

SANJAI KUMAR & ORS.

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v.

DR. PRABHAT KUMAR ETC.

(Contempt Petition (Civil) Nos.1332-1360 of 2018)

In

B

(Civil Appeal Nos. 4347-4375 of 2014)

DECEMBER 13, 2019

[UDAY UMESH LALIT AND M. R. SHAH, JJ.]

Service Law – Assistant Teachers – Appointment of – The Contempt Petition sought enforcement of interim orders dated 17.12.2014, 25.2.2015 and 7.12.2015 and the Judgment and final order dated 25.7.2017 – There were total 72,825 vacancies for the post of Assistant teachers and against the said posts 43,077 were appointed, 15,058 were undergoing training – In pursuance of the interim orders total 66,655 teachers were appointed – In 2018, Contempt Petitions were filed submitting that though the State made clear representation that the qualified persons would be appointed, it did not appoint the Contempt Petitioners and as such the orders passed by the Supreme Court were violated – It was contended that the State Government had incorrectly calculated figure of 66,655, there was no objection to issue appointment orders in respect of 12,091 candidates, including Contempt Petitioners – Held: According to the Affidavit dated 01.10.2016, out of 12091 candidates, only 391 candidates were appointed as the others either did not take part in the selection process or had not opted for certain Districts or could not be selected going by the cut-off for the concerned District – Thereafter, the State published another advertisement on 06.02.2016 and 08.02.2016 so that if any candidate was left out, his candidature could be considered – Thus, the reasons for not appointing all the persons who were part of list of 12,091 candidates were available on record from October 2016 onwards – At no stage any grievance was made till the matter was disposed of in July 2017 which gave a status of permanency – The grievance was made for the first time almost a year after when these contempt petitions were filed – Nothing substantial pointed out by any of candidates or contempt petitions – Nothing

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- A *wrong in the process undertaken by the State Government in pursuance of various interim orders passed by the Supreme Court – Therefore, Contempt petitions directed to be closed.*

Closing the Contempt petitions, the Court

- B **HELD: 1. The exercise of selecting those who had secured minimum marks in terms of criteria devised by order dated 17.12.2014 also resulted in finding 12,091 persons eligible subject to verification of antecedents, as was recorded in the order dated 07.12.2015. [Para 11 (d)] [1128-B]**

- C **2. The list of these 12091 candidates was published and it is a matter of record that the names of the contempt petitioners were part of this list. [Para 11 (e)] [1128-C]**

- D **3. According to para 21 of the Affidavit dated 01.10.2016 (which has been referred to in the order dated 22.07.2019) out of these 12091 candidates, only 391 candidates could be appointed as the others either did not take part in the selection process or had not opted for certain Districts or could not be selected going by the cut-off for the concerned District. This development had happened way back in October 2016 and the affidavit was on record since then. [Para 11 (f)] [1128-D]**

- E **4. The State thereafter published another advertisement on 06.02.2016 so that if any candidate was left out, his candidature could be considered. Steps were thereafter taken and another advertisement was published on 08.02.2016. Para 25 of the Affidavit dated 01.10.2016 as quoted in the order dated 22.07.2019, dealt with this issue in clear terms and was thus part of the record. [Para 11 (g)] [1128-E-F]**

- G **5. Aforesaid para 25 of the Affidavit thus made it clear that as on the date when the affidavit was filed, 64,257 vacancies were filled up and 1,536 appointment letters were being issued in addition. It was also stated that 862 candidates were given ad-hoc appointments in terms of the order dated 07.12.2015 and were not included in the number of 64,257. These three figures aggregate to number 66,655. [Para 11 (h)] [1128-G-H]**

- H **6. Thus, the reasons for not appointing all the persons who were part of list of 12,091 candidates were available on record from October 2016 onwards. [Para 11 (i)] [1129-A]**

7. At no stage any grievance was made till the matter was disposed of in July 2017 which gave the status of permanency to those who were appointed under various interim orders passed by this Court. [Para 11 (j)] [1129-B] A

8. The grievance was made for the first time almost a year after when these contempt petitions were filed. [Para 11 (k)] [1129-B] B

