

Neutral Citation No. - 2024:AHC-LKO:55715-DB

Reserved

Case :- SPECIAL APPEAL No. - 172 of 2023

Appellant :- Mahendra Pal and others

Respondent :- State of U.P. Thru. Its Addl. Chief/ Prin. Secy.Deptt. of Basic Edu. U.P. Civil Sectr. Lko. and Ors

Counsel for Appellant :- Sridhar Awasthi,Amit Kr. Singh Bhadauriya,Kamlesh Kumar Yadav,Susheel Kumar

Counsel for Respondent :- C.S.C.,Amit Kr. Singh Bhadauriya,Amrendra Nath Tripathi,Anurag Tripathi,Durga Prasad Shukla,Pawan Kumar Dwivedi,Ran Vijay Singh,Shradha Mishra,Vivek Mishra

Connected with

(1) Case :- SPECIAL APPEAL No. - 174 of 2023

Appellant :- Ashok Yadav and others

Respondent :- State of U.P. Thru. Addl. Chief Secy./Prin. Secy. Basic Edu. U.P. Govt.Civil Sectr. Lko. And Others

Counsel for Appellant :- Pt. S. Chandra,Manju Nagaur,Ravi Kant Mishra

Counsel for Respondent :- C.S.C.,Amit Kr. Singh Bhadauriya,Ran Vijay Singh

(2) Case :- SPECIAL APPEAL No. - 209 of 2023

Appellant :- Subodh Singh Yadav and others

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

Counsel for Appellant :- Pt. S. Chandra,Manju Nagaur

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

(3) Case :- SPECIAL APPEAL No. - 210 of 2023

Appellant :- Mayapati Yadav and others

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

Counsel for Appellant :- Pt. S. Chandra,Manju Nagaur

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

(4) Case :- SPECIAL APPEAL No. - 261 of 2023

Appellant :- Vimlendra Kumar Suman and others

Respondent :- State of U.P. Thru. Addl. Chief /Prin. Secy. Deptt. Basic Education Civil Sectr. Lko. And Others

Counsel for Appellant :- Onkar Singh

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

(5) Case :- SPECIAL APPEAL No. - 262 of 2023

Appellant :- Dev Narayan and others

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

Counsel for Appellant :- Mujtaba Kamal Sherwani

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

(6) Case :- SPECIAL APPEAL No. - 301 of 2023

Appellant :- Laxmi Kant Yadav and others

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

Counsel for Appellant :- Akshat Kumar

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

(7) Case :- SPECIAL APPEAL No. - 302 of 2023

Appellant :- Basu Deo Tiwari and 49 others

Respondent :- State Of U.P. Thru. Prin. Secy. Basic Edu Civil Sectt. Lko. And 3 Others

Counsel for Appellant :- Raj Kumar Mishra,Upasna Mishra

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

(8) Case :- SPECIAL APPEAL No. - 307 of 2023

Appellant :- Sandeep Yadav And Others

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

Counsel for Appellant :- Akshat Kumar

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

(9) Case :- SPECIAL APPEAL No. - 318 of 2023

Appellant :- Anita Kumari And Others

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

Counsel for Appellant :- Akshat Kumar

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

(10) Case :- SPECIAL APPEAL No. - 319 of 2023

Appellant :- Avanish Kumar And 7 Others

Respondent :- State Of U.P Thru. Its Addl. Chief Secy/Prin. Deptt. Of Basic Edu. Civil Sectt Lko And 6 Others

Counsel for Appellant :- Akshat Kumar

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

(11) Case :- SPECIAL APPEAL No. - 320 of 2023

Appellant :- Arjun Singh And 511 Others

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

Counsel for Appellant :- Neel Kamal Mishra, Anuj Singh
Counsel for Respondent :- C.S.C., Ran Vijay Singh

(12) Case :- SPECIAL APPEAL No. - 321 of 2023

Appellant :- Nitesh And 212 Others

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

Counsel for Appellant :- Akshat Kumar

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

(13) Case :- SPECIAL APPEAL DEFECTIVE No. - 204 of 2023

Appellant :- Sumit Yadav And Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Basic Education Govt. Of U.P. Civil Sectr. Lko. And Others

Counsel for Appellant :- Kaushlendra Tewari

Counsel for Respondent :- C.S.C., Ajeet Verma, Angad Prasad Shukla, I.M. Pandey Ist, Ran Vijay Singh, Shivam Pandey

(14) Case :- SPECIAL APPEAL DEFECTIVE No. - 237 of 2023

Appellant :- Rekha Singh

Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Scy. Deptt. Of Basic Education U.P. Civil Sectr. Lko. And Others

Counsel for Appellant :- Dharmendra Singh

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

(15) Case :- SPECIAL APPEAL DEFECTIVE No. - 243 of 2023

Appellant :- Susheel Kumar And Others

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

Counsel for Appellant :- Deepak Singh

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

(16) Case :- SPECIAL APPEAL DEFECTIVE No. - 244 of 2023

Appellant :- Ved Prakash And Others

Respondent :- The State Of U.P. Thru. Addl. Chief Secy. Basic Education Govt. Of U.P. Civil Sectr. Lko. And Others

Counsel for Appellant :- Kaushlendra Tewari, Suresh Kumar Pandey

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

(17) Case :- SPECIAL APPEAL DEFECTIVE No. - 245 of 2023

Appellant :- Aniket Chand And Others

Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Of Basic Edu. U.P. Govt. Civil Sectr. Lko. And Others

Counsel for Appellant :- Pt. S. Chandra

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

(18) Case :- SPECIAL APPEAL DEFECTIVE No. - 248 of 2023

Appellant :- Manoj Chaurasiya And Others

Respondent :- State Of U.P. Thru. Prin. Secy. (Basic Education) Civil Sectr. Govt. U.P. Lko. And Others

Counsel for Appellant :- Kaushlendra Tewari
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(19) Case :- SPECIAL APPEAL DEFECTIVE No. - 251 of 2023
Appellant :- Amarendra Kumar Singh And Others
Respondent :- State Of U.P. Thru. Prin. Secy. Basic Edu. Civil Sectt. U.P. Lko. And Others
Counsel for Appellant :- Shwetanshu Prakash Dubey,Rakesh Kumar Chaudhary,Shreya Chaudhary
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(20) Case :- SPECIAL APPEAL DEFECTIVE No. - 254 of 2023
Appellant :- Rahul Singh Yadav And Others
Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Of Basic Edu. U.P. Govt. Civil Sectr. Lko. And Others
Counsel for Appellant :- Pt. S. Chandra
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(21) Case :- SPECIAL APPEAL DEFECTIVE No. - 255 of 2023
Appellant :- Kurban Ali And Others
Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Basic Education, U.P. Govt. Civil Sectr.Lko. And Others
Counsel for Appellant :- Pt. S. Chandra,Ravi Kant Mishra
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(22) Case :- SPECIAL APPEAL DEFECTIVE No. - 256 of 2023
Appellant :- Subedar Yadav and others
Respondent :- State of U.P. Thru. Addl. Chief /Prin. Secy. Of Basic Edu. U.P. Govt. Civil Sectr. Lko. and others
Counsel for Appellant :- Pt. S. Chandra
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(23) Case :- SPECIAL APPEAL DEFECTIVE No. - 257 of 2023
Appellant :- Manoj Kumar And Others
Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Basic Education, U.P. Govt. Civil Sectr.Lko. And Others
Counsel for Appellant :- Pt. S. Chandra
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(24) Case :- SPECIAL APPEAL DEFECTIVE No. - 258 of 2023
Appellant :- Digvijay Singh And Others
Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Basic Education, U.P. Govt. Civil Sectr.Lko. And Others
Counsel for Appellant :- Pt. S. Chandra
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(25) Case :- SPECIAL APPEAL DEFECTIVE No. - 259 of 2023
Appellant :- Ram Diwakar Yadav And Others
Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Deptt. Of Basic Edu. U.P. Civil Sectr. Lko. And Others

Counsel for Appellant :- Santosh Kumar Yadav,Kaushlendra Tewari
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(26) Case :- SPECIAL APPEAL DEFECTIVE No. - 260 of 2023
Appellant :- Anup Singh And Others
Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Deptt. Of Basic Edu. U.P. Civil Sectr. Lko. And Others
Counsel for Appellant :- Santosh Kumar Yadav,Kaushlendra Tewari
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(27) Case :- SPECIAL APPEAL DEFECTIVE No. - 262 of 2023
Appellant :- Manoj Kumar Singh And Others
Respondent :- State Of U.P. Thru. Addl. Chief/Prin.Secy. Deptt. Of Basic Education U.P. Govt. Lko. And Others
Counsel for Appellant :- Deepak Singh
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(28) Case :- SPECIAL APPEAL DEFECTIVE No. - 264 of 2023
Appellant :- Rajeev Kumar And Others
Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Basic Education, U.P. Govt. Lko. And Others
Counsel for Appellant :- Pt. S. Chandra,Ravi Kant Mishra
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(29) Case :- SPECIAL APPEAL DEFECTIVE No. - 265 of 2023
Appellant :- Sneh Lata And Others
Respondent :- State Of U.P. Thru. Prin.Secy./Addl. Chief Secy. Basic Education U.P. Govt. Lko. And Others
Counsel for Appellant :- Pt. S. Chandra,Ravi Kant Mishra
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(30) Case :- SPECIAL APPEAL DEFECTIVE No. - 266 of 2023
Appellant :- Loha Singh Patel And Others
Respondent :- State Of U.P. Thru. Prin. Secy. Basic Education Civil Secrett. U.P. Lko. And Others
Counsel for Appellant :- Shreya Chaudhary,Lakshmi Kant Tripathi,Rakesh Kumar Chaudhary,Shwetanshu Prakash Dubey
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(31) Case :- SPECIAL APPEAL DEFECTIVE No. - 267 of 2023
Appellant :- Ram Bilas Yadav And Others
Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Deptt. Of Basic Edu. Lko. And Others
Counsel for Appellant :- Deepak Singh
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(32) Case :- SPECIAL APPEAL DEFECTIVE No. - 275 of 2023
Appellant :- Pooja Verma And 499 Others
Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Basic Education Deptt. U.P. Lko. And Others

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

(33) Case :- SPECIAL APPEAL DEFECTIVE No. - 281 of 2023
Appellant :- Krishnakant Verun Kumar And Others
Respondent :- The State Of U.P. Thru. Addl. Chief/ Prin.Secy. Basic Education U.P. Govt. Lko. And Others
Counsel for Appellant :- Anju Singh,Neetu Singh
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(34) Case :- SPECIAL APPEAL DEFECTIVE No. - 282 of 2023
Appellant :- Archana Yadav And Another
Respondent :- State Of U.P. Thru. Addl.Chief/Prin.Secy.Deptt. Of Basic Education U.P. Civil Sectr.Lko. And Others
Counsel for Appellant :- Dharmendra Singh
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(35) Case :- SPECIAL APPEAL DEFECTIVE No. - 283 of 2023
Appellant :- Sakshi Mauraya And Another
Respondent :- State Of U.P. Thru. Addl. Chief/ Prin. Secy. Deptt. Of Basic Edu. U.P. Civil Sectr. Lko. And Others
Counsel for Appellant :- Kapil Misra,Sunil Kumar Chaudhary
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(36) Case :- SPECIAL APPEAL DEFECTIVE No. - 285 of 2023
Appellant :- Ashish Kumar And Others
Respondent :- State Of U.P. Thru. Addl. Chief /Prin. Secy. Basic Edu. U.P. Civil Secrett. Lko. And Others
Counsel for Appellant :- Kamlesh Kumar Yadav,Deepak Singh
Counsel for Respondent :- C.S.C.

