

# Bhola Prasad Shukla vs Union Of India on 16 January, 2020

Bench: Uday Umesh Lalit, Indira Banerjee, M.R. Shah

1

8ITEM NO.13

COURT NO.6

SECTION XI

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C)

No(s). 14621/2019

(Arising out of impugned final judgment and order dated 01-10-2018  
in SPLAD No. 537/2018 passed by the High Court Of Judicature At  
Allahabad, Lucknow Bench)

BHOLA PRASAD SHUKLA & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

IA	No.	89075/2019 - EXEMPTION FROM FILING O.T.
IA	No.	193083/2019 - INTERVENTION APPLICATION
IA	No.	167036/2019 - INTERVENTION/IMPLEADMENT
IA	No.	192758/2019 - INTERVENTION/IMPLEADMENT
IA	No.	151942/2019 - INTERVENTION/IMPLEADMENT
IA	No.	191191/2019 - INTERVENTION/IMPLEADMENT
IA	No.	123295/2019 - INTERVENTION/IMPLEADMENT
IA	No.	189706/2019 - INTERVENTION/IMPLEADMENT
IA	No.	109429/2019 - INTERVENTION/IMPLEADMENT
IA	No.	189353/2019 - INTERVENTION/IMPLEADMENT
IA	No.	186268/2019 - INTERVENTION/IMPLEADMENT
IA	No.	193855/2019 - INTERVENTION/IMPLEADMENT
IA	No.	172013/2019 - INTERVENTION/IMPLEADMENT
IA	No.	171380/2019 - INTERVENTION/IMPLEADMENT
IA	No.	192941/2019 - INTERVENTION/IMPLEADMENT
IA	No.	170150/2019 - INTERVENTION/IMPLEADMENT
IA	No.	192800/2019 - INTERVENTION/IMPLEADMENT)

WITH

Diary No(s). 46884/2019 (XI)

( IA No.4554/2020-CONDONATION OF DELAY IN FILING and IA

No.4555/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and

IA No.4553/2020-PERMISSION TO FILE PETITION (SLP/TP/WP/..))

Signature Not Verified

Diary No(s). 849/2020 (XI)  
Digitally signed by  
INDU MARWAH  
Date: 2020.01.18

( IA No.7099/2020-CONDONATION OF DELAY IN FILING and IA  
14:13:58 IST  
Reason:

No.7102/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and  
IA No.7101/2020-EXEMPTION FROM FILING O.T. and IA No.7100/2020-  
PERMISSION TO FILE PETITION (SLP/TP/WP/..))

2

Date : 16-01-2020 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT  
HON'BLE MS. JUSTICE INDIRA BANERJEE  
HON'BLE MR. JUSTICE M.R. SHAH

For Parties:

Mr. Prashant Shukla, Adv.  
Mr. Girdhar Upadhyay, Adv.  
Mr. Kausar Raza Faridi, AOR  
Mr. Anurag Tripathi, Adv.  
Mr. Madhumay Misra, Adv.  
Mr. Satyendr Kr. Mishra, Adv.  
Mr. Shahbaaz Jameel, Adv.

Mr. R.K. singh, Adv.  
Mr. Kumar Gaurav, Adv.  
Ms. Neeraj Singh, Adv.  
Ms. Ritu Reniwal, Adv.  
Mr. Ajay Chaudhary, Adv.  
Ms. Shalu Sharma, AOR

Dr. Manish Singhvi, Sr. Adv.  
Mr. Shailja Nanda Mishra, Adv.  
Mr. Sandeep Kr. Jha, AOR  
Mr. Arpit Parkash, Adv.

Mr. Ajay Bansal, Adv.  
Dr. Brij Bhushan K. Jauhari, Adv.  
Mr. Karunakar Mahalik, AOR

Ms. Veena Bansal, adv.

Mr. Gaurav Yadav, Adv.  
Mr. Harsh Mahan, Adv.  
Ms. Purnima Jauhari, AOR

Mr. Pradeep Kr. Dwivedi, Adv.  
Mr. Sandeep Kr. Dwivedi, Adv.  
Mr. Satyam Pandey, Adv.  
Mr. Raghvendra Nath Tiwari, Adv.  
Mr. Umesh Dubey, Adv.  
Ms. Madhu Bala, Adv.  
Mr. Awadhesh Kr., Adv.  
Mr. Chandan Misha, Adv.

3

Dr. Vinod Kumar Tewari, AOR  
Mr. Ashotosh Lal, Adv.  
Mr. Alok Kr. Misra, Adv.

Mr. Diwakar Prasad Chaturvedi, Adv.  
Mr. Krishnanand Pandeya, AOR  
Mr. Anil Kr. Verma, Adv.

Mr. Prabhoo Dayal Tiwari, Adv.  
Mr. Surya Kr, Adv.  
Mr. Kaushal Yadav, AOR  
Ms. Akansha Rai, Adv.  
Ms. Yashoda Katiyar, Adv.  
Mr. Anup Kr. Srivastava, Adv.  
Mr. Nandlal Kr. Mishra, Adv.

