

RESERVED

AFR

**Court No. - 30**

**Case :-** WRIT - A No. - 13156 of 2020

**Petitioner :-** Mahendra Pal And Ors.

**Respondent :-** State Of U.P.Thru Addl.Chief Secy. Deptt Of Basic Edu.Andors

**Counsel for Petitioner :-** Neel Kamal Mishra,Deepak Singh,Niteesh Kumar,Pramod Kumar Yadav,Rajeev Narayan Pandey

**Counsel for Respondent :-** C.S.C,Ajay Kumar

And

**Case :-** WRIT - A No. - 8142 of 2020

**Petitioner :-** Rovin Singh And Ors.

**Respondent :-** State Of U.P.Thru Secy.Basic Education Lucknow And Ors.

**Counsel for Petitioner :-** Amrendra Nath Tripathi,Durga Prasad Shukla,Jai Shankar Prasad

**Counsel for Respondent :-** C.S.C.,Ajay Kumar,Jyotinjay Verma,Nand Kishore Patel,Onkar Singh

And

**Case :-** WRIT - A No. - 9050 of 2020

**Petitioner :-** Loha Singh Patel And Others

**Respondent :-** State Of U.P. Thru. Prin. Secy. Basic Education Lko And Ors.

**Counsel for Petitioner :-** Gantavya,Deepak Singh,Meha Rashmi,Pramod Kumar Yadav

**Counsel for Respondent :-** C.S.C.,Ajay Kumar,Amrendra Nath Tripathi,B.R. Singh,Durga Prasad Shukla

And

**Case :-** WRIT - A No. - 9683 of 2020

**Petitioner :-** Shweta Chauhan And Ors.

**Respondent :-** State Of U.P. Through Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Amrendra Nath Tripathi,Aatreya  
Tripathi,Durga Prasad Shukla

**Counsel for Respondent :-** C.S.C.,Ajay Kumar,Angad Prasad  
Shukla,Beer Bahadur Yadav,Brijendra Kumar Verma,Subhash Chandra  
Pandey,Surendra Singh

And

**Case :-** WRIT - A No. - 9767 of 2020

**Petitioner :-** Bhaskar Singh Yadav And 11 Ors.

**Respondent :-** State Of U.P. Thru Addl.Chief Secy. Basic Edu. Lko. And  
Ors.

**Counsel for Petitioner :-** Girish Chandra Verma

**Counsel for Respondent :-** C.S.C.,Ajay Kumar,Angad Prasad Shukla

And

**Case :-** WRIT - A No. - 10122 of 2020

**Petitioner :-** Vijay Pratap Yadav And Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Education  
And Ors.

**Counsel for Petitioner :-** Rajeev Narayan Pandey,Vinod Kumar

**Counsel for Respondent :-** C.S.C.,Ajay Kumar,Angad Prasad Shukla

And

**Case :-** WRIT - A No. - 10461 of 2020

**Petitioner :-** Susheel Kumar And Ors.

**Respondent :-** State Of U.P.Through Prin.Secy. Basic Education And  
Ors.

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ajay Kumar,Angad Prasad Shukla

And

**Case :-** WRIT - A No. - 11261 of 2020

**Petitioner :-** Rajesh Kumar And Ors.

**Respondent :-** State Of U.P.Throu.Prin.Secy.Basic Education Lko.And Ors.

**Counsel for Petitioner :-** Adesh Srivastava

**Counsel for Respondent :-** C.S.C.,Ajai Kumar,Angad Prasad Shukla  
And

**Case :-** WRIT - A No. - 11638 of 2020

**Petitioner :-** Bhupendra Kumar And Ors.

**Respondent :-** State Of U.P. Thru Addl. Chief Secy. Basic Education  
And Ors.

**Counsel for Petitioner :-** Rajeev Narayan Pandey, Vinod Kumar

**Counsel for Respondent :-** C.S.C.,Ajay Kumar,Angad Prasad Shukla  
And

**Case :-** WRIT - A No. - 11876 of 2020

**Petitioner :-** Ravi Shankar And Ors.

**Respondent :-** State Of Up Thru Addl. Chief Secy. Basic Edu. Lko And  
Ors.

**Counsel for Petitioner :-** Rajeev Narayan Pandey

**Counsel for Respondent :-** C.S.C.,Ajay Kumar,Angad Prasad Shukla  
And

**Case :-** WRIT - A No. - 12793 of 2020

**Petitioner :-** Anamika Verma And Ors.

**Respondent :-** State Of U.P. Thru Prin. Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Gaurav Mehrotra,Ishita Yadu

**Counsel for Respondent :-** C.S.C.,Ajay Kumar,Angad Prasad  
Shukla,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 18194 of 2020

**Petitioner :-** Narendra Pratap Singh And Ors.

**Respondent :-** State Of U.P. Thru. Prin. Secy. Basic Education Lko. And Ors.

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ajay Kumar

And

**Case :-** WRIT - A No. - 19535 of 2020

**Petitioner :-** Pradeep Kumar Maurya And Ors.

**Respondent :-** State Of U.P. Thru. Addl.Chief Secy.Basic Education Lko.Andors

**Counsel for Petitioner :-** Vidya Bhushan Pandey,Alok Kumar Vishwakarma

**Counsel for Respondent :-** C.S.C.,Ajay Kumar

And

**Case :-** WRIT - A No. - 19554 of 2020

**Petitioner :-** Nisar Ahmad Ansari And Ors.

**Respondent :-** State Of U.P. Thru. Prin. Secy. Basic Education Lko.Andors.

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ajay Kumar

And

**Case :-** WRIT - A No. - 21706 of 2020

**Petitioner :-** Dharmendra Kumar Vishwakarma And Ors.

**Respondent :-** State Of U.P. Thru.Prin.Secy. Basic Edu. Lko. And Ors.

**Counsel for Petitioner :-** Durgesh Mishra,Jai Prakash Pandey

**Counsel for Respondent :-** C.S.C.

And

**Case :-** WRIT - A No. - 22188 of 2020

**Petitioner :-** Shashank Tiwari And 19 Ors.

**Respondent :-** State Of U.P. Thru Secy. Basic Edu. Lucknow And Ors.

**Counsel for Petitioner :-** Mujtaba Kamal Sherwani, Anas Sherwani

**Counsel for Respondent :-** C.S.C., Ajay Kumar, Om Prakash Mani  
Tripathi

And

**Case :-** WRIT - A No. - 3012 of 2021

**Petitioner :-** Anurag Yadav And Ors.

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Education  
Lko. Andors.

**Counsel for Petitioner :-** Rajeev Narayan Pandey

And

**Case :-** WRIT - A No. - 4568 of 2021

**Petitioner :-** Tasleem Bano And Ors.

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Basic  
Edu. And Ors

**Counsel for Petitioner :-** Neel Kamal Mishra, Anuj Singh

**Counsel for Respondent :-** C.S.C., Ran Vijay Singh

And

**Case :-** WRIT - A No. - 5323 of 2021

**Petitioner :-** Everest Kumar And Ors.

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Education  
Lko. Andors

**Counsel for Petitioner :-** Rajeev Narayan Pandey, Niteesh Kumar, Vineet  
Kumar Verma

**Counsel for Respondent :-** C.S.C., Ran Vijay Singh

And

**Case :-** WRIT - A No. - 5863 of 2021

**Petitioner :-** Surendra Kumar Yadav And Ors.

**Respondent :-** State Of U.P.Thru.Addl.Chief Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Anil Kumar Maurya,Pramod Kumar Maurya

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 6527 of 2021

**Petitioner :-** Kuldeep Kumar Verma And Ors.

**Respondent :-** State Of U.P.Thru.Prin.Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Ajai Pratap Singh Chauhan

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 7678 of 2021

**Petitioner :-** Krishna Kumar And Ors.

**Respondent :-** State Of U.P.Thru.Addl.Chief Secy./Prin.Secy.Basic And Ors.

**Counsel for Petitioner :-** Shyam Mohan Upadhyay

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 8090 of 2021

**Petitioner :-** Anand Kumar Vishwakarma And Anr.

**Respondent :-** State Of U.P.Thru.Addl.Chief Secy. Basic And Ors.

**Counsel for Petitioner :-** Vidya Bhushan Pandey,Alok Kumar Vishwakarma

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 8414 of 2021

**Petitioner :-** Mulayam Singh And Ors.

**Respondent :-** State Of U.P.Thru.Addl.Chief Secy./Prin.Secy. Basic And

Ors.

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 9501 of 2021

**Petitioner :-** Savitri Patel And Ors.

**Respondent :-** State Of U.P.Thru.Addl.Chief Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Nand Kishore Patel,Onkar Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 12510 of 2021

**Petitioner :-** Kuldeep Kumar And Ors.

**Respondent :-** State Of U.P. Thru. Addl.Chief Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Gyanendra Kumar Pandey

**Counsel for Respondent :-** C.S.C.

And

**Case :-** WRIT - A No. - 12552 of 2021

**Petitioner :-** Ashutosh Verma And Another

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Edu. And Others

**Counsel for Petitioner :-** Onkar Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 12819 of 2021

**Petitioner :-** Sunil Kumar Gupta And Others

**Respondent :-** State Of U.P. Thru. Addl Chief Secy. Basic Edu. Lko And

Ors.

**Counsel for Petitioner :-** Rajeev Narayan Pandey

And

**Case :-** WRIT - A No. - 13587 of 2021

**Petitioner :-** Rekha Singh

**Respondent :-** State Of U.P. Thru Prin. Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Dharmendra Singh,Devendra Nath Tripahti

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 14913 of 2021

**Petitioner :-** Ranjeet Yadav And Ors.

**Respondent :-** State Of U.P.Thru.Addl.Chief Secy/Prin.Secy.Basic Edu.

And Ors

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 15040 of 2021

**Petitioner :-** Jas Veer And Ors.

**Respondent :-** State Of U.P.Thru.Addl.Chief Secy/Prin.Secy.Basic Edu.

And Ors

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 16083 of 2021

**Petitioner :-** Devendra Pratap And Anr.

**Respondent :-** State Of U.P.Thru.Addl.Chief/Prin.Secy.Basic Education

Andors

**Counsel for Petitioner :-** Vikas Pandey

**Counsel for Respondent :-** C.S.C.



And

**Case :-** WRIT - A No. - 16538 of 2021

**Petitioner :-** Mohd. Mueen And Ors.

**Respondent :-** State Of U.P. Thru.Addl.Chief/Prin.Secy.Basic Education Andors

**Counsel for Petitioner :-** Neel Kamal Mishra

**Counsel for Respondent :-** C.S.C.,Ajay Kumar,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 17441 of 2021

**Petitioner :-** Lalit Kumar And Ors.

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Edu. And Ors.

**Counsel for Petitioner :-** Onkar Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 17919 of 2021

**Petitioner :-** Ravindra Pratap Yadav And Ors.

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Edu. And Ors.

**Counsel for Petitioner :-** Rakesh Kumar Yadav,Jyoti Sikkane Mehrotra,Mulayam Singh Yadav,Raghvendra Kumar Saini

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 18167 of 2021

**Petitioner :-** Anil Kushwaha And Ors.

**Respondent :-** State Of U.P. Thru. Addl.Chief Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Shyam Mohan Upadhyay

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 18496 of 2021

**Petitioner :-** Reena Yadav And Ors.

**Respondent :-** State Of U.P.Thru.Addl.Chief Secy.Prin.Secy. Basic Edu  
And Ors

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ajay Kumar,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 18529 of 2021

**Petitioner :-** Noorulhaq And Ors.

**Respondent :-** State Of U.P.Thru.Addl.Chief Secy./Prin.Secy.Basic  
Edu.Andors.

**Counsel for Petitioner :-** Deepak Singh,Akhand Pratap Singh

**Counsel for Respondent :-** C.S.C.,Ajay Kumar,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 18709 of 2021

**Petitioner :-** Indrageet Yadav

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Edu. And  
Ors.

**Counsel for Petitioner :-** Ajay Madhavan,Abhishek Singh Yadav,Shiva  
Shashank

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 19050 of 2021

**Petitioner :-** Nuruddin Ahmad And Ors.

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Edu. And  
Ors.

**Counsel for Petitioner :-** Haider Abbas,Mohd.Yasin

**Counsel for Respondent :-** C.S.C.,Neeraj Chaurasiya

And

**Case :-** WRIT - A No. - 19564 of 2021

**Petitioner :-** Anil Kumar And Ors.

**Respondent :-** State Of U.P. Thru. Addl.Chief Secy. Basic Education  
And Ors.

**Counsel for Petitioner :-** Pramod Kumar Shukla

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 19601 of 2021

**Petitioner :-** Arvind Kumar Yadav

**Respondent :-** State Of U.P. Thru. Addl.Chief Secy. Basic Education  
And Ors.

**Counsel for Petitioner :-** Vidya Bhushan Pandey

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 20205 of 2021

**Petitioner :-** Pravesh Kumar And Ors.

**Respondent :-** State Of U.P. Thru. Addl.Chief Secy. Basic Education  
And Ors.

**Counsel for Petitioner :-** Shiva Nand Mishra,Kumar Gaurav Srivastav

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 22652 of 2021

**Petitioner :-** Abhishek Kumar And Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Edu. Lko  
And Ors.

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 22711 of 2021

**Petitioner :-** Satendra Kumar Kushwaha

**Respondent :-** State Of U.P. Thru. Prin. Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Shyam Mohan Upadhyay, Suneel Kumar  
Maurya

**Counsel for Respondent :-** C.S.C., Ran Vijay Singh

And

**Case :-** WRIT - A No. - 22808 of 2021

**Petitioner :-** Mohd. Alam Ansari And Others

**Respondent :-** State Of U.P. Thru. Addl Chief Secy. Basic Edu. Lko And  
Others

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C., Ran Vijay Singh

And

**Case :-** WRIT - A No. - 23751 of 2021

**Petitioner :-** Aniket Chand And Ors.

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Education  
And Ors.

**Counsel for Petitioner :-** Ashwani Kumar Singh

**Counsel for Respondent :-** C.S.C., Ran Vijay Singh

And

**Case :-** WRIT - A No. - 24401 of 2021

**Petitioner :-** Kanika Yadav

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Edu. Lko.  
And Ors.

**Counsel for Petitioner :-** Devesh Deo Bhatt, Awadhesh Kumar  
Tiwari, Mohd. Shahanshah Newaz Kh

**Counsel for Respondent :-** C.S.C., Ran Vijay Singh

And

**Case :-** WRIT - A No. - 26382 of 2021

**Petitioner :-** Ashish Kumar And Ors.

**Respondent :-** State Of U.P. Thru. Addl.Chief Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Deepak Singh,Aditi Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 26805 of 2021

**Petitioner :-** Shiv Prasad Yadav And Ors.

**Respondent :-** State Of U.P. Thru. Addl.Chief Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 26944 of 2021

**Petitioner :-** Sneha Lata And Ors.

**Respondent :-** State Of U.P. Thru. Prin. Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Arun Kumar Verma,Ashutosh Dwivedi

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 27478 of 2021

**Petitioner :-** Rakesh Kumar Yadav And Ors.

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Edu. And Ors.

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 28828 of 2021

**Petitioner :-** Aanchal Verma And Ors.

**Respondent :-** State Of U.P. Thru.Addl.Chief Secy. Basic Edu. Deptt.  
And Ors.

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh  
And

**Case :-** WRIT - A No. - 29292 of 2021

**Petitioner :-** Alam Husain And 19 Ors.

**Respondent :-** State Of U.P. Thru Prin.Secy. Basic Edu. Lucknow And  
Ors.

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh  
And

**Case :-** WRIT - A No. - 29600 of 2021

**Petitioner :-** Harish Babu And Ors.

**Respondent :-** State Of U.P.Thru Addl.Chief Secy./Prin.Secy.Basic  
Edu.Andors.

**Counsel for Petitioner :-** Deepak Singh,Aditi Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh  
And

**Case :-** WRIT - A No. - 29632 of 2021

**Petitioner :-** Kumari Gayatri And Others

**Respondent :-** State Of U.P. Thru. Prin. Secy. Basic Edu. Lko And  
Others

**Counsel for Petitioner :-** Arun Kumar Verma,Vikrant Choudhary

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh  
And

**Case :-** WRIT - A No. - 29687 of 2021

**Petitioner :-** Krishan Kumar And Ors.

**Respondent :-** State Of U.P. Thru. Prin. Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Sharad Kumar Verma,Arun Kumar  
Verma,Ashutosh Diwedi

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh  
And

**Case :-** WRIT - A No. - 29834 of 2021

**Petitioner :-** Raj Kumar Yadav And Ors.

**Respondent :-** State Of U.P. Thru Addl Chief Secy Basic Edu. Deptt.  
And Ors.

**Counsel for Petitioner :-** Maya Ram Yadav

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 29976 of 2021

**Petitioner :-** Satish Kumar And Ors.

**Respondent :-** State Of U.P. Thru. Addl.Chief/Prin.Secy.Basic  
Educationandors

**Counsel for Petitioner :-** Pankaj Kumar Singh,Joveen Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 29992 of 2021

**Petitioner :-** Ghanshyam Yadav And Ors.

**Respondent :-** State Of U.P. Thru Addl Chief Secy Basic Edu. Deptt.  
And Ors.

**Counsel for Petitioner :-** Deepak Singh,Aditi Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 30657 of 2021

**Petitioner :-** Rajendra Prasad And Ors.

**Respondent :-** State Of U.P. Thru. Addl.Chief/Prin.Secy.Basic  
Educationandors

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 138 of 2022

**Petitioner :-** Ramesh Kumar And 86 Others

**Respondent :-** State Of U.P Thru. Addl. Chief Secy. Basic Edu. And 5 Others

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 258 of 2022

**Petitioner :-** Ran Vijay

**Respondent :-** State Of U.P. Thru Addl Chief Secy Deptt Of Basic Education Lko. And 4 Others

**Counsel for Petitioner :-** Abhishek Yadav,Kamlesh Kumar Yadav,Sunil Kumar Maurya

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 323 of 2022

**Petitioner :-** Bharti Patel And 5 Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Education Deptt. Lko. And 9 Others

**Counsel for Petitioner :-** Sridhar Awasthi,Ashok Kumar Singh

**Counsel for Respondent :-** C.S.C.,Ankit Kumar,Ashok Kumar Singh,Deepak Singh,L.B.Singh Bhadauria,Lalta Prasad Misra,Mujtaba Kamal Sherwani,Neel Kamal Mishra,Prafulla Tiwari,Rajeev Narayan Pandey,Rakesh Kumar Chaudhary,Ran Vijay Singh,Shreya Chaudhary,Vidya Bhushan Pandey

And

**Case :-** WRIT - A No. - 355 of 2022

**Petitioner :-** Amit Kumar And Another

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Education Lko. And 4 Others



**Counsel for Petitioner :-** Vidya Bhushan Pandey

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 391 of 2022

**Petitioner :-** Arun Pratap Singh And 17 Others

**Respondent :-** State Of U.P. Thru. Its Additional Chief Secretary, Dept Of Basic Education And 6 Others

**Counsel for Petitioner :-** Ram Chandra,Vikas Yadav

**Counsel for Respondent :-** C.S.C.

And

**Case :-** WRIT - A No. - 435 of 2022

**Petitioner :-** Reeta

**Respondent :-** State Of Up Thru. Addl. Chief Secy. Basic Edu. Lko. And Others

**Counsel for Petitioner :-** Pankaj Verma

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 472 of 2022

**Petitioner :-** Jitendra Kumar And 116 Others

**Respondent :-** State Of U.P. Thru. Its Prin. Secy. Deptt. Of Basic Edu. And Others

**Counsel for Petitioner :-** Chandan Prasad

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 688 of 2022

**Petitioner :-** Mahendra Prasad Maurya And 6 Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy, Basic Edu. Civil Secrtt. U.P. Lko. And Others

**Counsel for Petitioner :-** Adarsh Kumar Maurya,Ram Kawal Maurya

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 719 of 2022

**Petitioner :-** Kamlesh Singh And 5 Others

**Respondent :-** State Of U.P. Thru. Secy. Basic Education Lko. And 2 Others

**Counsel for Petitioner :-** Satish Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 919 of 2022

**Petitioner :-** Puja Verma And Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Prin Secy .Dept. Of Basic Edu.U.P.Civil Sect.Lko And Others

**Counsel for Petitioner :-** Sanjay Kumar Verma

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 973 of 2022

**Petitioner :-** Mohini Tiwari And 29 Others

**Respondent :-** State Of U.P. Thru. Prin. Secy. Basic Education Lko. And 13 Others

**Counsel for Petitioner :-** Amrendra Nath Tripathi

**Counsel for Respondent :-** C.S.C.,Mujtaba Kamal Sherwani,Onkar Singh,Pradeep Kumar Verma,Rakesh Kumar Chaudhary,Ran Vijay Singh,Shreya Chaudhary

And

**Case :-** WRIT - A No. - 978 of 2022

**Petitioner :-** Raghvendra Prasad Mishra And 49 Others

**Respondent :-** State Of U.P Thru. Prin. Secy. Basic Education And 13

Others

**Counsel for Petitioner :-** Amrendra Nath Tripathi

**Counsel for Respondent :-** C.S.C.,Deepak Singh,L.B.Singh  
Bhadauria,Mujtaba Kamal Sherwani,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 1126 of 2022

**Petitioner :-** Karuna Shankar Shukla And Others

**Respondent :-** State Of U.P. Thru. Prin. Secy. Basic Education Lko. And  
Others

**Counsel for Petitioner :-** Gajendra Pratap Singh,Dr. V.K. Singh

**Counsel for Respondent :-** C.S.C.,Deepak Singh,H B Singh  
Bhadauria,L.B.Singh Bhadauria,M K Kesarwani,M K  
Kesharwani,Mujtaba Kamal Sherwani,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 1144 of 2022

**Petitioner :-** Shivam Pandey And 34 Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Education  
Dept. Lko. And 7 Others

**Counsel for Petitioner :-** I.M. Pandey Ist

**Counsel for Respondent :-** C.S.C.,Ashok Kumar Singh,Deepak  
Singh,L.B.Singh Bhadauria,Mujtaba Kamal Sherwani,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 1162 of 2022

**Petitioner :-** Vinay Kumar Pandey And 34 Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Education  
Dept. And 6 Others

**Counsel for Petitioner :-** I.M. Pandey Ist

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 1549 of 2022

**Petitioner :-** Rakesh Patel And Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Basic Edu. Govt. Of U.P. Lko. And Others

**Counsel for Petitioner :-** Rajeev Narayan Pandey

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 1556 of 2022

**Petitioner :-** Sandeep Kumar And 261 Others

**Respondent :-** State Of U.P. Thru. Additional Chief Secy./ Prin. Secy., Deptt. Of Basic Education And 5 Others

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** G.A.

