

AFR

Neutral Citation No. - 2025:AHC:47268

Judgment Reserved on 1.4.2025

Delivered on 4.4.2025

Court No. - 6

1. Case :- WRIT - A No. - 10478 of 2022

Petitioner :- Sunil Kumar Yadav And 2041 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Rameshwar Prasad Mishra

Counsel for Respondent :- C.S.C.

2. Case :- WRIT - A No. - 21158 of 2016

Petitioner :- Gyanendra Kumar And 6 Others

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Anil Kumar Savita, Arun Kumar Tripathi

Counsel for Respondent :- C.S.C.

3. Case :- WRIT - A No. - 16123 of 2023

Petitioner :- Anurag Sharma And 5 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Agnihotri Kumar Tripathi, Rajesh Kumar Pandey

Counsel for Respondent :- C.S.C.

4. Case :- WRIT - A No. - 302 of 2023

Petitioner :- Suresh Kumar And 1576 Others

Respondent :- The State Of U P And 2 Others

Counsel for Petitioner :- Avneesh Tripathi, Jamil Ahmad Ansari

Counsel for Respondent :- C.S.C.

5. Case :- WRIT - A No. - 9038 of 2023

Petitioner :- Ramesh Chand Bind And 12 Others

Respondent :- The State Of U.P. And 2 Others

Counsel for Petitioner :- Babu Lal Ram, Manoj Kumar Yadav

Counsel for Respondent :- C.S.C.

6. Case :- WRIT - A No. - 4933 of 2024

Petitioner :- Durgesh Singh Yadav And 2754 Others

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Jamil Ahmad Ansari,Rameshwar Prasad Mishra

Counsel for Respondent :- C.S.C.

7. Case :- WRIT - A No. - 9901 of 2024

Petitioner :- Shiv Nath

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Babu Lal Ram

Counsel for Respondent :- C.S.C.

8. Case :- WRIT - A No. - 11923 of 2024

Petitioner :- Smt Sangeeta Kumari Vishwakarma

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Babu Lal Ram

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Abdulla Kalam, Sri Rameshwar Prasad Mishra, learned counsel for the petitioners in the leading Writ Petition No.10478 of 2022, Sri R.K.Ojha, learned Senior Counsel assisted by Sri Abdulla Kalam and Sri Jamil Ahmad Ansari, learned counsel for the petitioners in Writ Petition No.4933 of 2024 and other learned counsel in connected writ petitions, Sri Abhishek Srivastava, learned Chief Standing Counsel assisted by Sri Ashish K.Nagwanshi, learned Additional Chief Standing Counsel and Ms. Shruti Malviya, (Brief Holder) for State.

2. This bunch of writ petitions is filed by the petitioners that they have passed Teachers Eligibility Test (Primary Level) Examination-2011 and their results were published on 25.11.2011, 30.11.2011 and 29.1.2015.

3. The issue as to whether marks obtained in TET Examination could be a sole criteria for filling up vacancies, was finally decided by Supreme Court in State of U.P. & Ors, ETC, ETC Vs. Shiv Kumar Pathak & Ors, ETC, ETC, 2018 (12) SCC 595 and its conclusions and directions given in its paragraphs 16,17,18,19 and 20 are reproduced hereinafter:

" 16. There is no manner of doubt that the NCTE, acting as an 'academic authority' under Section 23 of the RTE Act,

under the Notification dated 31st March, 2010 issued by the Central Government as well as under Section 12 and 12A of the NCTE Act, was competent to issue Notifications dated 23rd August, 2010 and 11th February, 2011. The State Government was under obligation to act as per the said notifications and not to give effect to any contrary rule. However, since NCTE itself has taken the stand that notification dated 11th February, 2011 with regard to the weightage to be given to the marks obtained in TET is not mandatory which is also a possible interpretation, the view of the High Court in quashing the 15th Amendment to the 1981 Rules has to be interfered with. Accordingly, while we uphold the view that qualifications prescribed by the NCTE are binding, requirement of weightage to TET marks is not a mandatory requirement.

17. As a result of above, in normal course the State would have been at liberty to proceed with the selection in terms of advertisement dated 7th December, 2012 in accordance with the amended rules by way of 15th amendment, in view of developments which have taken place during pendency of these appeals, the said advertisement cannot proceed and while upholding the said advertisement, relief has to be moulded in the light of developments that have taken place in the interregnum.

