

(2013) 04 AHC CK 0296

Allahabad High Court

Case No: Civil Misc. Writ Petition No's. 1772, 10549, 15821, 17313, 21743, 22156, 25649, 25818, 40068, 58244, 63518 of 2008

Ram Kishun and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: April 12, 2013

Acts Referred:

- Constitution of India, 1950 - Article 14, 16
- Uttar Pradesh Basic Education Act, 1972 - Section 19

Citation: (2013) 7 ADJ 205 : (2013) 6 ALJ 260 : (2013) 6 AWC 6269 : (2013) 4 UPLBEC 3472

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Advocate: Ashok Khare, Sunil Kumar Srivastava and S. Pratap Singh, for the Appellant; A. Maurya, Akhilesh Kumar, B.P. Singh, Ch. N.A. Khan and K. Shahi, for the Respondent

Final Decision: Dismissed

Judgement

Arun Tandon, J.

Heard Shri C.B. Yadav, Additional Advocate General assisted by Shri B.P. Singh and Shri K. Sahi, Advocates on behalf of the State and the Basic Shiksha Parishad. These writ petitions raise common questions of fact and common questions of law, therefore, have been clubbed together and are being decided by means of this common judgment.

2. Since there is a slight difference in the dates and the number of earlier writ petition filed by the petitioners of different districts, this bunch has been divided into three groups namely Group "A", Group "B" and Group "C".

3. Group "A" pertains to the petitions filed in respect of district Basti. Group "B" pertains to the petitions filed in respect of district Gorakhpur and Group "C" pertains to the petitions filed in respect of district Maharajganj.

4. The petitioners in all these petitions have to their credit a Degree of B.Ed./L.T. None of the petitioners are B.T.C., Vishisht B.T.C. nor they possess any special training of Hindustani Teachers Certificate/Junior Teachers Certificate or any other teaching course recognised by the Government as equivalent thereto. To be precise, it may be recorded that none of the teachers possess the prescribed qualifications as per Rule 8(2) of the U.P. Basic Education (Teachers Service) Rules, 1981 (herein after referred to as "Rules, 1981"). The Rules, 1981 are statutory having been framed u/s 19 of the U.P. Basic Education Act, 1972.

5. Rule 8 of Rules, 1981 lays down the minimum educational qualification for appointment as Assistant Teachers in Parishadiya Vidyalayas. Rule 14 provides for determination of vacancies and preparation of list with reference to the reservation applicable on the post of Assistant Teacher in Parishadiya Vidyalayas. Rule 14(1) provides that applications are to be invited from the candidates possessing prescribed training qualification from the district concerned. Rule 14(2) provides for scrutiny of the applications received and for preparation of list of persons who appear to be possessed of prescribed academic qualifications and eligible for appointment. The list of eligible candidates is arranged with reference to the point of time the candidate had passed the required training course. A candidate passing the training course earlier in point of time is to be placed above the one who had passed the training course later. Candidates passing the Course in one particular year are to be arranged in accordance with the quality point marks specified in the Appendix. Rule 14(5) declares that no person would be entitled for appointment unless his or her name is included in the list prepared under sub-rule (2). The list so prepared is forwarded under Rule 14(6) by the appointing authority to the Selection Committee. Rule 16 provides for the constitution of the Selection Committee. Rule 17 and 17(A) lay down the procedure for direct recruitment separately for teachers for imparting education in a language and teachers for other subjects respectively. While Rule 17 contemplates a written test and preparation of list of the candidates who qualify the written test. Rule 17(A) does not contemplate any written test. The rule provides for preparation of list on the basis of quality point marks. Rule 17 and 17-A(2) provide that the select list prepared shall remain valid for one year from the date of its preparation. Rule 19 provides that appointing authority shall make appointment by taking the names of the candidate in the order in which they stand in the list prepared under Rule 17 or 17(A), as the case may be.

6. From a simple reading of the aforesaid Rules, it is apparent that only those candidates can be considered and empanelled in the select list under Rule 17 and 17(A) for being appointed under Rule 19 who are possessed of the prescribed minimum qualification. Thus, possession of prescribed minimum qualification as per Rule 8 is a condition precedent for being appointed as Assistant Teacher in a Parishadiya Vidyalaya.