9. The order dated 22.07.2019 had, therefore, observed that the Court could not disregard the fact that challenge had been raised more than a year after the final Judgment. Even then, the State Government was called upon to indicate on affidavit certain issues. The reason was obvious that if there was large scale infraction of interim orders passed by this Court which merged in the final Judgment, the matter could still have been considered. [Para 11 (l)] [1129-C-D] C

10. However, the response filed by the State Government now indicates with clarity that no fresh appointments were effected after 2016 and no person other than those who satisfied the requirements laid down by this Court in its Order dated 27.07.2015 as modified by further orders, was given any appointment. The State Government has also placed on record the District wise break-up of all candidates appointed in various categories in all 75 Districts of the State. Nothing substantial was pointed out by any of the candidates or contempt petitioners. [Para 11 (m)] [1129-E] D E

INHERENT JURISDICTION/CONTEMPT PETITION (CIVIL) NOS. 1332-1360 of 2018 in Civil Appeal Nos. 4347-4375 of 2014. F

From the Judgment and Order dated 25.07.2017, 17.12.2014, 25.02.2015, 07.12.2015, 24.02.2016, 24.08.2016, 17.11.2016 passed in Civil Appeal Nos. 4347-4375 of 2014

With G

Contempt Petition (C) Nos. 1391-1419, 1673-1701, 1935-1963, 1964-1992, 1993-2021, 2022-2050, 2051-2079, 2127-2155 of 2018, 20-48, 323-351, 704-732, 776-790 of 2019 in Civil Appeal Nos. 4347-4375 of 2014, 741 of 2019 in Civil Appeal No. 9732 of 2017. H

- A V. Shekhar, Siddharth Dave, Mahabir Singh, Ms. V. Mohana, Ajit Sinha, N.K. Mody, Dr. I.M. Quddusi, Pallav Shishodia, Sr. Advs., Ravindra Sadanand Chingale, Fuzail Ahmad Ayyubi, Abbula Kalam, Abdul Qadir, Farrukh Rasheed, Pushkar Sharma, Ms. Goldi Tyagi, Abdul Gaffar, Satish Pandey, Sandeep Kr Satyam, Suyash Srivastava, Prashant Shukla, Ms. Nikita Capoor, Satyam Pandey, Satyajeet Kumar,
- B Susheel Tomar, Sanjeev Malhotra, Mukesh Verma, Pawan Kr. Shukla, Yash Pal Dhingra, S.K. Tiwang, Chandan Kr. V.S. Aggarwal, Shivam Tripathi, Himanshu Upadhyay, R.C. Chingale, Pradeep Kr. Dwivedi, Sandeep Kr. Dwivedi, Dr. Vinod Kumar Tewari, Prabhoo Dayal Tiwari, Surya Kr., Manish Tiwari, Purvish Jitendra Malkan, Pradeep Kr. Yadav,
- C Ms. Shanu Chauhan, Mohd. Asad Khan, Shashank Raj Singh, Danish Zubair Khan, Shakeel Ahmed, Ms. Sadiya Shakeel, Siddhant Gupta, Chirag Sharma, Ms. Ananya Sharma, Siddharth Singh, Amit Pawan, Abhishek Amritanshu, Anand Nandan, Akshat Srivastava, Hassan Zubair Waris, Ms. Shivangi, Rohit Rajershi, Raj Kishore Choudhary, Manoj K Mishra, Umesh Dubey, Ms. Jyoti Mishra, Sukumar., Niranjana Sahu,
- D Dhananjai Jain, Mrs. Swarupama Chaturvedi, Mukesh Kr., Ashutosh Mohan, Ms. Aparna Trivedi, Advs. for the appearing parties.

The Judgment of the Court was delivered by

UDAY UMESH LALIT, J.

