

(2002) 03 AHC CK 0107

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No"s. 37124, 38638, 39076, 39361, 39702, 39918, 40035, 40037, 40706, 40708, 40734, 40735, 40847, 40848, 41180, 41203, 41226, 41266, 41411, 41412, 41475, 41564, 41568, 41614, 41721, 41724, 41755, 41789, 42399, 42404, 42456

Anant Kumar Tiwari and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: March 21, 2002

Acts Referred:

- Basic Education Teachers Service Rules, 1981 - Rule 15, 5, 6, 8
- Constitution of India, 1950 - Article 14, 15, 16, 21, 226
- Uttar Pradesh Basic Education Act, 1972 - Section 13, 19, 3(3), 4

Citation: (2002) 2 UPLBEC 1327

Hon'ble Judges: Anjani Kumar, J

Bench: Single Bench

Advocate: Shailendra, R.P. Tewari, Anurag Khanna, Maheeb Singh and Jitendra Nath Shukla, for the Appellant; S.C. and R.K. Tripathi, for the Respondent

Final Decision: Allowed

Judgement

Anjani Kumar, J.

These groups of Writ Petitions have been filed by the petitioners under Article 226 of the Constitution in which the common questions of law and facts are involved and since all these writ petitions raises common questions, they are being heard together and are decided by the common judgment. Learned Counsel argued treating Writ Petition No. 37124 of 2001 to be leading writ petition in which counter-affidavit, rejoinder affidavit, supplementary affidavit, supplementary counter and supplementary rejoinder affidavits have been exchanged. All the learned Counsel for petitioner as well as learned Standing Counsel have made the statement that no further affidavits are required in each writ petition. The petitioners have prayed for the following reliefs :-

"(A) To, issue a writ, order or direction in the nature of certiorari call the record of the case and advertisement dated 14.8.2001 (Annexure-1 to the writ petition) and quash the advertisement dated 14.8.2001 to the extent it confined selection of petitioner like candidates to a particular district and further to the extent of reservation applied in the name of subject Arts and Science and also on the ground sex.

(B) To, issue a writ, order or direction in the nature of mandamus commanding the respondents to declare the proceedings initiated in pursuance of the advertisement dated 14.8.2001 for consideration for appointment of Assistant Teacher in various institutions run and managed by the Basic Shiksha Parishad as ultra-virus to the Constitution of India and the provisions of the Basic Education Act, 1972 and Rule and framed thereunder, particularly, U.P. Basic Education (Teachers) Service Rule 1981, which shall hereinafter be referred to as 1981 Rule.

(C) To, issue a writ, order or direction in the nature of mandamus directing the respondent-authorities to reconsider the selection afresh State-wise considering the candidates like petitioner against the vacancies on the State level and then fix the criteria uniformly without any discrimination and once the petitioner like candidates selected, they may be appointed accordingly without any hindrance.

(D) To, issue any other writ, order or direction which this Hon"ble Court may deem fit and proper on the facts, and circumstances of the present writ petition filed by the petitioner before this Hon"ble Court.

(E) To, award the costs of the writ petition to the petitioners."

2. The petitioners, by the order of the Court, have amended the writ petition and have added a ground and a further prayer, which is reproduced below :-

GROUND:

"(X) Because, the impugned Government Order dated 3.8.2001 is contrary to the provisions of U.P. Basic Education Act, 1972, and the rules framed thereunder as it encroached upon the jurisdiction and power vested in the said Act and Rules and action contemplated under the provisions of Acts and Rules."

PRAYER:

"(F) To, issue a writ in nature of certiorari quashing the impugned Government Order/Circular dated 3.8.2001 already enclosed as Annexure-4 to the supplementary affidavit filed before this Hon"ble Court."

3. The facts leading to the filing of present writ petition are that the State Council of Educational Research and Training, Nishatganj, Lucknow, U.P. had issued an advertisement, which was published in various daily newspapers, including the Hindi daily newspaper "Dank Jagran" dated 14.8.2001, thereby inviting applications for special training and appointment on the post of Assistant Teachers in the

primary schools in rural areas of the State of U.P. The last date for applying pursuant to the aforesaid advertisement was 15.9.2001. By the aforesaid advertisement, the applications were invited from such candidates, who possessed B.Ed./L.T. certificate from the University, other recognised colleges and training institutes, which are either run or managed or recognised by the State Government as regular students and these degree are from such Universities, which are established under law in the State of U.P. The aforesaid advertisement also prescribes the provision or reservation according to the then enforced G.O. of the State of U.P. regarding this reservation policy. The process of selection as defined in the aforesaid advertisement was on the basis of calculation of the qualitative marks on different level of education, including extra curricular activities as specified in the advertisement. The another clause provides that for the vacancies available in the district, 50 per cent will be reserved for women and 50 per cent for the male candidates, who will be selected according to their merits as stated in the process of selection. The further provision for selection is that out of the quota earmarked for male and female candidates, 50 per cent in each category shall be filled in by the candidates of Science subject and other 50 per cent jointly shall be allocated for the candidates belonging to all other categories. The aforesaid direction goes to say that a candidate shall be considered according to the merit as stated in the advertisement against the vacancies available for his home district. The applications, as stated above, were invited up to 15.9.2001. The aforesaid advertisement was modified by issuing a corrigendum, which was published in the various newspapers on 22.9.2001, a copy of which has been annexed as Annexure-2 to the writ petition, which purports to amend clause (xi) of the advertisement, Annexure-1 to the writ petition, to the extent that merit list shall now be prepared State-wise and there shall be one merit list for the entire State and earlier clause (xi) has been deleted. In Paragraph 8 of the writ petition, the petitioners have specified, according to their information, the number of vacancies available District-wise and a perusal of the same demonstrates that in some of the districts there were zero vacancy and in some of the districts, like districts Allahabad and Kaushambi, there were 1355 and 448 vacancies, respectively. The petitioners have also given the details of the qualitative marks secured by each of the petitioners in their respective districts, which has been annexed as Annexure-3 to the writ petition. The petitioners have found that the State Government keeps on changing the criteria for selection as it suits them in wholly arbitrary and discriminatory manner and that is why these writ petitions have been filed by the petitioners with the prayers aforesaid.

4. According to the petitioners (in writ petition No. 37124 of 2001), the following were the questions, which arise in the circumstances of the case for determination by this Court, which reads thus :-

"(a) Since the training like B.Ed., B.P. Ed., L.T. and D.P. Ed. are the stage of trainings in which the examinations are required to be conducted at the State level, therefore, the entire merit is prepared taking the candidates belonging to the entire States

together. Neither in the entrance stage while appearing in the training nor for making of appointment at any other stage, these degree holders were discriminated on the ground of Home district, or to domicile district.

(b) Since the petitioners belong to the State of U.P., therefore, they cannot be discriminated on the ground of District and as they are used to and have right to move within the State, get the qualifications from various Districts and as a matter of fact, the State Universities are although established in a particular District for providing the degree of B.Ed, and other corresponding degree to the students coming from various District and even the territorial jurisdiction of the Universities are having more than one District.

(c) The selection proceedings in question before this Hon"ble Court is apparently arbitrary. At the time of advertisement, the State Government expressed its opinion of holding the selection District-wise as per the advertisement dated 14.8.2001. While subsequently, there was an amendment to that extent and they will consider the selection State-wise.

(d) It appears that subsequently they again changed their stand and conducted the selection proceedings half the way the district-wise and half the way they even transferred the vacancies to other districts. Since the proceedings as claimed cannot be called to be district-wise. Once it is admitted that in so many districts, there were no vacancies for the Assistant Teachers while on the same time due to the political reasons. The State Government have no jurisdiction to transfer the vacancies from one District to another District for which they have no jurisdiction nor it is permitted under the Act or Rules, which governs the selection.

(e) Since in the advertisement, the State Government shows flexibility of changing the mode of selection. Earlier the upper age limit was allowed 35 years but subsequently, it has been amended to 40 years. Similarly, earlier the persons holder of B.Ed, and L.T. were only asked to apply against the advertisement while subsequently the other degree holders like B.P.Ed., C.P. Ed. and D.P. Ed., also included with the eligibility criteria as per the suitability of the State Government. However, it is necessary to mention here that as per Rule-6 of the U.P. Basic Education Teachers Services Rule, 1981. the upper age limit is only up to 32 years and further academic qualification also provided in the Rule-8.