7. The State of U.P. issued a Government Order dated 9.9.1994 which was followed by a Circular of the Director of Education (Basic) dated 22.11.1995 wherein it was provided that if requisite number of candidates with B.T.C. qualification are not available in Hill areas of the State of U.P., then candidates with B.Ed., qualification may be considered for appointment against the vacancies available in Parishadiya Vidyalayas.

8. This Government Order dated 9.9.1994 and Circular dated 22.11.1995 came to be challenged in various writ petitions filed before the Allahabad High Court as well as before the Lucknow Bench of this Court. The legality of the Government Order was decided in Civil Misc. Writ Petition No. 4983 of 1997 and other connected matters vide judgement and order dated 24.4.1997. The High Court held that the State Government cannot restrict the operation of the Government Order dated 9.9.1994 and the Circular dated 22.11.1995 to Hill districts only. It was, therefore, directed that the petitioners who were B.Ed., but did not have the qualification as per Rule 8 of Rules, 1981, may be considered for appointment in Parishadiya Vidyalayas in plain districts of State of U.P. also on same terms i.e. If there is a shortage of candidates with qualifications prescribed under Rule 8 of Rules 1981, i.e. BTC/JTC/HTC etc.

9. The High Court, however, in paragraph 19 of Civil Misc. Writ Petition No. 4983 of 1997 decided on 24.4.1997 has observed as follows:

I make it clear that this does not mean that on the present materials, the qualification of B.Ed. Or L.T, Is to be treated as equivalent to B.T.C. particularly when the Government has not recognised the same as equivalent and only in case when candidates with B.T.C. are not available, the candidates with B.Ed. or L.T. Qualification are being considered.

10. It is, therefore, clear that the High Court did not hold that the Government Order dated 9.9.1994 had declared the B.Ed. Qualification as equivalent to be treated at par with B.T.C. etc. in terms of Rule 8. It is also not the case of any of the petitioners before this Court that the Government Order dated 9.9.1994 declared B.Ed. Qualification as equivalent to B.T.C. etc.

11. Before proceeding with the matter on merits, it would be appropriate to record the facts group-wise, as borne out from the records:

(i) Group "A" (District Basti);--

12. Petitioners before this Court filed Civil Misc. Writ Petition No. 30687 of 1996 challenging the Government Order and the Circular of the Director of Education dated 9.9.1994 and 22.11.1994 respectively. In the said writ petition an interim order was granted on 23.9.1996 permitting the member of the petitioners' association to be considered for the post of Assistant Teacher. Although, at the relevant time, there was no Advertisement and process of selection was not in progress. According

to the petitioners an Advertisement was published on 21.8.1997 by the Basic Shiksha Adhikari inviting applications for appointment by direct recruitment in Parishadiya Vidyalayas. Rules of 1981 would apply in the matter of appointment as per the advertisement is not in dispute. The petitioners straight-away filed Contempt Petition No. 774 of 1997 contending therein that their candidature is not being considered for the post of Assistant Teacher, despite the order of the High Court dated 23.9.1996.

13. It is not in dispute that under the Advertisement, applications were invited from amongst those candidates only who were either B.T.C. or C.P. Ed. No other candidate was eligible to submit his application in response to the Advertisement. It appears that because of the orders passed in Contempt Petition No. 774 of 1997 from time to time, the Director of Education issued an order on 10.5.2002 for consideration of the claim of the persons like the petitioners for appointment against the post of Assistant Teacher. The petitioners claim that the Basic Shiksha Adhikari published a notice in newspaper on 7.2.2003 calling upon the petitioners who were B.Ed., to appear for consideration of their claim in the matter of appointment against vacant post of Assistant Teacher in Parishadiya Vidyalayas. The petitioners responded. They claim that they have been offered appointment on 11.5.2003. They started working.

14. The Basic Shiksha Adhikari under the order dated 5.7.2003 cancelled the appointment so offered to the petitioners. Petitioners preferred Writ Petition Nos. 44608 of 2003, 45607 of 2003, 49531 of 2003 and 55569 of 2004. These writ petitions were allowed vide judgement and order dated 7.12.2007. The High Court required the Basic Shiksha Adhikari to afford an opportunity to the petitioners and to pass a fresh order in accordance with law. With similar directions, other writ petitions were also disposed of.

15. The matter was examined by the Basic Shiksha Adhikari, after affording opportunity of hearing and vide order dated 7.3.2008 it has been held that the appointment of the petitioners was illegal, contrary to the statutory rules. The Basic Shiksha Adhikari has, therefore, declared the appointments to be null and void. It is against this order that the present writ petition has been filed.

