



**IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

LPA No: 194 of 2023
Along with LPA Nos. 11 to
18 of 2025 and CWPOA
No 5740 of 2020 and CWP
Nos 5663, 6475, 6476 of
2022 and 1756, 1759, 1809,
1897 and 2821 of 2023.

Reserved on: 19.05.2025
Announced on: 09.01.2026

1. LPA No. 194 of 2023

State of Himachal Pradesh and others ...Appellants

versus

Yog Raj and others ...Respondents

2. CWPOA No.5740 of 2020

Jasvinder Jhotia and others ...Petitioners

versus

The State of H.P. and others ...Respondents

3. CWP No.5663 of 2022

Vivek Sharma and others ...Petitioners.

versus

State of Himachal Pradesh and others ...Respondents

4. CWP No.6475 of 2022

Raj Kumar ...Petitioners

versus

State of Himachal Pradesh and others ...Respondents

5. CWP No.6476 of 2022

Hem Raj ...Petitioner

versus

State of Himachal Pradesh and others ...Respondents

6. CWP No.1756 of 2023

Beli Ram ...Petitioner

versus

State of Himachal Pradesh and others ...Respondents

7. CWP No.1759 of 2023



Shyam Lal

...Petitioner

versus

State of H.P. and others

...Respondents

8. CWP No.1809 of 2023

Raksha Devi and another

...Petitioners

versus

State of Himachal Pradesh and others

...Respondents

9. CWP No.1897 of 2023

Nisha Devi

...Petitioner

versus

State of Himachal Pradesh and others

...Respondents

10. CWP No.2821 of 2023

Sunita Kumari

...Petitioner

versus

State of Himachal Pradesh and another

...Respondents

11. LPA No.11 of 2025

The State of H.P. and another

...Appellants

versus

Bipan Kumar and others

...Respondents

12. LPA No.12 of 2025

The State of H.P. and another

...Appellants.

versus

Satish Kumar and others

...Respondents

13. LPA No.13 of 2025

The State of H.P. and another

...Appellants

versus

Dhani Ram and others

...Respondents

14. LPA No. 14 of 2025

The State of H.P. and another

...Appellants

versus

Ram Dass and others

...Respondents

15. LPA No.15 of 2025

State of H.P. and others

...Appellants

versus

Jagat Ram and others

...Respondents



16. LPA No.16 of 2025

The State of H.P. and another	...Appellants
<i>versus</i>	
Ms Abida Bano	...Respondents

17. LPA No.17 of 2025

The State of H.P. and another	...Appellants.
<i>versus</i>	
Ram Krishan	...Respondent

18. LPA No.18 of 2025

The State of H.P. and another	...Appellants
<i>versus</i>	
Dalip Singh Thakur & Others	...Respondents

Coram:

Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice
Hon'ble Mr. Justice Ranjan Sharma, Judge

¹*Whether approved for reporting?* Yes.

For the appellant(s):	Mr. Rakesh Dhaulta and Mr. Gobind Korla, Additional Advocates General for the appellant in LPA No.194 of 2023 and LPA Nos. 11 to 18 of 2025 and for respondents in CWPOA No. 5740 of 2020, CWP No. 5663, 6475, 6476 of 2022, CWP Nos. 1756, 1759, 1809, 1897, 2821 of 2023.
For the respondent(s):	Mr. Onkar Jairath and Mr. Anshul Jairath, Advocates, for respondents No. 1, 53, 54, 87, 104 & 115 to 117 and in LPA No. 194 of 2023. Mr. Vinod Thakur, Advocate, for the applicants in CMP No. 8122 of 2023. Mr. R.L. Chaudhary, Advocate, for the applicants in CMP No.11216 of 2023.

¹ *Whether reporters of Local Papers may be allowed to see the judgment?*



Mr. Ashok Chaudhary, Mr. Onkar Jairath and Mr. Anshul Jairath, Advocates, for the petitioners in CWPOA No. 5740 of 2020.

Mr. Ravinder Singh Chandel, Advocate, for the petitioners in CWP Nos. 5663 of 2022.

Mr. Lovneesh Singh Thakur, Advocate, for the petitioner in CWP No.6475 of 2022.

Mr. Vijay Chaudhary, Advocate, for petitioner in CWP No. 1756 of 2023, and Mr. R.L. Chaudhary, Advocate, for the petitioners in CWP No. 1759 of 2023.

Mr. Narender Singh Thakur, Advocate, for the petitioners in CWP No.1809 of 2023.

Mr. Prashant Sharma and Mr. Ajit Sharma, Advocates, for the petitioner in CWP No. 1897 of 2023.

Mr. Vikas Rajput, Advocate, for the petitioner in CWP No 2821 of 2023.

Mr. Onkar Jairath & Mr. Anshul Jairath, Advocates, for respondents in LPA No. 11 of 2025.

Mr. Kush Sharma, Advocate, for respondents, in LPA Nos. 12 & 13 of 2025.

None for respondent(s) in other LPAs, except LPA Nos. 12, 13 & 16 of 2025.

Mr. Adarsh K. Vashista, Advocate, for respondent No 1, in LPA No 16 of 2025.

Ranjan Sharma, Judge

Since factual matrix and issues involved in above cases is common, therefore, with consent



of Learned Counsels for the parties herein, all these cases are taken up together for adjudication by a common judgment.

2. For convenience sake, **LPA No 194 of 2023**, In Re: **State of Himachal Pradesh and Ors** *versus* **Yog Raj and others** is treated as the **“Lead Case”** so as to adjudicate all connected cases altogether.

3. The State of Himachal Pradesh, being the appellant, has come up before this Court, in Intra Court Appeal, in the Lead Case herein, assailing the judgment dated 19.07.2022, passed by Learned Single Judge in **CWPOA No. 3573 of 2019 and other connected matters**, in **Re: Yog Raj** versus **State of Himachal Pradesh** whereby, the order dated 10.07.2018, **[Annexure A-9]**, rejecting the claim of the Respondents-Aspirants for appointment as Physical Education Teacher(s), was quashed and set aside *and* the State Authorities were directed to consider and decide the cases of the respondents herein for appointment to the post of Physical Education Teachers, on Batch Wise Basis, after having granted them relaxation in minimum qualification, in terms



of the Notification dated 15.02.2011, **[Annexure A-2]** and pursuant to the counseling done on 14.07.2014, **[Annexure A-6]** with the further directions that the needful be done by the State Authorities within a period of four weeks.

FACTUAL MATRIX BEFORE WRIT COURT:

4. In CWPOA No. 3573 of 2019, Respondents Yog Raj and others, in lead case, have set up a case that they passed one year's Diploma in Physical Education Teacher from Pune (Maharashtra) during the year 1997-98 and thereafter got their names registered with the respective employment exchanges so as to consider their cases for appointment as Physical Education Teachers as and when, the recruitment was made either by Direct Recruitment or on Batch Wise Basis, for which they were eligible in-accordance with the *Recruitment and Promotion Rules dated 28.12.1973* [referred to as the Old R & P Rules of 1973]. It is averred that after repealing of the Old Rules, the State Authorities had notified the New Recruitment & Promotion Rules on 10.01.2011 **[Annexure A-1, in writ file]**, rendering



them ineligible for post of Physical Education Teacher,

by prescribing the Minimum Educational Qualification of 10+2 and Diploma in Physical Education Teacher [DPET] of a duration of two academic years from a University/Board recognized by Himachal Pradesh Government, besides the other alternative Educational Qualifications of Bachelor's Degrees [which are not relevant for purposes of adjudication of the instant matters]. It is averred that the State Authorities took a decision on 15.02.2011, **[Annexure A-2/T in writ file]** for filling up various posts in Classical and Vernacular {C & V} Cadre which included the posts of Physical Education Teachers, in-accordance with Old and New Recruitment and Promotion Rules but with the rider that the teachers so recruited under the Old Rules, will have to improve their Educational Qualifications within five years from the date of appointment. It is averred that based on relaxation granted on 15.02.2011, *[Annexure A-2], the State Authorities had granted an opportunity to the Respondents-aspirants and other like candidates to seek consideration for direct recruitment and for Batch*



Wise Recruitment but due to the shortage of vacancies, under batch-wise selection, the Respondents-aspirants in the Lead case and others could not be selected.

4(i). In averred that 20 other incumbents, who possessed One Years Diploma in Physical Education and who belonged to 1997-98 batch, filed a **CWP No 8022 of 2012, Saroj Kumar and others** versus **State of Himachal Pradesh and others**, claiming the benefit of relaxation in the light of the decision 15.02.2011 [*Annexure A-2*], as was granted to other incumbents of 1997-98 batch and the writ petition of **Saroj Kumar** (supra) was decided on 09.01.2012, [*Annexure A-3 in writ file*], whereby, State Authorities were directed to consider their cases in the light of the government decision dated 15.02.2011, [*Annexure A-2 supra*]. It is averred that the judgment in the case of **Saroj Kumar** (supra) was assailed before the Hon'ble Supreme Court in Special Leave to Petition [C] CC No. 17560 of 2013 and same was dismissed on 17.12.2013 [**Annexure A-4, in writ file**]. After dismissal of SLP and during pendency of Execution Petition No 4012 of 2013, the State Authorities have



furnished a communication on 15.03.2014, that the cases of petitioners in case of **Saroj Kumar** (supra) is being taken to its logical end by ensuring compliance of judgment. Resultantly, these 20 incumbents being the petitioners in case of Saroj Kumar were appointed as Physical Education Teachers.

