

“10. The admitted position in the supplementary counter affidavit filed in WPSS No. 476 of 2016 on behalf of respondent no. 3 is that 2058 posts of Scheduled Caste, 214 posts of Scheduled Tribe are still lying vacant but as far as Other Backward Classes are concerned, they are already in excess.

11. The contention of the respondents that the OBC candidates are in excess cannot be accepted as it has been specifically stated in WPSS No. 1730 of 2014 that against the OBC posts, Shiksha Acharya are working. As far as Shiksha Acharya is concerned, Shiksha Acharya are ineligible for appointment as an Assistant Teacher in a primary school, as admittedly the only qualification of a Shiksha Acharya is graduate as per the averments made in WPSS No. 1430 of 2014 and in the counter affidavit.”

3. Consequently, the learned Single Judge in para 15 of the judgement held that the post held/occupied by Shiksha Acharyas or Shiksha Mitras shall be deemed to be vacant and all these posts would be made available to be filled up from the OBC category candidates from amongst the backlog vacancies, and the entire exercise was to be done within the period of two months from the date of production of the certified copy of the order.

“15. Consequently, all the posts which are presently been occupied either by a “Shiksha Acharya” or by a “Shiksha Mitra”, shall be deemed to be vacated, and on those posts the duly selected candidates from each category shall be forthwith appointed. In case, there are no selected candidates as of now, these vacancies must be declared vacant and duly advertised, so that selection and appointment can be made on these posts as expeditiously as possible, but definitely within a period of two months from the date of production of a certified copy of this order.”

4. In the meantime, on a challenge being given to the said judgement, the matter came up for consideration before the Division Bench on 04.09.2017. So far as the observation made by the learned Single Judge in paras 10 and 11 of the judgement was diluted in view of the observations made by the Hon’ble Apex Court in para 26 of the judgement rendered on 25.07.2017 in *State of U.P. & another Vs.*

Anand Kumar Yadav and others wherein the Apex Court held as under:

“26. Question now is whether in absence of any right in favour of Shiksha Mitras, they are entitled to any other relief or preference. In the peculiar fact situation, they ought to be given opportunity to be considered for recruitment if they have acquired or they now acquire the requisite qualification in terms of advertisements for recruitment for next two consecutive recruitments. They may also be given suitable age relaxation and some weightage for their experience as may be decided by the concerned authority. Till they avail of this opportunity, the State is at liberty to continue them as Shiksha Mitras on same terms on which they were working prior to their absorption, if the State so decides.”

5. At least, couple of aspect which has been laid down quite implicitly by the Hon’ble Apex Court was :-

- (i) That Shiksha Mitras as of now they do not have any right in their favour to continue;
- ii) They were only given an opportunity to be considered for recruitment provided that they are holding the requisite qualifications;
- iii) The Appointing authority may consider granting them suitable age relaxation as and when required and weightage of their experience may also be taken into consideration by the Appointing Authority.

6. When this aspect came into consideration in the light of the judgement rendered by the Hon’ble Apex Court, the Division Bench while considering the Appeal against the judgement of the learned Single Judge had made the following observation in para 16 of the judgement rendered on 04.09.2017. Clause (ii) of para 16 reads as under:

“(ii) Since the posts held by the Shiksha Mitras and Shiksha Acharyas, which has been declared by learned Single Judge as to be deemed vacant, has been set aside by us, these Shiksha Mitras and Shiksha Acharyas, who are working and have qualified their TET, will have to be considered for appointments subject to the condition they fulfill the conditions given in para 26 of the judgement rendered by Hon’ble Apex Court on 25.07.2017.”

7. On issuance of notices, the respondents have filed their counter affidavit to the contempt petition, and yet again they have reiterated their old consistent stand that since OBCs already working with the department are in excess they cannot have any recourse to the appointment to fill the backlog vacancy as alleged to be available on the basis of information which the petitioner have received under the Right to information Act. Even in the response affidavit the same stand has been reiterated by the learned Standing Counsel.

8. The respondent No. 2 was directed to appear in person by an order dated 09.08.2018 to show cause as to why the charges may not be drawn against him for deliberately committing contempt of the judgement rendered on 18.12.2016 as well as dated 04.09.2017 rendered by the Division Bench.

9. In response to it, the respondent No. 2 has filed his reply affidavit on 24.09.2018 wherein the respondent No. 2 had taken a stand that they cannot conduct the selection process for the backlog OBC vacancy owing to the non-availability of the post as they are already in excess with OBC candidates who are working in the department.

10. In support of his argument, the rationale of the argument of the learned counsel for the State submits that there are no vacancies available as such in the light of the fact that the finding which has been recorded by the learned Single Judge, pertaining to there being a deemed vacancy as held by learned Single Judge as against the post which has been held by the Shiksha Acharya and Shiksha Mitra has in fact been set aside by the Division Bench in para 16(ii) of the said judgement, hence as a matter of fact, there is no vacancy as of now available and thus the finding of learned Single Judge that there is deemed vacancy as observed in para 10 of the said judgement has been nullified by the Division Bench's judgement.

11. This argument in defence to contempt of the learned Standing Counsel for the State is not acceptable by this Court for the following reasons :

The aspect that the stand taken by the State before the learned Single Judge that OBCs are already working in excess has been turned down by the Court on account of their eligibility to hold the post and hence those vacancy would be treated as the vacancy available with the respondents to be filled in compliance of the judgement rendered by the learned Single Judge on 08.12.2016 because merely unqualified Shiksha Mitra or Acharya are working would not be treated to be post occupied, if it is found to be occupied by the person not qualified and competent to teach, it has to be supplied by the qualified and competent teachers as inefficiency in the field of teaching cannot be permitted to persist and thus in the light of mandate issued in para 15 of the judgement, the same ought to have been complied within the time frame as provided therein.

12. The argument which has been extended in the light of the para 16(ii) of the Division Bench is not acceptable by this Court for the reason that the observation made that setting aside the finding of the learned Single Judge pertaining to the deemed vacancy as has been made in the light of the observations/directions issued by the Hon'ble Apex Court in para 26 of the judgement as quoted above. If para 16 (ii) is read with para 8 of the Division Bench, as a matter of fact, the aspect of there being a deemed vacancy in the light of the observations made by the learned Single Judge has not been disturbed at all rather adherence to preference as given by para 26 of the Hon'ble Apex Court judgement was to be complied. But still not at the compromise in qualification of teacher as incompetent teacher under no set of circumstances can be permitted to teach the students. Thus the respondent No. 2 was bound to comply the order rather the manner in which the compliance affidavit has been submitted, it shows that there has been a deliberate and intentional attempt to derogate the judgements dated 18.12.2016 and 04.09.2016, hence this Court is inclined to frame a charge against the respondent No. 2 giving him an opportunity to show cause within a period of four weeks from today as to why he should not be punished under the

Contempt of Courts Act for not complying the judgements as rendered above. The charge is framed to the following effect:

“As to why respondent No. 2 be not punished for not proceeded with the process of selection as against the backlog vacancies in compliance of the judgement dates 08.12.2016 and 04.09.2017 and continuing with unqualified teachers i.e. Shiksha Acharya to teach.”

(Sharad Kumar Sharma, J.)
02.01.2019

Mahinder/