

ITEM NO.101

COURT NO.6

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 Nos.4347-4375 of 2014

STATE OF U.P & ORS

Appellant(s)

VERSUS

SHIV KUMAR PATHAK & ORS

Respondent(s)

(With appln.(s) for 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 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 No.10408/2014

(With office report)

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

(With office report)

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

(With office report)

Date : 17/12/2014 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.

Mr. Yeshraj Bundela, Adv.

Mr. Rakesh Dwivedi, Sr. Adv.

Mr. Garvesh Kabra, AOR

Ms. Preetika Dwivedi, Adv.

Mr. Ashok Kumar Sharma, AOR

Mr. Anjani Kumar Mishra, AOR

Mr. Garvesh Kabra, AOR

Ms. Preetika Dwivedi, AOR

Mr. B.P. Singh Dhakray, Adv.

Mr. Shakti Singh Dhakray, Adv.

Dr. Kailash Chand, AOR

For Respondent(s) Mr. Ranjit Kumar, S.G.
Ms. Binu Tamta, Adv.
Mr. B.V. Balram Das, Adv.

Mr. Amit Pawan, AOR
Mr. Abhishek Amritanshu, Adv.
Mr. Suryodaya Tiwari, Adv.
Mr. Shailendra Kumar, Adv.

Mr. Vikas Singh, Sr. Adv.
Ms. Deepika Kalia, Adv.
Mr. Prashant Shukla, Adv.
Ms. Abha R. Sharma, AOR
Mr. Kapish Seth, Adv.

Mr. Amarendra Sharan, Sr. Adv.
Mr. Vivek Singh, AOR
Mr. Gaurav Yadava, Adv.

Mr. Sudhir Chandra, Sr. Adv.
Mr. Rajeev Kr. Srivastava, Adv.
Mr. Ajay Srivastava, Adv.
Mr. Abhishek Srivastava, Adv.
Mr. Rohit Singh, AOR

Mr. P.P. Rao, Sr. Adv.
Mrs. K. Sarada Devi, AOR

For NCTE Mr. Gaurav Sharma, Adv.
Mr. Prateek Bhatia, Adv.

Dr. Monika Gusain, AOR
Ms. Geeta Singh, Adv.

Mr. Alok Gupta, AOR

Mr. Garvesh Kabra, AOR

Mr. Gopal Singh, AOR

Mr. M. P. Jha, AOR

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

Mr. T.N. Tripathi, Adv.
Mr. Manohar Kumar, Adv.
Mr. Dushyant Swaroop, Adv.
Mr. Rameshwar Prasad Goyal, AOR

Mr. Vipul Maheshwari, Adv.
Mr. Ashish Mittal, Adv.
Mr. Vishwa Pal Singh, AOR

SLP 62/14

Mr. M. R. Shamshad, AOR
Mr. Vivek Vishnoi, Adv.

Mr. Anupam Mishra, Adv.
Mr. Simanta Kumar, Adv.

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

Mr. Nishit Agrawal, Adv.
Mr. Utkarsh Sharma, Adv.
Mr. Vipin Kumar Jai, Adv.

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

Hearing resumed.

In course of hearing, we have thought it appropriate to pass an interim order by which the vacancies can be filled up and the academic climate in the State of Uttar Pradesh shall not suffer an unnecessary winter.

Be it noted, this Court on 25th March, 2014, had passed the following order:

"Leave granted.

Hearing expedited.

By this interim order, we direct the State of Uttar Pradesh to fill up the vacancies of Assistant Teachers in the schools pursuant to the advertisement issued on 30.11.2011 as per the directions issued by the Division Bench of Allahabad High Court in the case of Shiv Kumar Pathak & Ors. [Special Appeal (Defective) No.237 of 2013] and connected matters as expeditiously as possible at any rate within 12 weeks' time from today.

Further, the State in the letter of appointment that will be issued to the successful candidates shall mention that their appointment is subject to the result of the civil appeals that are pending before this Court.

The appointee(s) shall not claim any equities at the time of final disposal of the civil appeals. All actions/proceedings of the State Government will be subject to the final result of these civil appeals."

Despite the aforesaid order, the State has not carried out the appointment process. After hearing the learned counsel for the parties at length on various

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). The candidates belonging to Scheduled 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 on the basis of the direction passed by this Court. The letters of appointment shall be issued within a period of six weeks.

At this juncture, we must state that the advertisement was issued to fill up 72,825 vacancies in the post of Assistant Teachers, who have to impart education to students of Classes I to V. We have been apprised by the learned counsel for the respondents that there are three lacs posts lying vacant as on today. In this context, we must recapitulate the objects and reasons from the Right of Children to Free and Compulsory Education Act, 2009, which

read as follows:

"The crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic. The Directive Principles of State Policy enumerated in our Constitution lays down that the State shall provide free and compulsory education to all children up to the age of fourteen years. Over the years there has been significant spatial and numerical expansion of elementary schools in the country, yet the goal of universal elementary education continues to elude us. The number of children, particularly children from disadvantaged groups and weaker sections, who drop out of school before completing elementary education, remains very large. Moreover, the quality of learning achievement is not always entirely satisfactory even in the case of children who complete elementary education.

2. Article 21A, as inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, provides for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such manner as the State may, by law, determine.

3. Consequently, the Right of Children to Free and Compulsory Education Bill, 2008, is

proposed to be enacted which seeks to provide,-

(a) that every child has a right to be provided full time elementary education of satisfactory and equitable quality in a formal school which satisfied certain essential norms and standards;

(b) 'compulsory education' casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education;

(c) 'free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education;

(d) the duties and responsibilities of the appropriate Governments, local authorities, parents, schools and teachers in providing free and compulsory education; and

(e) a system for protection of the right of children and a decentralized grievance redressal mechanism.

4. The proposed legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a just and humane society can be achieved only through provision of inclusive elementary

education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds."

Primary education can be equated to the primary health of a child. When a child is educated, the Nation marches towards civilization. No student can inculcate or cultivate education without guidance. Definitely not a child, who is supposed to get primary guidance from a teacher, for him he is like a laser beam. The State, as the guardian of all citizens and also with a further enhanced and accentuated responsibilities for the children, has a sacrosanct obligation to see that the children are educated. Almost two thousand years back, *Kautaliya* had stated that the parents who do not send their children to have the teachings, deserves to be punished. Similar was the climate in England almost seven centuries back. Thus, the significance of education can be well recognized. In such a situation, we cannot conceive that the posts would lie vacant, students go untaught and the schools look like barren in a desert waiting for an oasis. The teacher shall serve the purpose of oasis in the field of education. Hence, the aforesaid directions.

The competent authority shall file a compliance report, failing which they shall face the consequences as the law provides and the law does not countenance disobedience of the law and orders of the court.

Let the matter be listed on 25th February, 2015, for further hearing.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master