And

**Case :-** WRIT - A No. - 1561 of 2022

**Petitioner :-** Ashish Bajpai And 3 Others

**Respondent :-** State Of U.P. Through Principal Secretary, Basic Education And 6 Others

**Counsel for Petitioner :-** Gajendra Pratap Singh

**Counsel for Respondent :-** C.S.C.,Deepak Singh,L.B.Singh Bhadauria,Mujtaba Kamal Sherwani,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 1566 of 2022

**Petitioner :-** Nitesh Kumar Singh And 174 Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Department Of Basic Edu. Govt. Of U.P. And 12 Others

**Counsel for Petitioner :-** Durga Prasad Shukla

**Counsel for Respondent :-** C.S.C.,Deepak Singh,L.B.Singh Bhadauria,Mujtaba Kamal Sherwani,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 1592 of 2022

**Petitioner :-** Arpit Kumar Bajpai And Others

**Respondent :-** State Of Up Thru. Prin. Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Abhishek Singh,Akhand Kumar Pandey

**Counsel for Respondent :-** C.S.C.,Deepak Singh,L.B.Singh  
Bhadauria,Mujtaba Kamal Sherwani,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 1594 of 2022

**Petitioner :-** Alok Singh And Others

**Respondent :-** State Of Up Thru. Prin. Secy. Basic Education And  
Others

**Counsel for Petitioner :-** Gajendra Pratap Singh

**Counsel for Respondent :-** C.S.C.,Deepak Singh,L.B.Singh  
Bhadauria,Mujtaba Kamal Sherwani,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 1596 of 2022

**Petitioner :-** Kunwar Dharmendra Nath And Others

**Respondent :-** State Of Up Thru. Prin. Secy. Basic Education And  
Others

**Counsel for Petitioner :-** Gajendra Pratap Singh

**Counsel for Respondent :-** Vivek Verma,C.S.C.,Deepak  
Singh,L.B.Singh Bhadauria,Mujtaba Kamal Sherwani,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 1598 of 2022

**Petitioner :-** Adarsh Srivastava And Others

**Respondent :-** State Of Up Thru. Prin. Secy. Basic Education And  
Others

**Counsel for Petitioner :-** Gajendra Pratap Singh

**Counsel for Respondent :-** Vivek Verma,C.S.C.,Deepak  
Singh,L.B.Singh Bhadauria,Mujtaba Kamal Sherwani,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 1599 of 2022

**Petitioner :-** Ashutosh Barua And Others

**Respondent :-** State Of U.P. Thru Prin.Secy. Basic Education Lucknow  
And Ors.

**Counsel for Petitioner :-** Gajendra Pratap Singh,Dharmendra Kumar  
Singh

**Counsel for Respondent :-** C.S.C.,Deepak Singh,L.B.Singh  
Bhadauria,Mujtaba Kamal Sherwani,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 1600 of 2022

**Petitioner :-** Anita Singh And Ors.

**Respondent :-** State Of Up Thru. Prin. Secy. Basic Education And  
Others

**Counsel for Petitioner :-** Gajendra Pratap Singh

**Counsel for Respondent :-** Vivek Verma,C.S.C.,Deepak  
Singh,L.B.Singh Bhadauria,Mujtaba Kamal Sherwani,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 1602 of 2022

**Petitioner :-** Shiv Prakash Mishra And Others

**Respondent :-** State Of U.P. Thru Prin.Secy. Basic Education Lucknow  
And Ors.

**Counsel for Petitioner :-** Gajendra Pratap Singh,Dharmendra Kumar  
Singh

**Counsel for Respondent :-** C.S.C.,Deepak Singh,L.B.Singh  
Bhadauria,Mujtaba Kamal Sherwani,Ran Vijay Singh,Vivek Verma

And

**Case :-** WRIT - A No. - 1604 of 2022

**Petitioner :-** Ram Shankar And Others

**Respondent :-** State Of U.P. Thru Prin.Secy. Basic Education Lucknow

And Ors.

**Counsel for Petitioner :-** Gajendra Pratap Singh, Dharmendra Kumar Singh

**Counsel for Respondent :-** C.S.C., Deepak Singh, L.B. Singh Bhadauria, Mujtaba Kamal Sherwani, Ran Vijay Singh, Vivek Verma

And

**Case :-** WRIT - A No. - 1694 of 2022

**Petitioner :-** Anju Tripathi And 19 Others

**Respondent :-** State Of U.P. Thru. Prin. Secy. Basic Education Lko. And 13 Others

**Counsel for Petitioner :-** Amrendra Nath Tripathi

**Counsel for Respondent :-** C.S.C., Deepak Singh, L.B. Singh Bhadauria, Mujtaba Kamal Sherwani, Ran Vijay Singh

And

**Case :-** WRIT - A No. - 1713 of 2022

**Petitioner :-** Anil Kushwaha And 8 Others

**Respondent :-** State Of U.P. Thru. Its Addl. Chief Secy. Depart. Of Basic Education Lko. And 8 Others

**Counsel for Petitioner :-** Shyam Mohan Upadhyay

**Counsel for Respondent :-** C.S.C., Deepak Singh, L.B. Singh Bhadauria, Mujtaba Kamal Sherwani, Ran Vijay Singh

And

**Case :-** WRIT - A No. - 2324 of 2022

**Petitioner :-** Asheesh Baranwal And 26 Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Dept. Basic Education Lko. And 12 Others

**Counsel for Petitioner :-** Shashi Bajpai, Durga Prasad Shukla

**Counsel for Respondent :-** C.S.C., Ran Vijay Singh

And

**Case :-** WRIT - A No. - 3005 of 2022

**Petitioner :-** Jyoti Singh And 50 Others

**Respondent :-** State Of U.P. Thru. Its Addl. Chief Secy. Deptt. Of Basic Education And 12 Others

**Counsel for Petitioner :-** Durga Prasad Shukla,Angad Prasad Shukla,Durga Prasad Shukla

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh,Subhash Chandra Pandey

And

**Case :-** WRIT - A No. - 3608 of 2022

**Petitioner :-** Rabindra Kumar

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Deptt. Of Basic Education Lko. And 6 Others

**Counsel for Petitioner :-** Shrikant Mishra,Kumar Jaikrit

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 3651 of 2022

**Petitioner :-** Anil Kumar Gautam And Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy./ Prin. Secy. Basic Education And Others

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 3660 of 2022

**Petitioner :-** Vishnu

**Respondent :-** State Of U.P. Thru. Secy. Basic Edu. Lko. And 2 Others

**Counsel for Petitioner :-** Vinod Kumar

**Counsel for Respondent :-** C.S.C.

And



**Case :-** WRIT - A No. - 4230 of 2022

**Petitioner :-** Sunil Kumar And 10 Others

**Respondent :-** State Of U.P. Thru. Prin. Secy. Deptt. Of Basic Education  
And 3 Others

**Counsel for Petitioner :-** Chandan Prasad

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 4653 of 2022

**Petitioner :-** Vivek Kumar Singh And Another

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Deptt. Prin. Secy.  
Deptt. Of Basic Education Lko And 6 Others

**Counsel for Petitioner :-** Digvijay Singh Yadav,Manish Kumar Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 5816 of 2022

**Petitioner :-** Kamishnar Yadav

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. /Prin Secy. Deptt.  
Of Basic Education And 4 Others

**Counsel for Petitioner :-** Narendra Bahadur Singh,Prabhat Kumar

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 5965 of 2022

**Petitioner :-** Ankit Kumar Mourya And Others

**Respondent :-** State Of U.P. Through Additional Chief Secretary, Deptt.  
Of Basic Education And Others

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 6398 of 2022

**Petitioner :-** Richa Yadav

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy./ Prin. Secy. Deptt. Of Basic Edu. Lko. And Others

**Counsel for Petitioner :-** Santosh Kr. Yadav Warsi, Viswash

**Counsel for Respondent :-** C.S.C., Ran Vijay Singh

And

**Case :-** WRIT - A No. - 6562 of 2022

**Petitioner :-** Vimlendra Kumar Suman And 2 Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy., Basic Education, Lko. And 2 Others

**Counsel for Petitioner :-** Onkar Singh

**Counsel for Respondent :-** C.S.C., Ran Vijay Singh

And

**Case :-** WRIT - A No. - 6969 of 2022

**Petitioner :-** Archana Yadav And Another

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy./ Prin. Secy. Deptt. Of Basic Edu. And 3 Others

**Counsel for Petitioner :-** Dharmendra Singh

**Counsel for Respondent :-** C.S.C., Ran Vijay Singh

And

**Case :-** WRIT - A No. - 7003 of 2022

**Petitioner :-** Shipra Kumari

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. /Prin. Secy. Deptt. Of Basic Education Lucknow And 6 Others

**Counsel for Petitioner :-** Amol Kumar Srivastava, Dina Nath Saha

**Counsel for Respondent :-** C.S.C., Ran Vijay Singh

And

**Case :-** WRIT - A No. - 7078 of 2022

**Petitioner :-** Priyanka Chaudhary And 47 Others

**Respondent :-** State Of U.P. Through Additional Chief Secretary, Deptt. Of Basic Education And 5 Others

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 7204 of 2022

**Petitioner :-** Digvijay Singh And 15 Others

**Respondent :-** State Of U.P. Thru. Prin. Secy. (Basic Education) Lko. And 3 Others

**Counsel for Petitioner :-** Mukesh Kumar Tewari,Sushil Kumar Yadav

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 7234 of 2022

**Petitioner :-** Sunil Kumar Singh

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Basic Education And 5 Others

**Counsel for Petitioner :-** Prashant Pandey

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 7258 of 2022

**Petitioner :-** Rajesh Yadav And 2 Others

**Respondent :-** State Of U.P. Thru. Its Addl. Chief Secy. Deptt. Of Basic Edu. Lko. And 3 Others

**Counsel for Petitioner :-** Girish Chandra Verma

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 7307 of 2022

**Petitioner :-** Himanshu Yadav And Ors.

**Respondent :-** State Of U.P. Thru Addl.Chief Sey./Prin.Secy. Basic

Education Lucknow And Ors.

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 7460 of 2022

**Petitioner :-** Akanksha Pal

**Respondent :-** State Of U.P. Thru Addl Chief Secy/ Prin Secy Deptt Of Basic Education Lko. And 2 Others

**Counsel for Petitioner :-** Rakesh Sharma

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 7576 of 2022

**Petitioner :-** Krisna Chandra And 9 Others

**Respondent :-** State Of U.P. Thru. Prin. Secy. Basic Education And 4 Others

**Counsel for Petitioner :-** Shreya Chaudhary,Rakesh Kumar Chaudhary

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 7652 of 2022

**Petitioner :-** Smt.Kanchan Pushpakar And 3 Others

**Respondent :-** State Of U.P. Thru. Its Addl. Chief Secy. Deptt. Of Basic Edu. Lko. And 5 Others

**Counsel for Petitioner :-** Payal Singh,Ram Prakash Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 7681 of 2022

**Petitioner :-** Veerendra Singh Niranjana And Ors.

**Respondent :-** State Of U.P. Thru Addl.Chief Secy./Prin.Secy. Basic Education And Ors.

**Counsel for Petitioner :-** Deepak Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 7908 of 2022

**Petitioner :-** Manoj Kumar And Others

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy./ Prin. Secy. Deptt. Of Basic Education, Lko. And Others

**Counsel for Petitioner :-** Mahima Dwivedi,Anju Singh,Manju Nagaur

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 7930 of 2022

**Petitioner :-** Suneel Kumar Jaiswal

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Basic Education, Lko. And Others

**Counsel for Petitioner :-** Amarendra Pratap Singh

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 7995 of 2022

**Petitioner :-** Ajay Kumar Mishra And 49 Others

**Respondent :-** State Of U.P. Addl. Chief Secy. Deptt. Basic Education, Lko. And 8 Others

**Counsel for Petitioner :-** Durga Prasad Shukla,Vivek Mishra

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 8177 of 2022

**Petitioner :-** Anirudh Kumar

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy./Prin. Secy.Deptt. Basic Edu. Lko. And 3 Others

**Counsel for Petitioner :-** Arvind Kumar Kanaujea  
**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

And

**Case :-** WRIT - A No. - 8224 of 2022

**Petitioner :-** Rudra Deo Verma

**Respondent :-** State Of U.P. Thru. Addl. Chief Secy./ Prin. Secy. Deptt.  
Of Basic Edu. Lko. And 3 Others

**Counsel for Petitioner :-** Girish Chandra Verma,Jyoti Rajpoot

**Counsel for Respondent :-** C.S.C.,Ran Vijay Singh

**Hon'ble Om Prakash Shukla,J.**

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**A. Introduction**

1. Reservation is a form of affirmative action that provides predetermined representation in education, employment, government schemes, scholarships and political representation to a disadvantaged group. The system of reservation existed in India even before independence. Post-independence the system of reservation came to be imbibed in our Constitution. Initially, it was introduced for a time span of 10 years as per Article 334 of the constitution of India. Post 10-year period, the parliament found the necessity to continue the system of reservation to overcome many years of societal and cultural discrimination of certain sections of society and as such it continues to hold the ground even after 75 years of Independence.
2. Under our Constitution, reservations do not refer to the sharing of state power by all social groups, but rather it refers to inclusion of subordinated and marginalised groups, who were socially and culturally backwards due to various reasons to be included in the main-stream. Thus, the reservation in that sense, in our constitution, means an inclusive remedy for upliftment of these downtrodden and essentially is participatory in nature, so that the backward classes are not only brought at par to the main-stream, but they also play an active role in the development, administration, progressive equality and achievement of our country.
3. While Article 15 of our constitution relates to reservation in Education Institutions, Article 16 relates to reservation in public employment. Interestingly, the word “backward” used in both the

Articles are of utmost significance and that is the word, which has found itself in the epicentre of controversy, ever since the Article existed. Although, it was the Drafting Committee under the Chairmanship of Dr. B.R. Ambedkar that inserted the word "backward" in between the words "in favour of any" and "class of citizens" as mentioned in Article 16(4) of our constitution and eventually it was left to the respective states to determine as to who could be called backward. However, the meaning of the word "Backward" as should be understood in today's progressive India could be found from the explanation of Shri K.M. Munshi, who was a member of the drafting committee of our constitution. In a debate in the constituent assembly relating to Article 16 of our constitution (which was originally introduced as Article 10), after the discussion proceeded for some time relating to the insertion of the word "backward" and it was contended by the members of the constituent assembly that the said word was vague, Sri K.M. Munshi, rose to the occasion to explain the content of the word 'backward' in the following words:

“What we want to secure by this clause are two things. In the fundamental right in the first clause we want to achieve the highest efficiency in the services of the State-highest efficiency which would enable the services to function effectively and promptly. At the same time, in view of the conditions in our country prevailing in several provinces, we want to see that backward class, classes who are really backward, should be given scope in the State services; for it is realised that State services give a status and an opportunity to serve the country, and this opportunity should be extended to every community, even among the backward people. That being so, we have to find out some generic term and the word "backward class" was the best possible term.”

Sri Munshi proceeded to state:



I may point out that in the province of Bombay for several years now, there has been a definition of backward classes, which includes not only Scheduled Castes and Scheduled Tribes but also other backward classes who are economically, educationally, and socially backward. We need not, therefore, define or restrict the scope of the word "backward" to a particular community. Whoever is backward will be covered by it and I think the apprehensions of the Honourable Members are not justified.

4. The reservation extended on the basis of ‘economic criterion’ is one such step, wherein poverty is visualized as a form of subordination that reflects ‘social backwardness’. Be that as it may, the larger debate would always remain as to whether this reservation should be the end of the story or the government is required to take other remedial action beyond welfare policies. However, to the mind of this court, reservation should not be envisaged as an end to the problem but merely a means to secure the social, economic and political justice as enshrined in our Preamble.
5. As has been recently held by the Hon’ble Apex Court, while upholding the constitutionality of providing 10% EWS Quota to economically weaker section, which is as under:

“Reservation is not an end but a means — a means to secure social and economic justice. Reservation should not be allowed to become a vested interest. Real solution, however, lies in eliminating the causes that have led to the social, educational and economic backwardness of the weaker sections of the community”.

Hon’ble Justice P.B. Pardiwala, who formed the majority view which upheld the 10% EWS quota recently in “Janhit Abhiyan V/s Union of India” decided on 7<sup>th</sup> December, 2022 by Hon’ble Supreme Court of India.

6. The observation in the constitutional Bench judgment of *Indra Shawney case*, AIR 1993 SC 477, makes it amply clear that the objective behind reservation was the sharing of State power. The said Judgment observes that the State power which was almost exclusively monopolised by the upper castes i.e., a few communities, was now sought to be made broad-based, wherein the backward communities who were till then kept out of apparatus of power, were sought to be inducted there into and since that was not practicable in the normal course, a special provision was made to effectuate the said objective. In short, the objective behind Article 16(4) was empowerment of the deprived backward communities- to give them a share in the administrative apparatus and in the governance of the community.
  
7. The present bunch of matters stems out of a dispute relating to the nuances of implementation of reservation policy to the recruitment of Assistant Teachers in the primary school run by the state Government, wherein the primary issue is relating to migration of Meritorious reserved category (MRC) candidates to the open category and its consequences both the reserved category as well as the unreserved category. Before this court delves into the facts & issue in the present cases, it would be profitable to trace the law holding the ground relating to the recruitment process of the Assistant Teachers in the primary school with emphasis on the reservation policy of the state of Uttar Pradesh.

**B. Recruitment Law, Rules & Amendment**

8. The U.P. Basic Education Act, 1972 (hereinafter referred as the

“Act”) is the primary law dealing with the basic education in the State of Uttar Pradesh. Section 19(1) of the Act empowers the state to make rules for carrying out the purposes of the Act and Section 19(2)(a) & (c) of the Act empowers the state to make rules relating to the recruitment and condition of service of the persons appointed to the post of Teachers. Thus, the state framed the rules for selection to the recruitment of Assistant Teachers in the primary school run by the state Government vide the U.P. Basic Education (Teachers) Service Rules, 1981 (hereinafter referred as the “Rules”), wherein Rule 8 of the said rules prescribed the minimum requisite qualification for appointment of Assistant Teachers of the parishad.

9. Shorn of the various details of the Act and rules framed therein, this court keeping in mind the issue raised by the writ petitioners in this bunch of matter, finds that the State Government notified UP Basic (Teachers) Service (20th Amendment) Rules, 2017 amending 1981 Rules on 09.11.2017 and the following expressions were defined in Rule 2 as under:

- “(s) "Teacher Eligibility Test" means the Teacher Eligibility Test conducted by the Government or by the Government of India;
- (t) "Qualifying marks in Teacher Eligibility Test" Qualifying marks in Teacher Eligibility Test will be such as may be prescribed from time to time by the National Council for Teacher Education, New Delhi;
- (u) "Trainee teacher" means a candidate who has passed B.Ed./B.Ed. (Special Education)/D.Ed. (Special Education) and has also passed the teacher eligibility test and has been selected for eventual appointment as assistant teacher in Junior Basic School after

successful completion of six months special training programme in elementary education recognised by National Council for Teacher Education (NCTE);

- (v) "Shiksha Mitra" means a person working as such in junior basic schools run by Basic Shiksha Parishad under the Government Orders prior to the commencement of Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011;

Or a person who has been a Shiksha Mitra and appointed as an Assistant Teacher in Junior Basic Schools run by Basic Shiksha Parishad and reverted to work as Shiksha Mitra in pursuance of the judgment of the Apex Court in SLP No. 32599/2015 State of U.P. and others v. Anand Kumar Yadav and others.

- (w) "Assistant Teacher Recruitment Examination" means a written examination conducted by the Government for recruitment of a person in junior basic schools run by Basic Shiksha Parishad;

- (x) "Qualifying Marks of Assistant Teacher Recruitment Examination" means such minimum marks as may be determined from time to time by the Government.

- (y) "Guidelines of Assistant Teacher Recruitment Examination" means such guidelines as may be determined from time to time by the Government."

**10.** Thus, the concept of ATRE (Assistant Teacher Recruitment Examination) came into existence by the promulgation of 20<sup>th</sup> Amendment and the sources of recruitment of Assistant teachers as set out in Rule 5(a)(ii), inter-alia stated that the same shall be by direct recruitment as provided in Rule 14. Further, rule 8(1) dealing with the requirement of Academic qualifications of Assistant Teachers, stated as herein under:

“8. Academic Qualifications-(1) The essential qualifications of

candidates for appointment to a post referred to in clause (a) of Rule 5 shall be as shown below against each:

Post	Academic Qualifications
(i) Mistresses of Nursery School	Bachelors degree from a University established by law in India or a degree recognised by the Government equivalent thereto together with Certificate of teaching (Nursery) from recognised training institution of Uttar Pradesh and any other training course recognised by the Government as equivalent thereto and teacher eligibility test passed conducted by the Government or by the Government of India
(ii) Assistant Master and Assistant Mistresses of Junior Basic Schools	<p>ii.(a) Bachelors degree from a University established by law in India or a degree recognised by the Government equivalent thereto together with any other training course recognised by the Government as equivalent thereto together with the training qualification consisting of a Basic Teacher's Certificate (BTC), two years BTC (Urdu) Vishisht BTC, two-year Diploma in Education (Special Education) approved by Rehabilitation council of India or four year Degree in Elementary Education (B.El.Ed.), two years Diploma in Elementary Education (by whatever name known) in accordance with the National Council of Teacher of Education (Recognition, Norms and Procedure), Regulation or any training qualifications to be added by National Council for Teacher Education for the recruitment of teachers in primary education</p> <p style="text-align: center;">and</p> <p><u>Teacher eligibility test passed conducted by the Government of India and passed Assistant Teacher recruitment Examination conducted by</u></p>

	<p><u>the Government.</u></p> <p>(b) A trainee Teacher who has completed successfully six months special training programme in elementary education recognized by National Council for Teacher Education.</p> <p>(c) a shikshamitra who possessed bachelors degree from a University established by law in India or a degree recognised by the Government equivalent thereto and has completed successfully two year distant learning B.T.C. course or basic Teacher's Certificate (B.T.C.), Basic Teacher's Certificate (B.T.C.) (Urdu) or Vishisht B.T.C. conducted by the State Council of Educational Research and Training and passed the Teacher Eligibility Test conducted by the Government of India and passed Assistant Teacher recruitment Examination conducted by the Government.</p>
(iii) Trainee Teacher	<p>iii. Bachelors degree from a University established by law in India or a degree recognized by the Government equivalent thereto together with B.Ed./B.Ed.(Special Education)/D.E.d.(Special Education) qualification and passed the teacher eligibility test conducted by the Government or by the Government of India. However, in case of B.Ed. (Special Education)/D.Ed.(Special Education) a course recognised by Rehabilitation Council of India (RCI) only shall be considered</p>

11. Similarly, UP Basic (Teachers) Service (20th Amendment) Rules, 2017 as far as Rule 14 is concerned, dealt with determination of

vacancies and preparation of list. The said rule inter-alia stated:

**“14. Determination of vacancies and preparation of list-**

- (1) (a) In respect of appointment, by direct recruitment to the post of Mistress of Nursery Schools and Assistant Master or Assistant Mistress of Junior Basic Schools under clause (a) of Rule 5, the appointing authority shall determine the number of vacancies as also the number of vacancies to be reserved for candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, and other categories under Rule 9 and published in at least two leading daily newspapers having adequate circulation in the State as well as in concerned district inviting applications from candidates possessing prescribed training qualification and teacher eligibility test passed, conducted by the Government or by the Government of India and passed Assistant Teacher Recruitment Examination conducted by the Government.
- (b) The Government may from time to time decide to appoint candidates, who are graduates along with B.Ed./B.Ed. (Special Education)/D.Ed. (Special Education) and who have also passed teacher eligibility test conducted by the Government or by the Government of India, as trainee teachers. These candidates after appointment will have to undergo six months special training programme in elementary education recognised by National Council of Teacher Education (NCTE). The appointing authority shall determine the number of vacancies as also the number of vacancies to be reserved for candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, and other categories under Rule 9 and advertisement would be issued in at least two leading daily newspapers having adequate circulation in the State as well as in concerned district inviting applications from candidates who are graduates along with B.Ed./B.Ed. (Special Education)/D.Ed. (Special Education) and who have also passed teacher eligibility test conducted by the Government or by the Government of India.
- (c) The trainee teachers, after obtaining the certificate of successful completion of six months special training in elementary education shall be appointed as assistant teachers in junior basic school against substantive post in regular pay-scale. The appointing authority will be duty bound to appoint

the trainee teachers as assistant teachers within one month of issue of certificate of successful completion of said training.

