

ITEM NO.303

COURT NO.5

SECTION XI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 4347-4375/2014

STATE OF U.P & ORS

Appellant(s)

VERSUS

SHIV KUMAR PATHAK & ORS

Respondent(s)

WITH

SLP(C) No. 62/2014
(With Interim Relief and Office Report)

SLP(C) No. 1672/2014
(With Interim Relief and Office Report)

SLP(C) No. 1674/2014
(With Office Report)

C.A. No. 4376/2014
(With Interim Relief and Office Report)

S.L.P.(C)...CC No. 10408/2014
(With appln.(s) for impleadment and Office Report)

SLP(C) No. 11671/2014
(With appln.(s) for exemption from filing O.T. and directions and
appln.(s) for impleadment and de-tagging and Office Report)

SLP(C) No. 11673/2014
(With Office Report)

W.P.(C) No. 135/2015
(With appln.(s) for directions and appln.(s) for impleadment and
Office Report)

W.P.(C) No. 167/2015
(With appln.(s) for intervention and appln.(s) for impleadment
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Report)

CONMT.PET.(C) No. 199/2015 In C.A. No. 4347-4375/2014
(With Office Report)

SLP(C) No. 14386/2015

(With appln.(s) for exemption from filing O.T. and permission to submit additional document(s) and Interim Relief and Office Report)

CONMT.PET.(C) No. 399/2015 In C.A. No. 4347-4375/2014

(With Interim Relief and Office Report)

W.P.(C) No. 89/2015

(With appln.(s) for exemption from filing O.T. and permission to place addl. documents on record and exemption from filing O.T. and Office Report)

Date : 02/11/2015 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

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SLP 1672/14 Mr. Anjani Kumar Mishra, AOR

CA 4376/14 Mr. Rakesh Dwivedi, Sr. Adv.
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 Dr. Kailash Chand, AOR

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WP 167/15	Mr. Anand Nandan, Adv. Mr. Amit Pawan, AOR
CP(C) 199/15	Mr. Anupam Mishra, AOR Mr. Arvind Kumar, Adv.
SLP 14386/15	Mr. Satish Chandra, Sr. Adv. Ms. S. Janani, Adv. Mr. Deepak Goel, Adv. Mr. Sunando Batra, Adv. Mr. Vikrant Singh Bais, AOR
CP 399/15	Mr. S.R. Singh, Sr. Adv. Mr. Avnish Singh, Adv. Ms. Asha Gopalan Nair, AOR Ms. Nivedita Nair, Adv. Mr. Abhishek Kumar Pandey, Adv.
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IA 10 in WP 167/15	Ms. Ranjeeta Rohatgi, Adv. Mr. Gaurav Bhatia, AAG Mr. Utkarsh Jaiswal, Adv. Mr. Rakesh Mishra, Adv.
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Ms. Purnima Jauhari, Adv.

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Mr. Yash Pal Dhingra, Adv.

Ms. Mahalakshmi Pavani, Sr. Adv.

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Ms. S.V. Ankit, Adv.

Ms. Arti Gupta, Adv.

Mr. Wills Mathews, Adv.

Mr. Mukesh Kumar Verma, Adv.

Ms. Nishoo Singh, Adv.
Mr. Rabin Majumdar, Adv.

Mr. Satya Mitra Garg, AOR

Mr. R.P. Wadhwani, AOR

Ms. Manju Jetley, AOR

UPON hearing the counsel the Court made the following
O R D E R

Heard Mr. Gaurav Bhatia, learned Additional Advocate General for the State of Uttar Pradesh and Mr. R. Venkataramani, learned senior counsel (Amicus Curiae).

It is submitted by Mr. Bhatia that keeping in view the order dated 27.07.2015, as against 72825 posts advertised, 43,077 candidates have been appointed, who, after completion of the training till September 2015, are working in praesenti. It is also submitted that 15,058 candidates are undergoing training out of which 8,500 shall be appearing in the examination on 16th and 17th November, 2015 and the rest will be appearing in the examination after completion of their training. In the result around 14,640 posts still remain vacant.

At this juncture, number of counsel have raised a grievance that there are number of candidates who have secured more than 70% marks in TET examination in the general category and the lower percentage for other categories as per our earlier order and yet they are not appointed. At this juncture, learned Additional Advocate General submitted that some of the candidates might not have been appointed as they may not have been qualified otherwise

under the NCTE Rules. We do not intend to interpret on the said point, as advised today.

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

Be it stated, in our earlier order, we had requested the learned Chief Justice of the High Court of Allahabad to constitute a Full Bench and dispose of the writ petitions after transferring them to himself. The Full Bench had delivered the judgment on 12.09.2015 which has been placed before us. The Full Bench has opined that *Shiksha Mitras* cannot take the benefit as per the law in the field. We do not intend to comment on that as we have been apprised at the Bar that certain special leave petitions are being filed challenging the said order. Needless to say, the legal propriety of the said order of the Full Bench shall be dealt with in the special leave petitions.

Mr. Rakesh Dwivedi, the learned senior counsel, would submit

that he represents the set of the people who are qualified as per the prevalent rules and they should have been appointed had the High Court not struck down the Rules as *ultra vires*. Ordinarily, we would have dealt with this order making some kind of interim arrangement but we do not intend to get into the same now as we have been apprised that there are huge number of candidates and there will be a confusion. Be that as it may, the main thrust of the matter will be gone into on the next date of hearing.

A submission has been raised by learned counsel for the petitioner in Writ Petition No.167 of 2015 that because of the vacancies that are in vogue in State of U.P., education is impaired despite the command under Article 21A of the Constitution. We have been told that there are more than 4,00,000 vacancies. Mr. Anand Nandan, learned counsel appearing for the writ petitioners has pointed to para 2 of the counter affidavit to his writ petition filed by the Secretary, Basic Education, Govt. of U.P., Lucknow. The said paragraph reads as follows :

"2. That in reply to the contents of paragraph nos.2 and 3 of the Application it is stated that, TET Examination has been introduced to maintain a uniform standard of education throughout the Country by introducing it as the essential eligibility for appointment of Assistant Teacher in Basic Schools. At present 1,10,376 Primary Schools are being run by the Parishad, in the State of Uttar Pradesh. Under the Right to Education Act 2009, the number of teachers required to maintain the student teachers ratio is 4,86,182. At present 1,77,866 Assistant Teachers are working in the aforesaid circumstances, there is an immediate need of 3,08,316 Assistant Teachers in the various Primary Schools in the State to fulfill the aforesaid conditions contained in the Right to

Education Act 2009 the Government of Uttar Pradesh submitted a proposal through their letter dated 03.01.2011 before the National Council for Teachers Education requesting them to conduct a full fledged training programme for graduate Shiksha Mitra. The aforesaid proposal of the State Government was approved by the National Council for Teachers Education through their letter dated 14.01.2011."

As against the said assertion, there has been some cavil raised by Mr. Abhishek Shrivastava, learned counsel appearing for the Board.

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

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

- a) Whether the NCTE Guidelines fixing the minimum qualification are arbitrary and unreasonable?
- b) Whether the marks obtained in the TET Examination is the sole criterion for filling up the vacancies?
- c) Whether the High Court is justified in declaring the 15th Amendment brought in on 31.08.2012 to the U.P. Basic Education (Teachers) Service Rules, 1981?
- d) Assuming, the guidelines framed by the NCTE are treated as *intra vires*, the question will be what interpretation would

be placed by the Court on the concept of weightage as mentioned in the guidelines of the NCTE?

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

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

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

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master