4375 of 2014

“In this regard, we require Mr. Bhatia to explain to us about the number of vacancies.

At this juncture, we must formulate the issues that the learned counsel should address while arguing the matter on the next date, for we are not inclined any more to deal with the matter as interim measures. The issues are as under :

- a) Whether the NCTE Guidelines fixing the minimum qualification are arbitrary and unreasonable?*
- b) Whether the marks obtained in the TET Examination is the sole criterion for filling up the vacancies?*

c) Whether the High Court is justified in declaring the 15th Amendment brought in on 31.08.2012 to the U.P. Basic Education (Teachers) Service Rules, 1981?

d) Assuming, the guidelines framed by the NCTE are treated as intra vires, the question will be what interpretation would be placed by the Court on the concept of weightage as mentioned in the guidelines of the NCTE?

Needless to say, if any ancillary issue arises, the same shall also be addressed to. It is hereby made clear that except these issues, no other submissions as regards the interim arrangement shall be entertained.

The personal presence of the authorities stand dispensed with for the present.

Let the matters be listed on 07.12.2015 at 2.00 p.m. Needless to say, if the matter is not completed on that day, it will continue at 2.00 p.m. on 08.12.2015.

(VI) Order dated 07.12.2015 in Civil Appeal Nos. 4347-4375 of 2014

“CA Nos. 4347-4375 and 4376/2014, SLP(C) No. 62, 1672, 1674, 11671 and 11673/2014, SLP (C) No.14386/2015, SLP (C).....CC No. 10408/2014, WP(C) No. 135, 167 and 89/2015 and CONMT. PET.(C) No. 199/2015 In C.A. No. 4347-4375/2014 and CONMT. PET.(C) No. 399/2015 In C.A. No. 4347-4375/2014

On 2.11.2015, after hearing the learned counsel for the parties, this Court noted the stand of Mr. Bhatia which is to the following effect :-

“It is submitted by Mr. Bhatia that keeping in view the order dated 27.07.2015, as against 72825 posts advertised, 43,077 candidates have been appointed, who, after completion of the training till September 2015, are working in praesenti.

It is also submitted that 15,058 candidates are undergoing training out of which 8,500 shall be appearing in the examination on 16th and 17th November, 2015 and the rest will be appearing in the examination after completion of their training. In the result around 14,640 posts still remain vacant.”

Thereafter a grievance was made with regard to the people obtaining higher percentage not being appointed. The said grievance was taken note of in the following manner :

“At this juncture, number of counsel have raised a grievance that there are number of candidates who have secured more than 70% marks in TET examination in the general category and the lower percentage for other categories as per our earlier order and yet they are not appointed. At this juncture, learned Additional Advocate General submitted that some of the candidates might not have been appointed as they may not have been qualified otherwise under the NCTE Rules. We do not intend to interpret on the said point, as advised today.

However, the persons who are claiming that they are entitled to the benefit on the basis of the percentage fixed by the earlier order dated 27.07.2015 shall submit their applications/ representations before the Secretary, U.P. Basic Education Board (Board), Allahabad within one week hence and the said authority shall constitute a Committee to verify their percentage of marks as well as criteria by which the persons who have already been selected and put the same on the website as well as due intimation be given to the applicants. If there is parity they shall be extended the benefit of our order forthwith. The said exercise shall be completed within three weeks.”

Be it stated that on that occasion, four issues were framed to be dealt with at the time of final hearing.

It is submitted by Ms. K. Sharda Devi, learned counsel that the names of the appointees have not yet been put on the website. Mr. Vijay Bahadur Singh, learned Advocate General for the State of U.P. and Mr. Gaurav Bhatia, learned AAG undertake that the same shall be put on the website within a week hence.

At this juncture, we may state that Mr. Bhatia, learned AAG submitted that in pursuance of the direction of this Court on the earlier occasion and prior to that more than 75,000 representations were received and after scanning the same, the

State Government has found 12,091 persons eligible for being appointed subject to verification of antecedents. Let the said persons be appointed subject to the said verification within six weeks hence.

