

CLCON No. 609 of 2017

**Hon'ble Sharad Kumar Sharma, J.**

Mr. Rakesh Thapliyal, Senior Advocate assisted by Mr. Mukesh Kapurwan, Advocate for the applicants.

Mr. M.C. Pandey, Addl. Advocate General assisted by Mr. Ajay Singh Bisht, Addl. C.S.C. for the State of Uttarakhand.

In this Contempt Petition, on number of occasions, the arguments have been heard and the pleadings have been exchanged.

Today, during the course of argument, the learned Senior Counsel, Mr. Rakesh Thapliyal, had refuted the contentions pleaded by the respondents in their respective affidavits, on the pretext that after the judgment being rendered by this Court, when the same was not being complied with and the Contempt Petition was filed, and the respondents have taken a stand that there are no OBC vacancies available with them, which could be filled as per process, rather they are in excess appointment to the post available.

Mr. Rakesh Thapliyal, the learned Senior Counsel, on the contrary, had submitted that in pursuance to the advertisements which had been issued on number of occasions, which was based upon the communication/directions made by the Secretary, Education on 09.11.2020, by virtue of his letter No. 1227, it had been the basis for issuing the direction to the Director, Education, for advertising the posts in various districts of the State, for example, Tehri Garhwal, Pithoragarh, Rudrapayag, Chamoli, Almora and Bageshwar, henceforth.

Invariably, in all these advertisements, the communication of the Secretary dated 09.11.2020, is the foundation of its issuance and the break-up of the post, which has been provided therein, it doth reflect that the vacancies for OBC candidates, have also been classified and advertised to be appointed in pursuance to the said advertisement. In fact, by virtue of this

limb of argument of Mr. Rakesh Thapliyal, learned Senior Counsel for the applicant, he wanted to submit that the defence taken by the Secretary, as well as, the Director, that they are not in a position to comply the order on the pretext that OBC vacancies are not available with them, is absolutely a farce reason, which has been given by them.

He further submits that if the judgment of the learned Single Judge, as well as that of the judgment of the Division Bench; are read in harmony with para 26 of the judgment of the Hon'ble Apex Court, which has dealt with the aspect of continuance and eligibility of the Shiksha Mitra and Shiksha Acharya, was exclusively confined to the exception which had been carved out to only those Shiksha Acharyas or Shiksha Mitra, who were qualified to be appointed as an Assistant Teacher, meaning thereby, they were having their TET certificates. His argument is that Shiksha Acharya or Shiksha Mitra, who have been permitted to continue, are simplicitor graduates, and they are not holding the TET and, hence, their continuance and taking their continuance, as to be a pretext of non availability of the vacancies, is yet again a misnomer stand taken by the respondents, because the interpretation of the judgment would be that those Shiksha Mitra or Shiksha Acharya, who were not qualified, the posts which are being held by them would be treated to be vacant and available to be filled in from the open class category of candidates, i.e. OBC, SC & ST etc.

Since the advertisements were based on the communication which was made by the Secretary, by virtue of the letter No. 1229, dated 9<sup>th</sup> November, 2020, is rather the foundation and it goes without saying that the directions issued by the Secretary to fill in the vacancy must have entailed the prior exercise to determine the vacancies available to be filled in pursuance to his directions. The said break-up is not available on record as on date.

In order to complete the said instructions, the learned Addl. Advocate General prays for and is granted time till 16<sup>th</sup> March, 2021, to complete his instructions, and make his submission further.

Put up this Contempt Petition on 16<sup>th</sup> March, 2021.

**(Sharad Kumar Sharma, J.)**

Dated 10.03.2021

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