(f) Since the criteria or the legal jurisdiction is the concept who was confined to the B.T.C. holders only while the eligibility criteria expended to B.P. Ed. and B.Ed, and other State degrees, the question of selection restricting to the district-wise is apparently erroneous.

(g) The candidates like petitioners cannot be discriminated as they are getting the better degree having high marks and percentage but they could not selected in the particular district, while at the same time, the person having lower merit selected in other districts. While getting the education, no such discrimination was ever allowed

. In view of the change of mode of selection and criteria, the selection cannot be confined district-wise which is apparently, un-constitutional, discriminatory and arbitrary act of the State authorities.

(h) The provisions of the impugned advertisement to the extent it restrained the petitioners for apply only in home district, is apparently erroneous, un-constitution and is also discriminatory.

(i) Once the degree like B.Ed., B.P. Ed. and D.P. Ed. added in the qualification in the eligibility criteria, the scope of selection stretching to the State-wise is permissible and cannot be denied. B. Ed. degree holder cannot be asked for applying within a District and he has a right to be considered in the entire State against the vacancies, which matter occur in many District within the State.

(j) Another instance which requires to set aside the result dated 6.11.2001 are that person having qualitative marks 57 percent (quality point marks), could not get selection while at the same time another candidate belong to the same category having less number of qualifying marks i.e., 53 per cent got selection as a candidate being doing dependent of freedom fighter quota in District Allahabad. There are so many instances as explained in the body of the petition where a person having better percentage marks in comparison to other failed to get selection within the District, in the same category for no reasons and this itself shows arbitrary way of proceedings of selection. There are instances where the person belonging to Yadav community shows in the category of OBC-III (women), it again shows arbitrary way of preparation of the result. There are instances where more than a dozen districts, where there were no vacancies but the result declared by the State Authorities feeling the candidates from their districts, although vacancies as per information get transferred to other districts. Similar selection was done on the last occasion when State-wise list was prepared and candidates like petitioners were given appointment State-wise rather having any selection or restrictions District-wise.

(k) Since the State Government from the education to initial stage up to B.Ed., at no stage informed district-wise discrimination, therefore, petitioners chosen from districts according to their convenience, therefore, at the stage of appointment, they cannot be discriminated in such manner.

(l) That once vacancy could be transferred from one district to another, the candidates could also be considered from one district to another, meaning thereby, there cannot be a restriction on applying a candidate to a particular district, once the Government has taken a decision to transfer the vacancy from one district to another district, because every candidate have a right of consideration against each and every vacancy occurred to which he has secured minimum qualification. There is a large scale discrimination in the candidates while comparing to minimum quality point marks fixed district-wise, by restricting the vacancy of transferring the vacancy to other districts as in some districts, vacancies are more than 1000 but

selections were made only up to maximum 600 while in some districts either there were negligible vacancies or in some districts there were no vacancies but the vacancies were exported and the candidates belonging to that district adjusted against the said posts.

(m) The State Government has illegally fixed the quota subject-wise as the Government decided illegally to have 50% selection for Science Group of candidates and 50% quota for the Arts and other group students. Such discrimination is apparently erroneous for the reasons that for teaching basic classes, there is no classification of Arts and Science and to that extent also, the entire selection proceedings deserves to be set aside being arbitrary and discriminatory.

(n) Since the election is State-wise then all the formalities were also required to be done state-wise including reservation."

5. The State Government filed a counter-affidavit and have denied the allegations made by the petitioners in the writ petition. The parties were given full opportunity to file supplementary affidavits, supplementary counter-affidavits and supplementary rejoinder affidavit.

6. I have heard Sri Shailendra, learned Counsel appearing on behalf of the petitioners along with learned Counsels in the other writ petitions and the learned Advocate General as well as learned Chief Standing Counsel in opposition of the petitioners on behalf of the State.

7. The basic education in the State of U.P. is regulated by an enactment known as U.P. Basic Education Act, 1972. Before 1972, the basic education was managed by different local bodies in their respective rural and urban areas. The U.P. Basic Education Act, 1972, (hereinafter shall be referred to as "Act of 1972") as would be clear from the title of the Act, regulates the recruitment, appointment and conditions of service of the teachers for filling up in the Basic Primary School where they are situated, either in the rural area, or in the urban area. The present advertisement, as would be clear from Annexure-1 to the writ petition, was with regard to the recruitment of the assistant teachers in the rural areas. Under the provisions of the U.P. Basic Education Act, 1972, U.P. Basic Education Teachers' Service Rules, 1981 (hereinafter shall be referred to as "1981 Rules") have been framed. The relevant provisions shall be dealt with while dealing with the arguments advanced on behalf of the respective parties.

8. Sri Shailendra, learned Counsel appearing on behalf of the petitioners, advanced the following arguments in support of the writ petition; (i) that advertisement dated 14.8.2001, Annexure-1 to the writ petition, was issued for appointment after completing the training for two months; (ii) the eligibility criteria is confined only to such candidates who possessed the following degree or diploma course, such as B. Ed./L.T./C.P. Ed./D.P. Ed. and B.P. Ed.; (iii) the exact number of vacancies were not specified, but during the course of arguments it is stated to be twenty thousand.

The conditions specified in the advertisement, Annexure-1 to the writ petition, do not provide for any waiting list. Further contention of Sri, Shailendra is that the reservation is made applicable as per G.O. issued by the State from time to time, further reservation to the extent of 50 per cent for male and 50 per cent for female. The further reservation in both male and female category is that 50 per cent for Science and 50 per cent for Arts/rest of the candidates, is discriminatory, arbitrary and hit by Articles 14, 15, 16 and 21 of the Constitution of India. No distinction has been made in the reservation in training and the appointment, whereas the advertisement clearly demonstrates that the applications were invited for appointment. Learned Counsel further submits that in this view of the matter, there cannot be any reservation in the training, unless it leads to the appointment. The statutorily eligible candidates, namely, such candidates who either possessed the B.T.C. certificate, or eligible for B.T.C. training, have not been offered the training in the appointment pursuant to the advertisement, thus, such persons who are statutorily eligible have been excluded from the purview of this advertisement, Annexure-1 to the writ petition, and thus the action of the respondents are discriminatory and wholly arbitrary and violating the provisions of Articles 14 and 16 of the Constitution of India. The criteria for selection keeps on changing and has been changed even after the final date of preparation of the select list from State level to District level by the G.O. per se making the whole process arbitrary. The respondents are stopped by principles of estoppel as once they amended the condition of advertisement changing the criteria, the selection from District level to State level in preparing the merit list and undergoing the entire selection process on that basis at the last moment at the time of declaration of the result, the same cannot be changed to as has been done in the present case going back from state level to District level.

9. Learned Counsel for the petitioners has further relied upon Rule 8 of 1981 Rules [U.P. Basic Education Teachers' Service Rules, 1981]. This Rule has been framed in exercise of powers under sub-section (1) of Section 19 of the U.P. Basic Education Act, 1972 (U.P. Act No. 34 of the (1972)) by the Governor. Rule 5 of the aforesaid Rules prescribes source of recruitment, which reads thus :-

"5. Sources of recruitment.-The mode of recruitment to the various categories of posts mentioned below shall be as follows :

- | | |
|---|--|
| (a) (i) Mistresses of Nursery Schools | By direct recruitment Provided in Rules 14 and 15. |
| (ii) Assistant Masters and Assistant Mistresses of Junior Basic Schools | |
| (b).(i) Headmistresses of-Nursery Schools | By promotion as provided in Rule 18; |

(ii) Headmasters and Headmistresses of Junior Basic Schools	By promotion as provided in Rule 18;
(iii) Assistant Master of Senior Basic Schools	By promotion as provided in Rule 18;
(iv) Assistant Mistresses of Senior Basic Schools	By promotion as provided in Rule 18;
(v) Headmasters of Senior Basic Schools	By promotion as provided in Rule 18;
(vi) Headmistresses of Senior Basic Schools	By promotion as provided in Rule 18 :

Provided that if suitable candidates are not available for promotion to the posts mentioned at (iii) and (iv) above, appointment may be made direct recruitment in the manner laid down in Rule 15."