16. At the very outset it may be recorded that the petitioners, except for working between the period 11.1.2003 to 5.4.2003 i.e. four months, have not worked in the Parishadiya Vidyalayas at any other point of time.

(ii) Group "B" (District Gorakhpur):--

17. Petitioners before this Court are also stated to have filed writ petitions for challenging the Government Order dated 9.9.1994 and the Circular dated 22.11.1995 even before any Advertisement was published in the newspaper for appointment in Parishadiya Vidyalayas in the district concerned. The writ petition was allowed on 2.4.1997 for the same reasons as recorded herein above. An

advertisement was published subsequent thereto by the Basic Shiksha Adhikari, Gorakhpur on 21.8.1997 wherein applications were invited from only those candidates who were B.T.C./C.P.Ed. No other candidate was entitled to apply. The petitioners did not challenge the Advertisement. They straight-away filed Contempt Petition No. 2156 of 1997 and No. 774 of 1997. Because of the orders passed in the contempt proceedings, the Director of Education issued the Circular dated 10.5.2002 for consideration of the claim of the petitioners against the post of Assistant Teacher in Parishadiya Vidyalayas. The Basic Shiksha Adhikari published an Advertisement on 30.8.2002 calling upon the petitioners who were B.Ed., to appear for consideration of their claim against the vacant post. Petitioners responded and are stated to have been appointed on 23.5.2003. The Basic Shiksha Adhikari cancelled the appointment of the petitioners under order dated 9.8.2003.

18. The order of cancellation was challenged before this Court by means of writ petition which was clubbed with Civil Misc. Writ Petition No. 44608 of 2003 and decided under the judgment dated 14.12.2007, referred to above.

19. In pursuance to the order of the High Court, the matter was examined by the Basic Shiksha Adhikari, after affording opportunity of hearing. Under order dated 5.2.2008. It has been held that the appointment of the petitioners was illegal, contrary to the statutory rules. Their appointments have been declared as null and void. It is against this order that the present writ petitions have been filed.

(iii) Group "C" (District Maharajganj):--

20. Petitioners before this Court are also stated to have filed writ petitions for challenging the Government Order dated 9.9.1994 and the Circular dated 22.11.1995 even before any Advertisement was published in the newspaper for appointment in Parishadiya Vidyalayas in the district concerned. The writ petition was allowed on 2.4.1997 for the same reasons as recorded herein above. An advertisement was published subsequent thereto by the Basic Shiksha Adhikari, Maharajganj on 21.8.1997. The petitioners did not challenge the Advertisement. They straight-away filed Contempt Petition No. 2153 of 1997 and No. 774 of 1997. Because of the orders passed in the contempt proceedings, the Director of Education issued a Circular dated 10.5.2002 for consideration of the claim of the petitioners against the vacant post of Assistant Teacher in Parishadiya Vidyalayas. The Basic Shiksha Adhikari published an Advertisement on 30.8.2002 calling upon the petitioners who were B.Ed, to appear for consideration of their claim against the vacant post. Petitioners responded and are stated to have been appointed on 19.5.2003. The Basic Shiksha Adhikari cancelled the appointment of the petitioners under order dated 22.5.2003. The order of cancellation was challenged before this Court by means of writ petition which was clubbed with Civil Misc. Writ Petition No. 44608 of 2003 and decided under the judgment dated 14.12.2007, referred to above.

21. In pursuance to the order of the High Court, the matter was examined by the Basic Shiksha Adhikari, after affording opportunity of hearing under order dated 30.1.2008. It has been held that the appointment of the petitioners was illegal, contrary to the statutory rules. Their appointment has been declared to be null and void. It is against this order that the present writ petitions have been filed.

ON MERITS

22. It was stated before this Court by the Counsel for the petitioner that Writ Petition No. 30687 of 1996 was still pending. This Court summoned the original records of the said writ petition and it is found that the writ petition was dismissed on 3.12.2012. There is no application for recall of the said order on record. The interim order granted in favour of the petitioners of District Basti in the said writ petition, permitting consideration of their claim for the post of Assistant Teacher in Primary Schools, stood merged in the final judgment. Therefore, the petitioners who were not within the zone of consideration in terms of the Advertisement cannot be considered for the said post. The orders passed with reference to the Contempt Petition, filed, resulting in the consideration of the claim of the petitioners, would be rendered illegal by operation of law.