At this juncture, Mr. Rakesh Dwivedi, learned senior counsel, Mr. Neeraj Jain, Mr. Siddharth Dave, Mr. Sanjay Hegde, Mr. Vikas Singh, Mr. Anand Nandan, Mr. Arvind Srivastava, Mr. Ajay Jain, Ms. Rachana Shrivastava, Mr. Avnish Singh, Mr. D.K. Tiwary, Mr. Rajiv Dubey, Ms. S. Janani, Mr. Ashok Kuamr Sharma and Mr. Manoj Prasad learned counsel submit that they represent approximately 1100 people and some arrangement should be made for them. On being asked, Mr. Vijay Bahadur Singh, learned Advocate General submitted that the State has no objection to offer them appointment on ad hoc basis subject to result of the special leave petitions. Let that be done within four weeks hence. Needless to say, no right shall accrue in their favour because of this order.

Let the matter be listed for final disposal on 24.02.2016 at 2.00 p.m. The hearing shall continue on 25.02.2016 and 26.02.2016 at the same time.

S.L.P.(C)...CC Nos. 21708-21709, 20837, 20914, 20953, 20875, 20894, 21017, 21265, 21277, 20690, 21052, 20651, 21118, 21184, 21085-21089, 21376, 21392, 21589, 21056/2015 and SLP(C) Nos. 32599, 33328-33339, 33235 and 34093/2015

Permission to file the special leave petitions stands allowed.

Heard Mr. Dushyant Dave, learned senior counsel along with Mr. Gaurav Bhatia, learned counsel for the petitioner.

Issue notice returnable within four weeks.

Dasti, in addition, is permitted.

The State shall make a paper publication which is widely published I the State of Uttar Pradesh so that the persons who were the petitioners before the High Court shall be aware of the pendency of these cases before this Court.

Learned counsel for the State shall file a convenience volume which shall contain all the pleadings that were filed before the High Court in Writ Petition No.34833 of 2014 so that no fresh pleadings are required to be filed.

Let this matter be heard along with Civil Appeal No.4347-4375 of 2014 on 24.02.2016 for final disposal. As indicated by learned counsel for the petitioners, they will not seek any adjournment.

As an interim measure, there shall be stay of the operation of the impugned judgment till the next date of hearing.”

(VII) Judgment dated 25.07.2017 in Civil Appeal Nos. 4347-4375 of 2014

“16. There is no manner of doubt that the NCTE, acting as an ‘academic authority’ under Section 23 of the RTE Act, under the Notification dated 31st March, 2010 issued by the Central Government as well as under Section 12 and 12A of the NCTE Act, was competent to issue Notifications dated 23th August, 2010 and 11th February, 2011. The State Government was under obligation to act as per the said notifications and not to give effect to any contrary rule. However, since NCTE itself has taken the stand that notification dated 11th February, 2011 with regard to the weightage to be given to the marks obtained in TET is not mandatory which is also a possible interpretation, the view of the High Court in quashing the 15th Amendment to the 1981 Rules has to be interfered with. Accordingly, while we uphold the view that qualifications prescribed by the NCTE are binding, requirement of weightage to TET marks is not a mandatory requirement.

17. As a result of above, in normal course the State would have been at liberty to proceed with the selection in terms of advertisement dated 7th December, 2012 in accordance with the amended rules by way of 15th amendment, in view of developments which have taken place during pendency of these appeals, the said advertisement cannot proceed and while upholding the said advertisement, relief has to be moulded in the light of developments that have taken place in the interregnum.

18. Vide interim order dated 25th March, 2014, this Court directed the State of Uttar Pradesh to fill up the vacancies of Assistant Teachers in terms of the impugned judgment. Thereafter, on 17th December, 2014, the said order was

modified and the State was directed to appoint candidates whose names were not involved in malpractices in the TET test and who had obtained 70% marks (65% for SC, ST, OBC and physically handicapped or any other category covered by the Government policy for reservation). 54,464 posts have already been filled up in compliance of the orders of this Court. The said appointments were subject to result of these matters. It was also observed that if anyone without TET qualification is appointed his services will be terminated. Vide order dated 2nd November, 2015 it was noted that against 72,825 posts which were advertised, 43,077 candidates had completed training and were working while 15,058 candidates were undergoing training. Around 14,690 posts were vacant. It was further observed that candidates who had the required percentage of marks in terms of order dated 27th July, 2015 were to file their applications and a Committee constituted for the said purpose could verify such percentage and if parity was found the same benefit could be extended.