- (2) The appointing authority shall scrutinize the applications received in pursuance of the advertisement under clause (a) or (b) of sub-rule (1) of Rule 14 and prepare a list of such persons as appear to possess the prescribed academic qualifications and be eligible for appointment.
- (3) (a) The names of candidates in the list prepared under sub-rule (2) in accordance with clause (a) of sub-rule (1) of Rule 14 shall then be arranged in such manner that the candidate shall be arranged in accordance with the quality points and weightage as specified in the Appendix-I :

Provided that if two or more candidates obtain equal marks, the candidate senior in age shall be placed higher.

- (b) The names of candidates in the list prepared under sub-rule (2) in accordance with clause (b) of sub-rule (1) of Rule 14 shall then be arranged in such manner that the candidate shall be arranged in accordance with the quality points specified in the Appendix-II:

Provided that if two or more candidates obtain equal marks, the candidate senior in age shall be placed higher.

- (c) The names of candidates in the list prepared in accordance with clause (c) sub-rule (1) of Rule 14 for appointment as assistant teacher shall be same as the list prepared under clause (b) subrule (3) of Rule 14 unless the candidate under the said list is unable to successfully complete the six months special training course in elementary education in his first attempt. If the candidate successfully completes the six months special training in his second and final attempt, the candidate's name shall be placed under the names of all those candidates who have completed the said six months special training in their first attempt.
- (4) No person shall be eligible for appointment unless his or her name is included in the list prepared under sub-rule (2).
- (5) The list prepared under sub-rule (2) and arranged in accordance with clause (a) and (b) of sub-rule (3) of Rule 14 shall be forwarded by the appointing authority to the selection



committee.”

12. Appendix I referable to Rule 14(3)(a) and Appendix II referable to Rule 14(3)(b) as amended by the 20th Amendment were as under: -

“APPENDIX-I  
[See Rule 14 (3)(a)]  
Quality points and weightage for selection of candidates

	Name of Examination/ Degree	Quality points
1.	High School	<u>Percentage of Marks in the examination x 10</u> 100
2.	Intermediate	<u>Percentage of Marks in the examination x 10</u> 100
3.	Graduation Degree	<u>Percentage of Marks in the examination x 10</u> 100
4.	B.T.C Training	<u>Percentage of Marks in the examination x 10</u> 100
5.	Assistant Teacher Recruitment Examination	<u>Percentage of Marks in the examination x 60</u> 100
6.	Weightage Teaching experiences as shikshamitra or/as teacher working as such in junior basic schools run by Basic Shiksha Parishad.	2.5 marks per completed teaching year, up to maximum 25 marks, whichever is less

Notes 1 – If two or more candidates have equal quality points, the name of the candidate who is senior in age shall be

placed higher in the list.

2. If two or more candidates have equal quality points and age, the name of the candidate shall be placed in the list in English alphabetical order.”

“APPENDIX-II

[See Rule 14 (3)(b)]

Quality points for selection of candidates

	Name of Examination/ Degree	Quality points
1.	High School	$\frac{\text{Percentage of Marks}}{10}$
2.	Intermediate	$\frac{\text{Percentage of Marks} \times 2}{10}$
3.	Graduation Degree	$\frac{\text{Percentage of Marks} \times 4}{10}$
4.	Bachelor of Education (B.Ed.)/B.Ed. (Special Education)/B. Ed. (Special Education)	$\frac{\text{Percentage of Marks} \times 3}{10}$

Note – If two or more candidates have equal quality points the name of the candidate who is senior in age shall be placed higher in the list. If two or more candidates have equal quality point; and age, the name of the candidate shall be placed in the list in English alphabetical order.”

13. Thus, as per Rule 2(w), introduced by the 20<sup>th</sup> amendment in the rules, the ATRE was introduced, which this court finds was the

basis of conducting the ATRE-2018. Further, as per the amended rules, it was envisaged to be qualifying in nature and also its marks was to be included in the final merit list prepared for the purposes of selection. Thus, a two-tier system for selection was introduced, wherein firstly the candidates were to undergo and pass ATRE and only those who passed the said ATRE exam, were made eligible to participate in the selection process and the number scored in the said ATRE was given due weightage for preparing the final merit list (60% of ATRE score) from which eventually the final selection was made by the state.

14. It is significant to note that although the Rules mandated that it was an essential qualification for appointment on the post of Assistant Teacher in basic schools, (i) to have passed Teachers Eligibility Test (hereinafter referred as the “TET”) and (ii) also to pass ATRE examination held for the selection in question by the Basic Education Board, U.P., Allahabad, however, the passing of Teachers Eligibility Test was merely qualifying in nature as the marks obtained in the said Test was not included at the time of preparation of the final list, whereas ATRE was not only qualifying but the marks obtained in the said examination was also included in the preparation of the final merit list.
15. On 15.03.2018, by 22nd Amendment, 1981 Rules were amended removing the requirement of passing of ATRE from the essential qualifications contained in Rule 8. However, the requirement was retained in Rule 14 dealing with the procedure for selection of Assistant Teachers. The relevant part of Rule 8(1) dealing with Academic Qualifications for “Assistant Master and Assistant

Mistresses of Junior Basic Schools”, after the 22<sup>nd</sup> amendment read as follows: -

“ii. (a) Bachelor’s degree from a university established by law in India or a degree recognised by the Government equivalent thereto together with any other training course recognized by the Government as equivalent thereto together with the training qualification consisting of a Basic Teacher’s Certificate (BTC), two year BTC (Urdu) Vishisht BTC. Two-year Diploma in Education (Special Education) approved by the Rehabilitation Council of India or four year degree in Elementary Education (B.El.Ed.), two year Diploma in Elementary Education (by whatever name known) in accordance with the National Council of Teacher Education (Recognition, Norms and Procedure) Regulations, 2002 or any training qualifications to be added by National Council for Teacher Education for the recruitment of teachers in primary education.

And

Teacher eligibility test passed conducted by the Government or by the Government of India.”

Thus, as far as ATRE is concerned, the same being an essential qualification was done away with the 22<sup>nd</sup> Amendment, although it continued to be a part of rule 14 dealing with the selection process.

**16.** On 24.01.2019, 23rd Amendment to 1981 Rules was published. By this Amendment, the essential qualifications in Rule 8(ii) were substituted as under: -

“(ii)(a) Bachelors degree from a University established by law in India or a degree recognized by the Government equivalent thereto together with any other training course recognised by the Government as

equivalent thereto together with the training qualification consisting of a Basic Teacher's Certificate (BTC), two year BTC (Urdu) Vishisht BTC. Two year Diploma in Education (Special Education) approved by Rehabilitation council of India or four year Degree in Elementary Education (B.El.Ed.), two year Diploma in Elementary Education (by whatever name known) in accordance with the National Council of Teacher Education (Recognition, Norms and Procedure), Regulations 2002, Graduation with at least fifty percent marks and Bachelor of Education (B.Ed.), provided that the person so appointed as a teacher shall mandatorily undergo a six month Bridge Course in Elementary Education recognised by the NCTE, within two years of such appointment as primary teacher or any training qualifications to be added by National Council of Teacher Education for the recruitment of teachers in primary education.

And

Teacher eligibility test passed conducted by the Government or by the Government of India.”

Thus, consequently, Graduates having 50 per cent or more marks and holding a degree of Bachelor of Education (B.Ed.) became eligible for posts of Assistant Master and Assistant Mistresses in Junior Basic Schools in the manner laid down in the Amendment. The concerned provisions in 1981 Rules dealing with eligibility of such candidates were given retrospective effect from 01.01.2018.

17. On 07.03.2019, 24th Amendment to 1981 Rules was published further amending Rule 8(ii) by adding sub-clause (aa) after sub-clause (a) to the following effect:-

“(aa) Graduation with at least fifty percent marks and Bachelor of Education (B.Ed.), provided

that the person so appointed as a teacher shall mandatorily undergo a six month Bridge Course in Elementary Education recognised by the NCTE, within two years of such appointment as primary teacher or any training qualifications to be added by National Council of Teacher Education for the recruitment of teacher in primary education, and teacher eligibility test passed conducted by the Government or by the Government of India.”

This Amendment gave retrospective effect to sub clause (aa) of Rule 8(ii) from 28.06.2018.

18. On 14.06.2019, 25th Amendment to 1981 Rules was published. By this Amendment, Appendix I which was referable to Rule 14(3) (a) was amended as under:

“APPENDIX-I

Quality points and weightage for selection of candidates

	Name of Examination/ Degree	Quality points
1.	High School	$\frac{\text{Percentage of Marks in the examination}}{100} \times 10$
2.	Intermediate	$\frac{\text{Percentage of Marks in the examination}}{100} \times 10$
3.	Graduation Degree	$\frac{\text{Percentage of Marks in the examination}}{100} \times 10$
4.	Training Qualification of Rule	$\frac{\text{Percentage of Marks in the examination}}{100} \times 10$
5.	Assistant Teacher Recruitment Examination	$\frac{\text{Percentage of Marks in the examination}}{100} \times 60$

6.	Weightage Teaching experiences as shikshamitra or/as teacher working as such in junior basic schools run by Basic Shiksha Parishad.	2.5 marks per completed teaching year, up to maximum 25 marks, whichever is less
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Notes 1 – If two or more candidates have equal quality points, the name of the candidate who is senior in age shall be placed higher in the list.

2. If two or more candidates have equal quality points and age, the name of the candidate shall be placed in the list in English alphabetical order.”

19. Appendix II, referable to Rule 14(3)(b) was omitted by the same Amendment. Resultantly, Appendix I as it now stands after said Amendment, is the only and common Appendix for both the sources referred to in Rule 14.

### **C. Reservation Law, Rules & Amendment**

20. The Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 is the primary act as far as reservation to scheduled castes, tribes and Other Backward classes is concerned in the state of Uttar Pradesh. There had been amendment in the said Act in 2002 and 2007 and section 3(1) & 3(6) of the Act as on date is as follows:

**Reservation in favour of Scheduled Castes, Scheduled Tribes, and Other Backward Classes.** - (1) In public services and posts, there shall be reserved at the stage of direct recruitment, the following

percentage of vacancies to which recruitment's are to be made in accordance with the roster referred to in sub-section (5) in favour of the persons belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens, -

(a)	in the case of Scheduled Castes	Twenty-one per cent;
(b)	in the case of Scheduled Tribes	Two per cent;
(c)	in case of Other Backward Classes of citizens	Twenty-seven per cent:

Provided that the reservation under clause (c) shall not apply to the category of Other Backward Classes of citizens specified in Schedule II:

Provided further that reservation of vacancies for all categories of persons shall not exceed in any year of recruitment fifty per cent of the total vacancies of that year as also fifty per cent of the cadre strength of the service to which the recruitment is to be made;

(2) XXXX

(3) XXXX

(5) XXXX

(6) If a person belonging to any of the categories mentioned in subsection (1) gets selected on the basis of merit in an open competition with general candidates, he shall not be adjusted against the vacancies reserved for such category under sub-section (1).

(7) XXXX

**21.** There have been various instructions & circulars issued by the Government from time to time. However, the instructions dated 25.3.1994 issued by State of Uttar Pradesh, relevant to the context on the subject of reservation for scheduled castes/scheduled tribes/other back groups in Uttar Pradesh Public Services, the portion of which is being quoted as herein below:-



"4. If any person belonging to reserved categories is selected on the basis of merits in open competition along with general category candidates, then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he has availed any facility or relaxation (like relaxation in age limit) available to reserved category."

22. As far as the reservation to Assistant teachers is concerned, Rule 9 of the said U.P. Basic Education (Teachers) Service Rules is of specific significance in the context as it provides provision for Reservation in accordance with the Uttar Pradesh Act and the orders of the State Government in force at the time of recruitment, i.e. the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 as well as the various instruction & orders issued by the State.

**D. The Asst. Teacher Recruitment Examination-2019 (ATRE-2019)**

23. The state wide Government Order dated 01.12.2018 notified the 2nd ATRE ("ATRE-2019", for short) for filling up 69,000 vacancies of Assistant Teachers. Paragraphs 1, 4.1 and 4.2 of the Annexure to the G.O. were:-

"In the schools managed by the Basic Education Department the teachers imparting education have major role in the development of girls and boys studying in the schools. It has been therefore decided that in order to fill the vacant seats of the teachers in the primary schools a state level Assistant Teachers Recruitment Examination will be conducted.

Only those candidates who are graduate, trained and those who have passed the Teachers Eligibility Test

will be eligible to appear in the said examination.

... ..

4. The minimum qualification, age and residence for the application:-

(1) In Rule 8 of the Uttar Pradesh Basic Education (Teachers) Service (22nd Amendment) Rules, 2018 the described educational, training passed, Government of India or by the State Government the organized Teachers Eligibility Examination (Primary Level) passed candidates will be eligible for filing the application in the Assistant Teachers Recruitment Examination, 2019.

(2) By the National Teachers Education Council, New Delhi the Minimum Qualification with regard to the Class1 to Class-5 the issued Notification dated 23.08.2010, 29.07.2011, 12.11.2014 and 28.11.2014 (has been described in Appendix-2 in preamble 1.2) and on 28.06.2018 fixed eligible candidates are entitled to file application in the Assistant Teachers Recruitment Examination, 2019.”

**24.** Further, an advertisement came to be issued by the state on 29.12.2018 notifying that ATRE-2019 would be conducted on 06.01.2019.

**25.** ATRE-2019 was conducted on 06.01.2019 without there being any specification of minimum qualifying marks. However, this court finds that on the very next day i.e on 07.01.2019, the Government fixed the minimum qualifying marks for ATRE-2019 to the following effect:

(a) For the candidates of General Category, candidates getting 97 marks of the total 150 meaning 65% and more

will be considered passed for 'Assistant Teacher Recruitment Exam 2019'

- (b) For the candidates of all other Reserved Categories, candidates getting 90 marks of the total 150 meaning 60 percent and more will be considered passed for 'Assistant Teacher Recruitment Exam 2019'

26. That state Government vide the said letter dated 07.01.2019, while fixing the minimum qualifying marks also mentioned that candidates qualified on the basis of aforesaid qualifying marks will be eligible to apply against the 69000 vacancies advertised and on qualifying merely on the basis of aforesaid minimum marks will not have any claim for recruitment because this exam is only one of the eligible standards for recruitment. Further, in case of more candidates qualifying than the prescribed number of posts (69000), of the total qualified candidates, eligible candidates will be selected on the basis of final merit list against the advertised posts in accordance with Appendix-I of twentieth Amendment of Uttar Pradesh Basic Shiksha (teachers) Rules, 1981. Thus, remaining candidates will automatically be out of the selection process and they will not have any claim based on the 'Assistant Teacher Recruitment Exam 2019'.

27. However, it appears that the said fixing of the minimum qualifying marks was challenged by some Shiksha Mitra challenging the above said G.O dated 07.01.2019 before this High Court, wherein although a Single bench of this court passed an order staying operation of the said G.O, however the said order was set-aside by a Division Bench of this court. The said controversy was carried to the Hon'ble Supreme Court and the controversy was set at rest in a

bunch of SLPs & writ petitions, the lead case being “*Ram Sharan Maurya & Ors V/s State of U.P & Ors.*” (2020) SCC Online 939. The Hon’ble Supreme Court taking note of the rights of Shiksha Mitra and benefits conferred upon them by an earlier decision of the Apex court in *State of U.P and another V/s Anand Kumar Yadav and Others (2018) 13 SCC 560*, affirmed the view taken by the Division Bench of this court and concluded that the fixation of cut off at 65-60%, even after the examination was over by the state government, cannot be held to be impressible. The Supreme Court held that the Government was well within its rights to fix such a cut off and as such dismissed the bunch of appeals filed by the Shiksha Mitra and others.

28. In the meantime, the result for ATRE-2019, was declared by the Examining Body on 12.05.2020, wherein about 4,31,466 number of candidates got registered themselves, out of which 4,09,530 candidates appeared in the Examination and about 1,46,060 candidates were declared successful.
29. After declaration of the said result, vide order dated 13.05.2020, the State Government further accorded the permission for completing the selection process for appointment on the 69000 posts of Assistant Teacher in terms of the relevant rules and government orders.
30. That, in light of the Government order dated 13.05.2020, the Basic Education Board, U.P., Allahabad published advertisement seeking preference of district for selection of 69,000 assistant teachers on the basis of the result of ATRE 2019, vide advertisement dated 16.05.2020.

- 31.** That, it is relevant to mention here that the Basic Education Board, U.P., Allahabad had issued guidelines on 18.05.2020, which stipulated in para 1(iii) that the laws relating to reservation as applicable in state of UP as well as the various Government orders having been issued by the Government in this regard would apply to the said selection list.
- 32.** The Basic Education Board, U.P., Allahabad published the final select list on 01.06.2020 and the same was uploaded on the official website of the Respondents, on the basis of the quality points of the qualified candidates as per Appendix - I of the Rules, in which final districts were also allotted to the selected candidates as per the preference exercised by them.
- 33.** The said final select list dated 01.06.2020 was mired with controversy and various writ petitions came to be filed interdicting the said list both by the open category candidates as well as the reserved category candidates, with a common ground of defective application of the reservation policy, including non-compliance of section 3(6) of the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 dealing with the migration of MRC candidates to the General Category.
- 34.** During the pendency of the aforesaid Writ Petitions, two sub select-list of selected candidates, first for 31,277 candidates on dated 11.10.2020 and a second list for 36,590 candidates on dated 30.11.2020 was issued out of the total post of 69000, wherein 1133 post of Scheduled Tribe was left vacant due to non-availability of ST candidates. Further, out of the total selected candidates, some

candidates could not join and as such, a third list of sub select-list dated 26.06.2021 was issued for absorbing 6696 candidates.

- 35.** Notably, the Secretary, U.P Basic Education Board, Prayagraj in a Writ Petition No. 1389 (S/S) of 2021 ( titled Jawahar Lal & Ors V/s State of Uttar Pradesh) filed an Affidavit dated 11.07.2021 stating that the entire process of selection for recruitment of 69000 Assistant Teachers has been completed and there was no vacancy available on that time.
- 36.** Further, two writ petitions being No. 52/2021( Vinod Kr. Singh Vs State of U.P) and No. 760/2021( Shivam Pandey& Ors. V/s State of U.P) came to be filed under Article 32 of the Constitution of India by candidates who had appeared & participated in the ATRE-2019, requesting the Hon'ble Apex Court to consider the vacancies arising out of the earlier selection process i.e ATRE-2018 to be added to the present selection. However, the Hon'ble Apex Court refusing to accede to the request of the said petitioners dismissed their writ petitions vide an order dated 01.02.2021 and 29.06.2021 respectively.
- 37.** Although, there were no vacant seats left as far as ATRE-2019 was concerned and moreover the Hon'ble Apex Court has refused to consider the vacancy arising out of the earlier recruitment process (i.e seats left vacant in ATRE-2018) to be included in the present ATRE-2019, the State held a press meeting and announced that affected candidates of reserved category would be recruited for healing of discrepancies made in the recruitment process of ATRE-2019, by the remaining vacancies of ATRE-2018. Thus, the State, without rectifying the mistake in the list of 69000, issued a fourth

select list of 6800 candidates of reserved category. Thus, a second leg of controversy was stirred, wherein the said fourth select list dated 05.01.2022 came to be issued making provisions for appointment of about 6800 reserved category candidates. Obviously, this select list also came to be challenged before this court by both the open category candidates as well as the reserved category candidates, wherein the open category candidates contended that the select list could not have been issued for reserved category candidates only and in any case the same could not had been over and above the number of seats advertised for ATRE-2019 as it also effected their future prospect, whereas the reserved category candidates contended that the select list was not correct as there were approximately 18988 reserved category candidates, who deserved to be appointed upon the ouster of same number of unreserved candidates and the very issuance of select list of 6800 of reserved category candidates without ouster of same number of candidates from the open category was in violation of the Reservation Act, 1994 and the same amounts to acceptance of error by the government in implementing the reservation policy. Thus, they contended that, even after adjusting 6800 reserved category candidates, at least 13000 reserved category candidates still deserved to be considered for appointment as according to them the total number of vacant/ left-over seats were 27,737 from the earlier section process i.e ATRE-2018 and as such there are still vacant seats available for the post of Assistant Teachers.

**38.** Yet, some petitions came to be filed by reserved category candidates, who found place in the select list of 6800 dated 05.01.2022, seeking implementation of the said list by the

Government.

**E. Categories of the Writ Petitions**

39. Broadly, the bunch of matters, as has been agreed upon by the Ld. Counsels during the hearing, can be classified into five categories:

(A) First is the category where the select list of selection of 69000 teachers has been challenged by candidates belonging to the “reserved category” on the ground that those reserved category candidates who belong to “Meritorious Reserved Category” (MRC), thereby entitling them to be placed in unreserved category have not been so placed but have been treated as belonging to reserved category in violation of Section 3(1) & Section 3(6) of the Reservation Act, 1994. Thus, a prayer has been made to quash the select list dated 01.06.2020, in so far as the same relates to selection of MRC in the reserved category and not in the open category. The following writ petitions would be placed under this category:

1.	WRIA/13156/2020	Mahendra Pal & ors.
2.	WRIA/9050/2020	Loha Singh Patel ors.
3.	WRIA/9767/2020	Bhaskar Singh & ors.
4.	WRIA/10122/2020	Vijay Pratap Yadav & ors
5.	WRIA/10461/2020	Susheel Kumar & ors.
6.	WRIA/11638/2020	Bhupendra Kumar & ors.
7.	WRIA/11876/2020	Ravi Shankar & ors.
8.	WRIA/12793/2020	Anamika Verma & ors.
9.	WRIA/18194/2020	Narendra Pratap Singh & ors.