23. Even otherwise, this Court may record that the advertisement which was published in the year 1997, permitted submission of applications by candidates who were B.T.C./C.P.Ed. only. No other candidate including a person with a degree of B.Ed., could have submitted any application in response of the advertisement.

24. Admittedly, in terms of the conditions mentioned in the advertisement as published, the petitioners were ineligible to make any application, nor their applications could have been considered so long as the advertisement stood as it was.

25. Even if the entire case set up by the petitioner is accepted on its face value, then it will only mean that the petitioners who were B.Ed., were to be considered against the advertised post, provided, requisite number of applications from candidates who were J.T.C./C.P.Ed., were not received/were not available for selection. This would require fresh advertisement or corrigendum in respect of earlier advertisement so that all similarly situate candidates with degree of B.Ed., could make their applications against available post. Such procedure was necessary, in view of Articles 14 and 16 of the Constitution of India.

26. Admittedly, neither any corrigendum had been published nor any fresh advertisement has been made in the facts of the case. The petitioners only because they have approached this Court seek direction for consideration of their claim.

27. It is not necessary for this Court to dilate any further on the aforesaid aspect of the matter inasmuch as the issue stands decided against the petitioner in the case of [Hari Om and Others Vs. State of U.P. and Others](#), . The learned Single Judge after

noticing the judgment, in the case of [B. Ed. Berozgar Sangh and Others Vs. State of U.P. and Others](#), in paragraphs 6, 7 and 9 of the said judgment has held as follows:

6. In [B. Ed. Berozgar Sangh and Others Vs. State of U.P. and Others](#), the learned Single Judge held that in view of the Government Order dated 9.9.1994 and the Circular issued by the Director of Basic Education has permitted in the Hill areas the candidates possessing B.Ed. Or L.T. Degree to appear for selection on the ground that sufficient number of candidates are not available, the same principle can be applied in respect of other parts of the State and made the following observations:

If there are different situations prevailing in different parts of the State, the Government may in appropriate case exercise some power restricting it to a part of the State. But, when want of sufficient number of candidates with B.T.C. Qualification is the sole reason for considering candidates with B.Ed. Or L.T. Degrees then the same policy is to be applied in the entire State of Uttar Pradesh whenever similar such contingency occurs namely there occurs dearth of sufficient number of candidates having B.T.C. Qualification.

The circular dated 22.9.1995 provides the manner in which the selection for the post of Assistant Teacher in the Hill Region is to be followed. The vacancy has to be filled up by the candidates possessing, B.T.C., H.T.C. And J.T.C. Or equivalent degree thereto and if after the selection the post remained vacant then by the candidates possessing C.P.Ed. Degree can be considered and if still the post remains vacant then it is to be filled up by the candidates possessing L.T., B.Ed. Degree. The selection is not to take place alongwith all the candidates who possess B.T.C, H.T.C. and J.T.C or any other qualification/degree equivalent thereto. It can be done only when separate advertisement holding separate selection are done, one in respect of selection of candidates possessing B.T.C., H.T.C. and J.T.C. or qualification equivalent thereto second, regarding candidates possessing C.P.Ed., and third in respect of candidates having B.Ed or L.T. If this procedure is not to be followed there will be discrimination amongst other candidates who possess B.Ed. degree or L.T. It is not that only such candidates who file writ petition in this Court and obtain an order by which they are permitted to appear for the selection getting opportunity to appear in the selection but in case the advertisement is made inviting applications for such posts which remain unfilled by the B.T.C, J.T.C. and H.T.C. or any other degree equivalent thereto, all the candidates possessing B.Ed. and L.T. can apply for the post and they can be considered for the same.

7. Secondly, unless the Government itself makes a clear policy in respect of a district or Region, the District Basic Education Officer will be free to determine, the persons to whom he may permit for the selection possessing B.Ed. or L.T. The Government has not issued any order or the Director of Education (Basic) any circular laying down the guidelines for selection when in a district the post of teacher in Junior Basic School remains unfilled on account of non-availability of the candidates possessing required qualifications as prescribed under Rule 8 and the number of

vacancies remained unfilled. The District Basic Education Officer is also not required to prepare one list of candidates applying having required qualification as prescribed under Rule 8 and another at of candidates who have obtained B.Ed. or L.T. In absence of such guidelines the selection process will be irregular, which is unwarranted by law.