19. We have been informed that 66,655 teachers have already been appointed in pursuance of the interim orders of this Court. Having regard to the entirety of circumstances, we are not inclined to disturb the same. We make it clear that the State is at liberty to fill up the remaining vacancies in accordance with law after issuing a fresh advertisement.

20. The matters will stand disposed of in above terms.”

(Emphasis supplied)

(VIII) Judgment dated 13.12.2019 in Contempt Petition (Civil) Nos. 1332-1360/2018

“11. Following facts, therefore, emerge from the record:-

(a) Large number of vacancies were lying unfilled while the Civil Appeals were pending in this Court. Taking into account the interest of the student community those appointments were required to be made. A principle was, therefore adopted by order dated 17.12.2014 that those who had obtained more than 70% marks in TET Examination from the general category and those who had obtained more than 65% marks from the reserved categories be given appointments. The idea was clear

that such candidates would normally stand selected in the ultimate process of selection. It was, however, made clear that such appointments would not entitle the selected candidates to raise any claim in equity.

(b) In the selection process undertaken thereafter, initially 29,174 candidates were selected and a direction was issued on 25.02.2015 to fill up those posts.

(c) The next order dated 02.11.2015 recorded that as against 72,825 posts which were advertised, 43,077 candidates were appointed, who after completion of training were actually working while 15,058 candidates were undergoing training, leaving about 14,640 posts still vacant.

(d) The exercise of selecting those who had secured minimum marks in terms of criteria devised by order dated 17.12.2014 also resulted in finding 12,091 persons eligible subject to verification of antecedents, as was recorded in the order dated 07.12.2015.

(e) The list of these 12091 candidate was published and it is a matter of record that the names of the contempt petitioners were part of this list.

(f) According to para 21 of the Affidavit dated 01.10.2016 (which has been referred to in the order dated 22.07.2019) out of these 12091 candidate, only 391 candidate could be appointed as the others either did not take part in the selection process or had not opted for certain Districts or could not be selected going by the cut-off for the concerned District. This development had happened way back in October 2016 and the affidavit was on record since then.

(g) The State thereafter published another advertisement on 06.02.2016 so that if any candidate was left out, his candidature could be considered. Steps were thereafter taken and another advertisement was published on 08.02.2016. Para 25 of the Affidavit dated 01.10.2016 as quoted in the order dated 22.07.2019, dealt with this issue in clear terms and was thus part of the record.

(h) Aforesaid para 25 of the Affidavit thus made it clear that as on the date when the affidavit was filed, 64,257 vacancies were filled up and 1,536 appointment letters were being issued in addition. It was also stated that 862 candidates were given ad-hoc appointments in terms of the order dated 07.12.2015 and were not included in the number of 64,257. These three figures aggregate to number 66,655.

(i) Thus, the reasons for not appointing all the persons who were part of list of 12,091 candidates were available on record from October 2016 onwards.

(j) At no stage any grievance was made till the matter was disposed of in July 2017 which gave the status of permanency to those who were appointed under various interim orders passed by this Court.

(k) The grievance was made for the first time almost a year after when these contempt petitions were filed.

(l) The order dated 22.07.2019 had, therefore, observed that the Court could not disregard the fact that challenge had been raised more than a a year after the final Judgment. Even then, the State Government was called upon to indicate on affidavit certain issues. The reason was obvious that if there was large scale infraction of interim orders passed by this Court which merged in the final Judgment, the matter could still have been considered.

(m) However, the response filed by the State Government now indicates with clarity that no fresh appointments were effected after 2016 and no person other than those who satisfied the requirements laid down by this Court in its Order dated 27.07.2015 as modified by further orders, was given any appointment. The State Government has also placed on record the District wise break-up of all candidates appointed in various categories in all 75 Districts of the State.

(n) Even after the filing of the response by the State, as indicated in para 10 hereinabove, nothing substantial

could be pointed out by any of the candidates or contempt petitioners.

