

ITEM NO.301

COURT NO.5

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal Nos.4347-4375 of 2014

STATE OF U.P & ORS

Appellant(s)

VERSUS

SHIV KUMAR PATHAK & ORS

Respondent(s)

(With appln.(s) for directions and impleadment and intervention and office report)

WITH S.L.P.(C) No.62/2014

(With interim relief and office report)

S.L.P.(C) No.1672/2014

(With interim relief and office report)

S.L.P.(C) No.1674/2014

(With office report)

C.A. No.4376/2014

(With interim relief and office report)

S.L.P.(C)...CC 10408/2014

(With appln.(s) for impleadment and office report)

S.L.P.(C) No.11671/2014

(With appln.(s) for de-tagging and office report)

S.L.P.(C) No.11673/2014

(With office report)

W.P.(C) No.135/2015

(With office report)

W.P.(C) No.167/2015

(With appln.(s) for directions and exemption from filing O.T and office report)

CONMT. PET.(C) No.199 of 2015 In C.A. Nos.4347-4375/2014

(With office report)

S.L.P.(C) No.14386/2015

(With appln.(s) for exemption from filing O.T., permission to submit additional document(s) and interim relief and office report)

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

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

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

Date : 27/07/2015 These matters were called on for hearing today.

CORAM :

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

For Appellant(s) Mr. R. Venkataramani, Sr. Adv.
Mr. Satya Mitra Garg, AOR
Mrs. Manju Aggarwal, Adv.
Ms. Neelam Singh, Adv.
Mr. Yesraj Bundela, Adv.

SLP 1672/14 Mr. Ashok Kumar Sharma, AOR

SLP 1672/14 Mr. Anjani Kumar Mishra, AOR

CA 4376/14 Mr. Garvesh Kabra, AOR

SLP CC 10408/14 Mr. Siddhartha Dave, Adv.
Mr. R.K. Singh, Adv.
Mr. Kumar Gaurav, Adv.
Mr. B.N. Dubey, Adv.
Mr. Sajith. P, AOR

SLP 11671/14 Mr. B.P. Singh Dhakray, Adv.
Mr. Shakti Singh Dhakray, Adv.
Ms. Vandana Sharma, Adv.
Ms. Shikha Tyagi, Adv.
Dr. Kailash Chand, AOR

WP 135/15 Ms. Abha R. Sharma, AOR

WP 167/15 Mr. Anand Nandan, Adv.
Mr. Amit Pawan, AOR
Mr. Shailendra Kumar, Adv.

CP(C) 199/15 Mr. Anupam Mishra, AOR

SLP 14386/15 Mr. Vikrant Singh Bais, AOR

CP 399/15 Mr. S.R. Singh, Sr. Adv.
Mr. Avnish Singh, Adv.
Ms. Asha Gopalan Nair, AOR
Mohd. Muztaba, Adv.
Mr. Abhishek Kumar Pandey, Adv.

WP 89/15 Mr. Prashant Bhushan, Adv.
Mr. Nishit Agrawal, Adv.

Mr. Harsh Vardhan, Adv.
Mr. Vipin Kumar Jai, AOR

IA 10 in WP 167/15

Mr. K.K. Venugopal, Sr. Adv.
Mr. Saurabh Kirpal, Adv.
Ms. Ranjeeta Rohatgi, Adv.
Ms. Pragya Baghel, Adv.

For Respondent(s)

Dr. Kailash Chand, AOR

Dr. Monika Gusain, AOR

Mr. Vikas Singh, Sr. Adv.
Mr. Prashant Shukla, Adv.
Mr. Alok Gupta, AOR

Mr. L. Nageshwar Rao, Sr. Adv.
Mr. Amit Pawan, AOR
Mr. Shailendra Kumar, Adv.
Mr. Sunjodey P. Tiwari, Adv.

Mr. Anupam Mishra, AOR

Mr. Garvesh Kabra, AOR

Mr. Gopal Singh, AOR

Mr. Ajay Jain, Adv.
Mr. Jinendra Jain, AOR
Mr. Abhishek Jain, Adv.
Mr. R.S. Garg, Adv.
Mr. Shashwat Bhardwaj, Adv.
Mr. S.A. Akhtar, Adv.

Mr. M. P. Jha, AOR

Mr. T.L.V. Ramachari, Adv.
Mr. K.L.V. Raghavn, Adv.
Mr. Hitesh Kumar Sharma, Adv.
Mr. P. N. Ramalingam, AOR

Mr. Rajiv Ranjan Dwivedi, AOR

Mr. Rameshwar Prasad Goyal, AOR

Mr. Rohit Singh, AOR

Mr. Dinesh Kr. Tiwary, Adv.
Ms. Mala Dubey, Adv.
Mr. Ramesh Thakur, Adv.