10. The academic qualification has been prescribed as under :-

"Academic qualifications.-(1) The essential qualifications of candidate for appointment to a post referred to in clause (a) of Rule 5 shall be as shown below against each :

Post	Academic Qualification
(i) Mistress of Nursery Schools	Certificate of Teaching (Nursery) from a recognised Training Institution in Uttar Pradesh or any other training qualification recognised by the State Government as equivalent thereto.
(ii) Assistant Master	Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh or any other qualification recognised by the State Government as equivalent thereto together with the training qualification consisting of a Basic Teacher's Certificate,

Hindustani Teachers
Certificate, Junior Teacher's
Certificate, Certificate of
Teaching or any other training
course recognized by the State
Government as equivalent
thereto :

Provided that the essential
qualification for candidate
who has passed the 1 required
training course shall be the
same, which was prescribed for
admission to the said training
course.

(2) The essential qualification of candidates for appointment to a post referred to in sub-clauses (iii) and (iv) of clause (b) of Rule 5 for teaching Science, Mathematics, Craft or any language other than Hindi shall be as follows :

(i) Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh, or any other examination recognised by the State Government as equivalent thereto with Science, Mathematics, Craft or particular language, as the case may be, as one of the subjects, and

(ii) Training qualification consisting of a Basic Teacher's Certificate, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other training course recognised by the State Government as equivalent thereto.

(iii) The minimum experience of candidates for promotion to the post referred to in clause (b) of Rule 5 shall be as shows against each :

Post	Experience
(i) Headmistresses of Nursery School	At least five years'' teaching experience as permanent Mistress of Nursery School
(ii) Headmaster or Headmistress of Junior Basic School and Assistant Master or Assistant Mistress of Senior Basic School	At least five years'' teaching experience as permanent Mistress Assistant Master or Assistant Mistress of Junior Basic School
(iii) Headmaster or Headmistress	At least three years''

of Senior Basic School

experience permanent
Headmaster or Headmistress of
Junior Basic School or
permanent Assistant Master of
Assistant Mistress of Senior
Basic School, as the case may

Provided that if sufficient number of suitable eligible candidates are not available for promotion to the posts mentioned at Serial Numbers (ii) or (iii) the field of eligibility may be extended by the Board by giving relaxation in the period of experience."

11. A perusal of the same would demonstrate that for the post of Assistant Master and Assistant Mistress of Junior basic School (Primary School), according to Rule a person must possess Intermediate Examination of Board of High School and Intermediate Education, U.P. or any other qualification recognised by the State Government as equivalent thereto together with the training qualification consisting of Basic Teachers Certificate (B.T.C.), Hindustani Teachers Certificate (H.T.C.), Junior Teachers Certificate (J.T.C.) of teaching or any other training course recognised by the State Government as equivalent thereto. Referring to the aforesaid academic qualifications, learned Counsel for the petitioners submitted that such persons, as have been, invited by the advertisement Annexure-1 to the writ petition, are not eligible for appointment on the post of Assistant Master or Assistant Mistress of the Junior Basic School (Primary School) and there is no notification on the record or otherwise whereby the State Government has recognised the certificates and degrees as equivalent to the qualifications, which have been prescribed as essential qualification to candidates for appointment on the post referred to in clause (a) of Rule 5 of the 1981 Rules. Referring to Clause 9 of the 1981 Rules, petitioners' Counsel emphasise that no reservation except that has been provided under Rule 9 can be made applicable for the appointment pursuant to the impugned advertisement, therefore, the reservation of 50 per cent for the female is un-constitutional. It is further submitted that the further reservation to the extent of 50 per cent in each category of male and female for Science and Arts students is also un-constitutional as the same has no nexus with the object sought to be achieved, apart from the same being contrary to the provisions of Article 16 of the Constitution of India and thus the guarantee under Article 14 of the Constitution of India, has been denied. Learned Counsel for the petitioners further submitted that the scheme of recruitment pursuant to the impugned advertisement is contrary to the statutory provision.

12. Sri Shailendra further argued that the procedure of the recruitment and appointment and all other conditions of appointment is regulated by the provisions of the Basic Education Act, 1971 and 1981 Rules, thus nothing has left to be provided by the G.Os. (Executive Orders), so far as appointment of Assistant Teacher in Basic

Primary Schools are concerned as has been done in the present case and the recruitment pursuance of the G.O. impugned in the present writ petition is concerned, being contrary to the statutory provision, it is the statutory provision which will prevail and not the administrative order. Even training for appointment is provided under Sections 4(2)(a) and (b) of the Basic Education Act, 1972 read with Rules 2(p) and (q) of the 1981 Rules. Apart from above, learned Counsel for the petitioners has argued several points with regard to the facts in the writ petitions.

13. A bare perusal of the Act of 1972 (U.P. Basic Education Act, 1972), it reveals that the Board has been established for the functions enumerated u/s 4 of the Act. Section 3(3) of the Act provides the Constitution of the Board, which provides that the Director shall be ex-officio the Chairman of the Board. Section 3(3) of the Act of 1972, which is relevant, is being quoted below:-

"3. (3) The Board shall consist of the following members, namely-

(a) The Director, ex officio, who shall be the Chairman;

(b) Two persons to be nominated by the State Government from amongst the Adhyakshas, if any of Zila Parishads established u/s 17 of the Uttar Pradesh Kshettra Samitis and Zila Parishads Adhiniyam, 1961;

(c) one person to be nominated by the State Government from amongst the Nagar Pramukhs, if any, of the Mahapalikas constituted u/s 9 of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959;

(d) one person to be nominated by the State Government from amongst the Presidents, if any, of the Municipal Boards established under the U.P. Municipalities Act, 1916;

(e) the Secretary to the State Government in the Finance Department, ex officio;

(f) the Principal, State Institute of Education, ex officio;

(f-1) the Secretary, Board of High School and Intermediate Education, Allahabad, ex officio;

(f-2) the President of the Uttar Pradesh Prathamik Shikshak Sangh, ex officio;)

(g) two educationists to be nominated by the State Government; (h) an officer not below the rank of Deputy Director of Education, to

be nominated by the State Government, who shall be the Member Secretary."

14. Section 4 of the Act of 1972 provides function of the Board, which is quoted below :-

"4. Function of the Board.-(1) Subject to the provisions of this Act it shall be the function of the Board to organise, co-ordinate and control the imparting of basic education and teachers training therefore in the State, to raise its standards and to

correlate it with the system of education as a whole in the State. The other functions of the Board have been provided u/s 4(2) of the 1972 Act, which reads thus :-

(2) Without prejudice to the generality of the provisions of sub-section (1), the Board shall, in particular, have power-

(a) to prescribe the courses of instruction and books for basic education and teachers' training therefore;

(b) to conduct the Junior High School and basic training certificate examinations and such other examination as the State Government may from time to time by general or special order assign to it and to grant diplomas or certificates to candidates successful at such examinations;

(c) to lay down, by general or special orders in that behalf, norms relating to the establishment of institutions by the Zila Basic Shiksha Samitis or Nagar Basic Shiksha Samitis and to Superintendent the said Samitis in respect of the administration of institutions, for imparting instruction and preparing candidates for admission to examinations conducted by the Board;

(cc) to take over the management of all basic schools, which before the appointed day, belonged to any local body;

(d) to exercise supervision and control over basic schools, normal schools, basic training certificate units and the State Institute of Education;

(e) to accord approval (with or without modification) to the schemes prepared by the Zila Basic Shiksha Samiti or the Nagar Shiksha Samiti for the development, expansion and improvement of and research in basic education in any district or in the State or in any part thereof;

(f) to acquire, hold and dispose of any property, whether movable, or immovable and in particular, to accept gift of any building or equipment of any.(basic school or normal school on such conditions as it thinks fit;

(g) to receive grants, subventions and loans from the State Government;

(g-1) to have superintendence over the Zila Basic Shiksha Samitis and the Nagar Basic Shiksha Samitis in the performance of their functions under this Act, and subject to the control of the State Government to issue directions to the Samitis which shall be binding on such Samitis;

(g-2) to constitute sub-committees (from amongst the members of the Zila Basic Shiksha Samitis and Nagar Basic Shiksha Samitis) for such purposes as the Board things fit;

(h) to take all such steps as may be necessary or convenient for, or may be incidental to, the exercise of any power, or the discharge of any function or duty conferred or imposed on it by this Act: Provided that the courses of instruction and books

prescribed and institutions recognised before the commencement of this Act shall be deemed to be prescribed or recognised by the Board under this Act."