12. In the circumstances, we do not see anything wrong in the process undertaken by the State Government in pursuance of various interim orders passed by this Court and also in pursuance of the Judgment and final order dated 25.07.2017. The fact that out of 12,091 candidates only few could be selected and the reasons for non-selection of rest of the candidates, were part of the record since October 2016. In any case, response filed by the State is also clear. In the totality of the circumstances, in our view, there has not been any violation of any of the orders passed by this Court as alleged in the contempt petitions or otherwise.

13. We, therefore, see no reason to interfere in these contempt petitions which are directed to be closed.”

(Emphasis supplied)

(IX) Order dated 08.05.2020 in Review Petition (Civil) Nos. 851-879 of 2020

“The contempt petitions preferred by various parties were disposed of by Order dated 13.12.2019. In para 11 of the order certain facts which emerged from the record were set out, which included inter alia,-

Thus, the reasons for not appointing all the persons who were part of list of 12,091 candidates were available on record from October 2016 onwards.

At no stage any grievance was made till the matter was disposed of in July 2017 which gave the status of permanency to those who were appointed under various interim orders passed by this Court.”

In para 2(e) of the review petition it is now alleged that some of the candidates had filed contempt petition No.190 of 2016 on 11.03.2016 along with other contempt petitions seeking compliance of the order dated 07.12.2015. However, the record does not indicate that any grievance was made when the matter was finally heard and disposed of in July 2017.

In the circumstances, we see no merit in the review petitions. accordingly dismissed. These review petitions are accordingly dismissed.”

(X) Judgment dated 27.09.2023 in Writ Petition (Civil) Diary No. 19925/2023

“Application seeking condonation of delay in refiling is condoned.

Learned senior counsel appearing for the petitioners submitted that the petitioner(s) is one of the 66,655 teachers (Sub-Category 12,091) who have been appointed pursuant to the interim order of this Court. However, the grievance of the petitioners is that there is no actual appointment orders which have been issued to them, therefore, this petition has been filed seeking a writ of mandamus under Article 32 of the Constitution of India.

At this stage, we are not inclined to interfere in the matter. However, liberty is reserved to the petitioners to file a petition before the High Court under Article 226 of the Constitution and seek appropriate remedies.

It is needless to observe that if such a petition is filed before the High Court, the same shall be considered as expeditiously as possible having regard to the fact that the order of this Court is dated 25.07.2017.

The Writ petition is disposed in the aforesaid terms.

Pending application(s), if any, shall stand dispose of.”

(Emphasis supplied)

9. I have heard Sri Ashok Khare, Senior Advocate assisted by Sri Agnihotri Kumar Tripathi and Sri Indresh Dubey, Advocates, Sri R.K. Ojha and Sri H.N. Singh, Senior Advocates assisted by Sri Abbula Kalam, Sri Jamil Ahmad Ansari and Sri Sushil Kumar Pandey, Advocates for petitioners, Sri Ashish Kumar Nagvanshi, learned Additional Chief Standing Counsel alongwith Sri Ravi Prakash Srivastava, learned Standing Counsel for State-Respondents and Mrs. Archana Singh,

Advocate for Board of Basic Education, U.P. at Prayagraj, at length. Before adverting to their rival submissions, petitioners before this Court can be divided under three categories:

(I) Candidates who were part of sub category of 12091 candidates, i.e., within the cut off merit and have filed writ petition before Supreme Court.

(II) Candidates who were part of sub category of 12091 candidates, i.e., within the cut off merit list but have not filed any writ petition before Supreme Court.

(III) Candidates who were neither part of sub category of 12091 nor have filed any writ petition before Supreme Court.

10. Learned Senior Advocates appearing for petitioners have referred various orders passed by Single Bench and Division Bench of this Court as well as Supreme Court which are referred in earlier paragraphs of this judgment. Learned Senior Advocates have vehemently submitted that if the figure of selected candidates is 66655 which has been referred in sub-para (h) of para 11 of order dated 13.12.2019 passed by Supreme Court in contempt petitions which has already been mentioned in earlier paragraphs of this writ petition, petitioners who are part of list of 12091 are also part of it but since Supreme Court is satisfied by the affidavit filed on behalf of State about calculation of 66655, therefore, the Court has no option but to accept the details of calculation and that list of 12091 candidates was not part of list of selected candidates.