8.-----

9. It is for the State Government to recognise other qualifications equivalent to B.T.C., H.T.C. or J.T.C. The Government issued G.O. dated 9th September, 1994 providing that for Uttarakhand Region for appointment to the post of Assistant Teacher in Junior Basic School the candidates possessing B.Ed. or L.T. shall be treated to have equivalent qualification to B.T.C. Etc. as provided in Rule 8 of Uttar Pradesh Basic Education (Teacher Service) Rules, 1981 as amended by Fifth Amendment Rules 1983. This Government Order has not been challenged in the present writ petition. The petitioner has to establish as a fact that the Government is discrimination the candidates who apply for the post of Assistant Teacher in Junior Basic School in the Hill Areas. The situations there are different as the persons may not apply for appointment in those Regions as they have to live in difficult mountains. The persons living in the same Region may not be in such sufficient numbers who have obtained B.T.C., J.T.C., H.T.C. or qualification equivalent thereto.

28. High Court has also repelled the plea that hill treating candidates possessing B.Ed. or L.T. qualification be treated as equivalent to BTC, JTC, HTC etc. in the case of Nirmal Chandra Mishra v. State of U.P. and others, (1997) 3 UPLBEC 1774 (Civil Misc. Writ Petition No. 28243 of 1996). Relevant paragraph No. 5 reads as under:

5. A large number of similar petitions have been filed in this Court and in some of them counter-affidavits have been filed. In Writ Petition No. 30972 of 1996, Rajendra Kumar Dubey v. District Basic Education Officer and others, a counter-affidavit has been filed and I am treating this counter-affidavit to be the counter-affidavit in this case and in all connected cases where the same point is involved. I have perused the counter-affidavit in Writ Petition No. 30972 of 1996. In para 2(f) thereof it is stated: The courses in duration of B.T.C. and L.T./B.Ed. are entirely different and have been devised keeping in view the stages through which the pupils have to pass. In the case of B.T.C. the method of training course are devised so as to meet the requirement of teaching at formative stage of the pupil who enters the school without any educational background foundation. The curriculum of courses are quite exhaustive and are of two years duration, whereas duration of L.T./B.Ed. Courses are of only one year. In fact the subject-matter taught also which the B.T.C. and L.T./B.Ed. training holders are required to teach are entirely different. Thus it is evident that the training qualification for teaching children in primary school is B.T.C. while training for teaching to children in High School and Intermediate College is B.Ed. or L.T. A person may be very good teacher for teaching intermediate college or High School students but he may not be a good teacher for teaching

primary school children because teaching small children requires a different expertise. A special training has to be given to the teachers who are to teach such small children. Hence, it cannot be said that a person who has training to teach High School and Intermediate classes would ipso facto also be a good teacher for primary schools. Teaching small children requires knowledge of child psychology, which an L.T. or B.Ed. teacher may not possess. I cannot also accept the argument that Bachelor of Education and L.T. is higher qualification than B.T.C. In my opinion, it is neither higher nor lower, since these qualifications are for different types of children. In para 5 of the counter-affidavit in Writ Petition No. 30972 of 1996, it has been stated that the training qualification which the Petitioners possess have not been declared as equivalent to B.T.C. by the State of U.P. and as such the Petitioners do not possess the essential qualification for being considered for appointment to the post of Assistant Teacher in Junior Basic Schools in U.P. In view of this, I cannot accept the submission that B.T.C. training should be treated as equivalent to L.T. or B.Ed., in the absence of any declaration of equivalence by the State Government. In this connection, reference may be made to the U.P. Basic Education (Teachers) Service Rules, 1981. Under Rule 8 thereof, the relevant qualifications are given and Bachelor of Education and L.T. are not the qualifications prescribed for Junior Basic Schools.

29. This Court may further clarify that the issue with regard to degree of B.Ed. Being not equivalent to B.T.C./L.T. is not more res Integra. The Apex Court in the case of [Mohd. Sartaj and Another Vs. State of U.P. and Others](#), has specifically held that the degree of B.Ed, is not equivalent to B.T.C./L.T. etc. It has also been laid down that the qualifications are to be seen on the date of the recruitment and any amount of working under certain orders of the Court will not cure the defect in the initial appointment. This absence of minimum qualification cannot be rectified, such appointment has been held to be void.