(37) Case :- SPECIAL APPEAL DEFECTIVE No. - 287 of 2023
Appellant :- Mangesh Kumar Sharma And Others
Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Of Basic Edu. U.P. Govt. Civil Sectr. Lko. And Others
Counsel for Appellant :- Anju Singh,Neetu Singh
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(38) Case :- SPECIAL APPEAL DEFECTIVE No. - 289 of 2023
Appellant :- Krishan Kumar And Others
Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Of Basic Edu. U.P. Govt. Civil Sectr. Lko. And Others
Counsel for Appellant :- Anju Singh,Neetu Singh
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(39) Case :- SPECIAL APPEAL DEFECTIVE No. - 290 of 2023
Appellant :- Rahul Kumar Yadav And Others
Respondent :- The State Of U.P. Thru. Addl. Chief Secy. Prin. Secy. Basic Education U.P. Govt. Lko. And Others
Counsel for Appellant :- Anju Singh,Neetu Singh

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

(40) Case :- SPECIAL APPEAL DEFECTIVE No. - 291 of 2023

Appellant :- Jitendra Kumar And Others

Respondent :- State Of U.P. Thru. Addl. Chief/ Prin. Secy. Of Basic Edu. U.P. Govt. Civil Sectr. Lko. And Others

Counsel for Appellant :- Anju Singh,Neetu Singh

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

(41) Case :- SPECIAL APPEAL DEFECTIVE No. - 292 of 2023

Appellant :- Yogendra Kumar And 163 Others

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

Counsel for Appellant :- Deepak Singh

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

(42) Case :- SPECIAL APPEAL DEFECTIVE No. - 293 of 2023

Appellant :- Ravindra Kumar And 326 Others

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

Counsel for Appellant :- Deepak Singh

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

(43) Case :- SPECIAL APPEAL DEFECTIVE No. - 294 of 2023

Appellant :- Km. Babita And 121 Others

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

Counsel for Appellant :- Shreya Chaudhary,Lakshmi Kant Tripathi,Shwetanshu Prakash Dubey

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

(44) Case :- SPECIAL APPEAL DEFECTIVE No. - 295 of 2023

Appellant :- Vijay Pratap Yadav And Another

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

Counsel for Appellant :- Neel Kamal Mishra,Anuj Singh

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

(45) Case :- SPECIAL APPEAL DEFECTIVE No. - 296 of 2023

Appellant :- Adesh Kumar Verma And Others

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

Counsel for Appellant :- Anju Singh,Neetu Singh

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

(46) Case :- SPECIAL APPEAL DEFECTIVE No. - 297 of 2023

Appellant :- Kamlesh Kumar And Others

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

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

(47) Case :- SPECIAL APPEAL DEFECTIVE No. - 298 of 2023
Appellant :- Asheesh Baranwal And Others
Respondent :- State Of U.P. Thru. Addl.Chief Secy. Deptt. Of Basic Edu. Govt. Of U.P. Civil Sectr.Lko. And Others
Counsel for Appellant :- Durga Prasad Shukla,Vivek Mishra
Counsel for Respondent :- C.S.C.,Ran Vijay Singh,Subhash Chandra Pandey

(48) Case :- SPECIAL APPEAL DEFECTIVE No. - 299 of 2023
Appellant :- Lalit Kumar And Others
Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Deptt. Basic Education U.P. Lko. And Others
Counsel for Appellant :- Onkar Singh
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(49) Case :- SPECIAL APPEAL DEFECTIVE No. - 301 of 2023
Appellant :- Bhaskar Singh Yadav Ans Ors.
Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Deptt. Of Basic Education , U.P. Lko. And Others
Counsel for Appellant :- Kamlesh Kumar Yadav
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(50) Case :- SPECIAL APPEAL DEFECTIVE No. - 306 of 2023
Appellant :- Surendra Kumar Yadav And Others
Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Basic Education U.P. Civil Sectr. Lko. And Others
Counsel for Appellant :- Kamlesh Kumar Yadav
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(51) Case :- SPECIAL APPEAL DEFECTIVE No. - 310 of 2023
Appellant :- Vartika Verma And 16 Others
Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Basic Education U.P. Lko. And 3 Others
Counsel for Appellant :- Pt. S. Chandra
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(52) Case :- SPECIAL APPEAL DEFECTIVE No. - 311 of 2023
Appellant :- Sunil Kumar And 10 Others
Respondent :- State Of U.P. Thru. Addl. Chief Secy./ Prin. Secy. Of Basic Edu., Lko. And 3 Others
Counsel for Appellant :- Pt. S. Chandra
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(53) Case :- SPECIAL APPEAL DEFECTIVE No. - 312 of 2023
Appellant :- Alam Husain And Others
Respondent :- State Of U.P. Thru. Addl. Chief/Prin.Secy. Of Basic Edu., U.P. Govt. Lko. And Others

Counsel for Appellant :- Pt. S. Chandra
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(54) Case :- SPECIAL APPEAL DEFECTIVE No. - 316 of 2023
Appellant :- Ajay Jaiswal And Others
Respondent :- State Of U.P. Thru. Addl. Chief /Prin.Secy. Deptt. Of Basic Edu. U.P. Civil Sectr. Lko. And Others
Counsel for Appellant :- Deepak Singh
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(55) Case :- SPECIAL APPEAL DEFECTIVE No. - 318 of 2023
Appellant :- Ram Poojan And Others
Respondent :- State Of U.P. Thru. Addl. Chief/ Prin. Secy. Deptt. Of Basic Edu. U.P. Civil Sectr. Lko. And Others
Counsel for Appellant :- Onkar Singh,Gaurav Mehrotra,Utsav Mishra
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(56) Case :- SPECIAL APPEAL DEFECTIVE No. - 325 of 2023
Appellant :- Amit Kumar And 369 Others
Respondent :- State Of U.P. Thru. Its Addl. Chief/Prin. Secy. Deptt. Of Basic Edu. U.P. Lko. And Others
Counsel for Appellant :- Deepak Singh
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(57) Case :- SPECIAL APPEAL DEFECTIVE No. - 326 of 2023
Appellant :- Lal Jee Verma And Others
Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Basic Education Civil Sectr. Lko. And Others
Counsel for Appellant :- Onkar Singh
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(58) Case :- SPECIAL APPEAL DEFECTIVE No. - 335 of 2023
Appellant :- Indrasen Pal And 218 Others
Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Deptt. Of Basic Edu. U.P. Civil Sectr. Lko. And Others
Counsel for Appellant :- Deepak Singh
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(59) Case :- SPECIAL APPEAL DEFECTIVE No. - 336 of 2023
Appellant :- Km. Indrkla And Others
Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Basic Education, U.P. Govt. Lko. And Others
Counsel for Appellant :- Neetu Singh,Anju Singh
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(60) Case :- SPECIAL APPEAL DEFECTIVE No. - 357 of 2023
Appellant :- Shweta Chauhan And 111 Others
Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Basic Edu. Govt. Of U.P. Lko. And Others

Counsel for Appellant :- Durga Prasad Shukla,Vivek Mishra
Counsel for Respondent :- C.S.C.,Ran Vijay Singh,Subhash Chandra Pandey

(61) Case :- SPECIAL APPEAL DEFECTIVE No. - 366 of 2023

Appellant :- Rama Yadav And 1026 Others

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

Counsel for Appellant :- Deepak Singh

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

(62) Case :- SPECIAL APPEAL DEFECTIVE No. - 368 of 2023

Appellant :- Pradeep Kumar Maurya And 83 Others

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

Counsel for Appellant :- Deepak Singh,Manish Kumar Srivastava

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

(63) Case :- SPECIAL APPEAL DEFECTIVE No. - 372 of 2023

Appellant :- Deepchand Maurya And Others

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

Counsel for Appellant :- Onkar Singh

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

(64) Case :- SPECIAL APPEAL DEFECTIVE No. - 378 of 2023

Appellant :- Shikha Gupta And 471 Others

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

Counsel for Appellant :- Rachit Sondhi,Rajendra Singh

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

(65) Case :- SPECIAL APPEAL DEFECTIVE No. - 380 of 2023

Appellant :- Sushil Kumar And 405 Others

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

Counsel for Appellant :- Rajendra Singh,Rachit Sondhi

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

(66) Case :- SPECIAL APPEAL DEFECTIVE No. - 381 of 2023

Appellant :- Nitesh Kumar Singh And 178 Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Basic Education , Govt. Of U.P. Lko. And 12 Others