- E 1. These Contempt Petitions *inter alia* seek enforcement of interim orders dated 17.12.2014, 25.2.2015 and 7.12.2015 and the judgment and final order dated 25.7.2017¹ passed by this Court in Civil Appeal Nos.4347-4375 of 2014 and other connected matters.
- F 2. The facts leading to the filing of aforesaid Civil Appeals were set out in the judgment and final order dated 25.07.2017 as under: -
- G “4. In the wake of Eighty-Sixth Amendment to the Constitution of India inserting Article 21A for providing free and compulsory education to children of age of 6 to 14 years, the RTE Act was enacted. The RTE Act *inter alia* lays down qualifications for appointment and terms and conditions of service of teachers. The Central Government in exercise of its powers under Section 23 of the Act, issued Notification dated 31st March, 2010 authorising the NCTE as the “academic authority” to lay down the minimum qualifications for a person to be eligible for appointment as a

H ¹ (2018) 12 SCC 595

teacher. The NCTE thereafter issued Notification dated 23rd August, 2010 laying down qualifications for appointment of teachers for elementary education. The NCTE also issued guidelines dated 11th February, 2011 for conduct of Teachers Eligibility Test (TET) and also providing for weightage to the marks in the said test for recruitment of teachers. The 1981 Rules of the State were amended on 9th November, 2011 (the 12th Amendment) to bring the same in consonance with the Notifications dated 23rd August, 2010 and 11th February, 2011. Accordingly, the TET was held on 13th November, 2011 and result thereof was declared on 25th November, 2011. Thereafter on 30th November, 2011, an advertisement was issued for appointment of 'trainee teachers' in primary schools. The candidates submitted their applications. However, the said advertisement was cancelled and a fresh advertisement dated 7th December, 2012 was issued which came to be challenged and has been set aside by the impugned judgment. The justification given by the State of Uttar Pradesh for such cancellation is that the result of TET was influenced by the money consideration. On 31st December, 2011 the amount of several lacs was seized with lists of candidates. FIR No. 675 of 2011 was lodged. Residence of Director of Secondary Education was also searched leading to recovery of certain lists and cash. The State constituted a high powered committee headed by the Chief Secretary on 10th April, 2012 which gave its report dated 1st May, 2012. It was recommended that candidates found involved in any irregularity/criminal activity in the TET examination be prohibited from the selection. The State Government took a decision dated 26th July, 2012 which was followed by 15th Amendment to the 1981 rules on 31st August, 2012 to the effect that instead of giving weightage to the TET marks as per 12th Amendment, the criteria of 'quality point marks' as prevalent prior to 12th Amendment was adopted. This amendment was challenged on the ground that it rendered the rules inconsistent with the NCTE guidelines referred to above.

5. Writ petitions were filed by the affected candidates against the cancellation of advertisement dated 30th November, 2011 and the new advertisement dated 7th December, 2012 incorporating the criteria by way of 15th Amendment to the Rules which was

A at variance with the guidelines of the NCTE dated 11th February, 2011, supra to the extent that weightage for marks in TET was not contemplated.

6. The Single Judge of the High Court dismissed the writ petitions vide order dated 16th January, 2013². Appeal against the said judgment has been allowed by the Division Bench by the impugned order. The Division Bench *inter alia* followed the judgment dated 31st May, 2013 by three Judges (Full Bench) in ***Shiv Kumar Sharma and Ors. v. State of U.P. and ors.***³ The High Court held that the decision dated 26th July, 2012 of the State Government to change the criteria of selection by way of 15th Amendment in the Rules to make TET as a minimum qualification (without giving weightage for the marks in the said qualification as per NCTE guidelines) and cancelling the advertisement dated 30th November, 2011 was not sustainable and that the NCTE guidelines were binding. Accordingly, the State was directed to proceed and conclude the selection as per advertisement dated 30th November, 2011.”

3. While the challenge was pending in this Court, certain interim orders were passed considering exigencies of the situation and the fact that large number of posts of Assistant Teachers were lying vacant. These interim orders permitted the State Authorities to make appointments on certain parameters which were stated in the interim orders. Those orders were: -

(A) By order dated 25.03.2014 it was directed: -

F “By this interim order, we direct the State of Uttar Pradesh to fill up the vacancies of Assistant Teachers in the schools pursuant to the advertisement issued on 30.11.2011 as per the directions issued by the Division Bench of Allahabad High Court in the case of Shiv Kumar Pathak & Ors. [Special Appeal (Defective) No.237 of 2013] and connected matters as expeditiously as possible at any rate within 12 weeks’ time from today.