4(ii). It is further averred that after giving the appointment to 20 persons, who were petitioners in case of **Saroj Kumar (supra)**, the State Authorities called others for counseling on 14.07.2014, [*Annexure A-6, in writ file*] but in vain, which led to filing of various petitions claiming relaxation, as granted to petitioners in case of **Saroj Kumar (supra)**. These petitions were disposed of with directions to consider their cases. Since nothing was done, therefore, the contempt petitions were filed. However, during the pendency of **COPC No. 427 of 2014**, titled as **Shiv Lal and others** versus **P.C. Dhiman & Ors**, and other contempt petitions, the State Authorities i.e. Additional Chief Secretary [Education] passed the rejection orders on 30.06.2015, [*Annexure A-7 in writ file*]. This rejection order dated 30.06.2015,



was assailed in **O.A. No. 2718 of 2015**, titled as **Jagat Ram and other versus State of Himachal Pradesh** and 32 other matters were disposed of by Learned Tribunal on 28.04.2017, **[Annexure A-8, in writ file]**, by quashing the rejection orders dated 30.06.2015, **[Annexure A-7]**, with directions to reconsider the matter afresh. Incompliance to the directions of Learned Tribunal on 28.04.2017, the State Authorities passed the **fresh rejection orders on 10.07.2018, [Annexure A-9, in writ file]** disallowing the claim for relaxation as in communication dated 15.02.2011 resulting in disallowing the benefit of the judgement passed in the case of **Saroj Kumar (supra)**.

4(iii). The fresh rejection order dated 10.07.2018 **[Annexure A-9]** was assailed in instant petition, with the plea once 20 other persons, who were petitioners in case of **Saroj Kumar** {CWP No 8022 of 2012} and based on said judgement, one Shri Amrick Singh were appointed as a PET by giving benefit of relaxation as in the communication dated 15.02.2011 and once the Respondent-Writ Petitioners possessed similar qualification of One Years Diploma



in Physical Education and they belonged to the same batch {1997-1998}, therefore, they deserve to be treated similarly by appointing them as Physical Education Teachers, under batch-wise recruitment mode and the denial was alleged to be illegal and unsustainable with the prayer to quash the fresh rejection orders dated 10.07.2018, [Annexure A-9], with the prayer to direct the State Authorities to appoint them as Physical Education Teachers against available vacancies as per batch-wise seniority and all service benefits accruing therefrom.

**STAND OF STATE AUTHORITIES-APPELLANTS
BEFORE WRIT COURT:**

5. In Reply to CWPOA No. 3573 of 2019, the State Authorities have averred that as per the Recruitment and Promotion Rules of 1973, the minimum educational qualification for the post of Physical Education Teacher was one year's Diploma in Physical Education but after repealing of the Rules of 1973, the State Government had notified the New Recruitment and Promotion Rules on 10.01.2011 {Annexure A-1}, prescribing minimum educational qualification as 10+2 and Diploma in



Physical Education {DPET} of duration of two academic years.

5(i). Reply Affidavit indicated that on 09.09.2009, the State Cabinet gave approval for fill-up 1000 posts of various categories which included 450 posts of Language Teachers, 200 posts of Drawing Masters, 225 Posts of Shastri Teachers and 125 posts of Physical Education Teachers as per the New Rules. It is averred that the approval granted by the State Cabinet on 09.09.2009 for filling up 1000 posts of various categories under the New Rules, was reconsidered by the State Cabinet on 29.01.2011, deciding to fill up the aforesaid 1000 posts {including 125 posts of Physical Education Teachers} by applying the Old Rules and New Rules, by **notifying this decision on 15.02.2011 {Annexure A-2}, as one-time relaxation**, but with the rider that persons recruited under Old Rules, shall have to improve their qualifications within five years of appointment.

5(ii). Reply-Affidavit states that out of total 1000 posts of various categories of teachers



including 125 posts of Physical Education

Teachers, for which one time relaxation was

granted, 50% posts were to be filled by Direct Recruitment through Himachal Pradesh Subordinate Services Selection Board and remaining 50% posts were to be filled by Batch-Wise Recruitment as per batch-wise seniority and other parameters at departmental level. Reply-Affidavit states that based on the one time relaxation, out of total 125 posts of Physical Education Teachers, about 63 posts were filled-up by Direct Recruitment and the remaining 62 posts were to be filled on batch-wise basis by considering batch-wise seniority.

5(iii). Reply-Affidavit stated that the Respondents herein cannot seek benefit of the directions passed in CWP No. 8022 of 2012, in the case **Saroj Kumar** (supra), in view of the fact that these 20 persons who were petitioners in the case of **Saroj Kumar** (supra) were appointed by way of special approval given in order to implement the decision of this Court. Reply-Affidavit states that relaxation given by Cabinet, being a *One Time Relaxation*, cannot be



stretched for an indefinite period and one time relaxation cannot be applied for future recruitments which shall be de hors the Recruitment & Promotion Rules 2011, [Annexure A-1 in writ file], and also the Regulations dated 12.11.2014 notified by the NCTE under the Right of Children to Free and Compulsory Education Act, 2009 [hereinafter referred to as the RTE Act], mandating that no relaxation in Educational Qualification would be given in case of recruitment of Physical Education Teachers. The Reply-Affidavit indicates that merely because some persons belonging to the same batch of Diploma Holders in Physical Education have been appointed against 125 posts of PETs, (which were approved by the State Cabinet for being filled up in 2009 and reiterated in 2011), by way of one time relaxation will not confer any vested right of appointment on the Respondents and others, who were not eligible for the post of Physical Education Teachers, as per the Existing Recruitment and Promotion Rules dated 10.01.2011 {Annexure A-1 in writ file}. So far as the plea that after passing



of the judgement in case of **Saroj Kumar** (supra), one Shri **Amrick Singh** was appointed as PET was denied by stating that his appointment stands withdrawn, but he had filed an OA No. 297 of 2014, wherein, orders *withdrawing his appointment was stayed on 27.01.2017 and two wrongs will not make a right.* Reply-Affidavit further indicates that *respondents-writ petitioners were never called for counseling in the year 2014, [Annexure A-6 in writ file]* but were called to verify the credentials and such verification was not a part of selection process in any manner. In this background, the State Authorities have negated the claim of the respondents-writ petitioners.

STAND OF RESPONDENTS-WRIT PETITIONERS IN REJOINDER:

6. Respondents-writ petitioners filed a rejoinder reiterating the averments in the writ petition with the further plea that once the State Authorities have appointed one Sh. Amrick Singh as PET, on the basis of decision in the case of **Saroj Kumar** (supra), therefore, similar benefit should be extended to the petitioners also.



IMPUGNED JUDGMENT DATED 19.07.2022:

7. The Lead case, CWPOA No 3573 of 2019 filed by Respondents-Writ Petitioners and connected cases, was decided by the Learned Single Judge on 19.07.2022, accepting the claim of the Respondents-writ petitioners, in the following terms:

“35. It has been categorically held in the aforesaid judgment that State Government is under obligation to act as per the notifications and instructions issued by NCTE from time to time because it acts as “an academic authority” under section 23 of the RTE Act. However, in the instant case, aforesaid case has no application for the reasons that instructions/notifications, if any, to not give further relaxation in qualification for appointment to the post of PET came to be issued in the year 2014, before which time **Government of H.P., itself vide notification dated 15.02.2011 had decided to give one time relaxation** to the persons having qualification as per old R & P Rules. In the case at hand, petitioners, who had approached this Court in the year 2013-14 are entitled to be given benefit of relaxation in minimum education qualification in terms of notification dated 15.02.2011, as has been done by State of Himachal Pradesh in case of petitioners in Saroj Kumar’s case.



36. Leaving everything aside, this Court finds that **at present more than 870 posts of Physical Education Teachers are lying vacant in the State of Himachal Pradesh** and as such, cases of the petitioners can be easily **considered for appointment to the posts of PET on batch wise basis after granting them relaxation** in minimum qualification in terms of notification dated 15.02.2011, as was ordered to be done by Division Bench of this Court vide judgment dated 9th January, 2012 passed in CWP No. 8022 of 2012, titled as **Saroj Kumar and others vs. State of H.P. and others**, which has been further upheld by Hon'ble Apex Court.
37. Consequently, in view of the detailed discussion made hereinabove, all the petitions are allowed and order dated 10.07.2018 (Annexure A-9), is quashed and set-aside and respondents are directed to consider and decide the cases of the petitioners for appointment to the post of Physical Education Teachers on batch wise basis **after having granted them relaxation in minimum qualification** in terms of Notification dated 15.02.2011 **(Annexure A-2)** and pursuant to **counseling done on 14.7.2014 (Annexure A-6)**. Since, the petitioners have been fighting for their rightful claims for more than 7-8 years, this Court hopes and trust that needful shall be done by the respondents expeditiously, preferably within a period of four weeks. Pending applications, if any,



also stand disposed of. Interim order, if any, is vacated.”