Counsel for Appellant :- Durga Prasad Shukla,Vivek Mishra

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

(67) Case :- SPECIAL APPEAL DEFECTIVE No. - 384 of 2023

Appellant :- Nirmal Kumar Verma And 97 Others

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

Deptt. Basic Education, U.P. Lko. And 2 Others
Counsel for Appellant :- Onkar Singh,Ajay Madhavan
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(68) Case :- SPECIAL APPEAL DEFECTIVE No. - 390 of 2023
Appellant :- Shashi Singh And 884
Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin.Secy. Deptt. Of Basic Edu. Lko. And 5 Others
Counsel for Appellant :- Shilendra Kumar
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(69) Case :- SPECIAL APPEAL DEFECTIVE No. - 392 of 2023
Appellant :- Navneet Kumar And 1299 Others
Respondent :- State Of U.P.Thru.Addl. Chief Secy. Deptt. Of Basic Education,Lko. And 10 Others
Counsel for Appellant :- Neel Kamal Mishra
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(70) Case :- SPECIAL APPEAL DEFECTIVE No. - 424 of 2023
Appellant :- Vipin Kumar And 128 Others
Respondent :- State Of U.P. Thru. Prin. Secy. Basic Edu. Civil Sectr. Lko. And 44 Others
Counsel for Appellant :- Ashish Kumar,Rajat Aren,Rishi Srivastava
Counsel for Respondent :- C.S.C.,Amrendra Nath Tripathi,Ran Vijay Singh

(71) Case :- SPECIAL APPEAL DEFECTIVE No. - 425 of 2023
Appellant :- Prashant Kumar And Others
Respondent :- State Of U.P. Thru. Prin. Secy. , Basic Edu. Lko. and others
Counsel for Appellant :- Ashish Kumar,Rajat Aren,Rishi Srivastava
Counsel for Respondent :- C.S.C.,Amrendra Nath Tripathi,Ran Vijay Singh

(72) Case :- SPECIAL APPEAL DEFECTIVE No. - 429 of 2023
Appellant :- Raghvendra Prasad Mishra And 90 Others
Respondent :- State Of U.P. Thru. Prin. Secy. Basic Education U.P. Civil Sectr. Lko. And Others
Counsel for Appellant :- Amrendra Nath Tripathi
Counsel for Respondent :- C.S.C.,Onkar Singh,Rakesh Kumar Chaudhary,Ran Vijay Singh,Subhash Chandra Pandey

(73) Case :- SPECIAL APPEAL DEFECTIVE No. - 438 of 2023
Appellant :- Rishishekhar Yadav And Others
Respondent :- State Of U.P. Thru. Addl. Chief Secy. / Prin. Secy. Basic Education U.P. Lko. And Others
Counsel for Appellant :- Kaushlendra Tewari
Counsel for Respondent :- C.S.C.,Ran Vijay Singh

(74) Case :- SPECIAL APPEAL DEFECTIVE No. - 452 of 2023

Appellant :- Richa Yadav

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

Counsel for Appellant :- Krishan Kanhaya Pal,Pooja Pal

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

(75) Case :- SPECIAL APPEAL DEFECTIVE No. - 464 of 2023

Appellant :- Deepesh Kumar Mishra And 10 Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Basic Edu. Lko. And 8 Others

Counsel for Appellant :- Garima Singh,Durga Prasad Shukla

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

(76) Case :- SPECIAL APPEAL DEFECTIVE No. - 478 of 2023

Appellant :- Brijesh Singh And 82 Others

Respondent :- State Of U.P Thru. Addil. Chief Secy. Deptt. Basic Education Lko. And 8 Others

Counsel for Appellant :- Durga Prasad Shukla,Garima Singh

Counsel for Respondent :- C.S.C.,Neel Kamal Mishra,Ran Vijay Singh,Subhash Chandra Pandey

(77) Case :- SPECIAL APPEAL DEFECTIVE No. - 480 of 2023

Appellant :- Virendra Kumar And 28 Othres

Respondent :- State Of U.P. Thru. Its Prin. Secy. Basic Edu. Civil Sectt. U.P. Lko. And 3 Others

Counsel for Appellant :- Ayush Chaudhary,Lakshmi Kant Tripathi,Shreya Chaudhary

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

(78) Case :- SPECIAL APPEAL DEFECTIVE No. - 486 of 2023

Appellant :- Shivam Pandey And 16 Others

Respondent :- State Of U.P. Thru. Addl. Cheif Secy. Basic Education Deptt. And 7 Others

Counsel for Appellant :- I.M. Pandey Ist

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

(79) Case :- SPECIAL APPEAL DEFECTIVE No. - 489 of 2023

Appellant :- Mohammad Irfan And 52 Others

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

Counsel for Appellant :- Kamlesh Kumar Yadav

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

(80) Case :- SPECIAL APPEAL DEFECTIVE No. - 509 of 2023

Appellant :- Babita Maurya

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

Counsel for Appellant :- Dr.Pramod Kumar Maurya,Anil Kumar

Maurya,Chandan Prasad

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

(81) Case :- SPECIAL APPEAL DEFECTIVE No. - 534 of 2023

Appellant :- Vinay Kumar Pandey And Others

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

Deptt. Sectr. Lko And Others

Counsel for Appellant :- I.M. Pandey Ist

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

(82) Case :- SPECIAL APPEAL DEFECTIVE No. - 538 of 2023

Appellant :- Sunil Kumar Gupta And Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Basic Edu. Govt.

U.P. Lko. And Others

Counsel for Appellant :- Rajeev Narayan Pandey

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

(83) Case :- SPECIAL APPEAL DEFECTIVE No. - 598 of 2023

Appellant :- Dimpal Verma And 481 Others

Respondent :- State Of U.P. Thru. Its Addl. Chief Secy. Prin. Secy.

Deptt. Of Basic Edu. U.P. Lko. And 3 Others

Counsel for Appellant :- Onkar Singh

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

(84) Case :- SPECIAL APPEAL DEFECTIVE No. - 817 of 2023

Appellant :- Raj Kumar Yadav And Others

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

Education U.P. Lko And Others

Counsel for Appellant :- Kamlesh Kumar Yadav

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

(85) Case :- SPECIAL APPEAL DEFECTIVE No. - 875 of 2023

Appellant :- Aneeta Yadav

Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Deptt. Of

Basic Education U.P. Lko. And Others

Counsel for Appellant :- Nitesh Yadav,Lalit Kishore Tiwari

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

(86) Case :- SPECIAL APPEAL DEFECTIVE No. - 938 of 2023

Appellant :- Hari Om And Others

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

Education U.P. Govt. Lko. And Others

Counsel for Appellant :- Durga Prasad Shukla,Vivek Mishra

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

(87) Case :- SPECIAL APPEAL DEFECTIVE No. - 79 of 2024

Appellant :- Archana Singh Yadav And 54 Others

Respondent :- The State Of U.P. Thru. Addl. Chief/Prin. Secy. Of

Basic Education U.P. Govt. Lko. And Others

Counsel for Appellant :- Kamlesh Kumar Yadav

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

(88) Case :- SPECIAL APPEAL DEFECTIVE No. - 85 of 2024

Appellant :- Ajay Pal Rahul And 176 Others

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

Counsel for Appellant :- Deepak Singh

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

(89) Case :- SPECIAL APPEAL DEFECTIVE No. - 99 of 2024

Appellant :- Gaurav Kumar And 72 Others

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

Counsel for Appellant :- Kamlesh Kumar Yadav, Susheel Kumar

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

(90) Case :- SPECIAL APPEAL DEFECTIVE No. - 101 of 2024

Appellant :- Maninder Singh And 68 Others

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

Counsel for Appellant :- Onkar Singh

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

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Brij Raj Singh, J.

[Per Attau Rahman Masoodi, J.]

- (1) The bunch of appeals involve common questions of facts and law, therefore, they were heard together and are decided by a common judgement and order.
- (2) The aforementioned bunch of intra-Court appeals filed under Chapter VIII Rule 5 of the Rules of the Court is directed against the judgement and order dated 13.03.2023 passed by the learned Single Judge in Writ-A No.17919 of 2021 and other connected writ petitions, whereby while disposing of all the writ petitions filed by the writ petitioners, learned Single Judge quashed the select list dated 01.06.2020 with certain directions.
- (3) The bunch of appeals has raised an important question of law as to whether the marks obtained from the open competition on the result of Assistant Teachers Recruitment Examination (for

short 'ATRE') based on 2019 examination alone or the marks derived on the basis of the entire process i.e. ATRE-2019 coupled with other criteria of educational and training record would be decisive to serve the real object of Section 3(6) of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (for short "Reservation Act, 1994"). The relevant provision for ready reference is extracted below:-

"3. Reservation in favour of Scheduled Castes, Scheduled Tribes, and Other Backward Classes.-

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

- (4) Learned Single Judge while deciding the bunch of writ petitions on the aforesaid issue, after considering the submissions and the position of law in its entirety, has opined that the marks obtained in the open competition of ATRE-2019 has laid the just basis for implementing the Reservation Act, 1994 to compartmentalize the eligible candidates in their respective streams of vertical reservation and any further marks derived on the screening of other qualifications as per Rule 14 of the U.P. Basic Education (Teachers) Service Rules, 1981 (hereinafter referred as the "Service Rules, 1981") read with Appendix – I shall not alter the position for the purposes of migration from reserved category to an unreserved field, therefore, the vertical reservation once operated and implemented by the State at the stage of the result of the ATRE-2019, would bind all the eligible candidates in terms of the circular dated 07.01.2019. For the purposes of adjudication of the controversy at hand, we may take note of the facts, in brief, as under:-

Facts:

- (5) The U.P. Basic Education Act, 1972 (hereinafter referred as the "Basic Education Act, 1972") was enacted to regulate and control the imparting of basic education in schools upto Class-VIII. Rule 19 of the Basic Education Act, 1972 empowers the State Government to make Rules for carrying out the purposes of the Act and Section 19(2)(a) and (c) of the Basic Education Act, 1972 empowers the State Government to make Rules relating to the recruitment and conditions of service of the persons appointed as teaching staff. Thus, the State Government framed the Rules for selection and recruitment of Assistant Teachers in the primary schools run by the State Government vide Service Rules, 1981. Rule 8 of the said Rules prescribed the minimum requisite academic qualification for appointment of the Assistant Teachers, whereas Rule 9 provided for reservation and Rule 14 provided for procedure of appointment on the post of Assistant Teacher.
- (6) The State Government in order to provide equal opportunity in getting appointment to the reserved category candidates enacted the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994, wherein Section 3(1) prescribed the percentage of vacancies to be reserved for Scheduled Caste, Scheduled Tribe and Other Backward Class candidates at the stage of direct recruitment. Section 3(6) of the Reservation Act, 1994 provides that reserved category candidates who obtain merit equal to general candidates, are required to be mandatorily selected/appointed on the unreserved vacancies and not on the reserved vacancies. On 25.03.1994, the State Government issued a Government Order providing for migration of Meritorious Reserved Candidates (for short "MRC") even if benefit of relaxation has been taken by the reserved category candidates.