10.	WRIA/19535/2020	Pradeep Kumar Maurya & Ors.
11.	WRIA/19554/2020	Nisha Ahmad Ansari & ors.
12.	WRIA/21706/2020	Dharmendra Kumar Vishwakarma & ors.
13.	WRIA/3012/2021	Anurag Yadav & ors.
14.	WRIA/4568/2021	Tasleem Bano & ors.
15.	WRIA/5323/2021	Everest Kumar & ors.
16.	WRIA/5863/2021	Surendra Kumar Yadav & ors.
17.	WRIA/6527/2021	Kuldeep Kumar Verma & ors.
18.	WRIA/7678/2021	Krishna Kumar & ors.
19.	WRIA/8090/2021	Anand Kumar Vishwakarma & ors.
20.	WRIA/8414/2021	Mulayam Singh & ors.
21.	WRIA/9501/2021	Savitri Patel & ors.
22.	WRIA/12510/2021	Kuldeep Kumar & ors.
23.	WRIA/12552/2021	Ashutosh Verma & anr.
24.	WRIA/12819/2021	Sunil Kumar Gupta & ors.
25.	WRIA/13587/2021	Rekha Singh
26.	WRIA/14913/2021	Ranjeet Yadav & ors.
27.	WRIA/15040/2021	Jas Veer & ors.
28.	WRIA/16083/2021	Devendra Pratap & anr.
29.	WRIA/16538/2021	Mohd. Mueen & ors.
30.	WRIA/17441/2021	Lalit Kumar & Ors.
31.	WRIA/17919/2021	Ravindra Pratap Yadav & ors.
32.	WRIA/18167/2021	Anil Kushwaha & ors.
33.	WRIA/18496/2021	Reena Yadav & ors.
34.	WRIA/18529/2021	Noorulhaq & ors.
35.	WRIA/18709/2021	Indrageet Yadav
36.	WRIA/19050/2021	Nuruddin Ahmad & ors.
37.	WRIA/19564/2021	Anil Kumar & ors.
38.	WRIA/19601/2021	Arvind Kumar Yadav
39.	WRIA/20205/2021	Pravesh Kumar & ors.
40.	WRIA/22652/2021	Abhishek Kumar & ors.
41.	WRIA/22711/2021	Satendra Kumar Kushwaha
42.	WRIA/22808/2021	Mohd Alam Ansari

43.	WRIA/23751/2021	Aniket Chand & ors.
44.	WRIA/ 224401/2021	Kanika Yadav
45.	WRIA/26382/2021	Ashish Kumar & ors.
46.	WRIA/26805/2021	Shiv Prasad Yadav & ors.
47.	WRIA/26944/2021	Sneh Lata & ors.
48.	WRIA/27478/2021	Rakesh Kumar Yadav & ors.
49.	WRIA/28828/2021	Aanchal Verma & ors.
50.	WRIA/29292/2021	Alam Husain & ors.
51.	WRIA/29600/2021	Harish Babu & ors.
52.	WRIA/29632/2021	Kumari Gayatri & ors.
53.	WRIA/29687/2021	Krishan Kumar & ors.
54.	WRIA/ 29834/2021	Raj Kumar Yadav & ors.
55.	WRIA/29976/2021	Satish Kumar & ors.
56.	WRIA/29992/2021	Ghanshyam Yadav & ors.
57.	WRIA/30657/2021	Rajendra Prasad & ors.
58.	WRIA/138/2022	Ramesh Kumar & 86 ors.
59.	WRIA/258/2022	Ran Vijay
60.	WRIA/355/2022	Amit Kumar & Anr.
61.	WRIA/391/2022	Arun Pratap Singh & 17 ors.
62.	WRIA/435/2022	Reeta
63.	WRIA/472/2022	Jitendra Kumar & 116 ors.
64.	WRIA/688/2022	Mahendra Prasad Maruya & 6 ors.
65.	WRIA/719/2022	Kamlesh Singh & 5 ors.
66.	WRIA/919/2022	Puja Verma & ors.
67.	WRIA/1549/2022	Rakesh Patel & ors.
68.	WRIA/1556/2022	Sandeep Kumar & 261 ors.
69.	WRIA/3608/2022	Ravindra Kumar
70.	WRIA/3651/2022	Anil Kumar Gautam & ors.
71.	WRIA/4230/2022	Sunil Kumar & 10 ors.
72.	WRIA/4653/2022	Vivek Kumar Singh & ors.
73.	WRIA/5816/2022	Kamishnar Yaday
74.	WRIA/5965/2022	Ankit Kumar Mourya & ors.
75.	WRIA/6398/2022	Richa Yadav

76.	WRIA/6562/2022	Vimlendra Kumar Suman & 2 ors.
77.	WRIA/6969/2022	Archana Yadav & ors.
78.	WRIA/7003/2022	Shipra Kumari
79.	WRIA/7078/2022	Priyanka Chaudhary & 47 ors.
80.	WRIA/7204/2022	Digvuay Singh & 15 ors.
81.	WRIA/7234/2022	Sunil Kumar Singh
82.	WRIA/7258/2022	Rajesh Yadav & 2 ors.
83.	WRIA/7307/2022	Himanshu Yadav & ors.
84.	WRIA/11261/2020	Rajesh Kumar And Ors.
85.	WRIA/7460/2022	Akanksha Pal
86.	WRIA/7652/2022	Smt.Kanchan Pushpakar And 3 Others
87.	WRIA/7681/2022	Veerendra Singh Niranjana And Ors.
88.	WRIA/7908/2022	Manoj Kumar And Others
89.	WRIA/7930/2022	Suneel Kumar Jaiswal
90.	WRIA/8177/2022	Anirudh Kumar
91.	WRIA/8224/2022	Rudra Deo Verma

(B) Second category of Writ petitions comprises of those petition which have been filed by “General Category” candidates asserting that the reserved category candidates who have got the benefit of reservation in selection (both ATRE-2019 & TET) cannot be migrated from the reserved list to the unreserved/ open category list and as such has prayed for quashing the select list dated 01.06.2020 to the extent it allowed migration of such reserved category candidates from their own reserved category to the open category. Further, prayer has been made to quash the order dated 05.01.2022, by virtue of which permission has been granted by the state for

appointment of 6800 “reserved category candidates” only over and above the 69000 vacancies of assistant teachers advertised on 05.12.2018 & 16.05.2020. The following writ petitions would be placed under this category:

1.	WRIA/8142/2020	Rovin singh & ors.
2.	WRIA/9683/2020	Shweta Chauhan & ors.
3.	WRIA/22188/2020	Shashnk Tiwari & 19 ors.
4.	WRIA/973/2022	Mohini Tiwari & 29 ors.
5.	WRIA/978/2022	Raghvendra Prasad Mishra & 49 ors.
6.	WRIA/1126/2022	Karuna Shankar Shukla & ors.
7.	WRIA/1144/2022	Shivam Pandey & 34 ors.
8.	WRIA/1162/2022	Vinay Kumar Pandey 34 ors.
9.	WRIA/1561/2022	Ashish Bajpai & 3 ors.
10.	WRIA/1566/2022	Nitesh Kumar Singh & 174 ors.
11.	WRIA/1592/2022	Arpit Kumar Bajpai & ors.
12.	WRIA/1594/2022	Alok Singh & ors.
13.	WRIA/1596/2022	Kunwar Dharmendra nath & ors.
14.	WRIA/1598/2022	Adarsh Srivastava & ors.
15.	WRIA/1599/2022	Ashutosh Barua & ors.
16.	WRIA/1600/2022	Anita Singh & ors.
17.	WRIA/1602/2022	Shiv Prakash Mishra & ors.
18.	WRIA/1604/2022	Ram Shankar & ors.
19.	WRIA/1694/2022	Anju Tripathi & 19 ors.
20.	WRIA/2324/2022	Asheesh Baranwal & 26 ors.
21.	WRIA/3005/2022	Jyoti Singh & 50 ors.
22.	WRIA/3660/2022	Vishnu
23.	WRIA/7995/2022	Ajay Kumar Mishra And 49 Others

(C) Third category of Writ petitions comprises of petitions where the select list of 6800 reserved category candidates, has been sought to be challenged on various

grounds, including that there future prospect of participating in the ATRE examination was being curtailed by filling 6800 post over & above the advertised seats of 69000. These petitioners either were unsuccessful in the ATRE-2019 or had become eligible after the conduct of ATRE-2019 Examination. The following writ petitions would be placed under this category:

1.	WRIT-A-323/ 2022	Bharti Patel & 5 Others
2.	WRIT-A- 1713/2022	Anil Kushwaha & 8 Others

(D) Fourth category of Writ petition comprises those petitions where the horizontal reservation relating to providing the earmarked 4% prescribed quota for physically handicapped category of candidates have not been considered, while preparing the merit list. Most of the writ petitions under this category have been withdrawn on the ground of becoming infructuous. The issue raised in this writ petitions were neither argued during the time of hearing nor these writ petitions were pressed during hearing. However, these writ petitions are mentioned herein to complete the chain and are being disposed of by this common order. The following writ petitions are placed under this category:

1.	WRIT-A-13792	Ram Kishor & Ors.
2.	WRIT-A-15460/ 2020	Sandeep Kumar Pandey & Others
3.	WRIT-A- 26041/2020	Shiva Singh Raghubanshi
4.	WRIT-A- 9035/2020	Lakshmi Narayan Singh and Others
5.	WRIT-A- 9616/2020	Km. Anita Gupta and 2 Ors.
6.	WRIT-A/ 10327/2020	Prem Kumar and Others
7.	WRIT-A- 9782/2021	Ranjana Tripathi

(E) Fifth Category of writ petitions are those petitions, which has been filed by candidates forming part of the 6800 candidates as per the select list of 05.01.2022. They have prayed that although their names have been mentioned in the select list, but they had not been appointed in view of the pending litigation, which is adversely affecting their service prospect and benefits. The following writ petitions would be placed under this category:

1.	WRIT-A-7576/ 2022	Krishna Chandra & Ors.
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**F. Interim orders**

40. Various interim orders came to be passed during the pendency of these Writ Petitions, including a stay to the select list of 6800 dated 05.01.2022. This court vide an order dated 25.08.2020 passed in

Writ-A-13156 of 2020 ( Mahendra Pal & Ors V/s State of Uttar Pradesh & Ors.), also the lead matter of the first category has passed the following order:

“.....In these circumstances, it is directed that a master counter affidavit in this case shall be filed and while filing the counter affidavit in this case, a copy of the same shall be furnished to the learned counsel representing the other similar writ petitions. There will be no requirement of separate counter affidavit to be filed on behalf of the respondents in other matters and counter affidavit which may be filed in this case shall be treated to be counter affidavit in other similar matters as well. ....”

41. Thus, it was directed that one counter-affidavit be filed in the aforesaid lead matter, which was to be construed as a counter of the respondent in all the bunch of matters.

42. Further, this court in the same Writ Petition as mentioned supra vide an order dated 17.03.2021 has observed as follows:

“.....The contention Shri Upendra Nath Mishra, learned Senior Counsel appearing for the petitioners is that 28,000/- reserved category candidates, who had secured more than 67.11 marks which was the cut off for the general category, were not adjusted in the general category select list but were maintained in the reserved list contrary to Section 3(6) of the Reservation Act, 1994 and the law laid down by the Supreme Court by which a reserved category candidate, if otherwise meritorious and entitled to be included in the general select list, should not be treated as a reserved category candidate. Shri Mishra relies upon a chart prepared by him a copy of which is annexed as Annexure No. SA-7 at Page 63 of the supplementary affidavit dated 27.01.2021 in this regard.

On 03.02.2021 this Court had sought a response from the State Authorities in this regard which has not been filed as yet.

Let the concerned official opposite parties file their response

positively within a period of one week.....”

43. Apparently, the state shied away from filing specific responses to the queries recorded by this court in its order from time to time and even during the arguments these issues remained unexplained. As a matter of fact, besides the statement that the reservation policy has been applied on the opposite direction and giving a data as to how many MRC candidates have been absorbed in the unreserved category and reserved category, there had been no data as to who and in what manner these reserved category candidates were construed to be MRC, so as to allow them to migrate into the open category.

44. Further, an Interim order, which has been passed in one of the bunch matters, being Writ -A- No. 323 of 2022, lead matter in third category of matters, requires special mentions. This court, vide an order dated 27.01.2022, observed as follows:

“.....Today, Sri Raghavendra Singh, learned Advocate General has put in appearance on behalf of the official opposite parties and informed the Court that certain reserved category candidates had filed petitions before this Court, some of which are Writ -A. No.13156 of 2020 and Writ -A No.8142 of 2020 wherein certain orders were passed by this Court based on which, the State has revisited the implementation of reservation policy as also the provisions of the Reservation Act, 1994 and the law on the subject, according to which, such reserved category candidates who are otherwise meritorious, meaning thereby, they have secured marks higher than the cut-off for the general category are entitled to be considered and selected for unreserved posts. Accordingly, the State Government after revisiting the matter has taken a decision to issue a fresh select list containing names of 6800 candidates who are



those reserved category persons who have secured higher marks than the cut-off for the unreserved category and as this exercise is the result of orders passed by this very Court, therefore, the Court should not interfere in the matter at this stage.

Learned Advocate General also informs the Court that, in fact, entire process of selection is informed by the State officials to the N.I.C. and it is the latter which prepares the select list.

Learned Advocate General also submitted that as regards the order of Hon'ble the Supreme Court quoted in the order of this Court dated 25.01.2022, the same is not applicable in the facts of this case, as already clarified hereinabove.

However, on being asked as to how if 69000 posts have already been filled up as noticed in the earlier order, these 6800 selectees would be appointed, against which post they would be appointed, and whether against one post two persons can work and get salary, the learned Advocate General could not satisfy the Court on this count but stated that State has not taken any decision to oust the already appointed candidates who may have secured lesser marks than these 6800 candidates.

It is nobody's case certainly not that of the State that before issuing the list of 6800 additional selected candidates, as referred hereinabove, an equivalent number of candidates who have been appointed earlier have been disengaged in accordance with law.

Sri Upendra Nath Mishra, learned Senior Counsel for opposite party no.7 has invited attention of the Court to the orders passed by this Court which are annexed at page no.144-145 of the writ petition which have been referred by the learned Advocate General. He says that those writ petitions should be heard on priority basis and he also says that additional 6800 selectees are, in fact, entitled to be appointed and those who are not entitled but have been appointed are liable to be ousted. He agrees to the extent that persons cannot be appointed in excess of the 69000 vacancies which were advertised.

Sri Rakesh Kumar Chaudhary, learned counsel who has put in appearance on behalf of opposite party no.10 adopts the arguments of Sri Upendra Nath Mishra. In addition to it, he says that physically handicapped candidates who have also filed writ petitions before this Court, leading writ petition is Writ-A. No.13792 of 2020 wherein certain orders have been passed by this Court for giving the benefit of the quota prescribed for such persons and therefore, inclusion of these physically handicapped persons in the impugned select list of 6800 persons is in accordance with the orders of this Court and need not to be interfered with, certainly not at the interim stage. However, on being asked as to whether the opposite party no.10 on whose behalf he appears is a physically handicapped, he submitted that no, he was not physically handicapped but he is the counsel in Writ-A. No.13792 of 2020 and connected matters, therefore, he has made the aforesaid statement.

At this stage, Sri Seth, learned Senior Advocate appearing for the petitioners further submitted that if 69000 vacancies of Assistant Teachers were advertised and all of them have been filled up as admitted by the Principal Secretary to the Department in the affidavit filed before this Court as already noticed in the earlier order dated 25.01.2022, then, assuming for a moment that the State was entitled to revisit the selection process and based on such exercise it found that there were 6800 candidates who had a better right of being selected and appointed based on the marks obtained by them, then, at best the select list already published ought to have been modified and an equivalent number of candidates who have secured lesser marks than those 6800 candidates should have been ousted from it in accordance with law and if they have already been appointed, this should have been done after due and proper notice to them, and these 6800 candidates should have been substituted in their place but without undertaking such exercise the impugned action of the State to induct 6800 additional selectees leads to a situation where the 69000 vacancies would be exceeded which is apparently illegal and prejudices the rights of the petitioners to be considered against equivalent number of vacancies (6800) which would otherwise be re-advertised and the petitioner nos.1 to 5 would have a right of being

considered for selection against such vacancies irrespective of the fact that they have not succeeded in the earlier selection. The petitioner no.6 in fact has not appeared in the selection ARTE 2019 and is entitled to be considered against such vacancies as and when they are advertised.

As regards Sri Chaudhary's contention that the petitioners do not have locus to challenge the impugned action, the petitioner nos.1 to 5 who belong to reserved category had appeared in the selection and the contention of Sri Sudeep Seth, learned Senior Advocate as already recorded in the earlier order is that any vacancy other than 69000 will have to be re-advertised and fresh selection will have to be held in this regard in which the petitioner nos.1 to 5, even if, they have not succeeded in the earlier selection, are entitled to appear, therefore, filling up of any post in excess of 69000, without advertising these excess 6800 posts apart from being violative of law declared by Hon'ble the Supreme Court and the constitutional provisions, encroaches on the rights of the petitioner nos.1 to 6 to appear in such selection. The petitioner no.6 did not appear in the selection in question and therefore, he in any case, will have a right to appear in future selection against these excess vacancies. Prima facie, at this stage, Sri Seth, learned Senior Advocate appears to be correct.

Considering the facts of the case as already noticed in the earlier order dated 25.01.2022 which need not be reiterated and which, at least at this stage, have not been rebutted satisfactorily, especially the order of Hon'ble the Supreme Court dismissing a writ petition wherein it was the case that vacancies in excess of 69000 which were not advertised on 01.12.2018 (A.T.R.E.-2019) should be allowed to be filled up on the basis of the said selection advertised on 01.12.2018, as it has been dismissed with specific observation that posts in excess of those advertised cannot be allowed to be filled up based on the said selection, a piquant situation has been created by the State by the impugned action, prima facie.....”

45. This court after recording the other interim orders as referred by the Advocate General, observed & directed vide the said order

dated 27.01.2022 in the following terms:

“.....But the Court had only asked the State to file counter affidavit in the matter and the State was required to explain as to how the reservation policy has been implemented. The appropriate course for the State officials in these circumstances was to comply the said orders, revisit the matter, find out the facts and errors, if any, and on noticing them, to place the same before the Court either seeking its guidance or seeking permission to rectify the select list which had already been implemented or to modify the select list and disengage the persons already appointed, if they were erroneously appointed, as per law, but, instead of doing it, the State officials, for reasons best known to them, have hurried to issue a select list of 6800 persons in addition to the 69000 appointments already made by them without disengaging or cancelling the appointment of 6800 candidates already appointed if they had secured lesser marks. Considering the fact that only 69000 posts were advertised, candidates in excess of 69000 cannot be appointed and they already having been appointed, one fails to understand as to what purpose the issuance of select list of 6800 persons, who may otherwise have been entitled to selection and appointment, seeks to achieve in the factual scenario created by the State, as, in no circumstances, persons can be appointed in excess of 69000 which were advertised.

Now, it is for the State to decide what it has to do in the matter as it is the State which has created this situation but one thing is very clear that persons beyond 69000 vacancies cannot be appointed against such posts.

Considering the discussion made hereinabove, it is provided that in no circumstances, persons in excess of the 69000 vacancies which were advertised on 01.12.2018 (A.T.R.E 2019), shall be appointed and unadvertised vacancies shall not be filled-up without being advertised and selection being held in respect thereof. It is ordered accordingly.

Let Dasti notice be issued for service upon opposite party nos.6 and 8. In addition to it, considering the large number of selectees which are 6800 and the complications which

may be involved in getting them impleaded individually and having notices served upon them, especially as at this stage, they are only selectees and have not been appointed, the ends of justice would suffice if a publication is made in two daily newspaper, one of English and other of Hindi, having wide circulation in the state, namely, 'the Times of India' and 'Dainik Jagaran' notifying the selectees about the pendency of this petition so that they may, if they so choose, join in these proceedings, otherwise, persons have been impleaded in representative capacity. The Senior Registrar shall facilitate adequate steps being taken for publication in the newspaper as aforesaid.

Pleadings be exchanged between the parties.

List this case along with other matters i.e. Writ - A. No.13156 of 2020, Writ -A No.8142 of 2020 and connected matters referred hereinabove including Writ-A. No.13792 of 2020 and connected matters wherein pleadings are said to be complete.....”

46. Further, this court finds that the aforesaid interim order dated 27.01.2022 was a subject matter of challenge in Special Appeal No. 86 of 2022 (Rahul Kumar & Ors. V/s State of U.P), wherein a Division bench of this court vide an order dated 15.03.2022 while directing for early disposal of the present matters has refused to entertain the said interim order passed by this court.

47. This court observes that pursuant to the aforesaid publication in Newspaper by the respondent Impleadment Application for 1158 candidates came to be filed in the third category of petition.

### **G. Contention of the Parties**

48. Since, common issue has been raised in the present bunch of

matters. This court with the consent of the Ld. Counsels appearing for the parties is taking up all the writ petitions and the same is being decided by this common order. However, the facts of the lead matter being Mahendra Pal & 13 others is being mentioned herein for the sake of clarity. The facts of the said writ petition as has been argued by the Ld. Counsel for the petitioners lie in a narrow compass, in as much as it has been claimed that except of petitioner No. 7 and 9, all the other petitioners are graduate degree holders having requisite educational qualification of B.Ed, whereas petitioner No. 7 & 9 are teacher with Basic Teachers Training (BTC). All the petitioners claim to have passed the U.P Teachers Eligibility Test (TET) conducted by the Government. All the petitioners belong to the reserved category of “Other Backward Classes”, except petitioner No.11, who belongs to the reserved category of “Schedule caste”. The petitioners also claim to have successfully qualified the Assistant Teachers Recruitment examination-2019 and as such according to them they possess the minimum requisite academic qualification for appointment on the post of Assistant Teachers prescribed under the U.P Basic education (Teachers) service Rules, 1981.

- 49.** According to the petitioner, the state Government took a decision on 01.12.2018 to fill up 69000 vacancies of Assistant Teacher in the Junior Basic Schools of Uttar Pradesh, which was followed by an advertisement dated 05.12.2018 for conducting the ATRE-2019 on 06.01.2019, which was participated by them. Subsequently, on 07.01.2019, the respondent authorities issued a G.O for fixing the qualifying marks of the ATRE-2019 as 65% for open category and 60% for reserved category. The said G.O fixing the qualifying

marks was interdicted before a Single Bench of this court, which quashed the said G.O and directed to conduct the ATRE-2019 in terms of the qualifying marks of ATRE-2018, however in an intra-court Appeal, a division Bench of this Court set-aside the order of the Single Judge and upheld the G.O dated 07.01.2019. It has been further contended by the petitioners that several SLPs came to be filed challenging the order of the Division bench before the Hon'ble Supreme Court, wherein in one of the SLP's being "Ram Sharan Maurya Vs State of U.P & Ors." (SLP (Civil) Diary No. 11198 of 2020), the Supreme Court passed an interim order dated 21.05.2020, directing that the "Shiksha Mitra" who were presently holding on their posts as Assistant teachers would not be disturbed. Further, in another connected matter being "Subedar Singh & Ors Vs the State of Uttar Pradesh" (SLP (Civil) No. 6687 of 2020), the Hon'ble Apex Court vide an order dated 09.06.2020, directed the State Government to keep 37,339 post vacant, which was equivalent to the number of TET qualified Shiksha Mitra's and continue to fill the remaining vacancies.

**50.** It is argued that ATRE-2019 results were declared on 12.05.2020, wherein a total of 1,46,060 candidates were declared qualified. The petitioners claim to have obtained the minimum qualifying marks in the ATRE-2019 and as such pursuant to the notice dated 16.05.2020 issued by the secretary Basic education notifying the district-wise vacancies and guidelines dated 18.05.2020 issued by the Secretary Basic education Board relating to inviting the application form, the petitioners filled/applied online application form in the prescribed format for appointment to the post of Assistant teachers and legitimately expected to be selected in the

said recruitment process. A reference has been made by the petitioners to a dispute relating to incorrect evaluation in the ATRE-2019, wherein certain challenges were made to the answer key published by the respondent- Authority on 08.05.2020. It has been submitted that in the lead writ petition No. 8056 of 2020(Rishabh Mishra and Ors V/s State of U.P & Ors.) an interim order dated 03.06.2020 was passed by a Single Judge, wherein the answer key dated 08.05.2020 was stayed, however a Division bench of this court vide an order dated 12.06.2020 passed in Special Appeal No. 154 OF 2020 (Examination Regulatory Authority, Allahabad and Others V/s Rishab Mishra and Ors.) stayed the interim order passed by the Single Judge and the respondents were granted liberty to continue with the process of selection to the post of Assistant Teachers.