2026:HHC:3308-DB

**CHALLENGE TO IMPUGNED JUDGEMENT DATED
19.07.2022 PASSED BY LEARNED SINGLE JUDGE:**

8. In the instant Intra-Court Appeal, the State Authorities being the appellants have assailed the Impugned Judgement dated 19.07.2022 passed by Learned Single Judge, on the grounds that firstly, the Respondents-writ petitioners have no vested right of appointment when, pursuant to the one-time relaxation granted by the State Cabinet on 29.01.2011, as in communication dated 15.02.2011, they were considered but they were not selected against 62 posts of PETs meant for batch-wise recruitment} and secondly, the Impugned Judgement mandating the State Authorities to grant relaxation to the Respondents-writ petitioners so as to treat “one-time relaxation” to be “perpetual and indefinite relaxation” in view of the fact that the Respondents-writ petitioners have no right to seek relaxation as of right and the discretion to grant relaxation {under Rule 18 of the Rules}) and the time, stage, manner, and extent thereof lies within the domain



of the State Government and not the Court; and
thirdly, findings recorded in Paras 36 and 37
of Impugned Judgement directing the State Authorities
to grant relaxation to Respondents-writ petitioners,
as given to petitioners in case of **Saroj Kumar**
(CWP No 8022 of 2012 decided on 09.01.2012)
as there was no declaration of law and therefore
the same will not constitute a precedent, which
has been ignored, and claim for similar treatment
as given to Saroj Kumar {who were ineligible} shall
perpetuate illegality and thus Impugned directions are
erroneous and lastly, the Respondents -writ petitioners
have neither questioned the New Rules of the post
of PETs notified on 10.01.2011 {Annexure A-1} nor
has the decision of the State Cabinet granting “one
time relaxation” on 29.01.2011 nor the communication
dated 15.02.2011 {to the extent of 1000 posts of
teachers in various disciplines, which included 125
posts of PET, out of which 62 posts were meant
for batch-wise recruitment} therefore, the presumption
of constitutionality is attached to the said Rules
and the decisions taken thereon, disentitling the



Respondents-writ petitioners for any relief.

IMPUGNED JUDGEMENT STAYED:

9. The operation of the Impugned Judgement dated 19.07.2022, was stayed by this Court on 03.04.2023

10. Heard, Mr. Rakesh Dhaulta and Mr. Gobind Korla, Learned Additional Advocate General(s) for State Authorities-Appellants in Lead Case i.e. LPA No. 194 of 2023 and connected LPA's and Mr. Onkar Jairath, Mr. Vinod Thakur, Mr. R.L. Chaudahry, Mr. Ashok Chaudhary, Mr. Ravinder Singh Chandel, Mr. Lovneesh Singh Thakur, Mr. Vijay Chaudhary, Mr. Narender Singh Thakur, Mr. Prashant Shama, Mr. Vikas Rajput, Mr. Kush Sharma and Mr. Adarsh K. Vashists, Advocate for Respondents-writ petitioners and in CWPOA's/CWPs for petitioners in respective petitions.

11. Now this Court proceeds to analyze the contention of the Learned Counsels for the respective parties in succeeding paras.

ANALYSIS OF CONTENTIONS OF COUNSEL FOR APPELLANTS-STATE AUTHORITIES:

12. **First contention** of Learned State Counsel



is that the Respondents-writ petitioners have no vested right of appointment when, pursuant to the one-time relaxation granted by the State Cabinet on 29.01.2011, as in communication dated 15.02.2011, they were considered but they were not selected against 62 posts of PETs meant for batch-wise recruitment}

Above contention of Learned State Counsel has force, for the reason, that on 09.09.2009, the State Cabinet took a decision to fill 1000 posts of various categories after issuance of new rules. The New Recruitment and Promotion Rules for post of Physical Education Teachers was notified on 10.01.2011, (Annexure A-1, in writ file), and Rule 7 of New Rules conferred eligibility for the posts of Physical Education Teachers {PETs} on incumbents who were 10+2 and had passed 2 years Diploma in Physical Education Teacher from a University/Board recognized by State Government [other qualifications are not relevant for instant set of cases]. Rule 10 prescribes the method of recruitment and the percentage was to apply



to posts to be filled by various methods, providing that 50% posts of Physical Education Teachers were to be filled by HP Subordinate Services Selection Board [now Commission Hamirpur] and 50% posts by Batch Wise Basis at departmental level. After the issuance of New Recruitment and Promotion Rules on 10.01.2011, the Respondents-writ petitioners and others became ineligible for the post in question {as they possessed one year's diploma in physical education vis-à-vis diploma of two years duration under the New Rules of 2011}. In this situation, in order to grant one chance of consideration, the State Cabinet took a decision on 29.01.2011, granting relaxation, by deciding to fill 1000 posts of teachers in various disciplines {including 125 posts of Physical Education Teachers, which were to be filled 50% by direct recruitment and 50% by batch-wise recruitment} by applying the Old Rules and New Rules. The decision taken by the State Cabinet on 29.01.2011 granting one time relaxation was notified by the State Authorities on 15.02.2011 {Annexure A-2} but with the rider that the persons



recruited under the Old Rules shall have to improve their qualifications within five years of appointment.

ONE TIME RELAXATION GRANTED BY STATE CABINET FOR FILLING 125 POSTS OF PHYSICAL EDUCATION TEACHERS:

12(i). Consequent upon the approval granted for filling up aforesaid 1000 posts of teachers of various categories, including 125 posts of Physical Education Teachers, and *by applying the one time relaxation granted on 29.01.2011, notified on 15.02.2011, out of total 125 posts of PETs, 50% posts i.e. 63 posts of PET's were to be filled by Direct Recruitment through HP Subordinate Services Selection Board and remaining 50% posts i.e. 62 posts of PET's were to be filled by Batch-Wise Recruitment on the basis of the batch-wise seniority and other parameters at departmental level.*

BASED ON THE ONE-TIME RELAXATION RESPONDENTS-WRIT PETITIONERS CONSIDERED FOR RECRUITMENT AS PET's:

12(ii). Pursuant to the decision taken by the State Cabinet on *29.01.2011, notified on 15.02.2011,* granting one time relaxation, (in relation to 125 posts of PETs, to be filled by direct recruitment



and batch-wise recruitment i.e. 63:62 posts), the
State Authorities have considered the Respondents
-writ petitioners {in Lead Case} and others for the
batch-wise recruitment against 62 posts, 50% of
total 125 posts of PET's}.

Upon consideration, once the Respondents
-writ petitioners were considered along with others
for batchwise posts but could not did not find a
place in final selection, due to shortage of posts
vis-a-vis lower batch wise seniority/placement {as
admitted in Para 6 (viii) of writ file by petitioners}
therefore, the Respondents have a fundamental right
of consideration but they do not have any vested
right for appointment, in view of the mandate of
the Hon'ble Supreme Court as discussed hereinunder.

**MERE PARTICIPATION IN SELECTION WILL NOT
CONFER RIGHT OF APPOINTMENT:**

12(ii-a). While dealing with the claim of aspirants
for direct recruitment, the Honble Supreme Court has
mandated in the case of **N.T. Devin Katti and others**
vs **Karnataka Public Service Commission and others,**
(1990) 3 SCC 157, in the following terms:

47. There is yet another aspect of the



question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing rules of government orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing rules and government orders, **Candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selection in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates contrary intention.** Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallizes on the date of publication of advertisement, however amended retrospectively during the pendency of selection, in that event he has no absolute right in the matter. If the recruitment Rules are selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative



intent. The legislative intent is ascertained either by express provision or by necessary implication; **if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the rules** and of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant rules and orders. **Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an eligible and is otherwise qualified in accordance with the relevant rules and the terms contained in the advertisement, he does acquire a vested right of being considered for selection in accordance with the rules as they existed on the date of advertisement.** He cannot be deprived of that limited right on the amendment of rules during the pendency of selection unless the amended rules are retrospective in nature.

12(ii-b). While dealing with the rights of aspirants for direct recruitment, the Constitutional Bench of the Honble Supreme Court has mandated in the case of **Shankarsan Dash vs Union of India, (1991) 3 SCC 47**, that a person has a fundamental right of consideration for the post in terms of the Rules



in force on the date of commencement of selection process but even after selection, such a person has no indefeasible right of appointment, in the following terms:

“7. **It is not correct to say** that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, **the successful candidates acquire an indefeasible right to be appointed** which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and **on their selection they do not acquire any right to the post.** Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in the **State**



of Haryana v. Subhash Chander
Marwaha, Neelima Shangla versus
State of Haryana or **Jatinder Kumar**
versus State of Punjab.”

12(ii-c). While dealing with the claim of a selectee for appointment, the Honble Supreme Court in **R S Mittal vs Union of India, (1995) Supp 2 SCC 230**, has mandated that such a selected has no right of appointment, in the following terms:

10. It is no doubt correct that a person on the select-panel has no vested right to be appointed to the post for which he has been selected. He has a right to be considered for appointment....”.

12(ii-d). While dealing with the claim of aspirants for direct recruitment, the Full Bench of this Court in **Berojgar Shastri Sangh Welfare Society** versus **State of Himachal Pradesh and Others along with connected matters, CWP No 8523 of 2011**, has mandated that an aspirant has a fundamental right to be considered for the post as per the rules in force on the date of commencement of selection process but such an aspirant has no vested right for the post in the following terms:

7. We cannot accept these submissions



for the reasons that the law is now well settled and does not require restatement/reiteration that in the **case of direct recruitment**, which is the case before us, the **petitioners cannot plead vested right to a post** and consideration has to be in terms of what the qualifications prescribed on the date of advertisement of the vacancies.

13. We need not multiply precedent any further or restate the settled law applicable in the case of direct recruitment as the principle by now is well settled that **recruitment to the posts by direct recruitment is governed by the Rules as prevalent on the date when the vacancies were notified.**"

12(ii-e). Reiterating the principle that a person has a fundamental right of consideration for a post but has no vested right of appointment as mandated by the Hon'ble Supreme Court in **Mohd. Rashid versus Director, Local Bodies, New Secretariat and others, (2020) 2 SCC 582**, in the following terms:-

13. The appellants who are **aspirants for direct recruitment have no right for appointment** merely because at one point of time the vacancies were advertised. **The candidates such as the appellants cannot claim any right of**



appointment merely for the reason that they responded to an advertisement published on 12th September, 2013. Even after completion of the selection process, the candidates even on the merit list **do not have any vested right to seek appointment** only for the reason that their names appear on the merit list....”