- (7) In 2009, the Right of Children to Free and Compulsory Education (for short "RTE Act, 2009") was promulgated, wherein Section 23(1) empowers the Central Government to appoint Nodal Academic Authority, who was authorized to lay down minimum qualification for Teachers of basic education. Section 23(2) of the RTE Act, 2009 empowers the Central Government to give relaxation in minimum qualification of Teachers only for a period of five years in case of shortage of Teachers in the State. On 31.03.2010, the Central Government notified the National Council for Teachers Education (for short 'NCTE') as academic authority under Section 23 of the RTE Act, 2009. On 23.08.2010, the NCTE provided for passing of Teachers Eligibility Test (TET) as minimum qualification for achieving improvement in standard of basic education Teachers. On 09.11.2011, by means of 12th amendment, the State Government amended Rule 8(1)(ii)(a) of the Service Rules, 1981 for introducing the requirement of TET qualification as the minimum requisite qualification for appointment as Assistant Teacher.
- (8) Being aggrieved by the aforesaid amendment in the Service Rules, 1981, some persons filed petitions in the High Court and ultimately the matter went to the Supreme Court. On 25.07.2017, the Supreme Court in the case of ***State of U.P. and others Vs. Anand Kumar***, (2018) 13 SCC 560 (paragraphs 32 and 33) reiterated that no relaxation is permissible in the minimum prescribed qualification even in favour of Shiksha Mitras, who had challenged the amendment as arbitrary. However, in peculiar circumstances, some beneficial directions for Shiksha Mitra were given. In pursuance to the directions issued by the Supreme Court in the aforesaid case, by means of 20th amendment, the State Government further amended Rule 8(1)(ii)(a) of the Service Rules, 1981 introducing the passing of

ATRE by a candidate as the minimum requirement for eligibility over and above TET. Rule 14(i)(a) of the Service Rules, 1981 prescribed for quality point marks as per Appendix - I having six ingredients including a maximum of 25 marks for experience exclusively for Shiksha Mitra as per the scale fixed. For ready reference, provisions of Rule 14 (i)(a) of Service Rules, 1981 and the Appendix – I are reproduced as under:-

“Under clause (a) of Rule 5, the appointing authority shall determine the number of vacancies as also of the number of vacancies to be reserved for candidates belonging to reserved categories under Rule 9 and forward to the Secretary of Education Board.

For the notified vacancies an Assistant Teacher Recruitment Examination shall be conducted by Examination Body and result, according to reservation, shall be provided to Secretary.

Thereafter, an advertisement for recruitment will be published inviting online applications from candidates possessing prescribed educational. The Secretary of Board shall scrutinize the applications received in pursuance of the advertisement.

*The names of candidates in the list prepared in such manner that the candidate shall be arranged in accordance with the quality points and weightage as specified in the **Appendix-I**.*

Thereafter, cadre wise district will be allotted to the candidates as per their quality points and options by the Secretary of Board and list will be sent to the appointing authority.

The list prepared under sub-rule (2) and received in accordance with sub-rule (3) of rule 14, shall be forwarded by the appointing authority to the Selection Committee.”

"APPENDIX-I
[See Rule 14 (3)(a)]

*Quality points and weightage
for selection of candidates*

<i>Sl.</i>	<i>Name</i>	<i>of</i>	<i>Quality points</i>
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No.	Examination/ Degree	
1.	High School	$\frac{\text{Percentage of Marks in the examination} \times 10}{100}$
2.	Intermediate	$\frac{\text{Percentage of Marks in the examination} \times 10}{100}$
3.	Graduation Degree	$\frac{\text{Percentage of Marks in the examination} \times 10}{100}$
4.	B.T.C Training	$\frac{\text{Percentage of Marks in the examination} \times 10}{100}$
5.	Assistant Teacher Recruitment Examination	$\frac{\text{Percentage of Marks in the examination} \times 60}{100}$
6.	Weightage Teaching experiences as Shiksha Mitra or/as teacher working as such in junior basic schools run by Basic Shiksha Parishad.	2.5 marks per completed teaching year, up to maximum 25 marks, whichever is less

Notes 1 - If two or more candidates have equal quality points, the name of the candidate who is senior in age shall be placed higher in the list.

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

- (9) On 09.01.2018, first ATRE examination was notified for filling up 68,500 vacancies of Assistant Teachers. On 15.03.2018, 22nd amendment was introduced in the Service Rules, 1981, by which ATRE exam was removed from Rule 8(ii)(a) i.e. the

minimum qualification and added in Rule 14(i)(a) i.e. a step in the process of selection. It is this amendment which has posed the real difficulty in understanding and implementing the mandate of law under Section 3(6) of the Reservation Act, 1994 extracted above.

- (10) On 01.12.2018, the State Government decided to fill up 69,000 vacancies of Assistant Teachers and to hold ATRE-2019 as qualifying examination for recruitment/selection to the post of Assistant Teacher in accordance with the 22nd amendment in the Service Rules, 1981. The compartmentalization of candidates for implementing vertical reservation was not mentioned at the time of holding of ATRE-2019 though it was in the nature of an open competitive examination for recruitment/selection to the post of Assistant Teacher. On 05.12.2018, an advertisement was issued for conducting the ATRE-2019 and the appellants being eligible submitted their application forms online. On 07.01.2019, the State Government by means of a Government Order fixed the qualifying marks of ATRE-2019 as 65% and 60% for the unreserved and the reserved category candidates respectively, which did not tantamount to providing reservation, but classification. It was also clarified in paragraph-2(Ga) of the said Government Order that merely on qualifying ATRE-2019, the incumbent would not have any right to appointment since it was only an eligibility criteria for appointment to the post of Assistant Teacher. On 06.10.2019, the ATRE-2019 examination was conducted.
- (11) On 24.01.2019, the State Government introduced 23rd amendment in the Service Rules, 1981, whereby the minimum qualification of the candidates participating in ATRE-2019, was amended while including B.Ed candidates who have six months training in their credit in Rule 8(ii)(a) with retrospective effect from 01.01.2018. Secondly, provisions of Rule 14 were again

substituted with retrospective effect. On 07.03.2019, the State Government introduced 24th amendment in the Service Rules, 1981, whereby retrospective effect to the change of minimum qualification regarding B.Ed. was implemented with effect from 28.06.2018 i.e. the date of NCTE notification and not with effect from 01.01.2018.

- (12) The aforesaid Government Order dated 07.01.2019 was challenged before this Court in ***Writ Petition No.1188 (SS) of 2019, Mohd. Rizwan and others Vs. State of U.P. and others***, and other connected writ petitions and this Court vide a common judgement and order dated 29.03.2019 quashed the said Government Order with a direction for holding selection in accordance with the qualification marks prescribed for ATRE-2018. Aggrieved by the said judgement and order, the State as well as the aggrieved persons filed Special Appeals, leading of which is ***Special Appeal No.156 of 2019, Raghvendra Pratap Singh and others Vs. State of U.P. and others***, which were allowed by a Division Bench of this Court vide common judgement and order dated 06.05.2020 and upheld the Circular dated 07.01.2019 with a specific finding that "ATRE" was only a qualifying examination and was not part of the recruitment process because it was meant only for attaining eligibility in order to classify the reserved and unreserved candidates to be considered for recruitment. Thereafter, the matter went to the Supreme Court and the Supreme Court vide judgement and order dated 18.11.2020 dismissed the civil appeals and upheld the judgment and order dated 06.05.2020 passed by this Court in the case of ***Ram Sharan Maurya and others vs. State of U.P. and others***, (2021) 15 SCC 401.
- (13) In the meantime, the ATRE-2019 examination was conducted on 06.01.2019 and the result was declared on 12.05.2020, wherein a total 1,46,060 candidates were qualified. On

13.05.2020, the State Government issued the schedule/timeline for making appointments on 69,000 posts of Assistant Teachers including the time schedule for making advertisement, date of inviting applications from ATRE-2019 qualified candidates, preparation of select list, counselling and also about issuance of appointment letters etc. On 16.05.2020, the State Government granted permission to start selection for making appointments on a total of 69,000 vacancies of Assistant Teachers (district-wise), which were also advertised by inviting applications from eligible candidates. In pursuance of the permission granted by the State Government, the Secretary, Basic Education Board has advertised all 69,000 posts of Assistant Teachers by inviting applications from the eligible candidates. On 18.05.2020, amended guidelines were issued with regard to appointment of Assistant Teachers from amongst the eligible 1,46,060 ATRE-2019 candidates by the Director, Basic Education Board. Reservation has been provided for selection/ appointment since it was actually the process of selection/recruitment. In pursuance to the advertisement, the eligible candidates having the prescribed qualification, had applied for being considered for appointment as Assistant Teacher. It is alleged that the amended guidelines containing the quality point marks clearly show that there is no contribution of TET result in calculating the quality point marks. On 01.06.2020, the process of recruitment for 69,000 posts of Assistant Teachers was delineated by the Secretary, Basic Education Board, Allahabad and two select lists of selected candidates; one is dated 11.10.2020 for 31,277 candidates and the second is dated 30.11.2020 for 36,590, the total of which is 67,867 were issued and out of 69,000 posts, 1,133 posts of Scheduled Tribe candidates were shown lying vacant due to non-availability of the candidates of that category.