- 51.** The case of the petitioners as put in the nut shell is that the respondent-authority without declaring the category wise cut-off marks, issued a tentative select list of 67,867 candidates for appointment on 01.06.2020. According to the petitioners, the select list merely contains the names, roll numbers, other personal details of the candidates and the district in which such candidates have been selected and does not mentions the details of the merit of the selected candidates i.e the marks obtained by such candidates who were selected, vis-à-vis the final category wise cut-off marks, on the basis of which such selection were made.
- 52.** It is the contention of the petitioners that being bereft of adequate information in the select list, they ventured into conducting of some kind of self-inquiries and research, wherein they found more



than 50% of the vacancies have been allotted to candidates falling in the unreserved category (including the MRC candidates) and as such the same falls foul of the scheme/quota of reservation as provided under section 3(1) and section 3(6) of the Reservation Act of 1994.

**53.** The Ld. Counsel for the petitioners have succinctly explained the said proposition by quoting section 3(6) of the Reservation Act, 1994, which says that if a person belonging to any of the reserved categories gets selected based on merit in an open competition with general candidates, the said reserved category candidate shall not be adjusted against the vacancies reserved for such category but they will be adjusted in the general category. Thus, it has been argued by the petitioners that by inclusion of some Meritorious Reserved Category ( MRC) candidates in general category on the basis of their merit, the total number of reserved category candidates finally selected in a selection can be more than 50% of the total seats, but in no event the number of general category candidates can exceed 50% of the total seats and in case the number of general category candidates selected exceeds 50% of the total seats, it simply means that the selection of reserved candidates have been made on far less than the quota prescribed under section 3(1) of the Reservation Act and the said process is in the teeth of section 3(1) and section 3(6) of the Reservation Act, 1994.

**54.** The Ld. Counsel for the petitioners have also referred to government order dated 25.03.1994 and Government order dated 30.01.2015, which were issued by the State clarifying the provisions of applicability of section 3(6) of the Reservation Act,

1994 to buttress and drive his point home that when section 3(6) of the Reservation Act, 1994, is not applied with full rigour in any selection then the quota of reservation as provided under section 3(1) of the Act also automatically is violated and the entire reservation policy goes hay-wire as the beneficial provisions meant for those reserved category candidates who are unable to compete in the open competition, is rendered otiose. Thus, according to him, the reserved category candidates who need the support of reservation have been denied the same on account of faulty and illogical implementation of the reservation policy by the respondent authorities in as much as they have selected MRC candidates selected on the basis of their merit equal to or more than the minimum numbers scored by the general category candidates, have been arbitrarily adjusted against the reserved quota. Thus, as a result of the said action of the authorities an equal number of reserved vacancies have been illegally exhausted by the MRC candidates who ought to have been adjusted against the unreserved vacancies, which consequently had the effect of keeping the eligible reserved category candidates placed at the bottom like the petitioners out of the consideration zone for selection to the post of Asst. Teachers.

**55.** It is the further case of the petitioners that the respondents while presuming that these MRC candidates after being adjusted on the reserved quota, have in fact vacated their respective places in the general category, which was filled by excess candidates from the general category. Thus, it has been submitted by them that less deserving candidates of the unreserved/ general category have been got selected on way beyond the 50% unreserved seats and more

deserving reserved candidates like the petitioners were deprived of their fair consideration for appointment against the reserved seats. The petitioners, proceeding further, have given an instance of selection made in the district of Shahjahanpur, wherein as per the petitioners, out of total 1450 seats, a maximum of 725 seats ought to had been filled up by the unreserved/general candidates and the remaining 725 seats out to be filled by candidates belonging from the reserved category, however it has been pointed by them that in reality about 880 seats have bene filled from the unreserved/general candidates, including the MRC candidates and as such substantial number of seats belonging to the reserved category have been eaten up by the unreserved/ general category candidates.

**56.** The next point raised by the petitioners is relating to the reservation policy implemented by the authorities in allocating the districts of preference to the MRC Candidates. According to the petitioners, while allocating the districts of preference to these MRC candidates, the authorities have “substantively” treated them as “reserved category candidate”, whereas according to the various judgments of this court as well as the Hon’ble Apex Court, MRC candidates have to be only treated “notionally” as reserve category candidates for the said purpose for allotment of districts. Thus, it has been argued that the respondent authorities have arbitrarily presumed that the unreserved seats left over by the MRC candidates were available for even more selection of general candidates, which consequently led to excess selection of general category candidates in the left-over seats of the MRC, who in turn

were illegally adjusted against reserved quota vacancies, instead of unreserved vacancies. Thus, it has been submitted by the petitioners that on account of this excess selection of general candidates, the reserved candidates like the petitioners were denied selection against the reserved seats, though it was their legal right of fair consideration to be selected against the reserved seats u/s 3(1) and section 3(6) of the Reservation Act, 1994.

**57.** Thus, the select list of 01.06.2020 is sought to be challenged to the extent it violates the provisions contained in section 3 (6) of the Reservation Act of 1994, because according to the petitioners, although as per section 3 (6) of Reservation Act of 1994, an MRC candidate is required to be adjusted on the unreserved vacancies, but in reality and in fact the respondent authorities have adjusted the MRC candidate on the reserved vacancies on the pretext of allotting him the district of his choice and similarly by not counting the MRC candidates in the unreserved category, the respondents have reduced the actual reservation quota of OBC, SC and ST, which is violative of the section 3(1) of the Reservation Act of 1994, which is in contravention of article 14 and 16(4) of the Constitution of India.

**58.** Similar Writ petitions came to be filed as mentioned herein above and this court vide an order dated 25.08.2020 passed in the lead matter directed that a master counter affidavit be filed in the said lead matter and a copy of the same be furnished to the learned counsel representing the other similar writ petitions and there would be no requirement of separate counter affidavit to be filed on behalf of the respondents in other matters and counter affidavit

filed in the lead case would be treated to be counter affidavit in other similar matters as well. Further, this court vide an order dated 7<sup>th</sup> of December,2020, while issuing notice to the affected persons directed that, in the meantime, appointments made on the post of Assistant Teacher shall be subject to the final decision of these petitions.

**59.** The counter Affidavit came to be filed by the respondent authorities on 19.01.2021, wherein inter-alia they sought dismissal of the writ petition on various grounds including that the writ petitions have been field merely on apprehension and there has been no document filed along with the writ petition substantiating their apprehension. According to them the procedure for reservation has been properly followed and the select list dated 01.06.2020 has been prepared strictly as per the quality point marks obtained by the candidates and the reservation was made based on entry made by the candidates in the application form by a software process developed by NIC and it was a mechanical process, wherein no interference of any authority was possible. The respondent also raised a technical point of the writ petition being not maintainable as far as quashing the select list of 01.06.2020 was concerned as it failed to implead each & every selected candidate. According to the respondents, 67,867 candidates have been selected against various quotas against the total advertised post of 69000 and about 1133 post of schedule tribe was still vacant due to non-availability of requisite candidates.

**60.** The respondents also gave a break-up of district wise appointment of Asst. Teachers and stated that against the 34,598 posts for

unreserved category, 19805 candidates of General Category, 13007 candidates of the OBC(MRC), 1753 candidates of the SC (MRC) and 24 candidates of Scheduled Tribes have been selected. It has been contended by the respondent-Authority that as per section 3(1) of the Reservation Act, 27% seats were reserved for OBC and as per the select list, 18598 candidates belong to OBC have been selected in the said OBC quota, besides 13007 candidates of OBC(MRC) have been selected in the unreserved category. According to the respondent, in this manner about 31605 candidates have been selected belonging to the OBC category and as such there was no anomaly in the select list.

- 61.** The respondents, also in order to drive home their point also mentioned the cut-off marks of various category as follows:

Unreserved Category	67.11
Other Backward Class (OBC)	66.73
Scheduled Caste (SC)	61.01

and contended that in the selection process of 69000 Assistant Teachers Recruitment, the procedure prescribed under U.P Public Service (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994 has been strictly followed and the select list had been prepared strictly as per the quality point marks obtained by the candidates and there was no violation of merit list for any candidates. Thus, it was contended that the writ petitions was devoid of any merit and liable to be dismissed.

- 62.** The petitioners in their rejoinder, while reiterating their contention as made by them in their writ petitions, also contended by giving the following chart, which was prepared on the basis of

information provided by the respondent authorities in their counter-affidavit:

Category	Total Seats	Cut-off	Bifurcation of selected total candidates (Total-67,867)
Unreserved (UR)	34,589	67.11	19805 (GEN) 13007(OBC- MRC)) 1753(SC- MRC) 24(ST- MRC)
OBC	18598	66.73	18598
SC	14459	61.01	14459
ST		56.09	221 (1133 seats left vacant due to non-availability of candidates)

The petitioners referring to the aforesaid chart submitted that as per the own information of the respondent authority, they have considered only 14784 candidates as MRC candidates. According to the petitioner, after the receipt of the counter-affidavit, they got prepared yet another chart by providing category of the candidates as well as the marks obtained by them as provided in the website of Shiksha Parishad and were astonished to find that at least 7149 additional/extra general category candidates have been named/selected in the select list, as their name appears after serial number 34589 i.e the total number of seats in the general quota, which they say could not had happened, had the respondent applied the reservation policy in its true light and spirit.

**63.** The petitioner, further submits that from the data available from the website, they have been also able to collate a data of all the reserved category candidates who were able to obtain more marks than 67.11 i.e cut-off mark of the un-reserved category and thus, the chart would further depict as follows:

Category	Reserved Candidates having more than or equal to 67.11 marks i.e MRC  (A)	MRC candidates actually selected as MRC in UR category  (B)	MRC candidates who have been illegally treated as reserved category candidates  (A minus B)
OBC	28,978	13,007	15,971
SC	4,742	1,753	2,989
ST	52	24	28
Total	33,772	14,784	18,988

Referring to the chart, it has been contended by the petitioners that a total of 18,988 reserved category candidates having obtained more than the cut off marks of general category ought to have been shifted to the unreserved category, whereas the same had been adjusted in the reserved category in gross violation of section 3(6) of the Reservation Act, 1994. According to them, since a total number of 28,978 OBC candidates had obtained marks more than general category, whereas only 13007 candidates have been treated as MRC. Thus, the very fact of adjusting 15971 of such MRC candidates in the OBC quota seats is not only in the teeth of section



3(6) of the Reservation Act, 1994, but has also reduced the total availability of OBC quota seats from 18598 to mere 2627 due to illegal adjustment of 15971 OBC-MRC candidates in OBC quota seats. Thus, it has been claimed that against 27% of OBC quota seats, only 3.80% quota seats has been actually made available for OBC candidates. Similarly, for SC quota seats, against the statutory availability of 21% seats, only 16.62% quota seats has been actually made available for SC candidates. On similar lines, it had been contended that as far as ST quota seats were concerned, the total vacant seats would had been 1161 instead of 1133, had the 28 ST-MRC candidates been given their rightful due and adjusted in the General category seats.

64. Thus, it has been submitted by the petitioners in the rejoinder that in the teeth of section 3(1) of the Reservation Act, 1994, the quota of reservation has been drastically reduced i.e from 27% to 3.80% in case of OBC category and from 21% to about 16.62% in the case of SC category and as such the select list is in violation of the provisions of section 3(1) of the Reservation Act, 1994, Rule 9 of the U.P Basic education (teachers) service Rules, 1981 and Article 14 and 16(4) of the constitution of India. It is the case of the petitioners that had the respondent-Authority treated all the aforesaid 33,772 MRC candidates in the General Category and not had shifted 18,988 candidates to the reserved category, then additional reserved category candidates like the petitioners would had been selected for the post of Assistant teachers.

65. The Ld. Counsel for the petitioners while trying to vindicate his point that reservation policy has not been implemented in its right perspective also argued that probably the entire mistake has been committed by the Respondent's due to misinterpretation of legal provisions of section 3(1) and 3(6) of the Reservation Act of 1994, wherein while allocating the district of preference to some of the MRC candidates, the respondent authorities have 'substantively' treated them as 'reserved category candidate' only (instead of treating them as such notionally) whereas, according to the various pronouncements of the Hon'ble Apex Court and also of this Hon'ble Court in the *Shikha Singh Case* (Supra), MRC candidates have to be only treated 'notionally' as reserve category candidates for the purpose of allotment of districts and thereafter would substantively be treated as General Category. It is the contention of the petitioner that the Single Judge in the said Judgment had directed the respondents '*to carry on the process of allotment of district to MRC candidates only, treating them to be reserved category candidates only for the purposes of allotment of district of their preference.*'

66. It is the contention of the petitioners that after committing a wrong in the allotment of districts to MRC candidates, the respondent authorities have arbitrarily presumed that the unreserved seats left over by the MRC candidates are available for even more selection of general candidates and consequently excess unreserved selection were made precisely to the extent of MRC candidates who were illegally adjusted against reserved quota vacancies, instead of unreserved vacancies. On account of this excess selection of general category candidates, the reserved candidates like the

petitioners were denied selection against the reserved seats, though it is their legal right of fair consideration of selection against reserved seats u/s 3(1) and 3(6) of the reservation Act, which has been blatantly violated by the respondent authorities.

67. During the hearing of the present bunch of matters, the petitioners filed a supplementary Affidavit dated 27.01.2021 contending therein that the state government expedited the process of filling up of vacancies from the select list dated 01.06.2020 by issuing order dated 24.09.2020, wherein a direction was issued to fill up 31,661 vacancies in the 1<sup>st</sup> stage by issuing appointment letters to the selected candidates drawn from the select list dated 01.06.2020. Thus, a sub-select list dated 11.10.2020 was issued by the state, which consisted a list of 31,277 candidates and yet again the vigilant petitioners made inquiries to check as to whether any general category candidate having less than 69.25 quality point marks has been selected on the basis of vertical reservation or not. The score 69.25 quality point marks being the marks obtained by the 34589<sup>th</sup> candidate, which technically was the last seat meant for the unreserved category. Admittedly, the petitioners found out that in the 31,277 list, the last general candidate who has been given appointment on the basis of vertical reservation had obtained 71.2 quality point marks.

68. It is the contention of the petitioners that although the Apex Court vide its judgment dated 18.11.2020 ( *Ram Sharan Maurya case*) had given liberty to the state government to continue with the selection process in pursuance of the 69000 advertised vacancies, however the said liberty does not in any way give liberty to the

state government to make selection in violation of section 3(1) and section 3 (6) of the Reservation Act of 1994 and therefore the state government cannot in any way be permitted to take shelter of the judgment dated 18.11.2020 in order to encroach upon the reserved category seats by treating some 18988 MRC category candidate in the reserved category on the pretext of giving them their district of choice.

**69.** Vide an order dated 23.07.2021, the U.P Basic education Board and its secretary were directed to issue a circular and publish in the daily newspaper intimating those candidates who have been selected against the vacancies reserved in the OBC, SC and other categories, who may have concern to defect themselves as per the provisions of the Rules of the Court.

**70.** That a counter-affidavit/reply dated 23.07.2021 was filed by the respondents in response to the supplementary affidavit filed by the petitioners. According to the respondent, the selection was being carried in compliance of the judgment and order dated 09.06.2020 passed by the Apex Court in the case of Subedar Singh & Ors Vs State of U.P, SLP No. 6687/2020, pursuant to which GO dated 24.09.2020 and GO dated 06.10.2020 was issued for conducting the counselling for selection of the Asst. Teachers. In the first phase a total of 31277 posts were filled up, thereafter vide GO order dated 24.11.2020 filling up for remaining vacancies of 36590 was initiated. Thus, according to them counselling has been carried out for 67867 successful candidates in compliance of the Hon'ble Apex Court Judgment and vide GO dated 17.5.2021 the third round of counselling has been conducted for remaining vacant posts in

the 69000 recruitments as per the information furnished by the respective districts, after following the relevant rules and GO related to reservation through the software developed by NIC.

71. In the said reply, the respondent mentioned that the reservation prescribed in the UP Public service (Scheduled Reservation for Scheduled castes, Scheduled Tribes and Other Backward Classes) Act 1994 and in the Government Order dated 28<sup>th</sup> August, 2015, 21% for Scheduled Castes, 2% for Scheduled Tribes and 27% for other backward classes has been given in the present selection. It was also mentioned that 4% horizontal reservation for handicapped as per the GO dated 25.09.2018, 2% horizontal reservation for dependent of freedom fighter, 5% horizontal reservation for ex-servicemen and 20% horizontal reservation for women has been provided in the respective categories as per the relevant Act and GO dated 25.09.2018 and 21.06.2021. The respondent narrated their own version relating to the distribution of seats as per the district allotment list of 67,867 candidate published on 01.06.2020, which can be depicted in the form of chart as follows:

Category	Total Seats	Bifurcation of selected total candidates (Total- 67,867)	
Unreserved (UR)	34,589	19805 (GEN)	7159 (Horizontal Reservation under special reserved category)
			12,646 (General Category)
		13007(OBC- MRC))	
		1753(SC- MRC)	
		24(ST- MRC)	
OBC	18598	18598	8418 (Horizontal

			Reservation under special reserved category) 10,180 (OBC candidates for Vertical Reservation)
SC	14459	14459	960 (Horizontal Reservation under special reserved category) 13499 (SC candidates for Vertical Reservation)
ST	1354	245	10 (Horizontal Reservation under special reserved category) 211 (ST candidates for Vertical Reservation)

72. Thus, it was claimed by the respondent authorities that the entire process has been carried out after following the provisions with regard to reservation policy and in compliance of the judgment of the Hon'ble Apex Court and according to them a total of 48,062 candidates belonging to the reserved category have been selected either through MRC, special reservation quota, vertical reservation quota against the total seat of 67,867. Thus, they say that entire selection process was transparent and commensurate to the provisions of UP Public service (Scheduled Reservation for Scheduled castes, Scheduled Tribes and Other Backward Classes) Act 1994 and the U.P Basic Teachers Rules, 1981.

73. In yet another rejoinder, the petitioners have refuted the stand of

the respondent and according to them the counter-affidavit filed by the authority was misleading as several General category candidates, not having any special reservation in the form of horizontal reservation, have been selected beyond serial no. 34589. The petitioners have named at least three general category candidates, who have been without any horizontal reservation selected at serial number 34591, 34594 and 41905. According to them, at least 7149 general category candidates have been selected beyond the available unreserved vacancies. It has been contended by them that the explanation of the respondent that these general category candidates have been selected under the horizontal category was misleading and was an attempt to create a false impression before this court. The petitioners have also contended that the respondent-authority, although being a repository of records did not give any specific reply to para 17(a), 17(b) and 18 of their supplementary Affidavit, notwithstanding specific direction for providing the same by various orders of this court, including order dated 03.02.2021 and 17.03.2021. It has been contended by the petitioners that the respondent has always shied away in not only failing to give specific reply, but have also failed to disclose the actual number of the candidates from the reserved category who have obtained equal to more than 67.11% marks and thus the select list is neither legal, nor proper nor tenable in the eyes of law.

74. During the hearing of the matter, the petitioner sought to file an application seeking amendment of the writ petition and praying for inserting certain paragraphs and making additional prayers in view of the subsequent development in the matter. The petitioners have contended that the select list of 01.06.2020 was sought to be

implemented for appointment vide through two separate tranches i.e one through sub-select list dated 11.10.2020 and another through sub-select list dated 30.11.2020 and thereafter the government issued another select list dated 26.06.2021 for making appointments on the 6696 vacant seats on which no candidates have joined. It is the case of the petitioner that while the respondent did not file a suitable reply to the queries raised by this court relating to the actual number of reserved category candidates obtaining the 67.11% marks and as to why instead of allotting 27% seats to OBC category and 21% seats to SC category only 3.80% and 16.62% seats respectively have been actually allocated to them, the state issued a press-note dated 24.12.2021 admitting the folly in applying the reservation policy in the 69000 assistant teacher selection process and assuring that the same would be made good by making appointment of the reserved category. It has been argued by the petitioners that on the heels of the said press-note, the secretary/spl. Secretary, Department of Basic education issued a G.O dated 05.01.2022 for appointment of 6800 reserved category candidates in the said compelling circumstances.

75. According to the petitioner, the select list dated 05.01.2022, which has been issued in pursuance of the said G.O. of the same date, wherein only about 6800 reserved category candidates have been included, goes on to show that the State government has only partially rectified its mistake in application of the provision of section 3(1) and 3(6) of the reservation Act on the selection in question. It is noteworthy here that the petitioners had already showed it in the Supplementary affidavit dated 28.01.2021, filed in this petition itself, that about 18988 reserved category candidates



needs to be adjusted and selected, however the state government has chosen to give appointment to only about 6800 reserved category candidates, which is in blatant violation of the provision of section 3(1) and 3(6) of the reservation act 1994. It is evident that the benefit of reservation has not yet been provided to about 13000 candidates.

76. This court has narrated the contention and contra contention of the parties in *extenso* in the aforesaid 1<sup>st</sup> category of the writ petitions as the facts and arguments in all other connected categories are overlapping, except that these other categories have been filed by a different set of aggrieved petitioners with a modulated set of prayers. Thus, this court does not wish to burden this judgment any further with the facts of each category of case.

#### **H. Discussion & Findings**

77. Heard Heard Shri Amrendra Nath Tripathi, Advocate assisted by Shri Raj Kumar Vishwakarma and Shri Shailendra Tiwari, Advocates; Shri Maya Ram Advocate; Shri Ashwani Kumar Singh, Advocate; Shri Shivam Pandey, Advocate; Shri Vinay K. Pandey, Advocate; Shri I.M. Pandey, Advocate; Shri Shrikant Mishra, Advocate; Smt. Bulbul Godiyal, Senior Advocate assisted by Shri Rajeev Narayan Pandey, Advocate; Shri Sudeep Seth, Senior Advocate assisted by Shri Nitesh Kumar Advocate; Shri Asit Kumar Chaturvedi, Senior Advocate assisted by Shri Durga Prasad Shukla and Shri Vivek Mishra, Advocates; Shri Girish Chandra Verma, Advocate; Shri Onkar Singh, Advocate; Shri Sandeep

Dixit, Senior Advocate assisted by Shri Deepak Singh, Advocate; Shri Amrendra Nath Tripathi, Advocate assisted by Shri Anas Sherwani and Shri J.K. Mishra, Advocates; Ms. Jyoti Sikka, Advocate; Shri Abhishek Singh, Advocate; Shri Gajendra Pratap Singh, Advocate; Shri Dharmendra Kumar Singh, Advocate; Shri Kamlesh Kumar Yadav, Advocate; Shri Vikas Yadav, Advocate and Shri Shyam Mohan Upadhyay, Advocate as learned counsel for their respective petitioner(s); and Shri Sanjay Bhasin, Senior Advocate assisted by Shri Ran Vijay Singh, Additional Chief Standing Counsel as learned counsel for the State; Shri Rakesh Kumar Chaudhary, Advocate; Shri Shreya Chaudhary, Advocate and Dr. Lalita Prasad Mishra, Advocate assisted by Shri Prafulla Tiwari, Advocate as learned counsel for their respective respondent(s)/intervenor.