12(ii-f). Principle of law that mere participation in selection does not confer any automatic right of selection to a post was reiterated by the Hon’ble Supreme Court in **Nutan Kumari versus BRA Bihar University, (2024) 13 SCC 432** in the following terms:-

22. It is also a part of settled service jurisprudence that merely by applying for a post pursuant to an advertisement, a **candidate does not automatically acquire any vested right of selection.** He only acquires a right for being considered for selection strictly in accordance with the extant rules.

Once after promulgation of the New Rules for post of PET on 10.01.2011 the State Cabinet granted one-time relaxation on 29.01.2011, as notified on 15.02.2011, only to the extent of filling a total of 1000 posts of various categories of teachers, which



included 125 post of PETs and out of which 50 i.e. 63 posts were to be filled by direct recruitment and 62 posts by way of batch-wise recruitment. After grant of one-time relaxation and commencement of selection process for 62 posts to be filled under batch-wise recruitment, Respondents-writ petitioners were considered but due to their lower batch-wise placement {based on batch-wise parameters} they could not be selected whereas others were selected and appointed as PETs. After filling up of these 62 posts meant for batch-wise recruitment, selection process had culminated/ended. After culmination of selection process, the Respondents-writ petitioners having been considered but not selected do not have “any vested right of appointment” as PETs against vacant posts and therefore, the Impugned Judgment directing the State Authorities to grant relaxation and to consider and appoint the Respondents-writ petitioners and others as PET’s against the vacant posts is erroneous.

13. Second contention of Learned State Counsel is that the Impugned Judgment directing the State



Authorities to grant relaxation and to consider and appoint the Respondents-writ petitioners so as to treat “one-time relaxation” to be “perpetual relaxation” is erroneous;

The above contention has force for the reason, that perusal of writ records, indicates that the State Cabinet took a decision on 09.09.2009, for filling 1000 posts of various categories after issuance of new rules. The New Recruitment and Promotion Rules for post of Physical Education Teachers was notified on 10.01.2011, (**Annexure A-1, in writ file**). By virtue of Rule 7 of the New Rules, the eligibility for the post of Physical Education Teachers was amended by requiring the candidates to be 10+2 with 2 years Diploma in Physical Education Teacher from University/Board recognized by State Government [other qualifications are not relevant in instant cases]. Rule 10 prescribes method of recruitment, whereby, 50% posts of Physical Education Teachers were to be filled by HP Subordinate Services Selection Board [now Commission Hamirpur] and 50% posts by Batch Wise Basis at departmental level. After issuance



of New Rules on 10.01.2011, the Respondents-writ petitioners and others, who became ineligible for the post {as they possessed one year's diploma in physical education vis-à-vis two years diploma}, and in order to grant one chance of consideration, the State Cabinet took a decision on 29.01.2011, granting relaxation in relation to 1000 posts of teachers in various disciplines {including 125 posts of Physical Education Teachers which were to be filled by applying the Old Rules and New Rules. Based on one-time relaxation granted by the State Cabinet on 29.01.2011, notified on 15.02.2011 {Annexure A-2}, once the Respondents-writ petitioners were duly considered for batch-wise recruitment {62 posts} but were not selected due to their lower placement in terms of the parameters of batch-wise recruitment. The Impugned Judgement directing the State Authorities to grant relaxation and to consider and appoint the Respondents-writ petitioner (who are admittedly ineligible under the New Rules of 2011} against vacant posts of PETs, amounts to treating and converting "one time relaxation" into



“perpetual and indefinite relaxation” cannot sustain, for the reason, firstly, relaxation cannot be claimed as of right and secondly, the grant of relaxation is discretionary on the part of State Government and thirdly, relaxation cannot be grant so as to distort the basic fabric of the Extant Rules of 10.02.2011 and lastly, mandamus could not have been issued by directing the State Authorities to grant relaxation and to consider and appoint the Respondents-writ petitioners and others (who are ineligibles} against vacant 870 posts of PETs shall result in injustice to eligibles candidates and shall result in extending benefit to ineligible candidates and undermine the standards of education and shall amount to giving benefits to ineligible de hors the Statutory Rules of 2011 {Annexure A-2}, which is erroneous in law and cannot sustain.

13(i-a). For appreciating the issue, a recap of Rule 18 of the Recruitment & Promotion Rules for the post of Physical Education Teachers, notified on 10.01.2011, {Annexure A-2, in writ file} reads as under:



“Rule 18: Power to relax:

Where the **State Government is of the opinion** that it is **necessary or expedient to do so**, it **may** by order for reasons to be recorded in writing **and** in consultation with the Himachal Pradesh Public Service Commission/Subordinate Selection Board to **relax any of provisions of these Rules** with respect to any class or category or person or post.”

A bare reading of Rule 18 indicates that the State Government is vested with the discretion to relax any of provision of these Rules, in view of the use of expression **“may”** in the said Rules. Such discretion is to exercised, after **“formation of opinion”** to be based on **“necessity or expediency.”** After formation of opinion, the State Government is bound to **“consult”** the Himachal Pradesh Public Service Commission/Subordinate Selection Board before granting relaxation to with respect to any class or category or person or post. Moreover, once Rule 18 stipulates that that the discretion qua relaxation conferred on the State Government has to be performed in a particular manner, subject to formation of opinion, on the basis of necessity



or expediency and after having consultation with the Public Service Commission/Board, therefore, the Impugned Judgement dated 19.07.2022, directing the State Government Authorities to grant relaxation, “amounts to substituting its opinion with the opinion to be formed by the State Government” by giving a go-bye to the prescribed mode and manner for granting relaxation in Statutory Rules and when, the Respondents-writ petitioners have neither any locus nor any claim for relaxation as of right.

**COURT CANNOT SUBSTITUTE ITS SATISFACTION
FOR SATISFACTION OF GOVERNMENT**

13(i-b). While dealing with the extent and limits of exercise of power of relaxation, it been mandated that the Courts cannot substitute its satisfaction for the satisfaction of the State Government by directing the authorities to grant relaxation as per the mandate of the Honble Supreme Court in **Keshav Chandra Joshi versus Union of India and others (1992) Supp (1) SCC 272.**

**ISSUE DIRECTIONS TO INVOKE RELAXATION
DEHORS STATUTORY RULES:**

13(i-c). After taking into account the mandate of



Honble Supreme Court in the case of **Keshav Chandra Joshi** (supra), the directions passed by Tribunal to regularize erroneous promotions, by relaxing rules, who had not passed the departmental examination the Honble Supreme Court has mandated in **Union of India versus Narendra Singh, (2008) 2 SCC 750**, in following terms:

26. “...In this connection, it may be profitable to refer to a decision of this Court in [Keshav Chandra Joshi & Ors. v. Union of India & Ors.](#), (1992) Supp (1) SCC 272 where this Court was called upon to consider the ambit and scope of relaxation clause in Recruitment Rules. Rule 27 of the U.P. Forest Service Rules, 1952 invested in the Government power of relaxation which read thus:
27. Where the **Governor is satisfied** that the operation of any rule regarding 'the conditions of service' of the members of the service causes undue hardship in any particular case, he may, in consultation with the Commission, notwithstanding anything contained in the rules applicable to the case, by order dispense with or relax the requirements of that rule to such extent and subject to such conditions as he may consider necessary for dealing with the case in a just and equitable manner.
27. The Court held that such **power should be exercised to the extent** as may be necessary to ensure satisfactory working or removing hardship in just and equitable manner **but the Government**



cannot consciously and deliberately deviate from the Rules exercising the power of relaxation.

28. Interpreting the relaxation-clause and the power of the Governor, this Court observed;
33. Satisfaction of the Governor that the operation of the rules regarding the conditions of service would cause undue hardship in a particular case or cases and the need to relieve hardship and to cause just and equitable results is a pre-condition. Even otherwise the court cannot substitute its satisfaction for the satisfaction of the Governor in exercise of the power of deemed relaxation...”.

RELAXATION CANNOT BE CLAIMED-GRANTED BY THE RESPONDENTS-WRIT PETITIONERS TO DISTORT STATUTORY RULES :

13(ii). Deprecating the claim for relaxation, in a situation where the relaxation resulted in distorting the Statutory Rules and that in marginalized cases and situations where exceptionally qualified candidates are available by the Honble Supreme Court in **Food Corporation of India versus Bhanu Lodh, (2005)**

3 SCC 618, in the following terms:-

12. “.....While the maximum age prescribed under the Recruitment Rules is 35/ 40 years for the concerned posts, departmental candidates in the age of 52-53 years were proposed to be appointed. Even assuming that there



is a power of relaxation under the Regulations, we think that the **power of relaxation cannot be exercised in such a manner that it completely distorts the Regulations.** The power of relaxation is intended to be used in marginal cases where exceptionally qualified candidates are available. We do not think that they are intended as an 'open Sesame' for all and sundry. The wholesale go by given to the Regulations, and the manner in which the recruitment process was being done, was very much reviewable as a policy directive, in exercise of the power of the Central Government under [Section 6\(2\)](#) of the Act...

21.Hence, it is not possible to read any regulation framed under [section 45](#) as inconsistent with or overriding a directives or instruction validly given by the Central Government to FCI under [section 6\(2\)](#) of the Act. Apart therefrom, we are not able to appreciate the argument that the **power of the Board of Directors to relax the prescribed age limit can be exercised in such an unreasonable manner as to distort the regulation itself.** As we have noticed, the relaxation could not have been done for the benefit of persons who were over-aged by about 15 years...”.