G Further, the State in the letter of appointment that will be issued to the successful candidates shall mention that their appointment

² WP No.39674 of 2012 Akhilesh Tripathi v. State of U.P.

H ³ 2013 (6) ADJ 310

is subject to the result of the civil appeals that are pending before A
this Court.”

(B) The order dated 17.12.2014 noted that despite aforesaid
direction, the State had not carried out the appointment process. It was,
therefore, observed: -

“After hearing the learned counsel for the parties at length on B
various occasions, we are inclined to modify the order passed
on 25th March, 2014, and direct that the State Government shall
appoint the candidates, whose names have not been weeded out
in the malpractice and who have obtained/secured seventy
percent marks in the Teacher Eligibility Test (TET). The C
candidates belonging to Scheduled Caste/Scheduled Tribe/Other
Backward Classes and the physically handicapped persons, shall
be appointed if they have obtained/secured sixty-five percent
marks. If there is any policy of the State Government covering
any other category for the purpose of reservation, it may be given D
effect to with the same percentage. It shall be mentioned in the
appointment letter that their appointment shall be subject to the
result of these appeals and they shall not claim any equity
because of the appointment, for it is issued on the basis of the
direction passed by this Court.

At this juncture, we must state that the advertisement was issued E
to fill up 72,825 vacancies in the post of Assistant Teachers, who
have to impart education to students of Classes I to V. We have
been apprised by the learned counsel for the respondents that
there are three lacs posts lying vacant as on today. In this
context, we must recapitulate the objects and reasons from F
the Right of Children to Free and Compulsory Education Act,
2009,

The State, as the guardian of all citizens and also with a further
enhanced and accentuated responsibilities for the children, has
a sacrosanct obligation to see that the children are educated. G
Almost two thousand years back, *Kautaliya* had stated that the
parents who do not send their children to have the teachings,
deserve to be punished. Similar was the climate in England almost
seven centuries back. Thus, the significance of education can
be well recognized. In such a situation, we cannot conceive that
the posts would lie vacant, students go untaught and the schools H

- A look like barren in a desert waiting for an oasis. The teacher shall serve the purpose of oasis in the field of education. Hence, the aforesaid directions.”

- (C) The order dated 25.2.2015 took note of the affidavit filed on behalf of the State in which it was indicated that in respect of 72,825 posts of Trainee Teachers, the State had initiated process of counseling and only those candidates who had secured 70% marks amongst General Category Candidates and 65% amongst the Reserved Category Candidates were permitted to participate in the counseling. It was observed by this Court:-
- B

- C “As we find, as of today, 29174 vacancies are available to be filled up. If the persons belonging to Scheduled Casts/Scheduled Tribes/Other Backward Classes have secured 65% marks and their number meets the requirement, the vacancies meant for their quota, shall be filled up by taking into consideration the said percentage.

- D The State Government is directed to issue the public notice within four weeks from today requiring the selected candidates in respect of 29174 vacancies to join and if any candidate fails to join within the stipulated period provided in the public notice, he will forfeit his right of appointment in this selection. To clarify,
- E we may add that the public notice shall be published in widely circulated newspapers and the candidates shall be given three weeks time to join failing which the conditions prescribed hereinabove shall follow.”

- (D) The order dated 02.11.2015 noted as under:-
- F “It is submitted by Mr. Bhatia that keeping in view the order dated 27.07.2015, as against 72825 posts advertised, 43,077 candidates have been appointed, who, after completion of the training till September 2015, are working in *praesenti*. It is also submitted that 15,058 candidates are undergoing training out of which 8,500
- G shall be appearing in the examination on 16th and 17th November, 2015 and the rest will be appearing in the examination after completion of their training. In the result, around 14,640 posts still remain vacant.”