**78.** Having heard the parties and the ld. Senior Counsels of the parties at length, this court is of the view that the core issue to be decided in these bunch of writ petition is as to whether section 3(6) of the Reservation Act of 1994 would apply where a candidate of reserved category though has availed relaxation meant for reserved category candidates in the TET ( Teachers Eligibility Test) or ATRE ( Assistant Teachers Recruitment Examination), can still be allowed to compete with general category candidates in an open selection by securing more marks than the last selected general category candidates. The said question gains prominence in the sense that the result of the said question would have rippling effect as it would answer the other consequential questions of (i) whether the select list dated 01.06.2020 is vitiated because of non-

consideration of these Meritorious reserved category (MRC) candidates in the open category, which consequently led to their selection in the quota meant for reserved category, (ii) whether selection in question is vitiated because of non-compliance of section 3(1) of the Reservation Act, 1994 as due to non-migration of MRC candidates and they being consequently absorbed in the reserved category, the actual percentage of candidates availing the reserved category diminished/reduced, (iii) Whether a redrawing of the selection list dated 01.06.2020 is merited in the facts of the present case. The other ancillary question, which falls for determination is as to whether the state could publish any additional select list beyond the 69000 originally advertised seats allegedly admitting its folly in implementing the reservation policy for the ATRE-2019 and that too for the reserved category candidates only. Some writ petition have also been filed seeking implementation of the additional select list of 6800 dated 05.01.2022, which also is a question before this court to be decided along with the bunch of matters.

**79.** The submissions made by the learned counsel for the parties are all over-lapping. Reference to case laws are also almost common. In the opinion of this court, it is not necessary to consider in detail the numbers/figures of the reserved/unreserved categories candidates, who eventually could make to the select list of 01.06.2020 with regard to the nature and extent of reservation.

**80.** This court after hearing the rival submission and examining the pleadings and various documents field by them on record is of the view that the core issue needs to be decided first and the rest of the

issue would automatically fall in line as all other issues are inter-connected to each other.

**81.** It has been argued that reservation availed by the reserved category candidates at the level of TET and ATRE disentitle them to migrate to the unreserved category and since the respondents have allowed them to migrate to the open category, seats meant for general category candidates in the open category have been taken/occupied by this migrated reserved category, whereas on the other hand reserved category candidates have argued that MRC candidates were not allowed to migrate to the open category quota by the respondent, consequently which led this MRC candidates to take/occupy the seats meant for reserved category and thus large number of legitimate reserved category candidates, who were entitled to be considered in the reserved category could not avail reservation and have been left out by the respondent.

**82.** Article 16 (1) & (2) of our constitution essentially refers to equality of opportunity in matters of public employment and assures to all citizen of this country equality of opportunity in matters relating to employment or appointment to any office under the State and ensures that a citizen of this country is not discriminated on grounds of religion, race, caste, sex, descent, place of birth, residence, or any of them for any public employment. The said Article being a fundamental right is in the nature of command and directive. However, although Article 16(4) of our Constitution opens with a non-obstante clause -"Nothing in this Article shall prevent the State from making any provision for reservation.....", which technically has been added to uphold its

enforceability over Article 16(1) or 16(2), but on the face of it is in the nature of an enabling provisions as it confers discretion and protects the state, in case of making any provisions for reservation in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

**83.** Further, as held in the constitutional bench judgment of *Indra Sawhney*, AIR 1993 SC 477, reservations can take various forms. They may consist of preferences, concessions, exemptions, extra facilities etc or of an exclusive quota in appointments. When measures, other than an exclusive quota for appointments, are adopted, they form part of the reservation measures or are ancillary to or necessary for availing of the reservations. Reservation is the highest form of special provision, while preference, concession and exemption are lesser forms. The Constitutional scheme, and the context of Article 16(4), makes it clear that the larger concept of reservations takes within its sweep all supplemental and ancillary provisions as also lesser types of special provisions like exemptions, concessions and relaxations, consistent with the requirement of maintenance of efficiency of administration - the admonition of Article 335.

**84.** It is no longer *res integra* that the state is empowered to lay down the criteria for grant of exemption, concession and reservation, and prescribe the method and manner in which such reservation should be effected. Reservation, being an enabling provision, the manner and extent to which reservation is to be provided may be spelt out in the orders issued by the Government. Migration of reserved category candidates, into the general category, is also part of the larger concept of reservation. While providing reservation, the Government can, in its discretion, place restrictions on the migration, of those who are extended the benefit of reservation, to the general category. It can also, while extending concessions and providing

relaxation in favour of the backward classes, bar those, who receive the benefit of such relaxations and concessions, from migrating to the general category.

**85.** The state of Uttar Pradesh has enacted the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 and by virtue of Rule 9 of the U.P. Basic Education (Teachers) Service Rules relating to reservation in Teachers Recruitment the same is applicable to the present recruitment process.

**86.** The primary issue encircles around implementation of section 3(6) of the Reservation Act, which inert-alia states as herein under:

(6) If a person belonging to any of the categories mentioned in subsection (1) gets selected on the basis of merit in an open competition with general candidates, he shall not be adjusted against the vacancies reserved for such category under sub-section (1).

**87.** As far as the factual matrix of the present case is concerned, this court is of the view that the concession of reservation as argued by the Ld. Counsel of the parties was made available to the reserved category candidates at three stages. First at the level, when these reserved category candidates armed with the concessional pass marks in TET, were allowed to fill forms and participate in the ATRE-2019. The second stage kicks in at the stage when a reserved category candidate appears and qualifies in the said ATRE-2019 with the concessional minimum marks prescribed for their category in the ATRE-2019 itself and thereby comes within the consideration stage of the select list. The final stage is the

preparation of the selection list on the basis of quality points as provided in Appendix-1 of the rules. It has been argued that since relaxation of marks was applied at the stage of TET as well as the ATRE level to these reserved category candidates, they found their place in the select list and since there was no equal level playing ground for the reserved category with the unreserved category, any migration/transition of reserved category candidates into the open category was against the provisions of section 3(6) of the Reservation Act, 1994

**88.** Before this court comes to the determination of the application of section 3(6) of the Act, to the present controversy of selection of Assistant Teachers, it would be expedient to first understand as to whether TET or ATRE, were part of the eligibility criteria or a part of selection process for the ATRE-2019. Further, a significant question arises as to when a reserved category candidate could be termed to participate in the open competition, so as to enable him or her to migrate to the open category and not be adjusted against vacancies in the reserved category as provided under section 3(6) of the Act.

**89.** This court finds that both “TET” and “ATRE” were introduced by the UP Basic (Teachers) Service (20th Amendment) Rules, 2017 amending 1981 rules on 09.11.2017.

**90.** As far as the “Teachers Eligibility Test” popularly known as “TET” is concerned, shorn of the history of the TET, it would be appropriate to mention that the National Council for Teachers’ Education Act, 1993 (NCTE Act) was enacted for planned and coordinated development for teacher education system in India and

the Right of Children to Free and Compulsory Education Act, 2009 (the RTE Act, 2009) was enacted by Parliament for free and compulsory education to all children of the age of 6 to 14 years. Section 23 of the RTE Act provided for qualification for appointment of teachers and NCTE was designated as authority under Section 23(1) to lay down the qualifications for appointment of teachers. In view thereof, NCTE issued Notification dated 23-8-2010 laying down such qualifications, wherein, one of the requirements for being appointed as a Teacher under the said notification was passing the Teachers Eligibility Test (TET).

91. This court would not go into the details of the history relating to relaxation of the said requirement of passing TET under Section 23(2) of the RTE Act by the Central government and the related controversy and rights of the Shiksha Mitra engaged by the state of Uttar Pradesh. Suffice to say that the same stands decided by a very celebrated judgment of the Hon'ble Apex Court in “**State of Uttar Pradesh & Another V/s Anand Kumar Yadav & Others**” (2018) 13 SCC 560, pursuant to which, the state of Uttar Pradesh issued a press note on 21.08.2017, notifying various modalities, amongst others, which included:

- Shiksha Mitra's who had been absorbed/adjusted in the post of teachers would be deemed reverted on the post of Shiksha Mitra w.e.f 01.08.2017.
- The State Government would be organizing exam of TET in the month of October 2017 and all such Shiksha Mitras



shall be provided an opportunity to acquire the required qualification.

- After TET examination is held, for the purposes of selection of Assistant Teachers in the Primary Schools under the Board, advertisement of vacancy in appropriate number shall be got published in the month of December 2017 and all the eligible applicants shall be provided with opportunity to make application.

**92.** As far as the conducting of TET examination is concerned, the NCTE, had vide its notification dated 11.02.2011 issued guidelines under Section 23(1) of the Right to Education Act, 2009, for conducting Teacher's Eligibility Test (TET) by various state government which specifically prescribed qualifying marks as 60% (i.e. 90 out of 150 marks). It also further gives power to state Governments to give concessions to SC/ST/OBC and differently abled persons in accordance with the reservation policy of the state Government. It was in this regard that the state of Uttar Pradesh granted concessions of 5% to the candidates belonging to the reserved category i.e. SC/ST/OBC and differently abled persons, Ex-Service men for passing the TET, wherein the candidates belonging to reserved category were allowed to be declared pass by securing 55% marks.

**93.** Vide notification dated 17.10.2019, the state of Uttar Pradesh notified the UP TET 2019 and as per Clause 9 of the said notification provided for qualifying marks, which also prescribed

the passing marks of 82.5 out of 150 for reserved category candidates (i.e. 55%) while for unreserved category candidates the same was provided as 90 out of 150 (i.e. 60%).

94. Thus, as contended by candidates from the unreserved category that since, these reserved category candidates after availing the benefit of reservation in passing TET ( i.e pass marks of 55%) cannot come to compete with the open category candidate to avail the benefit of section 3(6) of the Act.

95. As already stated herein above, this court finds that both “TET” and “ATRE” were introduced by the UP Basic (Teachers) Service (20th Amendment) Rules, 2017 amending 1981 rules on 09.11.2017 and the essential qualification of candidates for appointment as Assistant Teachers could be found in Rule 8(ii), which inter-alia stated as follows:

- (a) Bachelor’s degree from a University established by law in India or a degree recognised by the Government equivalent thereto **together with** any other training course recognised by the Government as equivalent thereto **together with** the training qualification consisting of a Basic Teacher’s Certificate (BTC), two years BTC (Urdu) Vishisht BTC, two-year Diploma in Education (Special Education) approved by Rehabilitation council of India **or** four year Degree in Elementary Education (B.El.Ed.), two years Diploma in Elementary Education (by whatever name known) in accordance with the National Council of Teacher of Education (Recognition, Norms and Procedure), Regulation or any training qualifications to be added by National Council for Teacher Education for the recruitment of teachers in primary education

**and**

Teacher eligibility test passed conducted by the Government of India

**and**

Passed Assistant Teacher recruitment Examination conducted by the Government.

(b) A trainee Teacher who has completed successfully six months special training programme in elementary education recognized by National Council for Teacher Education.

(c) a shikshamitra who possessed bachelor's degree from a University established by law in India or a degree recognised by the Government equivalent thereto **and** has completed successfully two year distant learning B.T.C. course or basic Teacher's Certificate (B.T.C.), Basic Teacher's Certificate (B.T.C.) (Urdu) or Vishisht B.T.C. conducted by the State Council of Educational Research and Training **and** passed the Teacher Eligibility Test conducted by the Government of India **and** passed Assistant Teacher recruitment Examination conducted by the Government.

96. Thus, a pass in both the TET and the ATRE was envisaged by the 20<sup>th</sup> Amendment, which was a part of essential qualification. However, merely passing of the TET or the ATRE did not ensure any right to the candidate to seek for his appointment as his name ought to appear in the select list for being appointed as an Assistant Teacher. This court finds that the preparation of the selection list was guided by rule 14, which inter-alia prescribed three points for inviting application:

(i) Candidates should possess prescribed training qualification;

**and**

(ii) Pass in Teachers eligibility test (TET) conducted by the Government;

**and**

(iii) Pass in Assistant Teacher Recruitment Examination conducted by the Government.

Further, rule 14(2) says that the appointing authority shall scrutinize the applications received as aforesaid and prepare a list of such all persons as would appear to him to possess the prescribed academic qualifications and be eligible for appointment. Rule 14(3)(a) states that the names of candidates in the list prepared shall then be arranged in such manner that the candidate shall be arranged in accordance with the quality points and weightage as specified in the Appendix-I. Interestingly, appendix - 1 gives 10% weightage to the marks obtained by the candidate in High School, Intermediate, Graduation Degree and BTC training. The weightage for passing TET is conspicuously missing and a large chunk of weightage being 60% is given to the examination conducted under the name of ATRE.

**97.** It is significant to note that although the Rules mandated that it was an essential qualification for appointment on the post of Assistant Teacher in basic schools, (i) to have passed Teacher's Eligibility Test (hereinafter referred as the "TET") and (ii) also to pass ATRE examination held for the selection in question by the

Basic Education Board, U.P., Allahabad, however, the passing of Teacher's Eligibility Test was merely eligibility in nature as the marks obtained in the said Test was not to be included at the time of preparation of the final list, whereas ATRE served dual purposes as it was not only eligibility criteria but also the marks obtained in the said examination was included in the preparation of the final select/merit list.

**98.** Thus, ATRE was envisaged to be both qualifying in nature and also an integral part of the selection process as the marks obtained in ATRE was to be included in the final merit list prepared for the purposes of selection, whereas TET was merely qualifying only and merely enabled a candidate to apply for ATRE. Further, this court finds that as far as ATRE is concerned the same being an essential qualification was done away with the 22<sup>nd</sup> Amendment, although it continued to be a part of rule 14 dealing with the selection process.

**99.** Apparently, a pass in TET was merely an eligibility criteria, so as to enable a particular candidate to become eligible to fill the form for the ATRE-2019 as is also clear from point 7(2) of the government order dated 01.12.2018, which specifically prescribed that examination would be conducted of short-listed candidates, who could take part in the ATRE and the result of which would be valid for the said current recruitment only. Evidently, there is no challenge to the said G.O dated 01.12.2018, which prescribed the procedure for recruitment of Assistant Teachers through the ATRE-2019.

**100.** As a matter of fact & records, approximately 4 Lakhs candidates fulfilled the eligibility criteria ( i.e pass in TET along with other qualification) and filled the requisite forms of ATRE-2019, which was conducted on 06.01.2019. The Government of U.P subsequently on 07.01.2019, brought a circular stating the minimum passing marks criteria for general category and reserved category as 65% and 60% respectively. The said circular in clear terms mentioned that passing in the ATRE-2019 is one of the eligibility criteria for the selection process and candidates merely by obtaining the minimum marks would not be entitled for appointment. ATRE-2019 was mentioned as an eligibility criteria as securing of the minimum marks by a candidate would bring him or her within the consideration zone of selection as ultimately the selection would be as per the merit list prepared on the basis of quality points secured by a candidate as per Appendix-1 of the Rules and candidates who could not make to the merit list shall have no right to be appointment on the basis of ATRE-2019.

**101.** No doubt the selection to the post of Assistant Teachers was to be made on the quality points prepared as per the Appendix-I, however whether the preparation of the Appendix-1, resulting in the select list was an open competition, or passing the ATRE was an open competition, or filling the form for ATRE with the concessional TET marks was an open competition is the moot point, because in case it is held at any stage of examination that it was an open competition, the reserved category candidates would naturally be entitled to be considered & migrated in the open category due to the operation of section 3(6) of the reservation Act.

**102.** "The term 'competition' muchless 'open competition' has not been defined under the Reservation Act. The Cambridge Dictionary, defines "competition" to mean "an organized event in which people try to win a prize by being the best, fastest, etc". Similarly, Encyclopaedia Britannica has defined "Competition" to be an act or process of trying to get or win something (such as a prize or a higher level of success) that someone else is also trying to get or win. Thus, in common parlance, the meaning of competition would be an event or a process, wherein each person is trying to win by being the best. Therefore, an open competition as could be understood, relevant to the context, would be a competition which is open to one and all, wherein the participants are trying to win by being the best and in that process the participants have not availed any concession or privilege. Thus, in the said open competition, the best is chosen from the rest. The parameters applicable to all of them are one and equal and they are adjudged on the same scale of merit and most importantly, "level playing field" is afforded in the said open competition.

**103.** On a plain reading of section 3(6) of the Reservation Act, 1994 it is evident that the said clause has been enacted to serve dual purposes. The said clause on the one hand, allows the reserved category candidates who is competent enough of meeting the challenges of competence with that of the general category candidates is encouraged & required to be placed amongst the general category candidates and on the other hand, it preserves the reserved category candidate quota for all those reserved category

candidates, who inspite of their best ability is otherwise not able to compete with the general category candidates. According to this court, the said clause fulfils the aims and object of reservation and fulfilment of quota of reserved candidates without making any compromise with respect to the merit and talent of a candidate, who otherwise belongs to reserved category but is more meritorious and successfully makes his place along with the general category candidates. Thus, section 3(6) of the Act echoes the cardinal principle for providing reservation to backward classes as it ought to be a means for their upliftment and not the end as has been dreamed by the framer of our Constitution.

**104.** Thus, the question falls for determination is as to at what stage of competition for selection of candidates in ATRE-2019, it could be termed as an open competition or there is no stage at all for open competition in the said Examination.

**105.** The phrase open competition with general candidates' bears significance, as unless there is competition amongst the general candidates and reserved category candidates at the same level, the benefit of the said phrase may not be available to the reserved category candidate. In a selection, to be termed as an open competition, the candidature of the reserved category candidates as well as the general category candidates is to be tested on the same merit and if in that case a reserved category candidate succeeds or score more than minimum marks scored by the general category candidate in the open competition, he would be placed amongst the general category candidates in the open category. In the instant case, at the level of applying for the Assistant Teachers



Recruitment Examination-2019, wherein any candidate has passed the TET with the concessional marks or higher marks does not make any difference or gives any added advantage to any candidate in the ATRE, as all these candidates in order to be eligible for coming within the consideration zone for appointment as Assistant Teachers had to not only mandatorily appear, but has also to obtain certain qualifying marks in the said ATRE in order to further progress in the stages of selection process. Thus, candidates competing with concessional marks in TET do not have any advantage as such, over the general category candidates in the ATRE. In fact, this court is of the view that the said stage has been set-up for a broad base of talented candidates to compete openly, so that the best talent is chosen over the rest. Therefore, reserved category students passing TET on concessional marks cannot be shackled in their own category at that stage and in any case it is not any manner works to the disadvantage to the general category candidates. It has to be understood that at the time when the concession of TET were availed, open competition had not commenced; it commenced only when all candidates, who fulfilled the eligibility conditions, were permitted to sit in the ATRE-2019; and, with concessional TET or the age relaxation or the fee concession, reserved candidates were merely brought within the zone of consideration, so that they could participate in the open competition on merit.

**106.** This court finds that both the reserved as well as the unreserved category candidates have appeared in the same examination and have been tested on the anvil of the same set of questions & difficulty. In the opinion of this court, the relaxation in

the passing marks of TET does not in any manner upset the "level playing field". However, once these broad base of candidate, appear in the ATRE-2019, wherein the State Government has prescribed the criteria of minimum marks for qualifying marks of the reserved category candidates as 60% and for the general category candidates as 65% respectively and in case a reserved category candidate at this stage progresses further to the selection list stage taking benefit of the minimum marks prescribed i.e 60%, he ought to be compartmentalised into his category only. Thus, qualifying in the ATRE-2019 with concessional marks would amount to reservation. However, in case the said reserved category candidate obtains 65% or more in the said ATRE-2019 examination, he cannot be restricted into his category and ought to migrate into the open category in view of section 3(6) of the reservation Act. To the mind of this court, the whole difficulty has arisen due to the use of the word "unreserved category" and "open category" interchangeably. There is no quota for unreserved category, which actually is an open category, wherein merit only counts, irrespective of his/her category.

**107.** Further, this court finds that, once these candidates qualify with or without the prescribed minimum marks, which depends as to whether they belong to reserved category or unreserved category, to make to the selection process, wherein a merit list would be prepared on the basis of quality points as per Appendix-1 of the rules, the concept of open competition is lost in the said preparation of the select list as the candidates (who were declared successful in the ATR Examination) were then merely asked to fill an online form and submit their academic results and mark sheets,

which were used to prepare a merit list based on the weightage prescribed by the Rules and the explanatory Government Order. The enumeration of a candidate in the list, in accordance with the quality marks to prepare a merit select list does not form an open competition.

**108.** The said analogy could be well understood from the numbers as provided in the present case. Admittedly, about 4,31,466 number of candidates registered themselves for the ATRE-2019, all of whom have passed the TET with or without concessional marks. Thus, merely applying for ATRE-2019 armed with a concessional TET does not disarm any reserved category candidate the potential to compete with an unreserved category. As per the figure provided by the parties, amongst the aforesaid 4,31,466 candidates, about 1,46,060 candidates were declared successful. It is this step which was an open competition and accordingly in case the reserved category candidate is able to match with the minimum marks prescribed for the unreserved category, this court finds no reasons as to why the reserved category candidates would not be allowed to migrate into the open category as per the letter & spirit of section 3(6) of the reservation Act. The preparation of the select list on the basis of quality point as per Appendix-1 of the rules is not an open competition as it is merely a natural progression for all those candidates, who have been declared successful, with or without the concessional marks applicable to the reserved category, for preparation of a select list of the number of vacancies, which in this case is 69000. Thus, reserved category candidates, who have obtained and matched with the minimum marks i.e 65% as prescribed for unreserved category

would naturally progress into the open category and shall be accordingly selected in the said category, however, in case a reserved category obtains any number between 60% or less than 65% as has been prescribed as qualifying marks for reserved category and unreserved category respectively, he or she would be only considered in the reserved category only.

**109.** Further, when a reserved category candidate is able to obtain 65% marks in ATRE-2019 he or she obviously is at par with any general category candidate and as such ought to be adjusted in the open category, because he finds his entry into the open category like any other candidate who has participated in the ATRE-2019As held in various judgement of the Hon'ble Supreme Court, a meritorious candidate cannot be put to disadvantage and constrained to compete in his own category, although he is at par or more meritorious than the last general category candidate selected in the open category. Time and again this court as well as the Hon'ble Supreme Court has emphasised that the unreserved category is not a reserved category for general candidates but an open category, which is open for both the reserved category as well as the general category, wherein merit is the only criteria for selection, provided the selection is an open competition as envisaged under section 3(6) of the Act. Further, Government order dated 25.03.1994 issued under **The Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1994** [Act 4 of 1994] clearly states that even though the reserved category candidates have previously benefitted from certain relaxations, they will not be barred from application of section 3 of the Act, i.e., if *they* become eligible to

be placed in open competition, they'll be so placed irrespective of any previous relaxation.

**110.** Moreover, as the manner and extent of reservation should be spelt out in the Government Order, it is only if there is an express bar in the Government Order, for migration of those who belong to the backward classes to the general category, would they then be disabled from competing for general category posts, for otherwise reservation under Article 16(4) does not operate as a communal reservation. If members belonging to the socially and educationally backward classes get selected in the open competition field, on the basis of their own merit, they will not be counted against the quota reserved for the backward classes. They will be treated as open competition candidates. Ld. Counsel for the parties were not able to point out any such government order, which expressly barred such migration of reserved category candidates in the present Selection.

**111.** In this context, this court may refer to the Judgment in the case of Ritesh R. Sah v. Dr. Y.L. Yamul & Ors., (1996) 3 SCC 253. In the said case, the question that emerged for consideration before the Apex Court was whether a candidate who belonged to the Scheduled Caste or any other reserved category could be counted against the quota meant for the reserved category even if he was entitled for selection for admission in open competition on the basis of his own merit or would he be treated as an open competition candidate. Their Lordships in paragraph 13 of the said decision expressed the view as under:

"13. There cannot be any dispute with the proposition that if a candidate is entitled to be admitted on the basis of his own merit then such admission should not be counted against the quota reserved for Scheduled Caste or Scheduled Tribe or any other reserved category since that will be against the Constitutional mandate enshrined in Article 16(4)."