MANDAMUS CANNOT BE ISSUED FOR GRANT RELAXATION-CANNOT BE CLAIMED AS OF RIGHT-LIES WITHIN DOMAIN OF GOVERNMENT:



13(iii). While dealing with the issue relating to the “may” in the relaxation Clause in the Recruitment & Promotion Rules, the Hon’ble Supreme Court in **State of Uttar Pradesh and others** versus **Vikash Kumar Singh and Others, (2022) 1 SCC 347** has mandated that the term “may” used in the Rules providing for relaxation is discretionary on the part of the Competent Authority. Such relaxation cannot be prayed as a matter of right. The relaxation being discretionary is to be based upon the conscious decision to be taken by the Competent Authority and no mandamus can be issued directing the Competent Authority to grant relaxation in the Rules to the aspirants or persons, in the following terms:

7.1 The learned Single Judge thereafter while quashing and setting aside the eligibility lists dated 18.03.2019 and 10.05.2019 has issued the writ of mandamus commanding or directing the competent authority to grant relaxation in qualifying service, which as such was permissible under Rule 4 of the 2006 Relaxation Rules. The word used in the Rule 4 of Relaxation Rules, 2006 is “MAY”. Therefore, the **relaxation**



may be at the discretion of the competent authority. The relaxation cannot be prayed as a matter of right.

If a conscious decision is taken not to grant the relaxation, merely because Rule permits relaxation, no writ of mandamus can be issued directing the competent authority to grant relaxation in qualifying service. Therefore, the **High Court has committed a grave error in issuing the writ of mandamus commanding the competent authority to grant relaxation in the qualifying service.** Consequently, the High Court has also erred in quashing and setting aside the eligibility lists dated 18.03.2019 and 10.05.2019, which as such were prepared absolutely in consonance with the Rules, 1990 and Rules, 2006. The impugned judgments and orders passed by the learned Single Judge as well as the Division Bench of the High Court are not sustainable in law.”

GRANT OF RELAXATION BY SUBSTITUTING ITS OPINION WITH THE REQUIRED OPINION TO BE FORMED BY STATE- IMPERMISSIBLE:

13(i-e). Pertinently once the Statutory Rules for the post of PETs dated 10.01.2011 were in force prescribing the minimum educational qualification as 10+2 and 2 years Diploma in Physical Education and the State Government in its wisdom, granted



‘one time relaxation” in relation to 62 posts meant for batchwise recruitment, in terms of the decision of the State Cabinet dated 29.01.2011, notified on 15.02.2011 and the Respondents-writ petitioners, were considered for these posts of PETs per the existing rules of 2011 {Annexure A-2} but were not selected due to their lower placement as per the parameters for batch recruitment. In these circumstances, the Impugned Judgement dated 19.07.2022, directing the State Authorities to grant relaxation to the Respondents-writ petitioners who are ineligible so as to consider and appoint them by giving a complete go-bye to the eligibility stipulated in Statutory Rules of 2011 [at relevant time} and shall undermine the standards of education and shall amount to compromising with recruiting the best talent and shall amount to curtaining the fundamental right of consideration of eligible-candidates. The Impugned directions shall result in converting and treating “one-time relaxation” into “perpetual and indefinite relaxation”, despite the fact that “the power of relaxation, the extent of relaxation, the mode, manner, stage and time and



“formation of opinion, for relaxation on the basis of necessity or expediency’ fell with the realm of the State Government”. The Impugned Judgement whereby, the Learned Single Judge has formed its opinion so as to substitute the same with the opinion to be formed by the State Government as per the Statutory Rules”, is erroneous. Moreover, once there was neither the infringement of any constitutional right or legal right nor any corresponding obligation was cast on the State Authorities to grant relaxation and to consider and appoint the Respondent-writ petitioners and others, who were not at all eligible for the post of PETs, then, in this scenario, the Impugned directions passed dehors the Statutory Rules cannot sustain and the same are accordingly interdicted and quashed and set-aside.

14. Third contention of Learned State Counsel is that the findings recorded in Paras 36 and 37 of Impugned Judgement directing the State Authorities to grant relaxation to Respondents-writ petitioners, as given to petitioners in case of **Saroj Kumar** (CWP No 8022 of 2012 decided on 09.01.2012)



as there was no declaration of law and therefore the same will not constitute a precedent, which has been ignored, and claim for similar treatment as given to Saroj Kumar {who were ineligible} shall perpetuate illegality and thus Impugned directions are erroneous.

Above contention of Learned State Counsel has force, *for the reason*, firstly, that the judgement in case of **Saroj Kumar** (supra) is distinguishable ; and secondly, in the case of Saroj Kumar (supra) the applicability of Rule 18 of the Recruitment and Promotion Rules for post of PET notified on 10.01.2011 (Annexure A-2) escaped notice, when, the discretion for relaxation was exercisable on the basis of “formation of opinion” on the basis of “necessity or expediency” and by consulting the Public Service Commission /Board” and thirdly, another material was not brought to the notice in case of **Saroj Kumar** (supra) that relaxation granted by the State Cabinet on 29.01.2011, notified on 15.02.2011 was a “one-time relaxation” in relation to 125 posts of Physical Education Teachers {i.e. 63 posts to be



filled by direct recruitment and 62 posts by batch-wise recruitment}. Even once the selection process for these posts had culminated in 2011/2012 then, any unfilled or future vacancies could not have been filled by converting or treating the “one time relaxation” to be “perpetual or infinite relaxation”, so as to defeat the extent of relaxation granted by the State Government. After passing of the judgement and dismissal of SLP in limine without reasons in the case of **Saroj Kumar** (supra), the State Authorities “after granting special relaxation”, implemented the judgement by appointing persons who were petitioners in the case of Saroj Kumar and once there was neither any adjudication on merits by this Court {in relation to relaxation under Rule 18} nor there was any declaration by the Honble Supreme Court. In these circumstances, the contention of the Learned State Counsel is accepted, that judgments in Saroj Kumar (supra) which **did not declare the law, and in absence of any declaration of law, the said judgement did not constitute a precedent and was not binding**



and therefore the **Respondents-writ petitioners and others {who are ineligible as per rules}** and claim by the Respondents-writ petitioners for parity shall perpetuate illegality, so as to defeat the foundational fabric of public employment embedded in Articles 14 and 16 of the Constitution of India and the Statutory Rules notified under the proviso to Article 309 of the Constitution of India for the post of Physical Education teacher on 10.01.2011 (Annexure A-2, in writ file).

DISMISSAL OF SLP WITHOUT DECLARATION OF LAW- NOT A BINDING PRECEDENT:

14(i). While dealing with the principle of merger and the effect of dismissal of SLP without recording reasons, the Hon'ble Supreme Court in the case of **Kunhayammed and Others versus State of Kerala and another, (2000) 6 SCC 359**, has outlined the principles in the following terms:

“27. **A petition for leave to appeal to this Court may be dismissed by a non-speaking order or by a speaking order.** Whatever be the phraseology employed in the **order of dismissal, if it is a non-speaking order**, i.e. it does not assign reasons for dismissing the special



leave petition, **it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it nor would it be a declaration of law by the Supreme Court under Article 141** of the Constitution for there is no law which has been declared. If the order of dismissal be supported by reasons then also the doctrine of merger would not be attracted because the jurisdiction exercised was not an appellate jurisdiction but merely a discretionary jurisdiction refusing to grant leave to appeal. We have already dealt with this aspect earlier. Still the reasons stated by the Court would attract applicability of Article 141 of the Constitution if there is a law declared by the Supreme Court which obviously would be binding on all the courts and tribunals in India and certainly the parties thereto. The statement contained in the order other than on points of law would be binding on the parties and the court or tribunal, whose order was under challenge on the principle of judicial discipline, this Court being the apex court of the country. No court or tribunal or parties would have the liberty of taking or canvassing any view contrary to the one expressed by this Court. The order of Supreme Court would mean that it has declared the law and in that light the case was



considered not fit for grant of leave.

The declaration of law will be governed by Article 141 but still, the case not being one **where leave was granted, the doctrine of merger does not apply.** The Court sometimes leaves the

question of law open. Or it sometimes briefly lays down the principle, may be, contrary to the one laid down by the High Court and yet would dismiss the special leave petition. The reasons given are intended for purposes of Article 141. This is so done because in the event of merely dismissing the special leave petition, it is likely that an argument could be advanced in the High Court that the Supreme Court has to be understood as not to have differed in law with the High Court.”

14(i-a). The above principles were reiterated by the Hon’ble Supreme Court in **State of Orissa and another** versus **Dhirendra Sunder Das and Others, (2019) 6 SCC 270**, in the following terms:

“9.27. It is well-settled principle of law emerging from a catena of decisions of this Court, including Supreme Court Employees’ Welfare Assn. v. Union of India and State of Punjab v. Davinder Pal Singh Bhullar, that the dismissal of an SLP in *limine* simply implies that the case before this Court was not considered



worthy of examination for a reason,
which may be other than the merits
of the case. ***Such in limine dismissal***
at the threshold without giving any
detailed reasons, does not constitute
any declaration of law or a binding
precedent under Article 141 of the
Constitution.”