15. Section 13 of the Act of 1972 deals with the control by the State Government, which reads thus :-

"13. Control by the State Government.-(1) The Board shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act.

(2) If in, or in connection with, the exercise of any of its powers and discharge of any of the functions by the Board under this Act, any dispute arises between the Board and the State Government, or between the Board and any local body, the decision of the State Government on such dispute shall be final and binding on the Board or the local body, as the case may be.

(3) The Board or any local body shall furnish to the State Government such reports, returns and other information, as the State Government may from time to time require for the purposes of this Act."

16. Section 19 of the Act of 1972 provides power to make Rules, which reads thus :-

"19. Power to make Rules.-(1) The State Government may, by notification make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely-

(a) the recruitment, and the conditions of service of persons appointed to the posts of officers, teachers and other employees u/s 6;

(b) the tenure of service, remuneration and other terms and conditions of service of officers, teachers and other employees transferred to the Board u/s 9;

(c) the recruitment, and the conditions of service of the persons appointed, to the posts of teachers and other employees of basic schools recognised by the Board;

(d) any other matter, for which insufficient provision exists in the Act and provision in the rules is considered by the State Government to be necessary;

(e) any other matter which is to be or may be prescribed."

17. It is submitted that in exercise of powers u/s 19 of the U.P. Basic Education Act, -1972, the Rules have been framed known as U.P. Basic Education (Teachers) Service Rules, 1981, (which shall hereinafter be referred to as "1981 Rules".) From the perusal of the aforesaid provisions of the Act, it is clear that the only power conferred by the Act to the State Government is u/s 13 of 1981 Rules. Reading Rule 8 of 1981 Rules, it is clear that the entire function of recruitment, training and appointment of the teachers in the basic schools is exclusively vested in the- Board

to be followed in the manner prescribed under the 1981 Rules.

18. The learned Advocate General, assisted by learned Chief Standing Counsel and other Standing Counsel opposing the aforesaid contention of the petitioners" Counsel has raised the following objections with regard to the maintainability of the writ petitions that (i) the petitioners, who have participated but failed, cannot now challenge the impugned advertisement and the selection as has been done by the petitioners in the aforesaid writ petitions; (ii) the Government has taken a policy decision of. recruitment and appointment of such persons, who possessed such qualifications as are mentioned in the advertisement and the G.O. dated 3.8.2001, now this cannot be open to challenge being the policy decision, (iii) successful candidates having not been impleaded, the writ petitions are liable to be thrown away on this ground alone; (iv) the State policy decision by issuing the aforesaid G.O. dated 3.8.2001 and the impugned advertisement is in discharge of the State's obligation under Article 41 of the Constitution and cannot be challenged. Learned Advocate General has first of all tried to justify this special recruitment under Rule 8 of 1981 Rules that the impugned G.O. dated 3.8.2001 and the advertisement would be covered by Rule 8 of 1981 Rules. The G.O. dated 3.8.2001 pursuance whereof the impugned advertisement was issued is addressed to the Director, who is the Chairman of the Basic Education Board (which shall hereinafter be referred to as the "Board"), and not to the Board. It is further submitted that the G.O. dated 3/8.2001 provides that it is only after the completion of the training, the candidates will be eligible for the appointment. On a query as to whether for the recruitment and appointment after training on the post of Assistant Teachers in primary school in rural area, is it necessary to follow the procedure prescribed under 1981 Rules or not and particularly so far as the eligibility qualification is concerned, whether Rule 8 of 1981 Rules is comprehensive or not, it is conceded that the procedure prescribed under 1981 Rules cannot be dispensed with, but learned Advocate General tried to explain that the impugned G.O. dated 3.8.2001 and the advertisement are in accordance with the procedure prescribed under 1981 Rules and permitting the degree holders and certificate holders, which have not been mentioned in Rule 8 would be governed by "or any other training course recognised by the State Government is equivalent thereto". There is nothing on record to show that the degree of B.Ed., B.P. Ed., C.P. Ed., D.P. Ed. and courses of L.T. have ever been recognised as equivalent to the certificates and degrees mentioned in Rule 8 of 1981 Rules, so as to hold that the holder of degree and certificate may become eligible for appointment to the post of Assistant Masters in the basic primary schools in the rural area in accordance with the provisions of 1981 Rules, referred to above. In the absence of any such notification by the State Government, the first two arguments advanced on behalf of the learned Advocate General that the G.O. dated 3.8.2001 pursuance whereof the impugned advertisement was issued is in accordance with the provisions of 1981 Rules, cannot be accepted and is hereby rejected.

19. Learned Advocate General further submitted that the advertisement is for the process of selection for graining and not for the appointment. On being pointed out, the impugned advertisement clearly states that applications are invited for appointment to the post of Assistant Teachers as indicated in Annexure-1 to the writ petition, which reads as under :-

"PRADESH MEN SANCHALIT VISHWAVIDYALAYON, MANYATA PRAPTA MAHAVIDYALAYON TATHA RAJYA SARKAR DWARA SANCHALIT MAHAVIDYALAYON/PRASHIKSHAN MAHAVIDYALAYON SE SANSTHAGAT PRASHIKSHIT B.ED./L.T. ABHYARTHIYON SE UTTAR PRADESH BASIC SHIKSHA PARISHAD DWARA SANCHALIT GRAMIN KSHETRA KE PRATHMIK VIDYALAYON MEN SAHAYAK ADHYAPKON KE PADON PAN NIYUKTI KE LIYE VISHISHT B.T.C. PRASHIKSHAN HETU ABHYARTHIYON SE AAWEDAN PATRA AMANTRIT KIYE JATE HAIN."

20. This clearly demonstrates that the applications are invited for "appointment" after training, therefore, the contention that advertisement is only for inviting applications for training cannot be accepted and is liable to be rejected. The further contention on the point of discrimination that the discrimination can arise if and only if any eligible B.T.C. candidate is denied the appointment, this argument also deserves to be rejected, inasmuch as a perusal of the advertisement along with the G.O. dated 3.8.2001 clearly demonstrates that it invites applications only from amongst such persons, who have passed the degree and certificate of B.Ed./L.T./B.P. Ed./C.P. Ed. and D.P. Ed. from such Universities and institutions as are referred to in the advertisement, nowhere it includes the candidates who, according to the 1981 Rules were eligible, namely, holder of B.T.C, H.T.C. and J.T.C. can also apply pursuant to the advertisement. Learned Advocate General has further stated that even assuming that the advertisement was a bad piece of drafting, no candidate who possessed the B.T.C. has come forward with the grievance. Needless to say, this argument cannot be sustained, inasmuch as when the advertisement clearly states that this is special B.T.C. recruitment for such persons as are referred to above and this is "apart from the regular recruitment for training for B.T.C. The argument that the petitioners have taken their chance and thereafter when they have failed in the written test, they challenged the selection and therefore, they should not be allowed to challenge the selection, is not tenable in view of the specific circumstances of the fact that the petitioners have challenged the impugned advertisement, selection and the appointment pursuant thereto on the ground of violation of their rights, including the rights conferred on them in Chapter III of the Constitution of India, such as Articles 14, 15, 16 and 21 of the Constitution. That so far as the contention with regard to the State's alleged fulfillment or its obligation under Article 41 of the Constitution of India is concerned, suffice it to say that it is for that very purpose the legislature has enacted the U.P. Basic Education Act, 1972 and framed 1981 Rules. In this view of the matter the argument that this alleged policy decision by the State Government has been framed in order to discharge the