In arriving at the aforesaid decision, their Lordships referred to *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 wherein it has been held thus:

"In this connection it is well to remember that the reservations under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition field on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates."

112. Further, this court refers to the judgment in the case of *R.K. Sabharwal v. State of Punjab*, (1995) 2 SCC 745 wherein the Constitution Bench was considering the question of appointment and promotion and roster points vis-à-vis reservation and had opined thus:

"When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserve points, it has to be taken that the posts shown at the reserve points are to be filled from amongst the members of reserve categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. Article 16(4) of the Constitution of India permits the State

Government to make any provision for the reservation of appointments or posts in favour of any Backward Class of citizens which, in the opinion of the State if not adequately represented in the Services under the State. It is, therefore, incumbent on the State Government to reach a conclusion that the Backward Class/Classes for which the reservation is made is not adequately represented in the State Services. While doing so the State Government may take the total population of a particular Backward Class and its representation in the State Services. When the State Government after doing the necessary exercise makes the reservation and provides the extent of percentage of posts to be reserved for the said Backward Class then the percentage has to be followed strictly. The prescribed percentage cannot be varied or changed simply because some of the members of the Backward Class have already been appointed/promoted against the general seats."

**113.** At this stage, it is immensely instructive to refer to paragraph 811 of Indra Sawhney (supra) which reads as follows:

"811. In this connection it is well to remember that the reservation under Article 16(4) do not operate like a communal reservation. It may well happen that some members belonging to, say, Scheduled Castes get selected in the open competition filed on the basis of their own merit; they will not be counted against the quota reserved for Scheduled Castes; they will be treated as open competition candidates."

**114.** In the said case, Sawant, J., while dealing with the philosophy and objectives of reservation has opined thus:

"411. The aim of any civilized society should be to secure dignity to every individual. There cannot be dignity without equality of status and opportunity. The absence of equal opportunities in any walk of social life is a denial of equal

status and equal participation in the affairs of the society and, therefore, of its equal membership. The dignity of the individual is denied in direct proportion to his deprivation of the equal access to social means. The democratic foundations are missing when equal opportunity to grow, govern, and give one's best to the society is denied to a sizeable section of the society. The deprivation of the opportunities may be direct or indirect as when the wherewithals to avail of them are denied. Nevertheless, the consequences are as potent.

412. Inequality ill-favours fraternity, and unity remains a dream without fraternity. The goal enumerated in the Preamble of the Constitution, of fraternity assuring the dignity of the individual and the unity and integrity of the nation must, therefore, remain unattainable so long as the equality of opportunity is not ensured to all.

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416. The trinity of the goals of the Constitution, viz., socialism, secularism and democracy cannot be realised unless all sections of the society participate in the State power equally, irrespective of their caste, community, race, religion and sex and all discriminations in the sharing of the State power made on those grounds are eliminated by positive measures."

**115.** Apparently, from the various judgments delivered by the Apex Court, it is apparent that the whole purpose of reservation is a generic concept and has different connotations under various circumstances. The Constitution of India, the fountainhead of all law, requires one to understand and appreciate the schematic



interpretation of the organic law of the country to understand the said concept.

**116.** A Division Bench of the Delhi High Court in the case of Tej Pal Yadav Vs Union of India ( 174 (2010) DLT 510(DB) in identical situation held that, a student may appear in the preliminary examination declaring that he belongs to the OBC category and may qualify or may not qualify; if he does not qualify, that is the end of the road; if he qualifies, he then appears in the main examination; if he does not qualify in the said examination, his right to get admission becomes totally extinct; if he qualifies within the OBC category, he may put forth his claim in that category, but if he gets more marks than the general candidates, he would be justified to say that he can be considered in the general category; if the whole concept of reservation is understood in a holistic manner, it becomes clear that appearance of a candidate from the OBC category, in the preliminary examination, is basically at the entry level; though both the preliminary and the main examinations may seem interconnected, on a deeper scrutiny it is clear that there is a subtle distinctive separation; if an OBC candidate appears in the preliminary examination as an OBC category candidate, and performs extremely well in the main examination, his claim should not be scuttled or smothered solely on the ground that he had taken the initial examination as an OBC category candidate; and in case this is allowed to be done, a general category candidate, who really could not compete with the OBC candidate in the main examination, would steal a march over him; and that would not be in public interest.

**117.** It may be true that in view of the advertisement the selection process ought to have been adopted in a manner also that it could have been an open competition with general candidates, i.e., by comparing the merit of the reserved category candidates along with the merit of the general category candidates obtained in the ATRE-2019 and thereafter final select list could have been prepared by placing the reserved category candidates in the list of finally selected candidates as per their merit but this procedure was not adopted. As a matter of fact, the Respondents had filed its Supplementary Counter Affidavit in connected writ petition in bunch of writ petitions vide Writ Petition No. 13156 of 2020 (Writ-A), dated 24.05.2022 sworn by Dr. Sarvendra Vikram Bahadur Singh, posted as Director of Education (Basic), Lucknow U.P. wherein at paragraph 7 and 8 it was categorically admitted that the select lists have been prepared without taking into account as to whether these reserved category candidates have taken the benefit of reservation in TET examination or Assistant Teacher recruitment examination.

**118.** Further, this court cannot be oblivious of the short counter affidavit dated 24.05.2022 filed in the lead matter (Writ- A- No. 13156 of 2020) by the Respondents, wherein they have admitted at paragraph 5 and 6 of the said counter-affidavit that the reservation policy for *Scheduled caste category and Scheduled Tribe Category and Other Backward Class category applied to the present recruitment was revisited by the authorities, wherein it was revealed that the application of horizontal and vertical reservation was applied in opposite sequence due to which, some of the candidate who have secured equal or higher cut-off marks to*

*General Candidate have been appointed against reserved category seats. Thus, the Respondents admitting there folly, whimsically decided to rectify the same and as such had issued the fourth select list of 6800 candidates, which was published on 05.01.2022. Similar admissions were also made by the Respondents in a short counter affidavit dated 04.05.2022 filed in Writ petition- A-No. 8142-2021.*

**119.** This court finds that even the aforesaid reasons for an admitted flaw in the select list is not tenable factually as if for the sake of argument, it was presumed to be true that vertical and horizontal reservation have been applied in opposite sequence then unreserved category candidates ought to had been selected in lesser numbers and in place of list of reserved category candidates, list of unreserved category candidates would had been issued because the correct sequence as observed in para 18 of Hon'ble supreme Court judgment in case of Anil Kumar Gupta [(1995) 5 SCC 173], is that vertical reservation ought to be applied first and horizontal reservation thereafter. If, the respondents would had applied the vertical & horizontal reservation in opposite sequence, which meant horizontal reservation was applied first and vertical reservation thereafter, then post reserved for horizontal reservation would had been taken from total number of vacancies and in this process all candidates (unreserved and reserved) should have been affected, therefore a select list of unreserved category would had been issued and not only list of reserved category candidates as has been sought to be done by the respondent.

**120.** During the course of hearing, this court on several occasions

had directed the state to provide details of the candidates, along with their category and marks obtained by them in the ATRE-2019, however the state has merely provided figures and numbers of candidates selected in the reserved category as well as the open category and as such on the basis of the said numbers in the chart has been insisting that reserved category candidates have been allowed to migrate to the open category and thus there had been no violation of implementation of Section 3 (6) of the Act. However, the marks scored by each candidate along with their category, who have been qualified in ATRE-2019 was never provided by the state nor the same was made available to the court and as such this court is of the view that correct appreciation of migration of MRC candidates to the open category cannot be determined with the available facts of the present case.

**121.** Before this Court arrives at a finding & records its conclusion, it would be omnipotent that the various judgments cited by the parties and their relevance to the issue may be discussed forthwith.

**122.** Various decision have been relied upon by the parties during the course of hearing. The first judgment relied upon by them has been passed by the Hon'ble Supreme Court in the case titled ***"Jitendra Kumar Singh v. State of Uttar Pradesh & Others (2010) 3 SCC 119"***. In the said case, a competitive examination was held for filling up the post of Sub-Inspectors of Civil Police and Platoon Commanders in PAC by direct recruitment. For SC, ST & OBC candidates there was waiver of examination fee and relaxation in the upper age limit which was in terms of Section 8(1)

of the Uttar Pradesh Public Services (Reservation for Scheduled Caste, Scheduled Tribes and other Backward Classes) Act, 1994. Section 3(6) of the above Act provided that if a reserved candidate got selected on the basis of a merit in an open competition with general candidates, he would not be adjusted against vacancies reserved for the reserved category.

**123.** The Government instructions dated 25th March, 1994 provided that if a reserved category candidate was selected on the basis of merit in the open competition along with general category candidates, he would not be adjusted towards reserved category i.e. he would be deemed to have been adjusted against the unreserved vacancies. This was irrespective of whether he had availed of any facility or relaxation (like relaxation age limit). The Appellants, in the said case, who were general candidates contended that reserved category candidates should not be adjusted against the unreserved (UR) vacancies but only against the reserved vacancies. This was not accepted by the High Court. The decision of the High Court was affirmed by the Supreme Court. It was clarified as under:

“71. We are of the considered opinion that the concessions falling within Section 8 of the Act of 1994 cannot be said to be relaxations in the standard prescribed for qualifying in the written examination. Section 8 clearly provides that the State Government may provide for concessions in respect of fees in the competitive examination or interview and relaxation in upper age limit.

72. Soon after the enforcement of the 1994 Act the Government issued Instructions dated 25-3-1994 on the subject of reservation for Scheduled Castes, Scheduled Tribes and other backward groups in the Uttar Pradesh Public Services. These instructions, inter alia, provide as under:

- "4. If any person belonging to reserved categories is selected on the basis of merits in open competition along with general category candidates, then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he has availed any facility or relaxation (like relaxation in age-limit) available to reserved category."

From the above it becomes quite apparent that the relaxation in age-limit is merely to enable the reserved category candidate to compete with the general category candidate, all other things being equal. The State has not treated the relaxation in age and fee as relaxation in the standard for selection, based on the merit of the candidate in the selection test i.e. Main Written Test followed by Interview. Therefore, such relaxations cannot deprive a reserved category candidate of the right to be considered as a general category candidate on the basis of merit in the competitive examination. Sub-section (2) of Section 8 further provides that Government Orders in force on the commencement of the Act in respect of the concessions and relaxations including relaxation in upper age limit which are not inconsistent with the Act continue to be applicable till they are modified or revoked.

73. Learned counsel for the appellants had submitted that in the present appeals, the issue is only with regard to age relaxation and not to any other concessions. The vires of Section 3 (6) or Section 8 have not been challenged before us. It was only submitted by the learned Sr. Counsel for the petitioners/appellants that age relaxation gives an undue advantage to the candidate belonging to the reserved category. They are more experienced and, therefore, steal a march over General Category candidates whose ages range from 21 to 25 years.
74. It is not disputed before us that relaxation in age is not only given to members of the Scheduled Castes, Scheduled Tribes and OBCs, but also the dependents of Freedom Fighters. Such age relaxation is also given to Ex-servicemen to the extent of service rendered in the Army, plus three years. In fact, the educational qualifications in the case of Ex-servicemen is only intermediate or equivalent whereas for the General category candidates it is graduation. It is also accepted before us that Ex-servicemen compete not only in their own category, but also with the General category candidates. No grievance has been made by any of the appellants/petitioners with regard to the age relaxation granted to the Ex-servicemen. Similarly, the dependents of Freedom Fighters are also free to compete in the General category if they secure more marks than the last candidate in the General category. Therefore, we do not find much substance in the submission of the learned counsel for the appellants that relaxation in age "queers the pitch" in favour of the reserved category at the expense of the General category.

75. In our opinion, the relaxation in age does not in any manner upset the "level playing field". It is not possible to accept the submission of the learned counsel for the appellants that relaxation in age or the concession in fee would in any manner be infringement of Article 16 (1) of the Constitution of India. These concessions are provisions pertaining to the eligibility of a candidate to appear in the competitive examination. At the time when the concessions are availed, the open competition has not commenced. It commences when all the candidates who fulfill the eligibility conditions, namely, qualifications, age, preliminary written test and physical test are permitted to sit in the main written examination. With age relaxation and the fee concession, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit. Once the candidate participates in the written examination, it is immaterial as to which category, the candidate belongs. All the candidates to be declared eligible had participated in the Preliminary Test as also in the Physical Test. It is only thereafter that successful candidates have been permitted to participate in the open competition."

**124.** In the present case, also the concession given in passing marks in TET does not in any manner upset the "level playing field". The passing of TET is a provision pertaining to the eligibility of a candidate to appear in the competitive examination. At the time when the TET is passed, albeit under the concessional marks, the open competition has not commenced as it commences when all the candidates who fulfill the eligibility conditions, namely, qualifications, TET, age etc. are permitted to participate in the ATRE. As observed by the Hon'ble Supreme Court in the aforesaid judgment, by giving relaxation in the passing marks of TET, the reserved candidates are merely brought within the zone of consideration, so that they can participate in the open competition on merit i.e the ATRE-2019. Once the candidate has participated in the ATRE-2019, it is immaterial as to which category, the candidate belongs and in terms of section 3(6), in case a reserved category candidate is able to match the score of the general

category, he ought to migrate and be considered in the open category.

**125.** The next judgment relied upon by the parties is by the Apex Court in *Vikas Sankhala v. Vikas Kumar Agarwal, (2017) 1 SCC 350*, wherein the issue arose in the context of appointment of teaching staff through the Teachers Eligibility Test(TET) conducted by the State of Rajasthan. There was relaxation in the minimum pass marks in the TET to the extent of 10% to persons belonging to SC, ST and OBC category. One of the issues considered by the Supreme Court was framed as inter-alia:

"38.3 (iii) Whether reserved category candidates, who secured better than general category candidates in recruitment examination, can be denied migration to general seats on the basis that they had availed relaxation in TET.?"

**126.** In answering the said question in negative the Supreme Court referred to the circulars issued by the State Government from time to time. It was noted that the mere fact that some relaxation was given in the pass marks in the TET did not give any advantage to the reserve category candidate as it only enabled them to compete with others by allowing them to participate in the selection process. Therefore, in terms of the circular dated 11th May, 2011 issued by the Government in that case "the reserve category candidates, who secured more marks than the marks obtained by the last candidate selected in general category would be entitled to be considered against unreserved category vacancies." The observation of the Hon'ble Supreme court was captured at paragraph 80 of the Judgment which inter-alia stated:



“80. Having regard to the respective submissions noted above, first aspect that needs consideration is as to whether relaxation in TET pass marks would amount to concession in the recruitment process. The High Court has held to be so on the premise that para 9(a) dealing with such relaxation in TET marks forms part of the document which relates to the recruitment procedure. It is difficult to accept this rationale or analogy. Passing of TET examination is a condition of eligibility for appointment as a teacher. It is a necessary qualification without which a candidate is not eligible to be considered for appointment. This was clearly mentioned in guidelines/notification dated February 11, 2011. These guidelines pertain to conducting of TET. Basic features whereof have already been pointed out above. Even para 9 which provides for concessions that can be given to certain reserved categories deals with 'qualifying marks' that is to be obtained in TET examination. Thus, a person who passes TET examination becomes eligible to participate in the selection process as and when such selection process for filling up of the posts of primary teachers is to be undertaken by the State. On the other hand, when it comes to recruitment of teachers, the method for appointment of teachers is altogether different. Here, merit list of successful candidates is to be prepared on the basis of marks obtained under different heads. One of the heads is marks in TET. So far as this head is concerned, 20% of the marks obtained in TET are to be assigned to each candidate. Therefore, those reserved category candidates who secured lesser marks in TET would naturally get less marks under this head. We like to demonstrate it with an example. Suppose a reserved category candidate obtains 53 marks in TET, he is treated as having qualified TET. However, when he is considered for selection to the post of primary teacher, in respect of allocation of marks he will get 20% marks for TET. As against him, a general candidate who secures 70 marks in TET shall be awarded 14 marks in recruitment process. Thus, on the basis of TET marks reserved category candidate has not got any advantage while considering his candidature for the post. On the contrary, “level playing field” is maintained whereby a person securing higher marks in TET, whether belonging to general category or reserved category, is allocated higher marks in respect of 20% of TET marks. Thus, in recruitment process no weightage or concession is given and allocation of 20% of TET marks is applied across the board. Therefore, the High Court is not correct in observing that concession was given in the recruitment process on the basis of relaxation in TET.

**127.** This court finds that in *Vikas Sankhla case* the Hon'ble Supreme Court permitted the Migration of reserved category candidates from reserved category to general category to be admissible to those reserved category candidates who secured more

marks than the last unreserved category candidates, irrespective of availing concession of passing marks in TET. Further, in the said case, the selection of Teachers was to be made on the basis of marks obtained under different heads including that of marks obtained in TET. Thus, obtaining of marks in TET was also a criteria which effected the overall selection of a candidate as a Teacher and even in that circumstances, the Apex Court refused to consider the concessional marks obtained in passing the TET to be an embargo for Migration of reserved category from reserved category to open category, whereas in the case in hand, admittedly TET is merely an eligibility criteria and does not have any influence on the selection list as obtaining of marks in TET is not a part of the quality points as mentioned in Appendix-1 of the rules.

**128.** The third judgment relied upon by the parties is *the case of Gaurav Pradhan v. State of Rajasthan, (2018) 11 SCC 352*, wherein the issue was relating to recruitment in the post of Constables under the Rajasthan Police Subordinate Service Rules, 1989. Various circulars had been issued by the State Government from time to time. A Division Bench of the Rajasthan High Court allowed the plea of the reserved category candidates to the extent that after despite getting relaxation of age if they were higher in the merit than the general open category vacancies they could migrate to the general open category vacancies. However, if they had availed relaxation/concessions while participating in the competitive test/ process of selection they would not be eligible for said migration.

**129.** The Hon'ble Supreme Court in that case, referred to circulars issued by the Rajasthan Government from time to time and noticed that in 6.2 of a circular dated 24th June, 2008 there is an express bar as under:

"6.2 In the state, members of the SC/ST/OBC can compete against non-reserved vacancies and be counted against them, in case they have not taken any concession (like that of age, etc.) payment of examination fee in case of direct recruitment."

**130.** Thus, in view of the aforesaid express bar and following the earlier decision in *Deepa E.V. V/s Union of India* ( 2017) 12 SCC 680, the Supreme Court held that there could be no migration in the above circumstances permitted for those SC candidates to the unreserved vacancies in the following terms as could be found at paragraph 49 of the Judgment:

“49. In view of the foregoing discussion, we are of the considered opinion that the candidates belonging to SC/ST/BC who had taken relaxation of age were not entitled to be migrated to the unreserved vacancies, the State of Rajasthan has migrated such candidates who have taken concession of age against the unreserved vacancies which resulted displacement of a large number of candidates who were entitled to be selected against the unreserved category vacancies. The candidates belonging to unreserved category who could not be appointed due to migration of candidates belonging to SC/ST/BC were clearly entitled for appointment which was denied to them on the basis of the above illegal interpretation put by the State. We, however, also take notice of the fact that the reserved category candidates who had taken benefit of age relaxation and were migrated on the unreserved category candidates and are working for more than last five years. The reserved category candidates who were appointed on migration against unreserved vacancies are not at fault in any manner. Hence, we are of the opinion that SC/ST/BC candidates who have been so migrated in reserved vacancies and appointed should not be displaced and allowed to continue in respective posts. On the other hand, the

unreserved candidates who could not be appointed due to the above illegal migration are also entitled for appointment as per their merit. The equities have to be adjusted by this Court.”

The Hon’ble Apex Court, in order to balance the equity concluded by issuing the following directions:

- “50. On the question of existence of vacancies, although learned counsel for the appellant submitted that vacancies are still lying there, which submission however has been refuted by the learned counsel for the State of Rajasthan. However, neither appellants had produced any details of number of vacancies nor the State has been able to inform the Court about the correct position of the vacancies.
51. We thus for adjusting the equity between the parties issue following directions:
  - 51.1 The writ petitioners/appellants who as per their merit were entitled to be appointed against unreserved vacancies which vacancies were filled up by migration of SC/ST/BC candidates who had taken relaxation of age should be given appointment on the posts. The State is directed to work out and issue appropriate orders for appointment of such candidates who were as per their merit belonging to general category candidates entitled for appointment which exercise shall be completed within three months from the date copy of this order is produced.
  - 51.2 The State shall make appointments against the existing vacancies, if available, and in the event there are no vacancies available for the above candidates, the supernumerary posts may be created for adjustment of the appellants which supernumerary posts may be terminated as and when vacancies come into existence.

**131.** The Court next proposes to discuss the case law relied & reported as Deepa E.V. V/s Union of India (2017) 12 SCC 680. The facts in Deepa E.V. (supra) were that the Appellant applied for the post of Laboratory Assistant, Grade-II in the Export Inspection

Council of India functioning in the Ministry of Commerce and Industry, Government of India. The Appellant was in the OBC category and was among the 11 candidates from that category called for the interview. She secured 82 marks. One other OBC candidate who had secured 93 marks was selected. In the general category none of the candidates secured the minimum cut off of 70 marks.

**132.** The Appellant accordingly contended that she should be accommodated in the general category. Her writ petition was dismissed by the Single Judge and her appeal against that judgment was also dismissed by the Division Bench. However, the Supreme Court referred to condition three in the proceedings dated 1st July, 1998 issued by the Department of Personnel and Training, Government of India on the subject "*Reserved vacancies to be filled up by candidates lower in merit or even by relaxed standards-candidates selected on their own merits not to be adjusted against reserved quota.*" Condition three read as under:

"3. In this connection, it is clarified that only such SC/ST/OBC candidates who are selected on the same standards as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBC candidates, for example in the age-limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates, etc. the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies."

133. It was on the account of the fact that specific bar as above had not been challenged by the Appellant in that case that the Supreme Court was unable to grant her the relief prayed for.

134. The Ld. Counsel for the parties have placed much reliance on Apex Court decision, which requires special mention. The case reported as “*State (NCT of Delhi V/s Pradeep Kumar)*”( 2019) 10 SCC 120”. In the said case, Special Education Teachers under the Government of Delhi were sought to be recruited. The respondents had obtained CTET under the relaxed pass norms of OBC category, in the states other than Delhi and as such his candidature was found to be not eligible, which did not find favour with the Central Administrative Tribunal, which directed the candidates to be appointed. The said decision was upheld by the Division bench of the High Court of Delhi. However, the Apex Court reversing both the decision observed in the said peculiar facts that in the said recruitment process, the respondents did not possess OBC (Delhi) certificate and thus they could not be considered for the OBC category vacancies. The issue in that case was not migration of reserved category to open category rather the issue was regarding availing of employment in reserved category posts earmarked for OBCs who are certified by the Delhi Government. The Apex court, in the said Judgment observed the distinguishing & peculiar facts at paragraph 19.5, which inter-alia states:

“19.5 The other distinguishing aspect in *Vikas Sankhala* (supra) is that the candidates who had applied under the reserved category belonged to Rajasthan. For the selection and aspirants from the same State i.e., Rajasthan, the Court allowed such candidates to migrate to the unreserved category. In the present case, however, the candidates (i.e. the respondents) belong to States other than Delhi. Being OBC (outsiders), they could

have been considered only under the unreserved category if they secure at least 60% marks in the CTET. The respondents admittedly did not secure 60% and thus were ineligible. Moreover, an OBC candidate not certified in the State/Territory outside of Delhi cannot be eligible to avail of employment in reserved category posts earmarked for OBCs who are certified by the Delhi Government.”