Mr. Raghwendra Tiwari, Adv.
Mr. Rajesh Tiwari, Adv.
Mr. Santosh Kumar Tripathi, AOR

Mr. Shree Pal Singh, AOR

Mrs. K. Sarada Devi, AOR

Mr. Yugal Kishor Prasad, Adv.
Mr. Varinder Kumar Sharma, AOR

Mr. Kartik Prasad, Adv.
Mr. Vikrant Singh Bais, AOR

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Mr. Amarendra Sharan, Sr. Adv.
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Mr. Brijender Chahar, Sr. Adv.
Mr. Prashant Shukla, Adv.
Ms. Shreya Mishra, Adv.
Ms. Abha R. Sharma, AOR
Mr. Satyajeet Kumar, Adv.

Mr. Jayant Mehta, Adv.
Mr. Susheel Tomar, Adv.
Ms. Abha R. Sharma, AOR
Mr. D.S. Parmar, Adv.

Ms. Rachana Srivastava, AOR

Mr. Satyajeet Kumar, AOR

Mr. M. R. Shamshad, AOR
Mr. Rajesh Kr. Maurya, Adv.
Mr. Shashank Singh, Adv.

Mr. P.N. Mishra, Sr. Adv.
Mr. Nidhesh Gupta, Sr. Adv.
Mr. Sibho Sankar Mishra, AOR
Mr. Raj Kumar Parashar, Adv.

Mr. Nidhesh Gupta, Sr. Adv.
Mr. Amit Kumar, Adv.
Mr. Shaurya Sahey, Adv.
Mr. Ankit Rajgarhi, Adv.

Mr. Ajit Kumar Sinha, Sr. Adv.

Mr. G.P. Srivastava, Adv.

Mr. V.A. Mohta, Sr. Adv.
Mr. Shivpati B. Pandey, Adv.
Mr. Neelkant Naik, Adv.
Mr. V.N. Raghupathy, Adv.

Mr. Amit Sibbal, Sr. Adv.
Mr. Tahir Ashraf Siddiqui, Adv.
Mr. Rajeev Kr. Srivastava, Adv.
Mr. Rajiv Kumar, Adv.
Mr. Mohan Lal Sharma, Adv.

Mr. R.P. Wadhvani, Adv.
Mr. Durga Prasad Shukla, Adv.
Mr. Sanjeev Ralli, Adv.

Mr. Gaurav Sharma, Adv.
Mr. Prateek Bhatia, Adv.
Ms. Amandeep Kaur, Adv.

Mr. Asok Pande, Adv.
Mr. Rama Kant Dixit, Adv.
Mr. Satyajeet Kumar, Adv.

Mr. S.C. Maheshwari, Sr. Adv.
Mr. Vipul Maheshwari, Sr. Adv.
Mr. M.P.S. Tomar, Adv.
Mr. Jabar Singh, Adv.
Ms. Nikhar Berry, Adv.
Mr. Gaurav Y., Adv.
Mr. Prashant Shukla, Adv.
Ms. Shreya Mishra, Adv.
Mr. Satyajeet Kumar, Adv.

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

This Court on 6th July, 2015, in I.A. Nos.2 & 3 in
Writ Petition (C) No.167 of 2015, had passed the following
order:

"Hearing resumed.

Let the matter be listed for further
hearing at 2.00 p.m. on 27.07.2015.

Mr. Venkataramani, learned senior counsel for the State shall file a convenience volume. He shall also file the Rules that is in vogue in other States. We have given the direction for production of the Rules solely for the purpose of perusal.

I.A. NOS.2 & 3 IN WRIT PETITION (CIVIL)
NO.167 OF 2015

Mr. Anand Nandan, learned counsel for the applicant, has submitted that *Shiksha Mitras* who have not passed the Teachers Eligibility Test (TET) have been appointed as teachers in schools contrary to the guidelines issued by the NCTE and also contrary to the Rules framed by the State. He has drawn our attention to the letter No.2253/79-5-2014-282/98 dated 19th June, 2014 issued by the Secretary, Basic Education, Government of U.P. On a scrutiny of the same, we find that there is no mention of passing of the eligibility test. However, there is a direction for appointment of *Shiksha Mitras* in the post of Assistant Teachers in schools being run by the U.P. Basic Education Council.

The learned counsel for the State shall file an affidavit in respect of the said letter within ten days hence. The affidavit shall contain the details as to how many *Shiksha Mitras* have been appointed without passing the TET.

