

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 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 appln.(s) for directions and Interim Relief and Office Report)

S.L.P.(C)...CC No. 10408/2014

(With Office Report)

SLP(C) No. 11671/2014

(With Office Report)

SLP(C) No. 11673/2014

(With Office Report)

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

(With appln.(s) for exemption from filing O.T. and Office Report)

Date : 25/02/2015 These appeals 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 Singh, Adv.
Mrs. Neelam Singh, Adv.

Mr. Rakesh Dwivedi, Sr. Adv.
Mr. Garvesh Kabra, AOR
Ms. Preetika Dwivedi, AOR

Shri B.P. Singh, Dhankray, Adv.
Mr. Shakti Singh, Dhakray, Adv.
Dr. Kailash Chand, AOR

CC No.10408/14 Mr. Siddhartha Dave, Adv.
 Mr. R.K. Singh, Adv.
 Mr. Kumar Gaurav, Adv.
 Mr. B.N. Dubey, Adv.
 Mr. S. Sajith P., Adv.

For Respondent(s) Mr. Ranjit Kumar, S.G.
 Mr. Amit Pawan, AOR
 Mr. Abhishek Amritanshu, Adv.
 Mr. Suryodaya Tiwari, Adv.

 Mr. Brijender Chabar, Sr. Adv.
 Mr. Prashant Shukla, Adv.
 Ms. Abha R. Sharma, AOR

 Mr. Vivek Singh, AOR
 Mr. Gaurav Yadava, Adv.

 Abhishek Srivastava, Adv.

 Mr. Rajeev Srivastava, Adv.
 Mr. Vikrant Singh Bias, Adv.
 Mr. Rohit Singh, AOR

 Mrs. K. Sarada Devi, AOR

For NCTE Mr. Gaurav Sharma, Adv.
 Mr. Prateek Bhatia, Adv.
 Mr. Prateek Mishra, Adv.
 Ms. Amandeep Kaur, Adv.

 Dr. Monika Gusain, AOR
 Mr. Hari Om Yaduvandhi, Adv.
 Mr. Sanjay Kumar Tyagi, Adv.

 Mr. Alok Gupta, Adv.

CA 4347-4375/14 Mr. Gopal Singh, AOR
 Mr. M. P. Jha, AOR

 Mr. P.N. Ramalingam, Adv.

 Mr. Rajiv Ranjan Dwivedi, AOR
 Mr. Ashish Singh, Adv.

 Rameshwar Prasad Goyal, AOR

 Mr. Vishwa Pal Singh, AOR

SLP 62/14

Mr. M. R. Shamsad, AOR
Mr. Vivek Vishnoi, Adv.
Mr. Upendra Mishra, Adv.

Mr. Arvind Srivastava, Adv.
Mr. Anupam Mishra, Adv.

Mr. Shreepal Singh, Adv.
Mr. V.D. Mishra, Adv.

Ms. Rachana Srivastava, Adv.
Mr. Utkarsh Sharma, Adv.

Mr. Ashok Kumar Parija, Sr. Adv.
Mr. Nishit Agrawal, Adv.
Mr. Talha A. Rehman, Adv.
Mr. Tarun Patnaik, Adv.
Mr. Vipin Kumar Jai, Adv.

Mr. Jayant Mehta, Adv.
Mr. Susheel Tomar, Adv.
Ms. Abha R. Sharma, Adv.
Mr. Prashant Shukla, Adv.
Mr. Ashok Kumar, Adv.

Mr. Manish Shanker, Adv.
Ms. Minakshi Vij, Adv.

Mr. R.P. Bhatt, Sr. Adv.
Mr. Dinesh Kumar Tiwary, Adv.
Mr. Chandan Kumar, Adv.
Mr. Shailendra Kumar Mishra, Adv.

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

Mr. Ajay Jain, Adv.
Mr. Jinendra Jain, Adv.
Mr. R.P. Kaushal, Adv.
Mr. Ravi Shankar Garg, Adv.
Mr. Abhishek Jain, Adv.
Mr. B.N. Gaur, Adv.
Mr. Syed A. Akhtar, Adv.
Mr. B.P. Singh, Adv.

Mr. Satyaveer Singh, Adv.
Mr. Divesh Pratap Singh, Adv.
Mr. Sodhansu P., Adv.

Mr. Alok Dhir, Adv.
Mr. Approve Karol, Adv.
Mr. Vaibhav Tyagi, Adv.
Mr. Rahul Pratap, Adv.

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

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.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master