30. It is also worthwhile to note a Division Bench Judgement of this Court in the case of [Sanjay Kumar Tyagi Vs. State of U.P. and Others](#), . Paragraph Nos. 16, 17 and 18 of the judgment are quoted below:

16. We should, therefore, interpret Rule 4(1) of the 1978 Rules keeping in mind the observations made by us above and if we do so then there can be no manner of doubt that the Teacher's Training Course referred to in the said Rule should be confined to such Training Course which are imparted to teach small children only. This is the reason why the Legislature has specifically referred to four such Training Courses which are specifically confined to Specialised Training for imparting education to small children and if we interpret it in such a manner then the question whether the four Certificates referred to in Rule 4(1) of the 1978 Rules are exhaustive or illustrative may not assume much significance since even if it is held that they are merely illustrative then too we are of the opinion that only such other certificates can be taken into consideration which relate to Specialised Training for

imparting education to small children. The B.Ed./L.T./B.P.Ed./C.P.Ed. or D.P.Ed. Certificates cannot, therefore, be taken into consideration.

17. The Legislature was conscious of the distinction between Training Course Certificates received by candidates to teach small children and the certificates received to teach higher classes as is apparent from the fact that those who had obtained the B.Ed./L.T./B.P.Ed./C.P.Ed. or D.P.Ed. Certificates were required to complete a special B.T.C. Training Course under the Government Order dated 9.1.1998. If such trained candidates having B.Ed./L.T./B.P.Ed./C.P.Ed. or D.P.Ed. Certificates were eligible to be considered were eligible to be considered for appointment as Assistant Teachers or Headmasters of a Junior High School, there would have been no necessity at all for them to have undergone the Special B.T.C. Training Course. This again emphasises what we had observed earlier that to teach small children a Specialised Training Course is necessary. In this respect reference may also be made to the provisions of Rule 6 of 1981 Rules referred to above wherein also while providing for the age limit of the candidates it has been clearly provided that there shall be no upper age limit in case of B.Ed./L.T./B.P.Ed./C.P.Ed. or D.P.Ed. Certificates candidates who had completed the Special B.T.C. Training course in the year 1999. The Legislature was, therefore, clearly conscious of the fact that for such candidates a special B.T.C. Course was required to be undertaken before they could be considered eligible for appointment.

18. The matter can also be examined from a different angle. Under Rule 4(1) of the 1978 Rules, the Rule making authority has not merely restricted the minimum qualification to a Teacher's Training Course recognised by the State Government or the Board. Had it done so there would have been no difficulty at all and all Teacher's Training Course recognised by the State Government or the Board would have been treated to be sufficient. However, the clause proceeds further and goes on to illustrate the meaning of "Teacher's Training Course" by mentioning Hindustani Teaching Certificate, Junior Teaching Certificate, Certificate of Training or Basic Teaching Certificate. This could not have been done without a purpose. It could only be to indicate the type of Teacher's Training Course, the Rule making authority had in mind and if we examine the four Certificates referred to in Rule 4(1) we find that all of them relate to Certificates granted in respect of imparting education to small children. We, therefore, have no hesitation in holding that the B.Ed./L.T./B.P.Ed./C.P.Ed. or D.P.Ed. Certificates cannot be considered as a Teacher's Training Course for the purposes of possessing the minimum qualification under the 1978 Rules. The view, which we have taken, finds support from the decision of the Supreme Court in the case of [Royal Hatcheries Pvt. Ltd. etc. Vs. State of Andhra Pradesh and another](#) .

31. This Court must also deal with the contention which has been raised by the counsels for the petitioners with all vehemence at their command i.e. their case is identical to the one which was considered by the Division Bench of the Lucknow

Bench of this Court in the case of U.P. Board of Basic Education and others v. Rajesh Kumar Pandey and others (Special Appeal No. 512 of 2004), a copy whereof has been filed alongwith the supplementary-affidavit by the petitioner as Annexure SA-1 and therefore, they are entitled to same order/protection.

32. In the opinion of the Court the said judgment has to be applied to the facts of that case. The Division Bench has proceeded to hold that the State itself had withdrawn the SLP filed against the earlier order of the Division Bench whereby those petitioners were permitted to be considered who were not even B.T.C./H.T.C. etc. The Division Bench on its own did not lay down any law justifying consideration of the candidates who were B.Ed./L.T. so as to lay down any binding precedence. It would be appropriate to quote relevant paragraphs of the said Division Bench judgment:

These special appeals arise out of an order passed by the learned Single Judge dated 17.9.2004 by means of which directions have been given to the appellants for continuing the appointments of one set of teachers and to consider the cases of the rest of the candidates for being appointed on the post of Assistant Teachers after allowing them to undertake special B.T.C. Course.