The Secretary and the Special Secretary of the Basic Education, Government of UP shall remain personally present at 2.00 p.m. on 27.07.2015 failing which, they will be liable for contempt of this Court. Needless to emphasise, the State Government shall not appoint any *Shiksha Mitras*, who have not qualified in the TET on the post of the Assistant Teacher.

Dasti order permitted."

It is submitted by Mr. K.K. Venugopal, learned senior counsel appearing for the Association of *Shiksha Mitras* that there is no requirement on their part to appear in the entrance examination, as per the rules framed by the N.C.T.E. Mr. Amit Sibal, learned senior counsel, would contend that N.C.T.E. rules and certain amendments exempt the *Shiksha Mitras* from appearing in the examination.

The aforesaid submissions have been countered by Mr. Anand Nandan, learned counsel appearing for the applicants in the interlocutory applications and other counsel appearing for the persons who have qualified in the Teachers Eligibility Test (TET).

At this juncture, we have been apprised at the Bar that number of cases are pending in the High Court of Allahabad pertaining to the appointment of *Shiksha Mitras*. We have also been apprised that some writ petitions are pending at Allahabad and some are pending at Lucknow Bench of the High Court.

Regard being had to the aforesaid submission, we think it appropriate that all the matters pending before the High Court relating to *Shiksha Mitras* shall be heard by a Full Bench at Allahabad. We would request the Chief Justice of the High Court of Allahabad to constitute a Bench and preside over the Bench. The writ petitions which are pending before the Lucknow Bench of the High Court shall be transferred to Allahabad so that there can be singular judgment. We would request the Chief Justice to dispose of all the writ petitions after transferring them, within two months.

The interim order passed by us on 6th July, 2015, shall remain in force for a further period of ten weeks.

Be it clarified, whatever we have said by our interim order should not be placed reliance upon by any of the sides before the High Court as that was really an interim order and we have not expressed any opinion on the issue. Needless to say, after the judgment is rendered by the High Court, the aggrieved parties are at liberty to challenge the same, as advised in law. By virtue of this order, all the interlocutory applications relating to *Shiksha Mitras* stand disposed of.

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

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

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

result of these appeals and they shall not claim any equity because of the appointment, for it is issued direction passed by this Court. on the basis of the The letters of appointment shall be issued within a period of six weeks."

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

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

(i) Ist counseling 29.08.2014 to 31.08.2014

(ii) IInd Counseling 22.09.2014 to 30.09.2014

(iii) IIIrd counseling 05.11.2014 to 13.11.2014

(iv) IVth counseling 09.01.2015 to 14.01.2015

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

5. That amongst the candidates who ave been permitted to

participate in the counseling during the period of aforementioned schedule have also been offered the appointment letters and they have also joined post in their institutions.

6. That some of the candidates were repeatedly offered appointment letters from different districts on the account of their participation in counseling in such district but it is clarified that here that they have been permitted to join their post only once. Accordingly although 83983 appointment letters were issued, however, the joining has been taken only by 43651 candidates. The process of filling up the remaining 29174 vacancies is also on."

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

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

At this juncture, we may note with profit that we have fixed the percentage for persons belonging to Schedule Castes/Schedule Tribes/Other Backward Classes at 65%. It is urged by Mr. Sharma and learned counsel whose names appear hereinabove, that the persons who have obtained 60% marks should also be

considered. As we find, as of today, 29174 vacancies are available to be filled up. If the persons belonging to Scheduled Casts/Scheduled Tribes/Other Backward Classes have secured 65% marks and their number meets the requirement, the vacancies meant for their quota, shall be filled up by taking into consideration the said percentage. If the candidates of that percentage are not available, the State shall offer appointments to the candidates who have secured 60% of the marks. Be it noted, if the candidates belonging to Scheduled Castes/Scheduled Tribes/Other Backward Classes who have secured 65% of the marks are available, the candidates who have secured 60% of the marks cannot be allowed to compete with them.

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

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

We will be failing in our duty if we do not take note of the submission which has been advanced before us that though certain posts are reserved in the category of horizontal quota, no steps have been taken to

fill up the said. Regard being had to provisions contained in the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the Rules in vogue in the State of Uttar Pradesh, we direct that the posts in those categories shall be filled up as per the Rules relating to relaxation in respect of the said category. That apart, if any quota and relaxation are available for any other horizontal category, that may also be applied.

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

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

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

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

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

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

(Chetan Kumar)
Court Master

(Tapan Kumar Chakraborty)
Court Master