11. In later stage of argument when learned Standing Counsel has referred para 6 of order dated 13.12.2019 that in order to accommodate the candidates of aforesaid list of 12091 candidates, they were invited for counselling by publishing advertisements dated 06.02.2016 and 08.02.2016 and in this regard a categorical observation was made by Supreme Court in its order dated 13.12.2019 that out of 12091 candidates only few could be selected and reason for non selection of rest of candidates were part of record, the learned Senior Advocates appearing for petitioners have placed reliance on a categorical averment made on affidavit that no such counselling was ever took place and petitioners have not participated in any counselling in pursuance of said advertisements.

12. In aforesaid circumstances, in view of the limited window opened by Supreme Court, as referred in order dated 27.09.2023 passed in Writ Petition (Civil) Diary No. 19925 of 2023, the controversy before this Court is now narrowed down only to the aspect that since proceedings were initiated for consideration of candidature of candidates who are part of list of 12091 way back in the year 2016 and it is the stand of State that only few (391) were found eligible on counselling of such candidates (about 4000), who have appeared in counselling, this stand has to be tested on basis of specific averments made on oath by petitioners, who are part of aforesaid list that counselling in number of districts were never took place and petitioners have not participated in any counselling.

13. There are certain documents annexed alongwith rejoinder affidavit that concerned State-Respondents at district level have communicated that no counselling took place in pursuance of advertisements issued in the year 2016 and that except about 4000 candidates rest of candidates out of aforesaid list of 12091 have not participated, therefore, in the interest of justice I am of the considered opinion that all these writ petitions be disposed of with certain observations/ directions.

14. Supreme Court while granting liberty vide judgment dated 27.09.2023 passed in Writ Petition (Civil) Diary No. 19925 of 2023 has referred word 'petitioners'. However, considering that number of petitioners who were not even before Supreme Court, i.e., they have not filed writ petition, are before this Court and being similarly situated, therefore, in order to avoid any arbitrariness their grievance is also considered by this Court.

15. So far as writ petition filed by petitioners who are admittedly not part of list of 12091 candidates, no relief can be granted even though, as contended, they are on better footing than candidates of list of 12091.

16. As referred above, out of 12091 candidates, only about 4000 candidates have appeared during counselling and out of them only 391 were appointed, therefore, number of vacancies towards that list are still available.

17. Supreme Court has opened a window for consideration of candidates belonging to said list of 12091 candidates, though on the premises that they have granted appointment but not allowed to join, which is not substantiated, still as referred

above, now the case is that number of candidates of list of 12091 candidates were not participated in counselling either no counselling was conducted or they were not adequately informed and said fact was not brought in record except about process of counselling. It would be strange event if despite knowledge of counselling, number of candidates of said list have not participated in counselling but remained in litigation thereafter.

18. In view of above position and in the interest of justice and to conclude the controversy, it is directed that concerned respondents shall issue a fresh advertisement to call the candidates belonging to said category of 12091, who have not appeared earlier for counselling, fixing a date in the week commencing 05th February, 2024 and for that advertisement shall be published in three leading newspapers having circulation at least of one paper in each district of State of Uttar Pradesh on 22nd and 25th January, 2024.

19. The candidates who have not participated in counselling and are part of list of 12091, will have liberty to appear in pursuance of advertisement to be issued without any fail and counselling shall be concluded in accordance with law and result thereof shall be pronounced during last week of February, 2024.

20. Each candidate has to submit a notarized affidavit that they have not appeared in earlier counselling and has to deposit Rs. 2000/- for counselling additionally before concerned authority.

21. With aforesaid observations and directions, all the writ petitions are disposed of.

22. Before parting with this judgment, it is observed that this Court has proceeded to take note of solemn affidavits of petitioners with regard to their statement about counselling and that they are aspirants to become a 'Teacher', a highly regarded position, so much as that a Teacher has been put on a place above than God, as many years ago Saint Kabir has said:

गुरु गोविन्द दोऊ खड़े, काके लागूं पांय।

बलिहारी गुरु अपने गोविन्द दियो बताय।।

Order Date :- 12.01.2024

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(Saurabh Shyam Shamsbery, J.)