constitutional obligation of the State under Article 41 of the Constitution. It is further submitted that in the previous years, similar attempts were made and they were challenged before this Court, but this Court has dismissed the writ petitions. One such decision is reported in (1997) 3 UPLBEC 1774, B.Ed. Berozgar Sangh, District Sonebhadra and Ors. v. State of U.P. and Ors., connected with B. Ed. Prashikshan Berozgar Kalyan Samiti Children Academy and Ors. v. State of U.P. and Ors. In the aforesaid decision and the decision, which has been referred to in that writ petition, the challenge was different and was not based on the ground of violation of Chapter HI of the Constitution of India. Apart from above, in the present case, from the averments made in the counter-affidavit, it is clear that initially the advertisement was issued pursuant to the G.O. dated 3.8.2001, which is annexed as Annexure CA-1 to the counter-affidavit. The G.O. dated 3.8.2001 is also attached by the petitioners along with supplementary affidavit. Learned Standing Counsel has stated that earlier a G.O. dated 28.1.1998 has also been issued. The phrasography used in both the G.Os. i.e., G.O. dated 3.8.2001 and 28.1.1998, are entirely different. The present G.O. dated 3.8.2001, which is under challenge shows that the present recruitment is being made on account of the non-availability of B.T.C. trained teachers and because of the long gap between the available number of vacancies and the available B.T.C. trained teachers every year. As already stated, the Advocate General has tried to justify that the recruitment of B.Ed, and other qualification holder to a service where the eligibility qualification was B.T.C, J.T.C. and H.T.C., cannot be done except after the amendment of Rule 8 of the 1981 Rules, which admittedly has not yet been done and the certificate of B.Ed., B.P. Ed., C.P. Ed., D.P. Ed, and L.T. have not yet been recognised a equivalent to B.T.C. H.T.C. and J.T.C. as these are the higher educational qualifications.

21. That so far as the condition in the impugned advertisement that only such candidates should apply who have passed their B. Ed./L.T./B.P. Ed./D.P. Ed. etc. from the Universities and Colleges established in State of U.P. Division Bench of this Court in the case of [Upendra Rai Vs. State of Uttar Pradesh and others](#), has held :-

"4. The question that hegs consideration is whether any provision contained in the U.P. Basic Education Act, 1972, or the U.P. Basic Education (Teachers) Service Rules, 1981 is repugnant to any provision contained in the Central Act. The "teacher education" as defined in Section 2(1) of the Central Act means programmes of education, research or training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools and includes non-formal education, part-time education, adult education and correspondence education. Section 12 of the Central Act enumerates the functions of the National Council for teacher education as established under sub-section (1) of Section 3 of the Act. The functions enumerated in Section 12 inter alia include : (a) laying down guidelines in respect of minimum qualification for a person employed as a teacher in schools or in recognised institutions, (b) laying down norms for any specified category of courses or trainings in teacher education, including the

minimum eligibility criteria for admission thereof, and the method of selection of candidate, duration of the course, course contents and mode of curriculum; and (c) formulation of schemes for various levels of teacher education and identify recognised institutions and set up new Institutions for teacher development programmes. Section 14 of the Act enjoins upon every institution offering or intending to offer course or training in teacher education to make an application to the Regional Committee concerned for grant of recognition. Section 15 requires prior permission of the Regional Committee as a condition precedent to starting any new course or training in teacher education by any recognised institution and according to Section 16 which has an overriding effect, as the expressions "notwithstanding anything contained in any other law for the time being in force" suggests, no examining body shall, on or after the appointed day, grant affiliation, whether provisional or otherwise, to any institution or held examination, whether provisional or otherwise, for a course or training conducted by a recognised institution unless the institution concerned has obtained recognition from the Regional Committee concerned, u/s 14 of permission for a course or training u/s 15. Section 17 provides for withdrawal of recognition in the event of contravention of the provisions of the Act. Clause (4) of Section 17 visualises that if an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition or where an institution offering course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course or training or after undertaking a course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central Government or "any other Government". This necessarily implied that qualification in teacher education obtained from an institution duly recognised under the provisions of the Act, would be treated as a valid qualification for purposes of appointment in Schools, and Colleges or other educational body aided by the Central Government or any other State Government, Regard being had to the purpose and object sought to be achieved by the Act as also the provisions thereunder as discussed above, we are persuaded to the view that the person having obtained the qualification in teacher education from a recognised institution would be qualified for being considered in any school, college or other educational body aided by the Central Government or "any State Government". The appellant in the instant case, has obtained diploma in education from Zila Shiksha and Prashikshan Sansthan (DIET), Jabalpur an institution recognised under the provisions of the Act as would be evident from the certificate filed as Annexure 4 to the said petition. The impugned circular and the advertisement in so far as it has the effect of excluding the candidates having teacher qualification obtained from an Institution recognised under the provisions of NCTE Act are void in view of Article 254 of the Constitution. The appellant, in our opinion, was equipped with the requisite qualification for being considered for appointment as Assistant Teacher in Junior Basic School.

5. Even otherwise, the appellant could be considered for appointment in view of the proviso to Section 11 of the U.P. Basic Education Act, 1972 as it stands substituted by the U.P. Basic Education (Amendment) (Second) Ordinance, 1999, inasmuch as he has had obtained before the commencement of the Ordinance the diploma in education which was recognised by the State Government as equivalent to BTC. The proviso reads as under :

"Provided the Board shall have" power to make appointment of a person as a teacher of Basic School if he possesses a degree or diploma in education and has been selected for Basic Teacher Certificate Training before the commencement of the U.P. Basic Education (Amendment) Second Ordinance, 1997 or has obtained before such commencement training qualification of-Basic Teachers Certificate, Hindustani Teachers Certificate, Junior Teacher Certificate, Certificate of Teaching or any other training course recognised by the State Government."

The impugned circular dated 11.8.1997, it cannot be gainsaid, is fraught with the effect of depriving the appellant of his right to be considered for appointment as Assistant Teacher in Junior Basic School run by the Basic Shiksha Parishad, Uttar Pradesh. The view we are taking receives reinforcement from the decision of the Supreme Court in [Suresh Pal and Others Vs. State of Haryana and Others](#) , where in it has been held that since at the time when the petitioners therein had joined the course, it was recognised by State of Haryana and it was on the basis of the said recognition that the petitioners had joined the course, it would be unjust to tell the petitioner now that though at the time of their joining the course it was recognised yet they cannot be given benefit of such recognition and the certificate obtained by them would be futile because during the pendency of the course it was de-recognised by the State Government on 9th January, 1985.

6. In so far as the impugned advertisement is concerned, the classification therein between candidates who have passed requisite teacher training course from a recognised institution of Gorakhpur and those who have passed such course from a recognised institution outside Gorakhpur is arbitrary and violative of Article 14 in that a territorial classification cannot be justified except on the basis of a reasonable nexus between the classification and the object sought to be achieved by such classification."

22. Learned Chief Standing Counsel, in order to substantiate his arguments, has relied upon a decision of the Apex Court reported in [M/s. Ugar Sugar Works Ltd. Vs. Delhi Administration and Others](#), wherein in Paragraph 13 it has been held that "there is no fundamental right to trade in intoxicants, like liquor, has been conclusively held by this Court in State of A.P. v. Me Dowell & Co., where taking note of some of the earlier Constitution Bench decisions of this Court, the argument that a citizen of this country has a fundamental right to trade in intoxicant liquor was once against emphatically repealed. That issue is, thus, no longer res integra." Learned Standing Counsel has further relied upon Paragraph 19 of the aforesaid

judgment, which reads as under :

"19. In [Tamil Nadu Education Department Ministerial and General Subordinate Services Association and Others Vs. State of Tamil Nadu and Others](#) , noticing the jurisdictional limitations to analyse and fault a policy, this Court opined that "The Court cannot strike down a GO, or a policy merely because there is a variation or contradiction. Life is sometimes contradiction and even consistency is not always a virtue. What is important is to know whether mala fides vitiates or irrational and extraneous factor fouls".