- (14) It is alleged that two select lists were published without declaring category-wise cut-off quality point marks for each candidate, but actually more than 50% general category candidates were selected without giving due representation to the reserved category candidates as per their prescribed quota of reservation. By doing the aforesaid process, the MRCs were placed in the reserved category instead of placing them in the general category as per the provisions contained in Section 3(6) of the Reservation Act, 1994 and thus, the reserved category candidates were deprived of their right of reservation as prescribed under Section 3(1) of the Reservation Act, 1994 read with Section 3(6).
- (15) Being aggrieved by the select list dated 01.06.2020 and the selection of MRCs against the reserved category vacancies, some reserved category candidates preferred writ petitions before this Court, leading petition of which is Writ Petition No.13156 of 2020. During the course of arguments and hearing, the State Government filed several counter and supplementary counter affidavits and lastly the State Government issued a press note admitting that the provisions of the Reservation Act, 1994 could not be properly followed while applying the reservation in the selection of 69,000 Assistant Teachers and, therefore, issued a fresh select list on 05.01.2022 making 6800 more appointments from amongst the reserved category candidates.
- (16) Learned Single Judge vide a detailed judgement and order dated 13.03.2023 has set aside the select list dated 05.01.2022 and directed the select list dated 01.06.2020 to be revised as any candidate belonging to a reserved category, who has availed relaxation of marks in ATRE-2019 which has been held to be an open competition, shall not be entitled to migrate from their respective category to the unreserved category while preparing

the select list as per the quality points in terms of Appendix - I of the Service Rules, 1981.

Submissions of the Appellants' Counsels

- (17) Sri S.C. Mishra, learned Senior Advocate assisted by Sri Sunil Kumar Chaudhary appearing for the appellants in Special Appeal Defective No.283 of 2023 and intervenor in Special Appeal No.478 of 2023 while mentioning all the facts regarding selection process and the relevant Governments Orders issued in regard to selection and reservation and the judgment and orders passed by the Supreme Court as well as by this Court on this issue, has submitted that the learned Single Judge has wrongly interpreted the judgement rendered by the Supreme Court in the case of *Vikas Sankhala and others Vs. Vikas Kumar Agarwal and others* (2017) 1 SCC 350, wherein a specific finding has been made that provision of giving 20% marks of TET score was applied to all candidates irrespective of the category to which he/she belongs and, therefore, no concession or relaxation or advantage or benefit was given in this behalf, which could disturb the level playing field and tilt advantage for the purpose of migration from reserved category to the unreserved category unlike the marks in ATRE. He has further submitted that the selection is to be made on the basis of Appendix - I of the Service Rules, 1981 as per quality point marks, therefore, the pre-emption of ATRE ought not to have been implemented prematurely contrary to the law laid down by the Hon'ble Supreme Court.
- (18) Sri S.C. Mishra, learned Senior Advocate by relying upon the judgement rendered by the Supreme Court in the case of *Vikas Sankhala* (supra) has further submitted that when a reserved category candidate is considered for appointment on the basis of having 60% marks in ATRE, his marks in ATRE would be

54, whereas in the case of general category candidate, it would be 58.2 on the basis of having 65% marks in ATRE. Therefore, there is difference of 4.2 marks and if the reserved category candidate wants to achieve the marks at par with the general category candidate to shift in the general category as MRC, then he has to achieve 4.2 more marks than the general category candidate in other qualifying examinations.

- (19) Sri S.C. Mishra, learned Senior Advocate has further submitted that the phrase 'Open Competition' has been defined by the Supreme Court in paragraph 33 of the judgement rendered in the case of *Jitendra Kumar Singh and another Vs. State of Uttar Pradesh and others* (2010) 3 SCC 119 and on the basis of the aforesaid judgment, he has submitted that in the present case "Open Competition" started when the recruitment process commenced after declaration of the result of ATRE, therefore, the reservation ought to have been implemented on the basis of marks given as per Appendix - I of the Service Rules, 1981.
- (20) Sri S.C. Mishra, learned Senior Advocate has also submitted that the State Government while defending its decision in the counter affidavit, has wrongly relied upon the judgement of the Supreme Court rendered in the case of *State (NCT of Delhi) Vs. Pradeep Kumar and others*, (2019) 10 SCC 120 as the aforesaid case is not applicable in the present case for the reason that the point involved therein was entirely different as compared to the present case where ATRE was prescribed as the only qualifying examination as per the Rules and the reservation is applicable only at the stage of recruitment, which in the present case starts from 15.05.2020 when the applications have been invited from amongst the ATRE-2019 qualified candidates for preparation of the select list as per the criteria mentioned in Appendix - I of the Service Rules, 1981. He has further submitted that as per the provisions of Section 3(6) of

the Reservation Act, 1994, the MRCs should have been migrated in the general category on the basis of quality point marks, therefore, the impugned judgement and order is erroneous and the part of the judgment, which restrains the candidates whose merit is lower than 65% in ATRE for being included in the general category candidates, may be set aside and the opposite parties may be directed to include all such reserved category candidates who have secured the quality points more than the last selected candidate of general category, in the general category and accordingly the entire select list be revised.

- (21) Sri Upendra Nath Mishra, learned Senior Advocate assisted by Sri Neel Kamal Mishra appearing for the appellants has submitted that TET is a minimum requisite qualification and is not restricted to any particular selection and the same can be used across the selection of Assistant Teachers in the like manner of ATRE-2019. To qualify under 'Open Competition' under Section 3(6) of the Reservation Act, 1994, it is necessary that all the candidates have to qualify in the same examination. The phrase 'Open Competition' as contemplated under Section 3(6) of the Reservation Act, 1994 could be applied only under the advertisement dated 16.05.2020 and its guidelines dated 18.05.2020, so no reservation under Sections 3(1) and 3(6) of the Reservation Act, 1994 could have been applied at any previous point of time before the process of recruitment began.
- (22) Sri Upendra Nath Mishra, learned Senior Advocate has further submitted that though the learned Single Judge has rightly directed the authorities to revisit the select list dated 01.06.2020 being unsustainable by observing that reserved category candidates, who have passed TET examination on the basis of relaxed norms and have obtained merit more than or equal to

the unreserved category cut-off in the selection process, have to be migrated to the unreserved category, but has erred in observing that in the case of ATRE, the candidates should not be migrated to the unreserved category.

- (23) Sri Upendra Nath Mishra, learned Senior Advocate has vehemently argued that though the observation of the learned Single Judge that TET is not part of the selection as the marks obtained in TET were not included in preparing the quality point marks is in accordance with law, but the learned Single Judge has erred in observing that ATRE is part of selection in contravention of the judgement and order of a coordinate Bench of this Court in the case of *Raghendra Pratap Singh* (supra), which was affirmed by the Supreme Court in the case of *Ram Saran Maurya* (supra). He has further submitted that the learned Single Judge has also erroneously presumed the phrase "Open Competition" mentioned in Section 3(6) of the Reservation Act, 1994 that the same can only be hinged on ATRE-2019 between the general category candidates and the reserved category candidates but not on the preparation of quality point marks as per Appendix - I of the Service Rules, 1981 which is inclusive of ATRE examination. Therefore, the judgment and order passed by the learned Single Judge deserves to be modified to the extent that reserved category candidate despite having taken benefit of relaxation of marks either in TET or in ATRE may be allowed to be migrated to unreserved seats if they have obtained equal or more merit than the general category candidates, and the list of 6800 candidates dated 05.01.2022 should be implemented and the unreserved category candidates, who were working in excess deserve to be discontinued.
- (24) Sri O.P. Srivastava, learned Senior Advocate assisted by Sri Kaushlendra Yadav appearing for the appellants has submitted

that no reservation was provided at the time of holding of ATRE-2019 since it was not the sole open competition examination for recruitment/selection to the post of Assistant Teacher, whereas reservation has been provided for selection/appointment as per the recruitment process based on the determination of quality points according to Rule 14 of the Service Rules, 1981. He has further submitted that a coordinate Bench of this Court in the case of **Raghvendra Pratap Singh** (supra) while upholding the Circular/Government Order dated 07.01.2019, recorded a finding that ATRE was only a qualifying examination and not a part of the recruitment process, but for attaining eligibility in order to apply and to be considered for recruitment and the said view was affirmed by the Supreme Court as well in the case of **Ram Sharan Maurya** (supra). Thus, the learned Single Judge has erred in holding that ATRE is part of the selection process.

- (25) Sri O.P. Srivastava, learned Senior Advocate has further submitted that the select list was not prepared in accordance with the Act and the Rules as it does not mention the details of the merit of the selected candidates i.e. the marks obtained by such candidates who were selected, *vis-a-vis* the final category wise cut-off marks, on the basis of which such selections were made. He has also submitted that MRCs have not been placed in the general category, but they have been treated as reserved category in violation of Sections 3(1) and 3(6) of the Reservation Act, 1994. This fact has been admitted by the respondent-authorities in their supplementary counter affidavit filed on 24.05.2022 that select list had been prepared on the basis of final quality point marks of candidates and, thereafter, reservation of different categories had been applied.
- (26) Sri O.P. Srivastava, learned Senior Advocate has also submitted that percentage of quota prescribed for reserved category

candidates has not been filled up. The State Government rightly prepared a select list of 6800 MRCs only on 05.01.2022 in pursuance to the Government Order to rectify the mistake committed by it.

- (27) S/Sri H.G.S. Parihar, Sudeep Seth, Sandeep Dixit, I.P. Singh, learned Senior Advocates and Pt. S Chandra, learned counsel for the appellants have reiterated the submissions made by Sri S.C. Mishra, learned Senior Advocate and submitted that the learned Single Judge has erroneously applied the Reservation Act, 1994 in preparation of result of ATRE-2019, which is an Eligibility Acquiring Exam and not a Recruitment Competitive Exam. The learned Single Judge has also failed to apply the Reservation Act, 1994 at the time of recruitment while drawing a select list through determination of quality points, but has rightly held that MRC candidates be adjusted against the general category posts. He has further submitted that while passing the impugned judgement and order, the learned Single Judge has failed to appreciate that ATRE is not an open competitive examination, but it is a qualifying examination to acquire eligibility for recruitment/selection and has failed to consider that reservation has not been applied at the time of issuance of the Government Orders dated 01.12.2018 and 07.01.2019 for holding ATRE and prescribing minimum qualifying marks as it has no vested right for appointment. They have also submitted that recruitment process started from the stage of issuance of advertisement i.e. 18.05.2020, therefore, the reservation is bound to be made applicable from that stage only. It has further been submitted that provisions of Sections 3(1) and 3(6) of the Reservation Act, 1994 shall apply at the time of drawing select list.

- (28) Sri Vivek Raj Singh, learned Senior Advocate assisted by Sri Akshat Kumar appearing for the appellants has submitted that

opposite parties have wrongly calculated the marks of 65% of total marks of 150 as 97, whereas it should be 97.4 and if this 0.4 marks would have been included, then nearly 3000 candidates could have been benefited and they could have got appointment.