18. Vide interim order dated 25th March, 2014 this Court directed the State of Uttar Pradesh to fill up the vacancies of Assistant Teachers in terms of the impugned judgment. Thereafter, on 17th December, 2014, the said order was modified and the State was directed to appoint candidates whose names were not involved in malpractices in the TET test and who had obtained 70% marks (65% for SC, ST, OBC and physically handicapped or any other category covered by the Government policy for reservation). 54,464 posts have already been filled up in compliance of the orders of this Court. The said appointments were subject to result of these matters. It was also observed that if anyone without TET qualification is appointed his services will be terminated. Vide order dated 2nd November, 2015 it was noted that against 72,825 posts which were advertised, 43,077

candidates had completed training and were working while 15,058 candidates were undergoing training Around 14,690 posts were vacant. It was further observed that candidates who had the required percentage of marks in terms of order dated 27th July, 2015 were to file their applications and a Committee constituted for the said purpose could verify such percentage and if parity was found the same benefit could be extended.

19. We have been informed that 66,655 teachers have already been appointed in pursuance of the interim orders of this Court. Having regard to the entirety of circumstances, we are not inclined to disturb the same. We make it clear that the State is at liberty to fill up the remaining vacancies in accordance with law after issuing a fresh advertisement.

20. The matters will stand disposed of in above terms."

4. Learned Senior Counsel appearing on behalf of petitioners has submitted various arguments in support of above prayers, though he has effectively pressed only prayer no.4 in WRIT-A No.-10478 of 2022, which is being reproduced hereinafter:

"iv. Issue a writ order or direction in the nature of mandamus directing the respondents/State Government that the selection process may be started in accordance with the Advertisement dated 07.12.2012 issued by the Department of Basic Education, State Government (Annexure No. 21) "

5. In present writ petition it was further prayed that results declared on 25.11.2011, 30.11.2011 and 29.1.2015 of Teachers Eligibility Test (Primary Level)-Examination-2011 be quashed and to re-evaluate the OMR Sheets of Teachers Eligibility Test (Primary Level)-Examination-2011 as well as to cancel the candidature of candidates who have used whitener on OMR sheets and that selection process be commenced in pursuance of advertisement dated 7.12.2012 i.e. the subsequent advertisement.

6. Learned Senior Counsel further argued that judgment passed by Supreme Court in Shiv Kumar Pathak (supra) does not put a bar

that selection process could not be commence in pursuance of subsequent advertisement dated 7.12.2012.

7. Per contra, learned counsel for the respondents by referring operative part of Shiv Kumar Pathak (supra) submitted that no relief could be granted to the petitioners beyond the directions given by Supreme Court as well as this Court is also bound by said directions.

8. In order to appreciate rival submissions, I have perused the above referred operative part of judgment passed in Shiv Kumar Pathak (supra) as well as the directions given therein.

9. In paragraph no.17 of Shiv Kumar Pathak (supra), the Supreme Court has taken note that in normal course the State would have been at liberty to proceed with the selection in terms of advertisement dated 7th December, 2012 in accordance with the amended rules. However, in pursuance of an interim order passed by Supreme Court, 66, 655 teachers have already been appointed and, therefore, instead of giving a direction to continue with the selection process in terms of advertisement dated 7.12.2012, Supreme Court in paragraph 19 of Shiv Kumar Pathak (supra) has granted liberty to State to fill up the remaining vacancies in accordance with law after issuing a fresh advertisement, therefore, effectively the Supreme Court has passed a direction that selection in terms of advertisement dated 7.12.2012 shall not proceed further. Accordingly, prayer of the petitioners being contrary to the observations and direction passed by Supreme Court in Shiv Kumar Pathak (supra), are therefore, rejected.

10. So far as other prayers are concerned, it is also settled by Supreme Court in Shiv Kumar Pathak (supra) against them and now, it could not be reopened since appointments made in pursuance of earlier selection process has also been protected, therefore, other prayers are also rejected.

11. All Writ Petitions being no force are accordingly dismissed.

12. In present circumstances, Court is constraint to observe that these litigations appear to be luxury litigations since issues raised in present bunch of writ petitions have already been settled by

Supreme Court in Shiv Kumar Pathak (supra) and petitioners (6402 in numbers) in all writ petitions were also conscious of these facts, and decision of Shiv Kumar Pathak (supra) still they have filed present writ petitions, therefore, all Writ petitioners shall pay Rs.100/- each as cost since these litigations has wasted crucial time of this Court.

13. The deponent of affidavit accompanied with each Writ Petition shall be responsible that cost be paid by each petitioners since they have declared themselves being pairokar of respective writ petitioners.

14. The cost shall be paid within a week before High Court Bar Association, Allahabad and compliance affidavit shall be filed which will be kept in records of this writ petitions. In case of default, Registrar General of this Court is directed to take appropriate steps for recovery from deponent/pairokar of each Writ Petitions.

15. Learned counsel for the petitioners in each Writ Petitions will inform about this order to deponent/pairokar.

Order Date :- 4.4.2025

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