14 (i-b). While re-enforcing the principles of merger vis-à-vis the effect of dismissal of SLP by a non-speaking order which did not declare the law and was not to constitute a precedent having no binding effect [except the parties therein in personam] has been outlined by the Hon’ble Supreme Court in **V. Senthur and Another** versus **M. Vijay Kumar, Secretary, Tamil Nadu Public Service Commission and Another, (2022) 17 SCC 568**, in the following terms:

23. **It is thus clear that this Court in unequivocal terms has held that if the order of dismissal of SLPs is supported by reasons, then also the doctrine of merger would not be attracted.** Still the reasons stated by the court would attract applicability of Article 141 of the Constitution of India, if there is a law declared by this Court which obviously would be binding on



all the courts and the tribunals in India and certainly, the parties thereto. It has been held that no court, tribunal or party would have the liberty of taking or canvassing any view contrary to the one expressed by this Court. **Such an order would mean that it has declared the law and in that light, the case was considered not fit for grant of leave.”**

Based on the principles mandated by the Hon’ble Supreme Court in the case of **Kunhayammed, Dhirendra Sunder Das and V. Senthur (supra)** and taking into account the facts and circumstances of instant case, even if 20 petitioners in the case of **Saroj Kumar (supra)** were directed to be considered for relaxation but without taking into account the applicability and effect of Rule 18 of the Statutory Rules and another aspect as to whether One-Time Relaxation granted by State Authorities on 29.01.2011 notified on 15.01.2011 was confined to and related to 125 posts of Physical Education Teachers and after the dismissal of SLP in limine, without reasons, special relaxation was granted to the petitioners in case of Saroj Kumar, so as to implement the



judgment and once there was no adjudication on merits after considering the above material aspects either by the Writ Court nor was there any declaration of law by the Hon'ble Supreme Court therefore, the judgement in case of **Saroj Kumar** (supra), having not declared the law, was not a binding precedent. In these circumstances, Respondents-writ petitioners, who are ineligible as per the Statutory Rules, have neither any locus nor any right for claiming parity with eligibles. Accepting the prayer for parity shall amount to perpetuating illegality, by appointing Respondents-writ petitioners in contravention of and de hors the Statutory Rules for the post of PET's of 2011. Extending the parity to the Respondents-writ petitioners ineligibles shall certainly violate the fundamental right of consideration of eligibles and shall amount to giving a complete go-bye to the eligibility prescribed in the Statutory Rules, rendering the Rules nugatory and otiose is impermissible. In these circumstances, the Impugned Judgement passed by Learned Writ Court directing the State Authorities to grant relaxation and to consider and appoint



Respondents-writ petitioners, as PET, despite their ineligibility cannot be permitted to operate. Ordered accordingly.

15. Last contention of Learned State Counsel is that the Respondents-writ petitioners have neither questioned the New Rules for post of PETs notified on 10.01.2011 {Annexure A-1} nor has the decision of the State Cabinet granting “one time relaxation” on 29.01.2011 and communication dated 15.02.2011 which disentitled the Respondents-writ petitioners for any relief.

Above contention has force, *for the reason*, that the State Authorities issued the Recruitment and Promotion Rules for post of PET's on 10.01.2011 and thereafter granted one-time relaxation on 29.01.2011, notified on 15.02.2011 for filling up 1000 posts of various categories of teachers which included 125 posts of PETs, {out of which 63 posts of PETs were to be filled by direct recruitment and 62 posts by batch-wise recruitment} but once the Respondents-writ petitioners in Lead case and other connected cases, have not questioned either



the Statutory Rules nor the decision of State Cabinet dated 29.01.2011 granting the “one time relaxation” nor the communication dated 15.02.2011. Not laying a challenge amounts to waiver. Even presumption of constitutionality is attached to the Statutory Rules and even, the **Respondents-writ petitioners are not eligible and being ineligible,** have neither any fundamental right nor any legal right to be appointed as PETs under the State Government. These material aspects escaped notice of Learned Writ Court and therefore, the Impugned Judgement cannot sustain. Hence, the same is interdicted.

CONTENTION OF LEARNED COUNSEL FOR THE RESPONDENTS-WRIT PETITIONERS:

16. Arguments on behalf of the Respondent-writ petitioner were led Mr. Onkar Jairath, Advocate, followed by other Learned Counsels.

17. **First contention** of Learned Counsel is that the Respondents-writ petitioners being similarly placed vis-a-vis the 20 persons, who were petitioners in **Saroj Kumar** (supra) [CWP No.8022 of 2012, decided on 09.01.2012, Annexure A-3], against which was



SLP was dismissed on 17.12.2013 [Annexure A-4]

deserve similar treatment.

The above contention is misconceived, *for the reason*, that judgement in case of **Saroj Kumar** (supra) is distinguishable. In case of Saroj Kumar (supra), the applicability of Rule 18 of Recruitment and Promotion Rules for post of PET notified on 10.01.2011 (Annexure A-2) and the fact that the relaxation granted on 29.01.2011, which was notified on 15.02.2011 was **“one time relaxation”** in relation to 125 posts of Physical Education Teachers {i.e. 63 posts to be filled by direct recruitment and 62 posts by batch-wise recruitment}. Even, once the selection process for these 125 posts had come to be culminated in 2011/2012 then, any unfilled or future vacancies could not have been filled by converting or treating “one time relaxation” to be “perpetual or infinite relaxation”, so as to defeat the extent of relaxation granted by the State Government. After passing of the judgement and dismissal of SLP in limine without reasons, the State Authorities “after granting special relaxation”



so as to ensure implementation of the judgement, gave appointment to petitioners in the case of Saroj Kumar.

Notably, there was ***neither any adjudication on merits by this Court {in relation to the one-time relaxation granted under Rule 18} nor was there any declaration of law by the Honble Supreme Court*** in the case of **Saroj Kumar** (supra) can only be construed as a judgement in personam and **the said judgement did not constitute a precedent and was not binding** and therefore, the **Respondents-writ petitioners and others {who are ineligible as per rules}** cannot claim parity. Impugned Judgement directing to extend the parity cannot pass the test of judicial scrutiny, as the Respondents-writ petitioners were ineligible having no right for the post.

Even the petitioners in case of **Saroj Kumar** (supra) were ineligible but were appointed, so as to honor the judgement passed by the Learned Writ Court **without examining the issue** as to whether the “one time relaxation granted by



the State Cabinet, in relation to 125 posts of PET (including 62 posts meant for batch-wise recruitment} could be “converted or treated to be perpetual or indefinite relaxation” and by overlooking another aspect as to whether the “power of relaxation vested in the State Government under Rule 18 of the Rules of 2011 could have been exercised, by a subordinate functionary in the absence of formation of opinion on the basis of “necessity or expediency” by resorting to consultancy with State Public Service Commission/Subordinate Services Selection Board. Non-compliance with this statutory mandate at the designate level, cannot be a ground to claim parity. Permitting parity to the Respondents-writ petitioners with petitioners in the case of **Saroj Kumar** (supra) who were ineligible shall perpetuate illegality. The prayer of the Respondents-writ petitioners for parity despite being ineligible shall defeat the foundational fabric of public employment embedded in Articles 14 and 16 of the Constitution of India and shall violate the Statutory Rules notified under provisio to Article 309 of the Constitution of India for the



post of Physical Education Teacher on 10.01.2011 (Annexure A-2, in writ file). Permitting parity shall render the minimum qualifications and the Rules nugatory and otiose. In these circumstances, the claim for parity by the respondents-writ petitioners, is not tenable on facts as well as law and, therefore, the same is turned down.

18. Second contention of the Learned Counsel for the respondents-writ petitioners is that as per the mandate of the judgment of Hon'ble Supreme Court in the case of **State of Uttar Pradesh and others** versus **Arvind Kumar Srivastava and others (2015) 1 Supreme Court Cases 347** to assert that once the benefit has been extended to 20 petitioners in case of **Saroj Kumar** (supra), then, similar benefits should be extended to the respondents-writ petitioners and other incumbents.

The reliance placed on the judgment in case **Arvind Kumar Srivastava** (supra) appears to be attractive but on scanning the principles laid down in aforesaid judgments, the same finally turns up to be against the Respondents-writ petitioners for *the*



reason, that it is only the judgement, which declares the law and is a judgment in rem, which constitutes a binding precedent. Moreover, the Respondent-writ petitioners participated in selection process, against 62 batch-wise posts, out of 125 posts of PETs but remained unsuccessful, by not finding a place due to lower placement/seniority as per parameters for batch-wise and ***no junior incumbent in terms of batch-wise parameters has been appointed*** then, Impugned Judgment, directing to grant relaxation and to consider and appoint the Respondent-writ petitioners against future 870 vacant post of PET's by violating, contravening and defeating the object and intent of **"one time relaxation" "so as to treat it as reservoir for filling future vacancies."** Further, the future vacancies, if any could only be filled from eligible incumbents after initiating fresh selection process and not otherwise. Last but not the least, the Impugned Judgement directing the State Authorities to grant relaxation and to consider and appoint the ***Respondents-writ petitioners and others, who are ineligible and who do not***



possesses the minimum eligibility of “2 years

Diploma in Physical Education’ by which is a
sine-qua-non for consideration for post of Physical
Education Teacher as per Rule 7 (a) of Statutory
Rules of 2011, cannot be permitted to operate, so
 as to grant benefits, by giving a go-bye to Statutory
 Rules, occupying the field (at relevant time).

RESPONDENTS-WRIT PETITIONERS-INELIGIBLE
HAVE NO RIGHT AGAINST FUTURE VACANCIES :

18(i). While dealing with the issue as to whether
 after the completion of selection process, the future
 vacancies could be filled-up from the waiting list or
 otherwise has been answered by the Hon’ble Supreme
 Court in **Gujarat State Deputy Executive Engineers**
Association versus **State of Gujarat and Others,**
(1994) Supp (2) SCC 591, in the following terms:

8. Coming to the next issue, the first question is what is a waiting list? can it be treated as a source of recruitment from which candidates may be drawn as and when necessary? and lastly how long can it operate? These are some important questions which do arise as a result of direction issued by the High Court. A waiting list prepared in service matters by the competent authority is



a list of eligible and qualified candidates who in order of merit are placed below the last selected candidate. How it should operate and what is its nature may be governed by the rules. Usually it is linked with the selection or examination for which it is prepared. For instance, if an examination is held say for selecting 10 candidates for 1990 and the competent, authority prepares a waiting list then it is in respect of those ten seats only for which selection or competition was held. Reason for it is that whenever selection is held, except where it is for single post, it is normally held by taking into account not only the number of vacancies existing on the date when advertisement is issued or applications are invited but even those which are likely to arise in future within one year or so due to retirement etc. It is more so where selections are held regularly by the Commission. Such lists are prepared either under the rules or even otherwise mainly to ensure that the working in the office does not suffer if the selected candidates do not join for one or the other reason or the next selection or examination is not held soon. A candidate in the waiting list in the order of merit has a right to claim that he may be appointed if one or the other selected candidate does not join.