- (29) S/Sri Anil Kumar Tewari and Asit Kumar Chaturvedi, learned Senior Advocates assisted by Sri Durga Prasad Shukla appearing for the appellants while relying upon the judgements of the Supreme Court in the case of ***Jitendra Kumar Singh*** (supra) and provisions of Sections 3(1) and 3(6), 8 and 14 of the Reservation Act, 1994 as also the relevant Government Orders issued in regard to open competition, reservation, concessions and relaxations, has submitted that the learned Single Judge has failed to consider the law laid down by the Supreme Court in the case of ***Pradeep Kumar*** (supra) that if any reserved category candidate passed even any eligibility qualification by taking benefit of concession/realization, then he cannot be permitted to migrate from the reserved category to the unreserved/open category if he secures equal or more marks than the cut-off of unreserved category.
- (30) S/Sri Amrendra Nath Tripathi and Utsav Mishra, learned counsel appearing for the appellants while relying upon the judgements of the Supreme Court in the cases of ***Indra Sawhney Vs. Union of India and others***, 1992 Supp (3) SCC 217 (paragraph nos. 743, 744 and 808); ***Post Graduate Institute of Medical Education and Research Vs. Faculty Association*** (1998) 4 SCC 1 (paragraph no.32) and ***Jitendra Kumar Singh*** (supra) (paragraph nos.48, 49, 72, 75 and 76) as also Sections 3(1), 3(6) and 8 of the Reservation Act, 1994 has reiterated the submissions made by the learned Senior Advocates regarding application of reservation.

- (31) Dr. L.P. Mishra, learned counsel for the appellants has submitted that the eligibility of B.Ed. candidates, which was determined through notification dated 28.06.2018 by the NCTE, has been quashed and set aside by the Hon'ble Supreme Court in the case of *Devesh Sharma Vs. Union of India and others*, 2023 SCC Online SC 985. Therefore, it is submitted that in the event of ouster of the B.Ed. degree holders from the select list, the applicants, who are possessing the BTC degree, shall be adjusted and they may be given appointment.
- (32) Argument of the learned counsel for the appellants is also that 4% reservation earmarked for physically handicapped candidates, has not been given while preparing the merit list and only 3% reservation was provided ignoring the provisions of the Rights of Persons with Disability Act, 2016. In order to remove the said anomaly, the State Government prepared the select list dated 05.01.2022 placing 1% physically handicapped candidates in 6800 posts meant for reserved category candidates, but the learned Single Judge without considering this aspect of the matter, has set aside the said select list.
- (33) In sum and substance, the argument of learned counsel for the appellants is that the State Government while revisiting the select list, must bear in mind all the points raised herein above and accordingly the select list may be prepared, so that no eligible candidate stands deprived of his right in getting the appointment.

Submissions of learned counsels for the Respondents

- (34) On the other hand, Sri Amit Kumar Singh Bhadauriya, learned counsel appearing for the interveners has submitted that the learned Single Judge while passing the impugned judgement and order, has considered all the peculiar facts and

circumstances meticulously and there is no illegality in it. He has further submitted that 23rd amendment in the Service Rule, 1981 came into force with retrospective effect i.e. 28.06.2018, whereas the ATRE was held on 01.12.2018. Therefore, the selection was held in accordance with 22nd and 23rd amendments and Rule 14 of the Service Rules, 1981 and the merit list was prepared in accordance with Appendix - I of the Service Rules. He has also rebutted the arguments raised by the learned Senior Advocates appearing for the appellants regarding effect of ATRE in the selection process and the application of reservation in the said process by placing the relevant sections of the Service Rules, 1981 and the Government Orders issued in this regard from time to time. He has also submitted that the select list dated 05.01.2022 selecting 6800 reserved category candidates over and above the advertised vacancies of 69,000 has been quashed by the learned Single Judge and no one has challenged nor argued or filed any special appeal challenging this part of judgment.

- (35) Sri Sanjay Bhasin, learned Senior Advocate assisted by Sri Ran Vijay Singh appearing for U.P. Basic Education Board while rebutting the argument of Sri Vivek Raj Singh, learned Senior Advocate, has relied upon the Circular/Government Order dated 07.01.2019 and has submitted that as per tenor of language of the said Circular/Government Order, it transpires that emphasis has been laid on 65% and not on the marks. He has further submitted that in order to provide equal treatment to a reserved category candidate with general category candidate in an open competition, the State Government promulgated the Reservation Act, 1994.
- (36) Sri Sanjay Bhasin, learned Senior Advocate has also rebutted the argument of the learned Senior Advocates appearing for the appellants in regard to stage of application of reservation in an

open competition and has laid emphasis on the words "*gets selected on the basis of merit in an open competition*" mentioned in Section 3(6) of the Reservation Act, 1994 by saying that ATRE is the stage of direct recruitment in an open competitive process and there is no particular point for applying the reservation in the selection process as argued by the learned counsel for the appellants. He has further submitted that in a matter where public importance is involved, ordinarily the Court not only do justice, but a holistic and pragmatic view may be taken, so that public at large may get benefit of the same. In the present case also, the learned Single Judge while passing the impugned judgement and order has taken caution of the public importance and took a possible view. Therefore, there is no illegality or infirmity in it.

- (37) Sri Anil Pratap Singh, learned Additional Advocate General assisted by Sri Sanjeev Singh, learned Standing Counsel has adopted the arguments advanced by Sri Sanjay Bhasin, Senior Advocate appearing for the Basic Education Board and has further submitted that there is no illegality or infirmity in the detailed impugned judgement order passed by the learned Single Judge as the same has been passed after analysing the entire facts and circumstances of the case minutely and carefully.
- (38) We have heard learned counsel for the parties and perused the judgement and order impugned in the present appeals.

Discussion:

- (39) From over all facts and circumstances of the case, it emerges that four categories of appellants have approached this Court by filing the present special appeals impugning the judgement and order passed by the learned Single Judge with their following contentions:-

- (i) Reserved Category candidates challenging the impugned judgment and order to the extent that MRC candidates, who have obtained quality points at par with general category candidates, have not been placed in the general category and they have been treated as reserved category in violation of Sections 3(1) and 3(6) of the Reservation Act, 1994 and further the reserved category candidates forming part of the 6800 candidates as per the select list of 05.01.2022, had not been appointed in view of the pending litigation, which is adversely affecting their service prospect and benefits.
- (ii) General Category candidates challenging the impugned judgment and order to the extent that the reserved category candidates, who got the benefit of reservation in TET, cannot be migrated from the reserved category to the unreserved category.
- (iii) Physically Handicapped Category candidates impugned the judgement and order to the extent that 4% reservation earmarked for physically handicapped category has not been given while preparing the merit list.
- (iv) Interveners impugned the judgement and order to the extent that the eligibility of B.Ed. candidates which was determined through notification dated 28.06.2018 issued by the NCTE, has been quashed by the Hon'ble Supreme Court in the case of *Devesh Sharma* (supra) and in the event of ouster of the B.Ed. degree holders from the select list, the appellants-interveners possessing B.T.C. degree shall be adjusted and they may be given appointment accordingly.
- (40) The broader question which arises for consideration is as to how the benefit of reservation as per the mandate of Section 3(6) of the Reservation Act, 1994 is to be accorded to the reserved category candidates and on what parameters a

candidate belonging to the reserved category may be migrated against the field of general category. The Reservation Act, 1994 lays down two-fold benefits in favour of the reserved category candidates; firstly, Section 8 of the Reservation Act, 1994 provides for concession and the same for ready reference, is extracted below:-

"8. Concession and relaxation:- The State Government may, in favor of the categories of persons mentioned in sub-section (1) of section 3 by order, grant such concessions in respect of fees for any competitive examination or interview and relaxation in upper age limit, as it may consider necessary.

(2) The Government orders in force on the date of the commencement of this Act, in respect of concessions and relaxations, including concession in fees for any competitive examination or interview and relaxation in upper age limit and those relating to reservation direct recruitment and promotion, in favour of categories of persons referred to in sub-section (1) which are not in consistent with the provisions of this Act shall continue to be applicable till they are modified or revoked, as the case may be."

- (41) A plain reading of the aforesaid provision demonstrates as to what is to be construed to be a concession. The distinctive feature of concession is that it merely facilitates the reserved category candidates to participate as per the prescribed procedure of selection by availing some concessions in the recruitment process which has no bearing on the determination of merit. The selection process through open competition on the other hand compartmentalizes/identifies the reserved category candidates from unreserved category candidates on the basis of the merit derived through the process of selection prescribed under law. The top merit defines the general merit proportionate to the number of 50% vacancies. All the candidates securing highest marks irrespective of category are

classified as general against 50% of vacancies and this is how the bench mark for last general category candidate is determined below which the reservation would operate in the respective vertical streams.

- (42) In the present case, the procedure of selection as per the provisions of Rule 14 read with Appendix - I of the Service Rules, 1981 comprises of the essential criteria mentioned therein inclusive of the ATRE. The merit of selected candidates in an open competition in the present case for implementing the vertical reservation would either hinge on the quality point marks obtained in the entire prescribed criteria or the bench mark of above 65% marks in ATRE for general category candidates and less than 65% marks subject to a minimum of 60% marks in ATRE for reserve categories.
- (43) The State Government in order to accord the benefit of vertical reservation, is free to decide the criteria of merit either on the basis of percentage of marks in ATRE or through an inclusive process like in Appendix - I. This freedom of the State flows from Articles 15(4) and 16(4) of the Constitution of India, which for ready reference is extracted below:-

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

.....

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

16. Equality of opportunity in matters of public employment.----

.....

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."