135. The next judgment relied by the parties during the hearing of the matter was *Saurav Yadav V/s State of Uttar Pradesh, (2021) 4 SCC 542*. The facts in that case relating to recruitment of Police constables both under U.P Civil Police and Provisional Armed Constabulary in the state of Uttar Pradesh. The controversy in that case was relating to the correct method of filing the horizontal quota reserved for women candidates, wherein it was complained by largely women candidates belonging to OBC’s, that the state had not correctly applied the rule of reservation and as such have denied the benefit of “migration” i.e adjustment in the General Category Vacancies. Although the issue was relating to the inter-play between the vertical (social) reservation and horizontal (special) reservation, however the said issue is not engaging the attention of this court in the present bunch of matters. However, the conclusion by Justice S. Ravindra Bhat, who gave a separate affirmative & supplementing judgment is of special significance as it clinches the issue. Justice Bhat inter-alia held;

“66. I would conclude by saying that reservations, both vertical and horizontal, are method of ensuring representation in public services. These are not to be seen as rigid “slots”, where a candidate’s merit, which otherwise entitles her to be shown in the open general category, is foreclosed, as the consequence would be, if the state’s argument is accepted. Doing so, would result in a communal reservation, where each social category is confined within the extent of their reservation, thus negating merit. The open category is open to all, and the only condition

for a candidate to be shown in it is merit, regardless of whether reservation benefit of either type is available to her or him.”

136. In any case, the Respondents would be guided by the aforesaid judgment as far as implementation of “Horizontal Reservation” is concerned, as the aforesaid judgment is an authority on the said aspect.

137. The next case relied by the parties is *Niravkumar Dilipbhai Makwana vs Gujrat Public Service Commission, (2019) 7 SCC 383*, wherein the Hon’ble Apex Court was considering recruitment to the posts of Assistant conservator of Forest and Range Forest officer in the state of Gujrat. It was argued that the relaxation/concession in age granted to the candidates at the initial stage was only to enable a candidate belonging to the reserved category without granting him/her any preferential advantage in the matter of selection cannot be treated as an incident of reservation under Article 16(4) of the Constitution of India. Further, the Circulars dated 29.01.2000 and 23.07.2004 issued by the Government of Gujarat was sought to be interpreted to show that a concession in age in the matter of selection to a post cannot be treated as an incident of reservation. The Hon’ble Apex court dismissing the contention of the petitioners in that matter, was pleased to hold;

“25. In the instant case, State Government has framed policy for the grant of reservation in favour of SC/ST and OBC by the Circulars dated 21.01.2000 and 23.07.2004. The State Government has clarified that when a relaxed standard is applied in selecting a candidate for SC/ST, SEBC category in the age limit, experience, qualification, permitting number of chances in the written examination etc., then candidate of such category selected in the said manner, shall have to be



considered only against his/her reserved post. Such a candidate would be deemed as unavailable for consideration against unreserved post.

**138.** Thus, it is seen from the aforesaid judgment that each case turned on the peculiar facts and the conditions as specified in the recruitment notices, the prevailing statute and the circulars issued from time to time. It is seen that in Nirav Kuamr Dilipbhai case, Deepa E.V. case and Gaurav Pradhan Case, there were specific instructions which barred the consideration of the reserved category candidates against Unreserved category vacancies, whereas in Jitendra Kumar Singh Case and Vikas Sankhala Case they permitted accommodating the reserved category candidates against Unreserved Category vacancies if they bettered the Unreserved Category cut off marks. During the course of hearing, the Ld. Counsels were not able to point out any specific instruction applicable to the present facts of the case, which barred the migration of reserved category to the open category. In fact, section 3(6) of the Reservation Act coupled with the Government order dated 25.03.1994 specifically entails such migration. As far as the Pradeep Kumar case is concerned, the same is distinguishable on facts as there was an altogether different issue, which engaged the attention of the Apex Court, wherein it was held that an OBC candidate not certified in the State/Territory outside of Delhi cannot be eligible to avail of employment in reserved category posts earmarked for OBCs who are certified by the Delhi Government.

**I. Allocation of preferential Districts**

**139.** Having discussed the judgment relating to migration of MRC (Meritorious Reserved Category) to open category seats, this court comes next to another point in issue in this present bunch of matters. It has been contended that the reservation policy implemented by the authorities in allocating the districts of preference to the MRC Candidates have been flouted. According to candidates belonging to General Category, once a MRC is not allocated the preferred district as far as the merit of the open category is concerned and this MRC candidate for his own good reason is reverted to the reserved category for preferred district allocation, the seats vacated by such MRC candidates from the open category should be filled by candidates from General category only. These candidates have referred to the Hon'ble Apex Court Judgment passed in the case of *Union of India Vs Ramesh Ram & Ors (2010) 7 SCC 234*. These candidates have relied on the conclusion of the said Judgment, which appears at paragraph 50 as herein below:

“50. We sum up our answers:-

- i) MRC candidates who avail the benefit of Rule 16 (2) and adjusted in the reserved category should be counted as part of the reserved pool for the purpose of computing the aggregate reservation quotas. The seats vacated by MRC candidates in the General Pool will be offered to General category candidates.
- ii) By operation of Rule 16 (2), the reserved status of an MRC candidate is protected so that his/ her better performance does not deny him of the chance to be allotted to a more preferred service.
- iii) The amended Rule 16 (2) only seeks to recognize the inter se merit between two classes of candidates i.e. a) meritorious

reserved category candidates b) relatively lower ranked reserved category candidates, for the purpose of allocation to the various Civil Services with due regard for the preferences indicated by them.

- iv) The reserved category candidates "belonging to OBC, SC/ ST categories" who are selected on merit and placed in the list of General/Unreserved category candidates can choose to migrate to the respective reserved category at the time of allocation of services. Such migration as envisaged by Rule 16 (2) is not inconsistent with Rule 16 (1) or Articles 14, 16 (4) and 335 of the Constitution."

**140.** However, candidates of the reserved category have contended that the authorities have wrongly while allocating the districts of preference to MRC candidates have "substantively" treated them as "reserved category candidate", whereas according to the various judgments of this court as well as the Hon'ble Apex Court, MRC candidates have to be only treated "notionally" as reserve category candidates for the said purpose for allotment of districts. Thus, it has been argued that the respondent authorities have arbitrarily presumed that the unreserved seats left over by the MRC candidates were available for even more selection of general candidates, which consequently led to excess selection of general category candidates in the left-over seats of the MRC, who in turn were adjusted against reserved quota vacancies, instead of unreserved vacancies.

**141.** This court finds that the argument of the candidates of general category is a long shot. First and foremost, the argument of the general category candidate apparently seems to be the adversely effected by assuming that open category is a quo for general category candidate. It is clarified that open category as the

name signifies is not a quota as any quota is fixed to the limit of 50% as available to the OBC, SC & ST. The argument is premises on the believe that there is 100% quota, wherein 50% belongs to OBC, SC & ST, whereas the other 50% belongs to general category. Once, this confusion is removed, the argument also vanishes in thin air.

142. Further, the judgment in Ramesh ram has not been relied in the correct perspective by the open category candidates as the Hon'ble Supreme court in the case of *Union of India Vs Ramesh Ram & Ors ( 2010) 7 SCC 234* was concerned with the Constitutional validity of Sub-Rules (2) to (5) of Rule 16 of the Civil Services Examination Rules, for the civil services examinations from 2005 to 2007 and was relating to choice exercised by a candidate for the coveted service of IAS/IPS/IRS, wherein in the present case, a choice is related to a preferential district only and the candidate continues to be an Assistant Teacher, juxtaposed to the Ramesh Ram case, wherein a candidate by choosing his preference can be selected either in IAS/IPS/IRS or some other allied services. Recently, the Hon'ble Supreme Court in the case of *Tripurari Sharan Vs Ranjit Kuamr Yadav, ( 2018) 7 SCC 656*, which was related to admission in PG Medical college, wherein again a student by exercise of choice gets a different college, the Hon'ble Apex court after referring to the judgment passed in the Ramesh Ram case concluded as follows:

“14. In light of the cases discussed hereinabove, both questions are answered as follows:

- i) A MRC can opt for a seat earmarked for the reserved category, so as to not disadvantage him against less meritorious reserved

category candidates. Such MRC shall be treated as part of the general category only.

- ii) Due to the MRC's choice, one reserved category seat is occupied, and one seat among the choices available to general category candidates remains unoccupied. Consequently, one lesser-ranked reserved category candidate who had choices among the reserved category is affected as he does not get any choice anymore.

To remedy the situation i.e. to provide the affected candidate a remedy, the 50th seat which would have been allotted to X – MRC, had he not opted for a seat meant for the reserved category to which he belongs, shall now be filled up by that candidate in the reserved category list who stands to lose out by the choice of the MRC. This leaves the percentage of reservation at 50% undisturbed.”

**J. Select list of 6800 dated 05.01.2022**

143. The next question which falls for consideration is as to whether, the state admitting its folly can issue an additional list of 6800 dated 05.01.2022 meant for only reserved category candidates over and above the advertised seats of 69000. Well, there had been a preliminary objection raised relating to the maintainability of this kind of writ petitions as the petitioners, who had challenged this select list have either failed to qualify the ATRE-2019 or are candidates, who were not eligible to participate in ATRE-2019, but who became eligible subsequently. Thus, these petitioners in view of their future claim to participate in the ATRE have approached this court as any additional seat being permitted by the respondents at this stage would actually truncate the number of seats in future vacancy. Although, the relief being sought by these bunch of petitioners seems to be far-fetched as this court has been flooded with petitions relating to ATRE-2019 and there is no sight for future ATRE as of now, however keeping in view the

gamut of issues raised and the hearing conducted by this court, the relief as sought by these petitioners are being dealt in a different manner.

**144.** It has been contended by Sri Sudeep Seth, learned Senior Counsel appearing for the petitioners in a bunch of writ petition that as against 69000 posts advertised on 1.12.2018 all the posts were filled up after selection as per the affidavit filed by the Secretary, U.P. Basic Education Board filed in Writ Petition No. 1389 (SS) of 1991, Jawahar Lal v. State of U.P. on 12.7.2021. He also points out that a writ petition was filed before the Hon'ble Supreme Court seeking relief that certain vacancies which had occurred subsequently could also be filled up on the basis of the selection held in pursuance to the advertisement dated 1.12.2018 which was in respect of the 69000 posts referred hereinabove, however, this relief was declined by Hon'ble Supreme Court vide its judgment dated 11.2.2021 passed in Writ Petition (Civil) No. 760 of 2020, Shivam Pandey & ors. v State of U.P. & ors. The said order reads as under:

"This petition filed under Article 32 of the Constitution of India prays inter alia that 26944 unfilled posts from the Assistant Teachers Recruitment Examination 2018 be directed to be filled through instant selection.

Heard learned counsel for the parties.

It is a matter of record that 69000 posts were advertised to be filled through Assistant Teachers Recruitment Examination 2019.

In the circumstances, no direction can be issued to the concerned authorities to fill up posts in excess of 69000.

We, therefore, see no merit in the petition.

The writ petition is, accordingly, dismissed.

Pending applications, if any, also stand disposed of."

145. Mr. Seth, also submitted that the respondents have contended in one of the writ proceedings before this court, that the 6800 posts which are to be filled from the 'Reserved Category' candidates are not part of the 68500 vacancies on the posts of Assistant Teacher which were advertised on 9.1.2018 (A.T.R.E. 2018), nor as aforesaid they are a part of the present ATRE-2019 as admittedly all the seats stands filled-up. Thus, it is being contended by him that these vacancies were neither advertised on 01.12.2018 ( ATRE-2019) nor on 09.1.2018( ATRE-2018) and, as such these 6800 vacancies allegedly meant for 'Reserved Category' candidates were never advertised and were not part of selection referred hereinabove relating to A.T.R.E. 2018 and A.T.R.E. 2019, therefore, they cannot be filled up on the basis of the said selection, as is apparent from what has been noticed hereinabove. He says that, therefore, unless these vacancies are advertised and a fresh recruitment exercise for recruitment is conducted, there is no way that these 6800 vacancies can be filled up, but it seems that based on the selection for the 69000 posts referred hereinabove these vacancies are being filled up, which is clearly in the teeth of the decision of Hon'ble Supreme Court dated 11.2.2021 as also the law on the subject. He says that petitioners who are not successful in A.T.R.E. 2019 could nevertheless be entitled to be considered for fresh appointment in the subsequent vacancies which would include the 6800 vacancies which are the subject matter of this writ petition, as petitioners belong to the Reserved Category from which these posts are to be filled up. Moreover, he says that the determination of these reserved vacancies itself is erroneous and,

therefore, the other petitioners of the General Category have also a locus standi in the matter. He further says that out of the 6800 selectees, some of them have been arrayed in representative capacity. He says that on 5.1.2022 a select-list of 6800 reserved category candidates has been issued which is not tenable in law and is liable to be quashed.

**146.** This court finds force in the argument of Mr. Seth, Sr. Advocate as far as his contention relating to the order by the Hon'ble Supreme Court is concerned, wherein the Apex court has refused to find any merit in the request of the petitioner in that matter to direct the concerned authorities to fill the 26,944 unfilled posts from the ATRE-2018 through the ATRE-2019 and as such in the said peculiar circumstances has refused to issue any direction to the concerned authorities to fill up posts in excess of 69000. However, the contention of Mr. Seth as far as the maintainability of the writ petition is concerned, the same is farfetched. Although, a Full Bench of this Court in Sanjay Kumar Pathak Vs. State of U.P. and others, writ petition no. 65189 of 2006, decided on 25th May, 2007, has reiterated inter-alia that "Nobody can claim as a matter of right that recruitment on any post should be made every year." and moreover, these petitioners, have no *locus standii* as their cause is pre-mature and further petitioners have a strong onus of proving their grievance as to come within the definition of "*persons aggrieved*" as devised by the Hon'ble Apex Court on many instances which has nowhere been discharged by these petitioners and especially when these petitions are not filed as a Public Interest Litigation, however, dehors the issue of maintainability of this writ petition, which this court is refraining to



comment on this stage, this court is of the view that the law stands settled on the aspect that it was not permissible for the Government to hand out more appointments than the vacancies that are advertised. The law had been settled by a number of decisions of the Apex Court itself that it was against the law and also the rights of others to appoint more people than the vacancies advertised. A reference can be made to the following cases (i) Union of India Vs Ishwar Singh Khatri (1992) Supp 3 SCC 84, (ii) Gujrat State Deputy executive Engineers Association Vs State of Gujrat ( 1994) Suppl 2 SCC 591, (iii) State of Bihar V/s The Secretariat Assisstant S.E Union AIR 1994, SC 736, (iv) Prem Singh Vs Haryana State Electricity Board, (1996) 4 SCC 319 (v) Ashok Kumar V/s Chairman, Banking Service Recruitment Board, AIR 1996 SC 976. In each of these cases, it has been held that vacancies cannot be filled up over and above the number of vacancies advertised as “the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution” of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies.

**147.** Further, it is apparent from the aforementioned chronology of events leading to the issuance of the select list of 6800 for reserved category candidates on 05.01.2022 that the stand and reason of the Respondent is both contradictory and vague. As per the own admission of the respondents, the said select list of 6800 has been issued to remove the anomaly in reservation in ATRE-2019 and they did not relate to 22,933 vacancies of ATRE-2018, as

stated by the State Government in order dated 12.01.2022 passed in Special Appeal No. 79 of 2020 ( Alok Kumar and Ors. Vs State of U.P). The natural corollary of the aforesaid admission is (i) there is an anomaly in implementing the reservation policy of ATRE-2019, which in the opinion of this court is more than enough to quash the select list of 01.06.2020 and secondly, (ii) in case, select list of 6800 is an outcome to remove the anomaly, how and in what manner the said anomaly has been sought to be removed, the respondent is completely silent on the said aspect, thirdly (iii) if the respondent have chosen to remove the anomaly, how can the respondent breach the number 69000, without disengaging equal number of candidates from the said list, fourthly, (iv) the Hon'ble Supreme Court vide its judgment dated 11.2.2021 passed in Writ Petition (Civil) No. 760 of 2020, Shivam Pandey & ors. v. State of U.P. & ors has refused to grant any relief for appointment in excess of 69000. Moreover, in view of the own admission of the respondent, 6800 reserved category select list cannot be related to or fill any vacancies in ATRE-2019 recruitment process as the respondent have stated in affidavit dated 12.07.2021 filed in this court that no vacancies were available in 69000 Assistant teachers post recruitment process.

**148.** It is settled law that an authority cannot make selection/ appointment beyond the number of posts advertised, since it deprives the candidates ineligible for appointment on last date for submission of application and who became eligible for appointment thereafter, to participate in fresh selection exercise through fresh advertisement. Thus, filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the

reason that it amounts to improper exercise of power. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law. The judgment passed by the Apex court in the case of Suridner Singh & Ors. Vs State of Punjab & Ors. AIR 1998 SC 18 and Hoshiyar Singh Vs State of U.P ( 1993) Supp (4) SCC 377 is of special reference, wherein the Hon'ble Apex Court held at paragraph 10 as inter-alia:

“10. The appointment on the additional posts on the basis of such selection and recommendation would deprive candidates who were not eligible for appointment to the posts on the last date for submission of applications mentioned on the advertisement and who became eligible for appointment thereafter, of the opportunity of being considered for appointment on the additional posts because if the said additional posts are advertised subsequently those who become eligible for appointment would be entitled to apply for the same. The High Court was, therefore, right in holding that the selection of 19 persons by the Board even though the requisition was for 8 posts only, was not legally sustainable.”

**149.** Further, the said observation was reiterated in the case of Arup Das and Others Vs State of Assam (2012) 5 SCC 559, wherein the Apex Court in Arup Das Case at Paragraph 17 held as follows:

“17. It is well-established that an authority cannot make any selection/appointment beyond the number of posts advertised, even if there were a larger number of posts available than those advertised. The principle behind the said decision is that if that was allowed to be done, such action would be entirely arbitrary and violative of Articles 14 and 16 of the Constitution, since other candidates who had chosen not to apply for the vacant posts which were being sought to be filled, could have also applied if they had known that the other vacancies would also be under consideration for being filled up.”

**150.** For all the aforesaid reasons, the select list of 6800 dated 05.01.2022 issued for selection of reserved category candidates

cannot be sustained in the eyes of law.

**K. Conclusion**

**151.** Thus, this court is of the view that concession granted at the level of TET, so as to make a candidate eligible to participate in the open competition, like the ATRE-2019 would not debar a reserved category candidate to be excluded from the consideration zone in the open competition, in case he is able to match and score more marks than the last general category candidate in the open category as the competition has not yet started at that point of time. However, in case a candidate seeks relaxation of marks in passing in the ATRE-2019, obviously he would not be considered to belonging to a meritorious reserved category as not only the competition has started but this relaxation would mean reservation.

**152.** To make it abundantly clear any reserved category candidate, who has obtained 65% marks or more can be considered to be a meritorious reserved category candidate and accordingly allowed to compete with the general category candidate and progress to the open category, whereas a reserved category candidate, who has scored less than 65% and more than 60% in the ATRE-2019 would be considered in their own respective category and would not be allowed to progress into consideration zone with general category candidates on the basis of scoring more in the quality point as per Appendix-1 of the rules. The above proposition simply put may be understood as under :

- (i) Any candidate belonging to a reserved category, who has availed relaxation of marks in ATRE-2019, which has been held to be an open competition, shall not be entitled to migrate from their respective category to the unreserved category while preparing the select list as per the quality points in terms of Appendix -1 of the rules.
- (ii) Further, those candidate's, whether reserved or unreserved, scoring more than 65% marks in ATRE-2019 shall be encompassed within the consideration zone of the open category and a select list shall be accordingly prepared of these candidates separately on the quality points and accordingly 50% of the total seats shall be filled by these candidates, irrespective of whether they belong to reserved or unreserved category.
- (iii) The balance 50% shall be filled by candidates from their respective reserved category as envisaged under section 3(1) of the Reservation Act.
- (iv) Thereafter, the horizontal reservation as provided in the Government order should be applied accordingly, if any.

**153.** As regards, allocating the districts of preference to MRC candidates, MRC candidates have to be only treated “notionally” as reserve category candidates for the said purpose for allotment of districts and they can opt for a seat earmarked for the reserved category, so as to not disadvantage him against less meritorious reserved category candidates. Such MRC shall be treated as part of the general category only. Further, due to the MRC's choice, one reserved category seat being occupied, and one seat among the choices available to general category candidates remains

unoccupied. Consequently, one lesser-ranked reserved category candidate who had choices among the reserved category is affected as he does not get any choice anymore and as such to remedy the situation i.e. to provide the affected candidate a remedy, the seat which would have been allotted to MRC, had he not opted for a seat meant for the reserved category to which he belongs, shall now be filled up by that candidate in the reserved category list who stands to lose out by the choice of the MRC, which would leave the percentage of reservation at 50% undisturbed.

**154.** Apparently, during the hearing of the present matter, there was no clarity of the score and details of the reserved category candidates, who have appeared in the ATRE-2019. There had been no endeavour from the respondents, who are custodian of the records of the ATRE-2019 and would had assisted this court in providing the said records. Thus, it is directed that the state shall review the select list of 01.06.2020 and prepare the quality point of candidates as per Appendix-1 of the rules and prepare the merit of the candidates as per the observation of this court. The said exercise shall be conducted within a period of three months from today.

**155.** In the peculiar facts of the present case and purely to balance to equity, this court in exercise of its Jurisdiction under Article 226 of the Constitution of India directs that till the time the respondents prepare the revised list, the candidates already appointed and presently working as Assistant Teachers in various district shall continue to work in their post till such period and shall be not disturbed, keeping in mind the examination period and the end of

education session. This court holds that the appointment of those teachers, who do not find any place in the revised list as has been directed herein above and who had been appointed as per the select list of 01.06.2020 was purely fortuitous and does not entail any right in them. The said direction is in conformity to the interim order dated 7<sup>th</sup> of December, 2020, wherein this court while issuing notice to the affected persons directed that, in the meantime, appointments made on the post of Assistant Teacher shall be subject to the final decision of these petitions.

**156.** In the overwhelming facts as narrated herein above, wherein apparently the teachers, who have been appointed and are working since the last more than 2 years, whether belonging to the reserved or unreserved category cannot be faulted with, as essentially, it is the respondents, who were under a constitutional duty to implement the provisions of section 3(1) & 3(6) of the Reservation Act in its letter and spirit, however the same having been not done, this court in order to balance the equity and keeping in mind that these young men & women, who as teachers are going to shape the future of this country, hereby grants liberty to the State Government to intervene in this matter in the peculiar facts of the present case and frame a policy for adjustment of these Teachers, who may be ousted by a revision in the select list dated 01.06.20020 in light of the explication provided in the case of ousted candidates in the judgment passed by the Hon'ble Apex Court in the case of *Gaurav Pradhan v. State of Rajasthan, (2018) 11 SCC 352*, as already discussed herein above.

- 157.** All impleadment Application stands allowed.
- 158.** Since, it has been directed that the select list dated 01.06.2020 to be revised in view of the observation made in this Judgment, the select list of 6800 dated 05.01.2022 stands quashed.
- 159.** Reservation should not be in any circumstances more than 50% of the total seats.
- 160.** All the Writ petitions are **disposed of** in the aforesaid terms and all interim orders stands vacated.
- 161.** In the facts of the present case, there shall be no orders as to cost.

**Order Date : 13.03.2023**

S. Shivhare/-