But once the selected candidates join and no vacancy arises due to resignation etc. or for any other reason within the period the list is to operate under the rules or within reasonable period where no specific period is provided then candidate from the waiting list has no right to claim appointment to any future vacancy which may arise unless the selection was held for it. She has no vested right except to the limited extent, indicated above, or when the appointing authority acts arbitrarily and makes appointment from the waiting list by picking and choosing for extraneous reasons.”

18(i-a). While dealing with the right of persons or wait listed candidates against future vacancies after the earlier selection process had come to an end was negated by the Hon’ble Supreme Court in **Rakhi Ray and others** versus **High Court of Delhi and others, (2010) 2 SCC 637**, *in the following terms:*

12. In view of above, the law can be summarized to the effect that **any appointment made beyond the number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of**



India, thus, a nullity, inexecutable and unenforceable in law. In case the vacancies notified stand filled up, the process of selection comes to an end. **Waiting list, etc. cannot be used as a reservoir, to fill up the vacancy which comes into existence after the issuance of notification/advertisement.** The unexhausted select list/waiting list becomes meaningless and cannot be pressed in service anymore.”

VACANCIES ARISING AFTER CULMINATION OF SELECTION PROCESS CANNOT BE FILLED WITHOUT THE COMMENCEMENT OF FRESH SELECTION PROCESS:

18(ii). Reinforcing the principle that the vacancies arising after the culmination of selection process cannot be filled-up without issuing the proper advertisement and without following fresh selection process was outlined by the Hon’ble Supreme Court in **Sudesh Kumar Goyal versus State of Haryana and Others, (2023) 10 SCC 54**, *in the following terms:*

19. This takes us to the second argument that the appellant could have been easily adjusted against the vacancy caused due to resignation of one of the selected candidates. The argument per se is bereft of merit inasmuch as all the vacancies notified stood filled



up initially. **However, if one of the selected candidates joins and then resigns, it gives rise to a fresh vacancy which could not have been filled up without issuing a proper advertisement and following the fresh selection process.** The Division Bench has rightly dealt with the above contention in the light of the precedent of the various decisions of this Court and we do not feel that any error has been committed in this context."

RESPONDENTS- WRIT PETITIONERS BEING INELIGIBLE BENEFICIARY OF ILLEGALITY HAS NO RIGHT AGAINST FUTURE VACANCIES:

18(ii-a). While examining the issue as to whether the appointment could be given against the future vacancies, even while balancing the equities was answered by this Court in **Meenakshi versus State of Himachal Pradesh, 2021 SCC Online HP 7310** which stands approved by the Hon'ble Supreme Court in **Vivek Kaisth and another versus State of Himachal Pradesh and Others, (2024) 2 SCC 269**, *in the following terms:*

41. ...**The second reason given was that in any case the balance of equity would lie in favour of the petitioner (i.e. respondent No. 4 before High Court),**



and not the present appellants. The reasons given were as follows:

50. “Having carefully perused aforesaid judgments rendered by Hon’ble Apex Court, which have been otherwise taken note above this Court finds that though in the aforesaid cases, selection of the petitioners therein was held to be not in accordance with law but their selection was protected by Hon’ble Apex Court, while exercising power under Article 142 of the Constitution of India, which power is firstly not available with this Court, and secondly, in the case at hand, there is active challenge to the selection of the respondents Nos. 4 and 6 by the petitioners herein, whose rights are equally important as that of the aforesaid respondents and, in case respondents Nos. 4 and 6 are allowed to continue on their posts, same would result in infringement of right of the petitioners to participate/being considered in the selection process for the posts in question, and **while balancing equalities, the party which is fighting for a just cause, its right (Sic rights) are to be protected and not of the party, which is beneficiary of an illegality committed by the selecting / appointing authorities.”**

NO PERSON CAN SEEK MANDAMUM FOR FILLING POSTS UNLESS STATUTORY RULES EXPRESSLY PROVIDE FOR IT:



18(iii). While dealing with the issue as to whether a person can seek “mandamus” directing the State Authorities to fill-up vacant posts has been answered by the Hon’ble Supreme Court in **Shankarsan Dash** (*supra*) in the following terms:

7. **It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied.** Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. **Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies.** However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and



we do not find any discordant note in the decisions in State of Haryana v. Subhash Chander Marwaha and Others, Neelima Shangla versus State of Haryana, or Jatendra Kumar versus State of Punjab.”

18(iii-i). While dealing with a similar issue the Hon’ble Supreme Court in the case of **Ankita Thakur and others** versus **Himachal Pradesh Staff Selection Commission and Others, 2023 SCC Online SC 1472** held that an employer cannot be forced to fill all the existing vacancies and even a candidate in the merit-list has no indefeasible right of appointment in the following terms:-

Issue 41 (vii)

41(vii) Whether the State (i.e. the employer could be forced to fill all vacancies advertised; and whether it could be restrained from carrying it forward for filling it as per the amended/new Rules.”

Answer to Issue No. (vii)

58. It is well settled that an **employer cannot be forced to fill all the existing vacancies under the old Rules**. The employer may, in a given situation, withdraw an advertisement and issue a fresh advertisement in conformity with the new or amended Rules. Even a candidate included in the merit



list has **no indefeasible right to appointment even if the vacancy exists.** Issue No. (vii) is decided accordingly.”

VACANCIES TO BE FILLED AS PER RULES IN FORCE ON COMMENCEMENT OF SELECTION PROCESS:

18 (iv). In the instant case, the selection process was initiated as per the Rules notified on 10.01.2011 and the “One Time Relaxation” was granted on 29.01.2011, which was notified on 15.02.2011, with respect to 125 posts of Physical Education Teachers. Against these posts, under one time relaxation, the Respondents-writ petitioners were considered but they could not be selected. The selection process come to an end in 2011-2012. So far as the vacancies which existing after culmination of selection process could not be filled-up by directing the appointment of respondents-writ petitioners who are not eligible. The vacancies occurring after culmination of earlier selection process were to be filled-up as per the Rules in force on the date of commencement of selection process as mandated by the Hon’ble Supreme Court in **State of Himachal Pradesh and Others** versus **Raj Kumar (2023) 3 SCC 773**, in



the following terms:

“82.2 It is now a settled proposition of law that a ***candidate has a right to be considered in the light of the existed rules***, which implies the "rule in force" as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates.

82.3 The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. **The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules** in view of the policy decision taken by the Government. **There is no obligation for the Government to make appointments as per the old Rules** in the event of restructuring of the cadre is intended for efficient working of the unit. The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14.

84. The ***decision in Deepak Agarwal*** is a complete departure from the principle in *Rangaiah*, inasmuch as the Court has held that a candidate has a right to be considered in the light of the existing rule. ***That is the rule in***



force on the date the consideration takes place. This enunciation is followed in many subsequent decisions including that of *Union of India v. Krishna Kumar*. In fact, in *Krishna Kumar* Court held that **there is only a "right to be considered for promotion in accordance with rules which prevail on the date on which consideration for promotion take place."**

STATE CANNOT FILL VACANCIES DEHORS THE ELIGIBILITY IN STATUTORY RULES:

18(v). While dealing an issue as to whether a person could claim appointment dehors the procedure and eligibility prescribed in the Statutory Rules was negated and the right of the State not to fill vacancies was reiterated by the Constitutional Bench of Hon'ble Supreme Court in **Tej Prakash Pathak and Others** versus **Rajasthan High Court and Others (2025) 2 SCC 1** in the following terms:

“65.5 Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the Rules are non-existent, or silent, administrative instructions may fill in the gaps;

65.6 Placement in the select list gives **no infeasible right to appointment.** The **State or its instrumentality**



for bonafide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list.”

NCTE REGULATIONS OF 12.11.2014 DISENTITLE RESPONDENTS-WRIT PETITIONERS FOR POST OF PET AGAINST FUTURE VACANCIES:

19. Once the culmination of selection process for 125 posts of PETs, initiated in the year 2011/2012, the Respondents-writ petitioners and others, who possess “One Year Diploma in Physical Education under 1973 under repealed Rules but do not possess the “Two Years Diploma in Physical Education” as mandated under the New Rules notified on 10.01.2011 {Annexure A-2, in writ file} and the requirement of said qualification was reiterated in Regulations notified on 12.11.2014 [*Taken on Record*], issued under Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 [*referred to as Right to Education Act*].