23. In Paragraph 21 of the same judgment, the Apex Court has filed thus :

"21. In the present case the executive policy regulating the sale of liquor in the territory of Delhi is sought to be challenged by the petitioner on the ground that it is "unfair" and "unreasonable" besides being "arbitrary" and has no nexus with the object sought to be achieved. We are unable to agree."

24. In Paragraph 22 of the aforesaid judgment of the Apex Court, it has been held that "The State has every right to regulate the supply of liquor within its territorial jurisdiction to ensure that what is supplied is "liquor of good quality" in the interest of health, morals and welfare of the people." Whereas in the present, case as argued by learned Advocate General, the present recruitment is being done in order to fulfill the State's obligation under Article 41 of "the Constitution of India. In the case of [Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc.](#), the Constitutional Bench of the Apex Court in Paragraph 132 has held that "right to education is not stated expressly as a fundamental right in Part III. This Court has, however, not followed the rule that unless a right is expressly stated as a fundamental right, it cannot be treated as one. Freedom of Press is not expressly mentioned in Part-III, yet it has read into and inferred from the freedom of speech and expression". In the said judgment in paragraph 142, the Apex Court ailed that "the right to life guaranteed by Article 21 does take in "educational facilities". (The relevant portion has been quoted hereinbefore). Having regard to the fundamental significance of education to the life of an individual and the nation, and adopting the reasoning and logic adopted in the earlier decisions of this Court referred to hereinbefore, we hold, agreeing with the statement in [Bandhua Mukti Morcha Vs. Union of India \(UOI\) and Others](#) , that right to education is implicit in and flows from the right to life guaranteed by Article 21. That the right to education has been treated as one of transcendental importance in the life of an individual has been recognised not only in this country since thousands of years, but all over the world as has been held in the case of Mohani Jain 1992 AIR SCW 2100."

25. Learned Standing Counsel who has supplemented the arguments advanced 1 by learned Advocate General has argued that if anybody has any grievance, he could have approached the authorities instead of approaching this Court by means j of the present writ petitions. Needless to say that so far as the violation of the 1

constitutional rights conferred in Part-III of the Constitution is concerned, the writ petitions cannot be thrown out on the suggestions as suggested by the learned Chief Standing Counsel.

26. That coming to the contention of reservation for women and for candidates belonging to Science and other group of candidates, suffice is to say that there is absolutely no justification of providing the reservation, which takes the upper limit beyond the limit prescribed in the case of *Indira Sawhney and Ors. v. Union of India* and Ors., reported in 1992 Supp (3) SCC 217. Apart from above, in view of the declaration of the law laid down in *Indira Sawhney's* case (supra), the reservation in Part-HI of the Constitution can be provided only to the socially or educationally backward classes of citizens. The women in the present case to whom the 50 per cent reservation has been provided and the Science and Arts group of candidates to whom 50 per cent out of the original 50 per cent reservation has been provided, cannot be said to form by any stretch of imagination to socially or educationally backward classes of citizens so as to entitle them for reservation under Articles 15 or 16 of the Constitution of India. This reservation of 50 per cent to each category is over and above the reservation available in accordance with the provisions of U.P. Public Services (Reservation for SC/ST and Other Backward Classes) Act, 1994 and also contrary to the Constitution, as stated above as laid down by Apex Court in the case of *Indira Sawhney* (supra).

27. Coming to the next submission made by the petitioners' Counsel that frequent change was by issuing corrigendum of the original advertisement providing initially recruitment and preparation of the merit list District-wise and thereafter changing the same to the State-wise and a day or two before the declaration of the result again going back to the District-wise, per se amounts to discrimination and the action is also arbitrary and is hit by Articles 14, 16 and 21 of the Constitution of India. Learned Counsel for the petitioners has submitted that in view of Section 4 of the U.P. Basic Education Act, read with Rule 17-A of the 1981 Rules, the concept of district cadres is unknown. This is further clear from the G.Os. dated 9.1.1998 and 21.1.1998 that the cadre is State-wise and the object of the State cadre is to provide equal opportunity to all, in such circumstances any criteria which provides District-wise selection is illegal and discriminatory and it is probably with this view that the original advertisement was amended by issuing a corrigendum changing the criterion from District-wise to State-wise. The cadre in service will come into existence only when a person is appointed to the service and restricting the same to District-wise would per se amounts to discrimination, inasmuch as the person domiciling or residing in a particular district will be entitled to apply only against the vacancies of that particular district and as has been shown in the present writ petition as well as supplementary affidavits and counter-affidavits that there are some districts where there were zero vacancy meaning thereby that though the State is going to appoint approximately twenty thousand Assistant Teachers, the Meritorious candidates belonging to such districts, which have zero vacancy would

have no opportunity to apply for the same and get an appointment though living in the same State governed by the same Rules and the cadre, if any, shall come only after the appointment and before that creating the district cadre and making appointment restricted to the district cadre is per se, arbitrary and denying the quality clause of the Constitution of India.

28. The another circumstance, which supports the petitioners' case that by the notification dated 22.9.2001, it is again to apply to every applicant that merit list shall be prepared State-wise and changing the same after the last date of application amounts to going back from the promise made by the State Government and on the basis of the principles of estoppel also the State is stopped from going back from the criteria of the State-wise merit list to District-wise merit list.

29. Learned Counsel for the petitioners has relied upon the case reported in [Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others](#), . The relevant Paragraph 8 and 24 of the aforesaid judgment are being quoted below :-

"8. This Principle of Equity laid down by Lord Cairns made sporadic appearances in stray cases new and then but it was only in 1947 that it was disinterred and restated as a recognised doctrine by Mr. Justice Denning, as he then was, in the High Trees case. The facts in that case were as follows. The plaintiff leased to the defendants, a subsidiary of the plaintiffs, in 1937 a block of flats for 99 years at a rent of 2,500/- a year. Early in 1940 and because of the war, the defendants were unable to find sub-tenants for the flats and unable in consequence to pay the rent. The plaintiffs agreed at the request of the defendants to reduce the rent to 1,250/- from the beginning of the term. By the beginning of 1945 the conditions had improved and tenants had been found for all the flats and the plaintiffs, therefore, claimed the full rent of the premises from the middle of that year. The claim was allowed because the Court took the view that the period for which the full rent was claimed fell outside the representation, Justice Denning, as he then was, considered Obiter whether the plaintiffs could have recovered the covenanted rent for the whole period .of the lease and observed that in equity the plaintiffs could not have been allowed to act inconsistently with their promise on which the defendants had acted. It was pressed upon the Court that according to the well settled law as laid down in *Jorden v. Money* (1854) 5 HLC 185, no estoppel could be raised against the plaintiffs since the doctrine of estoppel by representation is applicable only to representations as to some state of facts alleged to be at the time actually in existence and not to promises do future which, if binding at all, must be binding only as contracts and here there was no representation of an existing state of facts by the plaintiffs but it was merely a promise or representation of intention to act in a particular manner in the future."

Mr. Justice Denning, however, pointed out:

"The law has not been standing still since *Jorden v. Money*. There has been a series of decisions over the last fifty years which, although they are said to be cases of estoppel are not really such. They are cases in which a promise was made which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made, and which was in fact so acted on. In such cases the Courts have said that the promise must be honoured."

The principle formulated by Mr. Justice Denning was to quote his own words. That a promise intended to be binding, intended to be acted on and in fact acted on, is binding so far as its terms properly apply." Now *Hughes v. Metropolitan Rly. Co.* (supra) and *Birmingham and District Land Co. v. London and North Western Rly. Co.*, (supra), the two decisions from which Mr. Justice Denning drew inspiration for evolving this new equitable principle, were clearly cases where the principle was applied as between parties who were already bound contractually one to the other. In *Hughes v. Metropolitan Rly. Co.*, (supra) the plaintiff and the defendant were already bound in contract and the general principle stated by Lord Cairns, L.C. was :

"if parties who have entered into definite and distinct terms involving certain legal results afterwards.....enter upon a course of negotiations."