- (44) The percentage of marks prescribed against ATRE vide Circular dated 07.01.2019 serves the purpose of compartmentalization and once a reserved category candidate does not achieve the requisite percentage of marks at par with the general category candidate, he is to be treated as reserved category candidate. This principle of reservation to achieve the object of Section 3(6) of the Reservation Act, 1994 could either be achieved on the basis of total quality point marks obtained by a candidate as per Appendix - I or the object may be achieved on the basis of the percentage of marks obtained in the ATRE. It is nobody's case that ATRE is not an open competition enabling all the eligible candidates to face a common written test. The difference in the percentage of qualifying marks clearly segregates the two streams irreversibly. Once a candidate belonging to the reserved category obtains higher marks in ATRE at par with the general category candidate, he is provided the benefit of migration from reserved category to the general category. Thereafter, there is no question of providing the same benefit again at the stage of evaluating the total quality point marks obtained by a candidate. The question, therefore, hinges on the Circular dated 07.01.2019 which evolves a distinctive mechanism of which the legality has remained unquestioned. The circular issued on 07.01.2019 does not fall within the scope of Section 8 of the Reservation Act, 1994 which is evident from the provisions enumerated above.
- (45) Having regard to the scope of Section 8 of the Reservation Act, 1994, the Circular dated 07.01.2019 by no stretch of imagination can be treated to be a concession and the Court

would reject all the submissions which may tend to lead us to such an understanding of the circular.

- (46) We accordingly hold that the Circular dated 07.01.2019 is not a concession within the meaning of Section 8 of the Reservation Act, 1994 and proceed to consider the essence of such a Government Order in the light of submissions made.
- (47) Now, the real question of law which remains to be considered is, as to what is the import of the Circular dated 07.01.2019 when it does not fall within the scope of concession as provided under Section 8 of the Reservation Act, 1994. The Circular dated 07.01.2019 was issued by the State Government just after conducting the examination of ATRE-2019, whereby the State Government has fixed the qualifying marks of ATRE-2019 at 60% for reserved category candidates and 65% for general category candidates below which there is no migration. In order to appreciate the position of law, the Circular dated 07.01.2019 being relevant, the same in its entirety is reproduced below:

“प्रेषक

चन्द्रशेखर

विशेष सचिव

उ०प्र० शासन

सेवा में

1. निदेशक

2. सचिव

राज्य शैक्षिक अनुसंधान एवं प्रशिक्षण
परिषद, उत्तर प्रदेश लखनऊ

परीक्षा नियामक प्राधिकारी
उ०प्र० प्रयागराज

बेसिक शिक्षा अनुभाग 4 लखनऊ

दिनांक 07 जनवरी, 2019

विषय:— उत्तर प्रदेश, बेसिक शिक्षा परिषद द्वारा संचालित परिषदीय प्राथमिक विद्यालयों हेतु “सहायक अध्यापक भर्ती परीक्षा 2019” में न्यूनतम उत्तीर्णांक निर्धारित किये जाने के सम्बन्ध में।

महोदय

उपर्युक्त विषयक सचिव, बेसिक शिक्षा परिषद के पत्र संख्या बे0शि0प0 16426-27/2018-19 दिनांक 05 जनवरी, 2019 का संदर्भ ग्रहण करे, जिसके द्वारा "सहायक अध्यापक भर्ती परीक्षा 2019" में न्यूनतम उत्तीर्णांक निर्धारित किये जाने का अनुरोध किया गया है।

2. इस सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि शासन द्वारा सम्यक् विचारोपरान्त "सहायक अध्यापक भर्ती परीक्षा 2019" के आयोजन हेतु निर्गत शासनादेश संख्या 2056/68-4-2018 दिनांक 01.12.2018 के क्रम में परीक्षा परिणाम हेतु निम्नवत न्यूनतम उत्तीर्णांक निर्धारित किया जाता है। यह न्यूनतम उत्तीर्णांक मात्र "सहायक अध्यापक भर्ती परीक्षा 2019" के लिये ही होगा:-

(क) सामान्य वर्ग के अभ्यर्थियों को पूर्णांक 150 में से 97 अंक अर्थात् 65 प्रतिशत एवं अधिक अंक प्राप्त करने वाले अभ्यर्थियों को "सहायक अध्यापक भर्ती परीक्षा 2019 " हेतु उत्तीर्ण माना जायेगा।

(ख) अन्य समस्त आरक्षित वर्ग के अभ्यर्थियों को पूर्णांक 150 में से 90 अंक अर्थात् 60 प्रतिशत एवं अधिक अंक प्राप्त करने वाले अभ्यर्थियों को "सहायक अध्यापक भर्ती परीक्षा, 2019" हेतु उत्तीर्ण माना जायेगा।

(ग) उपरोक्त 'क' एवं 'ख' के आधार पर उत्तीर्ण अभ्यर्थी 69000 रिक्तियों के विरुद्ध विज्ञापित पदों पर आवेदन करने के अधिकारी होंगे एवं उपरोक्त न्यूनतम उत्तीर्णांक के आधार पर सफल होने मात्र पर ही किसी अभ्यर्थी को नियुक्ति हेतु अधिकार नहीं होगा क्योंकि यह परीक्षा नियुक्ति के लिये केवल पात्रता मानदण्डों में से एक है।

(घ) निर्धारित विज्ञापित पदों की संख्या (69000) से अधिक अभ्यर्थी उत्तीर्ण होने की स्थिति में सफल होने वाले कुल अभ्यर्थियों में से अन्तिम मेरिट के आधार पर विज्ञापित पदों के सापेक्ष उत्तर प्रदेश बेसिक शिक्षा (अध्यापक) सेवा नियमावली, 1981 के बीसवें संशोधन के परिशिष्ट -1 एवं निर्धारित आरक्षण के अनुसार अर्ह अभ्यर्थियों का चयन किया जायेगा। शेष अभ्यर्थी चयन प्रक्रिया से स्वतः बाहर हो जायेंगे तथा

उनको इस "सहायक अध्यापक भर्ती परीक्षा 2019 " के आधार पर चयन हेतु कोई अधिकार नहीं होगा।

(ड.) न्यूनतम उत्तीर्णांक के सम्बन्ध में कोई भी पत्रकार स्वीकार नहीं किया जायेगा।

भवदीय

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07.01.19

(चन्द्रशेखर)

विशेष सचिव

संख्या एवं दिनांक तदैव—

प्रतिलिपि निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:—

1. समस्त मण्डलायुक्त, उत्तर प्रदेश।
2. समस्त जिलाधिकारी, उत्तर प्रदेश।
3. राज्य परियोजना निदेशक, सभी के लिए शिक्षा परियोजना परिषद उ0प्र0
4. निदेशक, माध्यमिक/बेसिक शिक्षा/साक्षरता एवं प्रौढ़ शिक्षा उ0प्र0 लखनऊ
5. अपर शिक्षा निदेशक, बेसिक/माध्यमिक शिक्षा उ0प्र0 इलाहाबाद
6. सचिव, बेसिक शिक्षा परिषद उ0प्र0 इलाहाबाद
7. समस्त मण्डलीय संयुक्त शिक्षा निदेशक उ0प्र0
8. समस्त प्राचार्य, जिला एवं प्रशिक्षण संस्थान उ0प्र0
9. समस्त जिला बेसिक शिक्षा अधिकारी उ0प्र0
10. शिक्षा अनुभाग-5
11. गार्ड फाइल।

आज्ञा से

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(चन्द्रशेखर)

विशेष सचिव”

- (48) So far as the legality of the Circular dated 07.01.2019 issued by the Special Secretary, Basic Education Department and the question whether it was issued to serve the object of vertical reservation is concerned, as the same has not been issued to serve the said object specifically, it is to be noted that vide Government Order dated 06.06.2018, the power of issuing circulars for the selection and recruitment of Assistant Teachers has been delegated to the Basic Education department of the

State. Articles 15(4) and 16(4) of the Constitution of India also confer such a power upon the State. Therefore, the competent department, i.e. Basic Education Department has issued the Circular dated 07.01.2019 and any circular issued by the Basic Education Department can safely be classified to be a Government Order. Apart from this, a coordinate Bench of this Court in the bunch of cases, i.e., Special Appeal No. 156 of 2019, ***Raghvendra Pratap Singh and others vs. State of U.P. and others***, vide elaborate judgment and order dated 06.05.2020 has already held the Circular dated 07.01.2019 as valid and it is within the legislative power of the State Government to prescribe the qualifying marks of passing the examination even after the advertisement and holding the examination. This power is envisaged under Rule 2(1)(x) of the Service Rules, 1981, which when read in conjunction with Section – 19 of the Basic Education Act, 1971 assumes a statutory sanctity. Rule 2(1)(x) for ready reference is extracted below:-

“Qualifying Marks of Assistant Teacher Recruitment Examination” means such minimum marks as may be determined from time to time by the Government.”

- (49) The prescription of ATRE – 2019 with the specified percentage of marks for the two streams of candidates is nothing but an eligibility criteria to qualify in the respective streams. The prescription of qualifying standard at variance has remained unquestionable throughout, therefore applying the principle of migration merely on the prescribed standard of qualifying test would be nothing but over-reaching the essence and import of circular issued on 07.01.2019 beyond the field of circular itself. In other words, the circular dated 07.01.2019 without specifying its sanctity to serve the object of Section 3(6) of the Reservation Act, 1994 cannot be read beyond what it actually

intends to prescribe as a minimum qualifying test. The rule for implementing vertical reservation is bound to proceed on overall determination of merit through open competition as is prescribed under the Statute itself.

- (50) A plain reading of the relevant proviso of Reservation Act, 1994 extracted in para – 3 above demonstrates that if a reserved category candidate mentioned in sub-section 3(1) ***gets selected on the basis of merit in an open competition with the general candidates***, he shall not be adjusted against the vacancies reserved for such category mentioned in sub-section 3(1). This provision lays emphasis on two significant terms viz., ‘merit’ and ‘open competition’.
- (51) Rule 9 of the Service Rules, 1981 specifically provides for Reservation in accordance with the Reservation Act, 1994 and the Government Orders issued in this regard from time to time. For ready reference, Rule 9 of the Service Rules, 1981 is extracted herein below:-
- "9. Reservations.- Reservation for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes, dependants of freedom fighters, ex-servicemen and other categories shall be in accordance with the Uttar Pradesh Act and the orders of the State Government in force at the time of recruitment."*
- (52) Reliance placed by Sri Asit Kumar Chaturvedi, learned Senior Advocate for the appellants on the Government Order dated 10.12.2019 is also relevant to be considered here, wherein it has been provided that those candidates belonging to Scheduled Caste, Scheduled Tribe, Other Backward Class and Economically Weaker Sections, who have not availed the benefit of reservation in the qualifying standard in pre, main, interview and screening test in an open competition i.e., ATRE, 2019 and obtain more marks than the cut-off marks fixed for unreserved category, they will be treated as unreserved category

candidate and adjusted accordingly, otherwise they will remain in their respective categories till the final selection.