For the sake of brevity and for understanding the questions raised in these special appeals we categorize the candidates into four categories as has been categorized by learned Single Judge. The categories of those candidates, who are possessed of B.Ed. degree and not the Basic Training Certificate (BTC) are as under.

1. Those candidates whose writ petitions were allowed vide judgment and order dated 23.12.02 and confirmed in special appeal No. 21/93 and the SLP was withdrawn by the State.
2. Those who had offered their candidature against 1995 advertisement and who were interviewed on 5.4.1996 pursuant to the interim orders on their writ petitions directing their appointments by giving benefit of the judgment dated 23.12.1992 subject to the decision of Special Appeal No. 21 of 1993 and whose writ petitions were ultimately allowed on 30.11.2002.
3. Those who had offered their candidature against 1995 advertisement and who were interviewed on 5.4.1996 alongwith the persons belonging to the category (2) above.
4. Those candidates whose writ petitions were allowed vide judgment and order dated 30.11.2003.

So far as first category is concerned, relevant facts are that these candidates, who are 43 in number were appointed on the post of Assistant teachers despite the fact that they are not possessed of B.T.C. but are having higher qualification of B.Ed. The appointments were made against the advertisement which required the persons having B.T.C. qualification, to apply for appointment on the post of Assistant

Teacher.

Several writ petitions were filed by the persons, who were not possessed of the requisite qualification of B.T.C. but were having B.Ed. degree, claiming for their consideration for appointment on the post of Assistant Teachers they being possessed of higher qualification of B.Ed., in which petitions, initially interim orders were passed saying that in case vacancies remain unfilled after absorbing all the candidates who are possessed of B.T.C. qualification, those persons who are having B.Ed. qualification may also be considered. Finally writ petitions were disposed of on 23.12.1992 with the same directions.

It is in the judgment of the learned Single Judge that out of 315 vacancies advertised only 151 candidates possessing B.T.C. qualification were available, but despite the aforesaid judgment and order passed by the learned Single Judge on 23-12.1992 the petitioners of these writ petitions were not given appointment which later on compelled them to file contempt petitions. Special appeals were filed against the aforesaid judgment but the same were dismissed on 1.11.2001. SLP Preferred against the aforesaid judgments and order before the Apex Court was got withdrawn and was dismissed as such on 22.4.2002.

Thereafter appointments were given to these candidates who possessed B.Ed., qualification against the vacancies advertised for B.T.C. but could not be filled in for want of required number of such candidates as Assistant Teachers but by the impugned orders in the present writ petition out of which these special appeals arise, their appointments were cancelled saying that they were ab initio void as appointments were given to them without holding any selection. Their cancellation orders, became subject-matter of adjudication in the writ petition as the respondents claimed benefit and advantage of the litigation which took place between them, the Basic Shiksha Adhikari and the State Government up to the Apex Court, were consciously and deliberately SLP was withdrawn challenging the orders passed by the High Court, both passed in special appeals as well as by learned Single Judge.

Sri Umesh Narayan Sharma, Senior Advocate appearing for the appellants very categorically stated that so far as binding effect of the judgment passed by the High Court between the parties to the litigation is concerned that cannot be disputed between the parties but he further submitted that the judgment of 23rd December, 1992 did not permit automatic appointment of those candidates who were given appointment without undergoing the process of selection, therefore, the orders of termination could not have been interfered with.

Defending the aforesaid argument Shri S.K. Kalia, Senior Advocate, Dr. L.P. Mishra and Shri Ramesh Chandra Shrivastava appearing for the respondents submitted that it is not open for the appellants to take such a plea which is in conflict with the directives issued in the judgment of the learned Single Judge which order has been

upheld in special appeal, and that passing of the termination order after giving appointment in pursuance of the aforesaid judgments is a circuitous way to overcome the orders passed by the High Court which otherwise have become final between the parties, the SLP against those orders having been withdrawn. Further submission is that all these pleas were open when the matter was agitated before the Apex Court but instead of proving the pleas, the appellants have chosen to withdraw the SLP therefore these pleas are not more open to them.