Ms. Manju Jetley, AOR

Dr. Vinod Kumar Tewari, AOR

Mr. Gopal Jha, Adv.  
Mr. Anmol Chandan, Adv.  
Ms. Vaishali Verma, Adv.  
Mr. G.S. Makker, AOR

Mr. Vivek Vishnoi, adv.  
Mr. Pawan Kr. Shukla, Adv.  
Mr. Pankaj Kr. Singh, Adv.  
Mr. Sangeet Paliwal, Adv.  
Mr. Raj Singh Rana, AOR

Mr. Randhir Kumar Ojha, AOR  
Mr. Purushottam Sharma, Adv.

Mr. Sandeep Kumar Jha, AOR

Mr. V. Shekhar, Sr. Adv.  
Mr. R.K. Shukla, Adv.  
Mr. Dinesh S. Radiar, adv.  
Ms. Sheetal Rajput, Adv.  
Mr. Ravi Kumar Tomar, AOR

Mr. R.K. Singh, Adv.  
Ms. Neeraj Singh, Adv.  
Mr. Kumar Gaurav, Adv.  
Ms. Ritu Reniwal, Adv.  
Mr. Ajay Chaudhary, Adv.

4

Ms. Shalu Sharma, AOR

Ms. Manisha T. Karia, AOR  
Mr. Shashank S. Mangal, Adv.  
Mr. Adarsh Kr, Adv.  
Ms. Sukhda Kalra, Adv.

Mr. M.M.Singh, Adv.  
Mr. Jitendra Kr., Adv.  
Mr. Rameshwar Pd. Goyal, AOR

Mr. Utkarsh Sharma, AOR

Mr. Mukesh Verma, Adv.  
Mr. Kamal Kr. Pandey, Adv.  
Mr. Kakrand Pratap Singh, Adv.  
Mr. Siddnath Singh Sengor, Adv.

Mr. Ranjit Kumar Sharma, AOR

Mr. R.K. Singh, Adv.  
Mr. Neeraj Singh, Adv.  
Mr. Kumar Gaura, Adv.  
Ms. Ritu Reniwal, Adv.  
Mr. Ajay Chaudhary, Adv.  
Mr. Robin Khokhar, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Permission to file SLPs is granted.

Delay condoned.

Applications for intervention/impleadment are allowed. In State of U.P. and Another vs. Anand Kr. Yadav & Others [(2018) 13 SCC 560 ], the basic question as posed in Para 2 was as under:-

“2. The main question for consideration is whether it is permissible to appoint teachers for basic education who do not have the requisite statutory qualifications?” The decision rendered by the Full Bench of the High Court was affirmed by this Court as under:

“28. We are in agreement with the above findings. In view of clear mandate of law statutorily requiring minimum qualification for appointment of teachers to be appointed after the date of the Notification dated 23-8-2010, there is no doubt that no appointment was permissible without such qualifications. Appointments in the present case are clearly after the said date. Relaxation provision could be invoked for a limited period or in respect of persons already appointed in terms of applicable rules relating to qualifications. The Shiksha Mitras in the present case do not fall in the category of pre 23-8-2010 Notification whose appointment could be regularised.

29. Further difficulty which stares one in the face is the law laid down by this Court on regularisation of contractually appointed persons in public employment.

Appointment of Shiksha Mitras was not only contractual, it was not as per qualification prescribed for a teacher nor on designation of teacher nor in pay scale of teachers. Thus, they could not be regularised as teachers. Regularisation could only be of mere irregularity. The exceptions carved out by this Court do not apply to the case of the present nature.

30. In view of our conclusion that the Shiksha Mitras were never appointed as teachers as per applicable qualifications and are not covered by relaxation order under Section 23(2) of the RTE Act, they could not be appointed as teachers in breach of Section 23(1) of the said Act. The State is not competent to relax the qualifications.

31. Since, we have given full hearing to all Shiksha Mitras through their respective counsel, it is not necessary to consider the argument of breach of procedure under Order 1 Rule 8 CPC.

32. On the one hand, we have the claim of 1.78 lakh persons to be regularised in violation of law, on the other hand is the duty to uphold the rule of law and also to have regard to the right of children in the age of 6 to 14 years to receive quality education from duly qualified teachers. Thus, even if for a stop-gap arrangement teaching may be by unqualified teachers, qualified teachers have to be ultimately appointed. It may be permissible to give some weightage to the experience of Shiksha Mitras or some age relaxation may be possible, mandatory qualifications cannot be dispensed with. Regularisation of Shiksha Mitras as teachers was not permissible. In view of this legal position, our answers are obvious. We do not find any error in the view 1 taken by the High Court.” However, while considering whether any relaxation be given to the present incumbents and how the interest of such incumbents could be secured, it was observed in Para 33 as under:

“33. Question now is whether in the absence of any right in favour of Shiksha Mitras, they are entitled to any other relief or preference. In the peculiar fact situation, they ought to be given opportunity to be considered for recruitment if they have acquired or they now acquire the requisite qualification in terms of advertisements for recruitment for next two consecutive recruitments. They may also be given suitable age relaxation and some weightage for their experience as may be decided by the authority concerned. Till they avail of this opportunity, the State is at liberty to continue them as Shiksha Mitras on same terms on which they were working prior to their absorption, if the State so decides.” Thus, on two counts, benefit was extended to the present incumbents who are working as Shiksha Mitras. In the recruitment process undertaken by the State, such incumbents would be entitled to age relaxation as well as some weightage for their experience as Shiksha Mitras. What weightage ought to be given was completely left to the authorities. However, considering the exigencies of the situation and particularly the fact that primary education in the State ought not to suffer, the State was given liberty to take services of present incumbents on same terms on which the persons were working prior to their absorption.

In keeping with the directions issued by this Court, a circular was issued by the State Government on 20.09.2017. Para 4 of the Circular adverted to the decision taken at the government level and said para 4 was as under:

“4. In this regard, I have been directed to say that in compliance of order dated 25.07.2017 passed by the Hon’ble Supreme Court in SLP (C)No.32599/2015, State of U.P. & Ors. vs. Anand Kr. Yadav & Ors, the following decision have been taken after consideration on the present facts on the government level:-

(1) By order dated 25.07.2017 passed by the Hon’ble Supreme Court in SLP (C)No.32599/2015, State of U.P. & Ors. vs. Anand Kr. Yadav & Ors., the retrenched Shiksha Mitras be paid the pay of Assistant Teacher till the 31.07.2017 by appointing them from the date 01.08.2017 in the Councils Primary Schools for the education purpose.

(2) In compliance of order dated 25.07.2017 of the Hon’ble Supreme Court, issued government order No.225379- 5-14-282/98, dated 19.06.2014/79-5-15-3031/15 TC dated 22.12.2015 for absorption of previous Shiksha Mitras to the Council Primary Schools on the post of Assistant Teachers and in this regard, issued other government orders are set aside.

(3) In compliance of order dated 25.07.2017 of the Hon’ble Supreme Court in SLP (C)No.32599/2015, employed and working total 1,65,157 Shiksha Mitras in the Council Primary Schools be paid the fixed pay of Rs.10,000/- per month till 41 months, from 01.08.2017.” Thus a decision was taken to continue 1,65,157 Shiksha Mitras who were working in Primary Schools, for 41 months at fixed pay of Rs.10,000/- per month.

It was submitted by Mr. V. Shekhar and Dr. Manish Singhvi, learned Senior Advocates as well as by other learned counsel that recommendation was made by Project Approval Board on 15.03.2017 recommending, inter alia, salary and emoluments in the sum of Rs.38,870/- for Primary Teachers appointed on Contractual Basis. The submission was that Shiksha Mitras who are being continued under the present dispensation ought to be paid the salary and emoluments in the sum as recommended by the Project Approval Board. The basic question which engaged the attention of this Court was whether persons who do not have the requisite qualifications, could be appointed as Teachers. The premise, therefore, was clear that the persons who were appointed for Shiksha Mitras did not have the requisite qualifications. The only sequitor therefore, could be that such persons would not be entitled to retain their posts. However, considering the fact that large number of persons were appointed as Shiksha Mitras and the State would take some reasonable time to switch over and make regular appointments, the liberty was given to the State to continue the services of the present incumbents on the same terms.

Since the Shiksha Mitras were not regularly appointed and qualified Teachers, it would not be proper to extend to them the same pay scales as is now being canvassed or projected. However, considering the entirety of the matter, in our view, the ends of justice would be met, directions as stated hereinafter are called for:

We have been given to understand that since the decision of this Court in State of U.P. Vs. Anand Kr. Yadav, selection process was undertaken to fill up approximately 69,000 vacancies in the Primary Schools in the State, in which selection process about 41,500 teachers were selected.

The record is not clear whether any Shiksha Mitras availing the benefit extended by this Court, were selected or not. But considering the large number of Shiksha Mitras, the State must undertake further selection process(s) as early as possible so that all the qualified Shiksha Mitras who are otherwise aspiring to be regularly selected teachers may have an opportunity available to compete in the process subject to the benefits already extended to them.

We, therefore, direct the State Government to initiate the process for selection, after assessing the actual number of vacancies, as early as possible and preferably six weeks from today and conclude the selection process within six months thereafter.

All Shiksha Mitras who are otherwise qualified shall be considered for such selection after extending to them the benefit as contemplated in Para 33 of the decision in (2018) 13 SCC 560. It shall open to the State Government to consider and devise a weightage formula. We may, by way of example, suggest that for every four years of experience, the State may consider extending the benefit of one per cent. This is only by way of a suggestion. The matter is completely left to the discretion of the State and its authorities.

With the aforesaid directions, these SLPs are disposed of. All applications for intervention/impleadment are also disposed of in same terms.

(INDU MARWAH)  
COURT MASTER

(SUMAN JAIN)  
BRANCH OFFICER