19(i). Recap of the Recruitment & Promotion Rules for the post of Physical Education Teacher as notified by the State Government on 10.01.2011,



reads as under:-

7.	Minimum educational and other qualifications required for direct recruitment	(a) Essential Qualification: (a) Senior Secondary School (+2) or its equivalent examination passed with at least fifty percentage marks and diploma in Physical Education (D.P.Ed) of a duration of two academic years from a University/Board recognized by HP Government OR (a) Bachelor's Degree in Physical Education with fifty percent marks (B.P.Ed.) from a University recognized by HP Govt. OR (b) Bachelor's Degree with Physical Education as an elective subject with fifty percent marks in Physical Education from a University recognized by HP Govt. OR (c) For Ex-Servicemen candidates Senior Secondary School (+2) or its equivalent examination with pass Course of PTI from Army School of Physical Education Poona. 05% relaxation in marks will be given to those who have at least participated in International/National/SGFI/Sports competition or Position Holders in Inter-Zonal sports competitions. a) Desirable Qualification Knowledge of customs, manners and dialects of Himachal Pradesh and suitability for appointment in peculiar conditions prevailing in the Pradesh.
8 & 9	Not relevant	



	Method of recruitment whether by direct recruitment or by promotion, deputation, transfer and the percentage of post(s) to be filled in by various methods	100% by direct recruitment on regular basis or by recruitment on contract basis in the following manner - i) 50% by the HPSSSB Hamirpur ii) 50% by the batch wise basis through Department The contract employee will get emoluments as given in Col. No.15-A and will be governed by service conditions as specified in the said column.
11 to 14	Not applicable	
15.	Selection for appointment to post by direct recruitment	Selection for appointment to the post of direct recruitment shall be made on the basis of viva-voce/written test or both by the H.P.S.S.B./recruiting authority (as the case may be) as considered necessary or expedient by written test or practical test. The standard/syllabus will be determined by the H.P.S.S.B./ other recruitment authority as the case may be.

19(ii). Reference to the NCTE Regulations dated 12.11.2014, reads as under:

The National Council for Teacher Education Determination of Minimum Qualifications for Persons to be recruited as Physical Education Teachers in Primary, Upper Primary, Secondary, Senior Secondary or Intermediate Schools or Colleges) Regulations, 2014

Level	Minimum Academic and Professional Qualifications
1. Primary and Upper Primary (For Classes-I to VIII)	(a) Senior Secondary (Class XII or its equivalent) with at least 50% marks from recognized board Or Candidates who have passed the Senior Secondary examination (+2) or its equivalent and have participated in sports/games at least school/college/district level in accordance with the and National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007 notified on



	20.12.2007). Or Senior Secondary (Class XII or its equivalent) with at least 45% marks from recognized board (in accordance with the National Council for Teacher Education (form of application for recognition, the time limit of submission of application, determination of norms and standards for recognition of teacher education programmes and permission to start new course or training) Regulations, 2002 notified on 13.11.2002. and (b) Certificate/Diploma in Physical Education of duration not less than two years (or its equivalent) from any National Council for Teacher Education recognized institution.
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In the backdrop of the Recruitment Rules of 2011 and the Recruitment & Promotion Rules and the NCTE Regulations, this Court is of the considered view that the future vacancies which occur after issuance of these Regulations cannot be directed to be filled by the State Authorities by acting dehors the Statutory Rules as well as the NCTE Regulations. Once Respondents-writ petitioners and others in connected cases, are not eligible as per Statutory Rules and Statutory regulations, then, Impugned Judgement directing the State Authorities -Appellants, to fill future vacancies from ineligibles cannot be permitted to sustain.

CONCLUSION:

20. The Impugned judgement passed by Learned



Single Judge directing the State Authorities to consider and appoint Responders-writ petitioners after granting relaxation against the future vacant posts *cannot sustain, for the reasons. Firstly*, based on the one time relaxation granted on 29.01.2011, as notified on 15.02.2011, in relation to total 1000 posts of various categories, which included 125 posts of PETs **{posts relating to instant case}**, the State Authorities have granted an equal opportunity to the Respondents-writ petitioners and others for considering their cases against these 125 posts of PET's {out of which 63 posts were to be filled by direct recruitment and 62 posts by batch-wise recruitment} ; and *secondly*, upon grant of one-time relaxation, the Respondent-writ petitioners were duly considered against 62 batch wise posts out of total 125 posts of PETs); and *thirdly*, after having participated but remaining unsuccessful, they have no right to raise claim against future vacancies ;and *fourthly*, the Respondents-writ petitioners who were ineligible under New Rules notified on 10.01.2011 cannot be directed to be appointed against the



future vacancies, so as to violate, defeat and negate the “one time relaxation” granted on 29.01.2011 and notified on 15.02.2011; and fifthly, Respondents-writ petitioners being ineligible under the Rules of 2011 have neither any right nor locus for treating “one-time relaxation” granted by State Cabinet on 29.01.2011 to be “a perpetual relaxation” so as to render New Rules of 2011 as redundant, nugatory and otiose ; and sixthly, the judgment in the case of **Saroj Kumar** (supra) was distinguishable and the matter was not an adjudication on merits {in relation to the issue as to whether petitioners therein could seek relaxation as of right without compliance of Rule 18 and fulfilment of preconditions prescribed therein and whether the one-time relaxation granted by the State Cabinet on 29.01.2011, which was notified on 8/15.02.2011 could be sought to be converted/ treated as perpetual or indefinite relaxation for filling future vacancies and that too when, earlier selection process initiated for 125 posts of PETs {63 direct recruitment and 62 batch-wise recruitment on the basis of one time relaxation had come to an end



and there was “*no declaration of law*” by this Court or by the Honble Supreme Court {upon dismissal of SLP by non-speaking order}, which did not constitute a binding precedent and these material facts escaped the notice of Learned Single Judge, and therefore, the benefit of judgment in the case of *Saroj Kumar* (supra) wherein, petitioners were not eligible cannot be directed to be extended to the Respondents-writ petitioners and other similar aspirants, who are also ineligible so as to confer benefits to them de hors the Statutory Rules for post of PETs of 10.01.2011 {at relevant time} is impermissible; and seventhly, even after culmination of selection process for filling 125 posts of PETs in the year 2011-2012, the Respondents-writ petitioners and similar other do not have any right to seek appointment against unfilled or future vacancies nor can the writ court pass directions to grant relaxation and to consider the Respondents-writ petitioners for appointment against future vacancies by giving a complete go-bye to the Statutory Rules dated 10.01.2011 holding the field and eighthly, no person or aspirant can compel the Government to



fill all or any of the vacant posts, unless the Statutory Rules expressly provided it and once the Statutory Rules did not expressly mandated the government to fill all or any of the vacant posts of PETs at specified frequencies-time lines therefore, Impugned directions mandating government to grant relaxation and then to consider and appoint the Respondents-writ petitioners as PETs against vacant posts was erroneous in law {as discussed above} and was not tenable ; and ninthly, the Respondents-writ petitioners being otherwise ineligible under New Rules notified on 10.01.2011 could not be directed to be appointed against future vacancies, which shall result in filling future vacancies from ineligibles and that too under the Old Rules, despite the fact that the Old Rules stood repealed and when, vacancies were are to be filled as per the Rules in force on the date of commencement of selection process i.e. the Rules notified on 10.01.2011 ; and tenthly, permitting the Respondents-writ petitioners to be considered and to be appointed against vacancies available even under Rules of 2011 shall amount to making ineligibles



(i.e. Respondents-writ petitioners) to compete with eligibles, amounts to treating “unequals as equal” which shall be in total derogation of the core principles of Articles 14 and 16 of the Constitution of India; and eleventhly, even relaxation cannot be claimed as of right and such relaxation lies within the domain of State Government subject to fulfillment of preconditions contained in Rule 18 of the Statutory Rules of 2011 for post of PET; and twelfthly, once the Respondents-writ petitioners have failed to question New Rules for post of Physical Education Teachers dated 10.01.2011 and have not laid any challenge to “one time relaxation” granted by State Cabinet on 29.01.2011 as notified on 15.02.2011, then silence and waiver, disentitles them for any relief; and lastly, a combined reading of the Statutory Rules of 2011 and the NCTE Regulations of 2014 for the post of Physical Education Teachers leaves no room for doubt that ***minimum educational qualifications for post*** is **Certificate/Diploma in Physical Education of duration not less than two years (or its equivalent)** and the Respondents-writ petitioners and others



do not possess these qualifications therefore, they being ineligible have neither any locus nor any right for consideration/appointment as PETs de hors the statutory Rules/Regulations and thus the Impugned Judgement directing the State Authorities-Appellants to grant relaxation and to consider and appoint them as Physical Education Teachers against the future vacancies, without initiating the selection process for unfilled posts cannot pass the test of judicial scrutiny and is accordingly interdicted.

In above backdrop, the Impugned Judgement dated 19.07.2022 passed by Learned Single Judge, by ignoring the above aspects, relating to legal compliances {based on the Statutory Rules, Regulations and the mandate of Law} is an infirmity. In these circumstances, the Impugned Judgement cannot pass the test of judicial scrutiny and is interdicted by this Court.

DIRECTIONS:

22. In view of aforesaid discussion and for reasons recorded hereinabove, Letters Patent Appeal(s) filed by the State Authorities are ***allowed*** and the



connected **writ petitions** {CWP's and CWPOA's} **are**

dismissed, in the following terms:

- (i). Letters Patent Appeal No 194 of 2023, **State of Himachal Pradesh and others** versus **Yog Raj** and LPA Nos.11, 12, 13, 14, 15, 16, 17 and 18 of 2025, **are allowed**;
- (ii). Writ Petition i.e. **CWPOA** No.5740 of 2020, 5663 of 2022, 6475 of 2022, 6476 of 2022, **CWP** Nos. 1756, 1759, 1809, 1897, 2821 of 2023, **are dismissed** ;
- (iii). **Impugned Judgement** dated 19.07.2022 passed by Learned Single Judge in **Yog Raj** versus **State of Himachal Pradesh**, in Lead Case and connected cases is **quashed and set aside**;
- (iv). Claim of writ petitioners for relaxation with prayer for appointment against future vacancies is disapproved, being dehors the Recruitment and Promotion Rules dated 10.01.2011 [Annexure A-1] and dehors NCTE Regulations dated 12.11.2014;
- (v). Parties to bear respective costs.

In aforesaid terms, instant appeals and writ petitions along with all pending application(s), if any shall stand disposed of.

(G.S. Sandhawalia)
Chief Justice

January 09, 2026

[himani/tm]

(Ranjan Sharma)
Judge