Ten years later Bowen, L.J. also used the same terminology in *Birmingham and District Land Co. v. London and North Western Rly. Co.* (supra) that:

"if persons who have contractual rights against others induce by their conduct those against whom they have such rights to believe.....".

These two decisions might, therefore, seem to suggest that the doctrine of promissory estoppel is limited in its operation to cases where the parties are already contractually bound and one of the parties induces the other to believe that the strict rights under the contract would not be enforced. But we do not think any such limitation can justifiably be introduced to curtail the width and amplitude of this doctrine. We fail to see why it should be necessary to the applicability of this doctrine that there should be some contractual relationship between the parties. In fact Donaldson, J. pointed in *Durham Fancy Goods Ltd. v. Jackson (Michael) (Fancy Goods) Ltd.* (1968) 2 All ER 987 :

"Lord Cairns in his enunciation of the principle assumed a pre-existing contractual relationship between the parties, but this does not seem to me to be essential, provided that there is a pre-existing legal relationship which could in certain circumstances give rise to liabilities and penalties."

But even this limitation suggested by Donaldson, J. that there should be a preexisting legal relationship which could in certain circumstances give rise to liabilities and penalties is not warranted and it is significant that the statement of the doctrine by Mr. Justice Denning in the *High Trees* case does not contain any such

limitation. The learned Judge has consistently refused to introduce any such limitation in the doctrine and while sitting in the Court of Appeal, he said in so many terms, in *Evenden v. Guildford City Association Football Club Ltd.* (1975) 3 All ER 269 :

"Counsel for the appellant referred us, however, to the second edition of Spencer Bower's book on Estoppel by Representation (1966) pp. 340-342], by Sir Alexander Turner, a Judge of the New Zealand Court of Appeal. He suggests the promissory estoppel is limited to cases where parties are already bound contractually one to the other. I do not think it is so limited; see *Durham Fancy Goods Ltd. v. Jackson Michael (Fancy Goods) Ltd.* It applies whenever a representation is made, whether of fact or law, present or future, which is intended to be binding intended to induce a person to act on it and he does act on it."

"This observation of Lord Denning clearly suggests that the parties need not be in any kind of legal relationship before the transaction from which the promissory estoppel takes its origin. The doctrine would seem to apply even where there is no pre-existing legal relationship between the parties, but the promise is intended to create legal relations or affect a legal relationship which will arise in future. Vide Halsbury's Laws of England, 4th Ed. P. 1018, Note 2, Para 1514, of course it must be pointed out in fairness to Lord Denning that he made it clear in the *High Trees* case that the doctrine of promissory estoppel cannot found a cause of action in itself, since it can never do away with the necessity of consideration in the formation of a contract, but he totally repudiated in *Evenderis* case the necessity of a pre-existing relationship between the parties and pointed out in *Crabb v. Arun District Council* (1975) 3 All ER 865, that equity will in a given case where justice and fairness demand, prevent a person from insisting on strict legal rights even where they arise not under any contract, but on his own title deeds or under statute. The true principle of promissory estoppel, therefore, seems to be that where once party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not."

"24. This Court finally, after referring to the decisions in the *Ganges Mfg. Co. v. Surajmull* (1980) ILR 5 Cal 669 (supra), *Municipal Corporation of the City of Bombay v. Secy, of State for India* ILR (1905) 29 Bom 580 (supra), and [Collector of Bombay Vs. Municipal Corporation of The City of Bombay and Others](#), summed up the position as follows :

"Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some

undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the Judge of its own obligation to the citizen on an ex-parte appraisement of the circumstances in which the obligation has arisen."

"The law may, therefore, now be taken that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Govt. would be held bound by the promise and the promise would be enforceable against the Govt. at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned, the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel? Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations, but, let it be said to the eternal glory of this Court, this doctrine was emphatically negated in the Indo-Afghan Agencies case AIR 1968 SC 718, and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the legislature must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government

to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts which have transpired since the making of the promise public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J. pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole Judge of its liability and repudiate it "on an ex-parte appraisal of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the subsequent events on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those events are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government would have to show what precisely is the changed policy and also its reason and justification so the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee can not resume his position, the promise could become final and irrevocable. [Vide *Ajayi v. Briscoe* (1964) 3 All ER 556]."

30. Learned Counsel appearing on behalf of the petitioners further relied upon a decision reported in [Vij Resins Pvt. Ltd. and Others Vs. State of Jammu and Kashmir](#), , in which in Paragraph 26 Hon"ble supreme Court ruled :

"26. Petitioners in Writ Petition No. 794 of 1986 had claimed that pursuant to the arrangement entered into between them and the State following the invitation by the State they had invested Rs. 1.68 crore in shape of plant and machinery and 63 lacks of rupees by way of land and buildings. The petitioner in the other two cases stated that investments had been made by them as well. The petitioners were invited to set up industries by assuring them supply of the raw material. They changed their position on the basis of representations made by the State and when the factories were ready and they were in a position to utilise the raw material, the impugned Act came into force to obliterate their rights and enabled the state to get out of the commitments. We are inclined to agree with the submissions made on behalf of the petitioners that the circumstances gave rise to a fact situation of estoppel. It is true that there is no estoppel against the legislature and the virus of the Act cannot be tested by invoking the plea but so far as the State Government is concerned the rule of estoppel does apply and the precedents of this Court are clear. It is unnecessary to go into that aspect of the matter as in our considered opinion the impugned Act suffers from the vice of taking away rights to property without providing for compensation at all and is hit by Article 31(2) of the Constitution."

31. Learned Counsel for the petitioners next relied upon the decisions reported in [Union of India and others Vs. Sanjay Pant and others etc. etc.](#), , and AIR 1986 SC 534, Nidamati Mahesh Kumar v. State of Maharashtra, in which Hon"ble Supreme Court has clearly laid down with regard to the aforesaid controversy, referred to above.

32. Learned Counsel for the petitioners further submitted that the change in the criteria on 2.11.2001 and then the declaration of the result on 4.11.2001 show great heist on the part of the respondents in some how completing the process of selection and appointment, which has resulted so many irregularities like the applications without there being any testimonials and records and this per se makes the procedure of selection and appointment arbitrary and unfair. Learned Counsel for the petitioners had relied upon a case reported in [National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others](#), , in which in Paragraph 8 it has been held :

"8. As to the first point we may state at the outset that giving of reasons for decision is different from, and in principle distinct from, the requirements of procedural fairness. The procedural fairness is the main requirement in the administrative action. The "fairness" or "fair procedure" in the administrative action ought to be observed. The Selection Committee cannot be an exception to this principle. It must take a decision reasonably without being guided by extraneous or irrelevant consideration. But there is nothing on record to suggest that the Selection

Committee did anything to the contrary. The High Court, however, observed, that Dr. Kalyana Raman did not receive a fair and reasonable consideration by the Selection Committee. The inference in this regard has been drawn by the High Court from the statement of objections dated, February 18, 1980 filed on behalf of the Selection Committee. It appears that the Selection Committee took the stand that Dr. Kalyana Raman did not satisfy the minimum requirement of experience and was not eligible for selection. The High Court went on to state that it was somewhat extraordinary for the Selection Committee after calling him for the interview and selecting him for the post by placing him second, to have stated that he did not satisfy the minimum qualifications prescribed for eligibility. According to the High Court the stand taken by the Selection Committee raises serious doubts as to whether the deliberations of the Selection Committee were such as to inspire confidence and reassurance as to the related equality and justness of an effective consideration of this case. It is true that selection of the petitioner and the stand taken by the Selection Committee before the High Court that he was not eligible at all, are, indeed, antithetical and cannot co-exist. But the fact remains that the case of Dr. Kalyana Raman was considered and he was placed second in the panel of names. It is not shown that the selection was arbitrary or whimsical or the Selection Committee did not act fairly towards Dr. Kalyana Raman. The fact that he was placed second in the panel, itself indicates that there was proper consideration of his case and he has been treated fairly. It should not be lost sight of that the Selection Committee consisted of experts in the subject for selection. They were men of high status and also of unquestionable impartiality. The Court should be slow to interfere with their opinion."