We have considered the aforesaid arguments and we find that the order passed by the learned Single Judge upheld in the special appeal which remained undisturbed because of the withdrawal of the SLP with respect to 43 candidates is binding between the parties. Learned Single Judge (Hon. K.C. Bhargava, J.) in the said writ petitions had issued the following directions,

The writ petition, therefore, is partly allowed and the opposite parties are directed that in case sufficient number of B.T.C. trained candidates are not available for appointment as assistant teachers in the Basic Schools, the petitioners who have qualified for appointment on the basis of the advertisement dated 22.1.1991 be appointed as Assistant Teachers in the basic schools managed and run by the opposite parties, within a period of three weeks. No order as to costs.

The aforesaid order leaves no doubt that the candidates who were claiming appointment being possessed of B.Ed., qualification were directed to be appointed as they stood qualified as per terms of the advertisement. The appointments were to be given within a specified period i.e. three months. In such a short term, appointment could have been directed to be given only when the learned Single Judge was satisfied that their qualifications. Consequently it appears that the Basic Shiksha Adhikari who was the appointing authority in compliance of the Court's order, after dismissal of the SLP issued appointment orders.

It is true that if a procedure is prescribed for selection, the candidate is to be selected by undergoing the process of selection, may be by facing the selection committee but in the instant case admittedly the vacancies advertised were much more in number than the actual number of the candidates possessed of B.T.C. qualification so to say 350 vacancies were advertised and only 151 candidates of B.T.C. qualification could be available. That being so, the candidates who were possessed of B.Ed. Qualification, unless of course they lacked any other essential qualification, like prescribed maximum and minimum age or any other such qualification determined otherwise, essential for being considered for appointment, on the date of applying cannot be said to be ineligible and they were to be given the appointment in pursuance of the directives issued by the learned Single Judge.

Therefore, if the B.S.A. gave appointment to such candidates no illegality could be said to have been committed nor any prejudice can be said to have been caused to any person who otherwise might be possessed of B.T.C. qualification, and had

applied in pursuance of the advertisement and also to those who did not apply for the reason that B.Ed., qualified persons were to be given appointment only on remaining existing vacancies for which B.T.C. candidates were not available in pursuance of the order passed by the High Court.

In view of the fact that the judgment passed on 23.12.1992 became final between the parties, the argument raised on behalf of the counsel for the appellants in effect tends to persuade the Court to take a different view as against the view taken by the Court as far back as in December, 1992. This Division Bench is not sitting in appeal over the judgment and order passed by the learned Single Judge dated 23.12.1992 affirmed by the special appeal. The judgment and order with direction issued thereon became final and binding between the parties moreso when the Special Leave Petitions challenging the aforesaid order were withdrawn knowingly and consciously. It thus can safely be held that all those candidates who were entitled for benefit of appointment on the post of Assistant Teachers in pursuance of the directives issued by the Court in its judgment and order dated 23.12.1992 cannot be deprived of their appointment on any fresh ground which could have been raised in the writ petition while challenging the case of the respondent and also could have been raised in special appeal and in the SLP but have not been raised.

In view of the aforesaid fact and legal position the order of cancellation of their appointment has rightly been set aside by the learned Single Judge. These candidates (category 1) are thus entitled to the benefit of judgment and order and have to be given appointment/reinstated as such into service and will be allowed to resume their duties immediately.

33. It will therefore, be seen that the Division Bench as basically held that once the State has conceded their participation by withdrawing the Appeal, the judgment of the High Court inter-se between the parties would be binding on them and it is for this reason the Division Bench held that now the Board cannot contend that they had wrongly been considered.

34. In this case it is found that the petitioners were not eligible to apply in terms of the advertisement published and even if they had any claim for being considered against the posts which remained unfilled from qualified candidates, in view of the judgment of this Court in the case of Hari Om and others v. State of U.P. and others (supra), the minimum required was that a fresh advertisement had to be published so that all similarly situate candidates available in the open market could apply and could be considered alongwith the petitioners.

35. Further, the legal position with regard to the equivalence of the degree of B.Ed. with that of J.T.C. and B.T.C. has now been settled by the Apex Court in the Case of Mohd. Sartaz (supra), and the Division Bench of this Court in the case of Dilip Kumar Gosh (supra) as well as by the Division Bench judgment of this Court in the case of Sanjay Kumar Tyagi v. State of U.P. and others (supra).

36. This Court finds that there is no illegality in the termination of the appointment of the petitioner which has rightly been held to be void having been made in absence of essential qualifications being possessed by the petitioners. All the writ petitions are dismissed.