- (53) From a plain reading of Section 3(6) of the Reservation Act, 1994, it is clear that the implementation of the rule of reservation is dependent upon two significant terms, namely, 'merit' and 'open competition'. Thus in the case at hand, the real dispute is as to what is the procedure for determining the ultimate merit of a candidate to compartmentalize him/her in either of the categories, i.e., unreserved or reserved and secondly, as to what is to be understood as an open competition. In so far as the question of merit is concerned, Rule 14 of the Service Rules, 1981 provides us a complete guidance which, for ready reference, is extracted below:-

“[14. Determination of vacancies and preparation of list -- (1)(a) In respect of appointment, by direct recruitment to the post of Mistress of Nursery Schools and Assistant Master or Assistant Mistress of Junior Basic Schools under clause (a) of Rule 5, the appointing authority shall determine the number of vacancies as also the number of vacancies to be reserved for candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, and other categories under Rule 9 and published in at least two leading daily newspapers having adequate circulation in the State as well as in concerned district inviting applications from candidates possessing prescribed training qualification and passed teacher eligibility test, conducted by the Government or by the Government of India and passed Assistant Teacher Recruitment Examination conducted by the Government.

(b) The Government may from time to time decide to appoint candidates, who are graduates along with B.Ed/B.Ed. (Special Education)/D.Ed. (Special Education) and who have also passed teacher eligibility test conducted by the Government or by the Government of India, as trainee teachers. These candidates after appointment will have to undergo six months

special training programme in elementary education recognised by National Council of Teacher Education (NCTE). The appointing authority shall determine the number of vacancies as also the number to be reserved for candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, and other categories under Rule 9 and advertisement would be issued in at least two leading daily news papers having adequate circulation in the State as well as in concerned district inviting applications from candidates who are graduates along with B.Ed./B.Ed. (Special Education) D.Ed. (Special Education) and who have also passed teacher eligibility test conducted by the Government or by the Government of India and passed Assistant Teacher Recruitment Examination conducted by the Government or by the Government of India.

(c) The trainee teachers, after obtaining the certificate of successful completion of six months special training in elementary education, shall be appointed as assistant teachers in junior basic schools against substantive post in regular pay-scale. The appointing authority will be duty bound to appoint the trainee teachers as assistant teachers within one month of issue of certificate of successful completion of said training.

(2) The appointing authority shall scrutinise the applications received in pursuance of the advertisement under clause (a) or clause (c) of sub-rule (1) and prepare a **merit list** of such persons as appear to possess the prescribed academic qualifications and passed Assistant Teacher Recruitment Examination be eligible for appointment.

(3)(a) The names of candidates in the list prepared under sub-rule (2) in accordance with clause (h) of sub-rule (1) of Rule 14 shall then be arranged in such manner that the candidate shall be arranged in accordance with the quality points and weightage as specified in the Appendix I:

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

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

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

(c) The names of candidates in the list prepared in accordance with clause (d) of sub-rule (1) of Rule 14 for appointment as assistant teacher shall be same as the list prepared under clause (c), sub-rule (3) of Rule 14 unless the candidate under the said list is unable to successfully complete the six months special training course in elementary education in his first attempt. If the candidate successfully completes the six months special training in his second and final attempt, the candidate's name shall be placed under the names of all those candidates who have completed the said six months special training in their first attempt.

(4) No person shall be eligible for appointment unless his or her name is included in the list prepared under sub-rule (2).

(5) The list prepared under sub-rule (2) and arranged in accordance with clauses (a) and (b) of sub-rule (3) of Rule 14 shall be forwarded by the appointing authority to the selection committee.”

- (54) From a plain reading of the aforesaid Rule, it is more than clear that the merit of a candidate is the total number of quality points and weightage obtained as a result of the computation of total marks derived from all the standards fixed in Appendix – I. It is for this reason, Rule 14(5) defines such a figure to be a merit of the candidate according to the marks and such a list by virtue of Rule 14(2) is termed to be the merit list. The prescription of the examination and its integral parts is inclusive and no part of it taken to be exclusive would qualify to be an open competition for the purposes of compartmentalization of

the candidates in either of the categories. Any deviation would defeat the very essence and the object of merit prescribed to be determined as per the rules. Once the merit is prescribed to be derived from the prescribed procedure as above, it leaves no scope for the Court to have a different view on the basis of some qualifying test which unless prescribed to serve the object of Section 3 (6) of the Act would not be a just and fair basis for achieving such an object. Moreover, this qualifying test like any other qualifying exam satisfies the twin test of its qualification and being a part of the final determination of quality point marks. This brings us to the other dimension of the controversy as to what would be the meaning of 'open competition' of which the merit is relevant to implement the rule of vertical reservation. The open competition is not defined under the Service Rules, however, the recruitment body like Union Public Service Commission as far back as 1981 has understood the same in the following terms:-

"...

2. The expression "by open competition" occurring in the above paragraph would mean all recruitment by U.P.S.C. whether through written examination or by interview or both and recruitment made by other authorities including Staff Selection Commission or any other appointment authority through written competitive examination or tests (but not by interview alone). Any recruitment not made by the U.P.S.C. or not made through written competitive tests held by any other authority would mean direct recruitment otherwise than by open competition."

- (55) Subsequently, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training vide Office Memorandum No.36034/2/2013-Estt.(Res.) dated 08.04.2013 clarified that instructions on the subject already exist that the expression 'direct recruitment on the result of an All India

Competitive examination' means (i) all recruitments by UPSC whether through written examination or by interview or both and; (ii) recruitment made by the authorities including Staff Selection Commission or any other appointment authority through written competitive examination or tests (but not by interview only). The expression 'direct recruitment otherwise than by open competition' means (i) any recruitment not made by the UPSC or (ii) recruitment not made through written competitive tests held by any other authority.

- (56) So the aforesaid circulars also lay emphasis on an inclusive process of recruitment, namely, written examination as well as interview. In the instant case, the written examinations qualified by the candidates in the academic records are a basis enabling the recruiting agency to determine their merit. Any single part of the recruitment process cannot be construed to be a decisive criteria contrary to the mandate of Rule 14 of 1981 Rules which for its operation adopts a holistic approach to serve the purpose of Section 3(6) of the Reservation Act, 1994, therefore, it cannot be restricted to ATRE, 2019 alone.
- (57) The rule of migration would only come into play on the determination of overall merit of a candidate at the end of the selection process and not at any early stage for which the intention of Rule Making Authority, i.e., the State cannot be gathered either from the circular dated 07.01.2019 or the Rules applicable in this behalf.
- (58) In the recruitment process at hand, there is no challenge to the qualifying examination of ATRE – 19 setting out the qualifying standard at variance, therefore, such a question does not crop up before us in the present case and the question is left open to be dealt with in an appropriate proceeding.

- (59) The Circular dated 07.01.2019 issued by the State Government for qualifying examination of ATRE – 19 was challenged on a different aspect in a bunch of writ petitions, leading Writ Petition No. 1188 (SS) of 2019, *Mohd, Rizwan and others v. State of U.P. and others* wherein the learned Single Judge had quashed the Circular dated 07.01.2019 vide judgment and order dated 29.03.2019. The said Single Judge decision was challenged in a bunch of Special Appeals, leading Special Appeal No. 156 of 2019, *Raghvendra Pratap Singh and others v. State of U.P. and others*. A co-ordinate Bench of this Court vide its judgment and order dated 06.05.2020 upheld the Circular which on being challenged before the Apex Court in a bunch of Civil Appeals, leading Civil Appeal No. 3707 of 2010, *Ram Sharan Maurya and others v. State of U.P. and others*, the Apex Court in its judgment and order dated 18.11.2020 while affirming the view taken by the Co-ordinate Bench of this Court has held that the fixation of cut off standard for the reserved and unreserved categories, even after holding ATRE - 19 cannot be said to be impermissible as the Government was well within authority to fix cut off marks for restricting the zone of consideration.
- (60) Since as per rules, merit list is statutorily defined and the list has to be drawn on the basis of quality point marks from the inclusive standards specified in the Appendix - I, therefore, the view taken by the learned Single Judge does not seem to be a correct view within the purview of law and calls for interference. Even if it may be a possible view as has been taken by appreciating the essence of circular dated 07.01.2019, the decision solely based on the circular is erroneous insofar as the restriction imposed on migration from reserve category to general is concerned.

- (61) For the reasons stated above, we are of the opinion that the marks derived on the basis of the entire process i.e. ATRE-2019 coupled with other criteria of educational and training record would serve the broader and real object of Section 3(6) of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 and reply to the question framed in paragraph -3 is answered accordingly.
- (62) In view of above, all the Special Appeals are **disposed of** with the following directions:-
- (i) The State Government/concerned authorities shall prepare a select list of 69,000 candidates for appointment as Assistant Teachers on the basis of ATRE-19 as per Appendix – 1 to the Service Rules, 1981 afresh, ignoring the select lists dated 01.06.2020 and 05.01.2022. We are conscious of the fact that the learned Single Judge has already quashed the select list of 6800 candidates dated 05.01.2022 vide impugned judgment.
- (ii) After preparation of select list in terms of quality points enumerated in Rule 14 of Service Rules, 1981, reservation policy be adopted as envisaged under Section 3 (6) of Reservation Act, 1994.
- (iii) If a reserved category candidate acquires merit equivalent to the merit prescribed for the general category, then Meritorious Reserved Category candidate shall be migrated to the general category as per the provisions contained in Section 3 (6) of the Reservation Act, 1994.
- (iv) The benefit of vertical reservation given in terms of the directions issued above shall give away to the horizontal reservation as per the Statutes/Rules/Government Orders applicable in this behalf.

(v) While preparing the fresh select lists for appointment, if any one of the working candidates is affected by the action of the State Government/competent authority, they shall be given the session benefit so that the students may not suffer.

(vi) The directions issued by the learned Single Judge in the impugned judgment and order stand modified accordingly.

(vii) The entire exercise shall be carried out in terms of this judgment within a period of three months from the date of receipt of this order.

(63) No order as to costs.

(Brij Raj Singh, J.) (Attau Rahman Masoodi, J.)

Order Date :- 13th August, 2024
Rao/Lakshman