33. Learned Counsel for the petitioners next relied upon a decision of this Court of Lucknow Bench reported in (1990) 1 UPLBEC 444, Chandra Behari Tripathi and Ors. v. State of U.P. and Ors., in which in Paragraph 17 it has been field that "In view of what has been said above, the appointment of Suparsh Awasthi as Deputy Director of Sports in the cadre post of Deputy Director of Sports and its extension which was void deserves to be quashed."

34. Learned Counsel for the petitioners further relied upon a decision reported in [G. Sarana Vs. University of Lucknow and Others](#), , in which Paragraphs 11 and 14 are relevant, which reads thus :

"11. Again as held by this Court in A.K. Kraipak's case, reiterated in S. Parthasarathi v. State of Andhra Pradesh, and followed by the High Court of Jammu and Kashmir in Farooq Ahmad Bandey v. Principal, Regional Engineering College, the real question is not whether a member of an administrative board while exercising quasi-judicial powers or discharging quasi-judicial functions was biased, for it is difficult to prove the mind of a person. What has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into

consideration. In a group deliberation and decision like that of a Selection Board, the members do not function as computers. Each member of the group or board is bound to influence the others, more so if the member concerned is a person with special knowledge. This bias is likely to operate in subtle manner."

"14. From the above discussion, it clearly follows that what has to be seen in a case where there is an allegation of bias in respect of a member of an administrative board or body is whether there is a reasonable ground for believing that he was likely to have been biased. In other words whether there is substantial possibility of bias animating the mind of the member against the aggrieved party."

35. Learned Counsel for the petitioners has further relied upon a decision reported in [A.K. Kraipak and Others Vs. Union of India \(UOI\) and Others](#), in which in Paragraph 16 the Hon"ble Supreme Court has held as under:-

"16. The members of the selection board other than Naqishbund, each one of them separately, have filed affidavits in this Court swearing that Naqishbund in no manner influence their decision in making the selection. In a group deliberation each member of the group is bound to influence the others, more so, if the member concerned is a person with special knowledge. His bias is likely to operate in a subtle manner. It is no wonder that the other members of the selection board are unaware of the extent to which his opinion influenced their conclusions. We are unable to accept the contention that in adjudging the suitability of the candidates the members of the board did not have any mutual discussion. It is not as if the records spoke of themselves. We are unable to believe that the members of selection board functioned like computers. At this stage it may also be noted that at the time the selections were made, the members of the selection board other than Naqishbund were not likely to have known that Basu had appealed against his suppression and that his appeal was pending before the State Government. Therefore, there was no occasion for them to distrust the opinion expressed by Naqishbund. Hence the board in making the selections must necessarily have given weight to the opinion expressed by Naqishbund.

36. Learned Counsel for the petitioners further relied upon a decision of this Court reported in [B. Ed. Berozgar Sangh and Others Vs. State of U.P. and Others](#), in which this Court in Paragraph 16 has held, which reads as under :-

"16. Upon giving anxious consideration to the aforesaid aspect, I do not find any justification for consideration district-wise in respect of appointments of teachers in Junior Basic Schools in the State. No reason has been disclosed for such restriction. The language of the said Rule 8 also does not justify or authorise the State Government to recognise a qualification for a particular district or districts resulting in a discrimination but the Government has admittedly changed the policy and has started acting in accordance with the Rules by allowing so called mobility. The position, according to the Rules, seems to be clear that the persons having B.T.C.

qualification throughout the State are entitled to participate in the selection process in any part of the State."

37. Learned Counsel for the petitioners further relied upon the decisions reported in (2000) 2 UPLBEC 1608 , [Union of India and others Vs. Sanjay Pant and others etc. etc.](#) , Union of India and Ors. v. Sanjay Pant and Ors., in support of the arguments that restriction on application from home district alone is per se, arbitrary and violative of Article 16(2) of the Constitution of India. So is the position of reservation on the basis firstly sex and thereafter of Arts and Science category of students, which have already been held un-reasonable and un-constitutional.

38. A case has been taken in the counter-affidavit that in order to adjust the vacancies so that the requirement of all the districts may be made for appointment of the Assistant Teachers in question, the vacancies of one district have been transferred to another district. This, according to the averment made by the learned Counsel for the petitioners, has no rational as the State has already advertised that the merit list shall be prepared State-wise and this transfer of vacancy from one district to another district substantiate the petitioner that under law the entire State has to be taken as one unit. Thus, the changing the preparation of merit list for State-wise to District-wise is illegal, arbitrary and contrary to Constitutional provisions and law declared by this Court.

39. A feeble attempt made on behalf of the State that the advertisement is only for inviting applications for training and not for appointment, the G.O. dated 3.8.2001 clearly states that there are about twenty thousand vacancies going to be filled in through this advertisement and it is not denied that the impugned advertisement has not been issued pursuant to the G.O. dated 3.8.2001. In reply to the argument advanced on behalf of learned Advocate General that the impugned advertisement is based on the policy matter of the Government and therefore the same is outside the purview of the judicial review under Article 226 of the Constitution of India, learned Counsel for the petitioners submitted that in view of the law laid down by the Apex Court reported in [Krishnan Kakkanth Vs. Government of Kerala and others](#), (Para 36) 2001 (3) SCC 365: AIR 1981 SC 2181, any executive policy, which is contrary to the statutory provision, is per se, arbitrary and directs the following unfair procedure. Hence the decision adversely affecting the people in general, is always subject to judicial review as it suffers from the vice of discrimination or infringement to the statutory provision. In this view of the matter, the argument advanced on behalf of learned Advocate General that this being a policy decision is outside the scope of the judicial review, cannot be accepted. The Special B.T.C. course is available only to a degree and certificate holder, which has not yet been recognised, either under the U.P. Basic Education Act, 1972, or the same has been recognised by the National Council of Education under the 1993 Central Act as suggested by learned Advocate General. The State Council of Educational Research and Training, U.P. constituted under the provisions of Central Act with the object to provide the

instructor, who provides training to the B.T.C. training centre and the same has nothing to do, in order to get instituted the job of recruitment and appointment, which has conferred by the State on the statutory authority i.e., Basic Shiksha Parishad under the provisions of the U.P. Basic Education Act, 1972. With regard to the argument that the selectees have not been impleaded as a party, suffice it to say that the order passed in writ petition and a categorical statement made by the learned Chief Standing Counsel that no one is declared selected and since no appointment has been made of a single person pursuance to the impugned process of selection. The learned Chief Standing Counsel has further stated that only the result has been declared and even the list has not been supplied to the district concerned, as there is already interim orders of this Court. In this view of the matter, the argument that the selectees have not been impleaded has no force. In terms of the advertisement impugned in the present writ petition selection which may have started with the invitation of the applications for selection and appointment only when the appointment letters have been issued is also clear from the fact and statement aforesaid of the learned Chief Standing Counsel.

40. In view of what has been stated above, since none of the arguments advance in support of the impugned advertisement and selection pursuance thereto which can justify the process. I have no hesitation in holding that the impugned advertisement along with G.O. dated 3.8.2001 and the process of selection pursuance thereto at whatever stage it has reached, is per se, arbitrary and discriminatory and is violative of Articles 14, 15, 16 and 21 of the Constitution of India, apart from the same being contrary to the U.P. Basic Education Act, 1972 and 1981 Rules and cannot be upheld and are thus quashed. The Government Order dated 3.8.2001 and the advertisement pursuance thereto dated 14.8.2001 and Government Order dated 3.12.2001 as well as the process of selection pursuance to the aforesaid Government Orders and advertisements at whatever stage it has reached before the passing of the interim orders by this Court dated 9.11.2001 and 3.12.2001, are deserved to be quashed.

41. In view of what has been stated above, the writ petitions succeed and are allowed. The Government Order dated 3.8.2001, the advertisement dated 14.8.2001 and Government Order dated 3.12.2001 as well as process of selection pursuance thereto at whatever state it has reached before passing of the interim orders dated 30.11.2001 and 3.12.2001 are hereby quashed. It will, however, be open for the State to go for fresh process of appointment in accordance with law.

42. There will, however, be no order as to costs.