- (E) The order dated 07.12.2015 noted submissions of the learned
- H counsel for the State as recorded in the order dated 02.11.2015 and

the grievances of some of the candidates that though they had secured more than 70% marks in TET examination in the General Category, they were not being considered. Following direction was thereafter passed:- A

“At this juncture, we may state that Mr. Bhatia, learned AAG submitted that in pursuance of the direction of this Court on the earlier occasion and prior to that more than 75,000 representations were received and after scanning the same, the State Government has found 12,091 persons eligible for being appointed subject to verification of antecedents. Let the said persons be appointed subject to the said verification within six weeks hence.” B C

4. The appeals were thereafter heard finally and by its judgment and final order dated 25.07.2017¹, this Court held as under:-

“16. There is no manner of doubt that the NCTE, acting as an ‘academic authority’ under Section 23 of the RTE Act, under the Notification dated 31st March, 2010 issued by the Central Government as well as under Sections 12 and 12A of the NCTE Act, was competent to issue Notifications dated 23rd August, 2010 and 11th February, 2011. The State Government was under obligation to act as per the said notifications and not to give effect to any contrary rule. However, since NCTE itself has taken the stand that notification dated 11th February, 2011 with regard to the weightage to be given to the marks obtained in TET is not mandatory which is also a possible interpretation, the view of the High Court in quashing the 15th Amendment to the 1981 Rules has to be interfered with. Accordingly, while we uphold the view that qualifications prescribed by the NCTE are binding, requirement of weightage to TET marks is not a mandatory requirement.” D E F

However, considering the facts and circumstances and particularly that various interim orders were passed from time to time, it was observed by this Court:- G

“17. As a result of above, in normal course the State would have been at liberty to proceed with the selection in terms of advertisement dated 7th December, 2012 in accordance with the amended rules by way of 15th amendment, in view of H

- A developments which have taken place during pendency of these appeals, the said advertisement cannot proceed and while upholding the said advertisement, relief has to be moulded in the light of developments that have taken place in the interregnum.
- B 18. Vide interim order dated 25th March, 2014, this Court directed the State of Uttar Pradesh to fill up the vacancies of Assistant Teachers in terms of the impugned judgment. Thereafter, on 17th December, 2014, the said order was modified and the State was directed to appoint candidates whose names were not involved in malpractices in the TET test and who had obtained 70% marks
- C (65% for SC, ST, OBC and physically handicapped or any other category covered by the Government policy for reservation). 54,464 posts have already been filled up in compliance of the orders of this Court. The said appointments were subject to result of these matters. It was also observed that if anyone without
- D TET qualification is appointed his services will be terminated. Vide order dated 2nd November, 2015 it was noted that against 72,825 posts which were advertised, 43,077 candidates had completed training and were working while 15,058 candidates were undergoing training. Around 14,690 posts were vacant. It was further observed that candidates who had the required percentage
- E of marks in terms of order dated 27th July, 2015 were to file their applications and a Committee constituted for the said purpose could verify such percentage and if parity was found the same benefit could be extended.
- F 19. We have been informed that 66,655 teachers have already been appointed in pursuance of the interim orders of this Court. Having regard to the entirety of circumstances, we are not inclined to disturb the same. We make it clear that the State is at liberty to fill up the remaining vacancies in accordance with law after issuing a fresh advertisement.”
- G 5. The judgment and final order thus noted that 66,655 teachers were already appointed in pursuance of the interim orders passed by this Court and having regard to the entirety of the circumstances those appointments were not to be disturbed. As regards the remaining vacancies, the State was given liberty to fill up those vacancies in
- H accordance with law after issuing fresh advertisement.

6. Sometime in May, 2018 present Contempt Petitions were filed submitting *inter alia* that in terms of the interim orders issued by this Court which merged in the judgment and final order dated 25.07.2017¹, the candidates who had secured more than 70% marks in General Category and 65% marks in Reserved Category were required to be appointed; though the State made clear representation that the qualified persons would be appointed, it did not appoint the Contempt Petitioners and as such the orders passed by this Court were violated. It was submitted that the State Government had incorrectly calculated the figure of 66,655; that as recorded in the order dated 07.12.2015, there was no objection to issue appointment orders in respect of 12,091 candidates and yet the State had not issued appointment orders to the concerned candidates, including Contempt Petitioners. It was further submitted that the Contempt Petitioners were part of the list of 12,091 candidates that was officially declared and yet they were completely sidelined by the State.

7. Notice was issued in the Contempt Petition on 20.08.2018 and thereafter in its order dated 04.10.2018, this Court observed:-

“Mr. Siddharth Dave, learned advocate appearing for the petitioner in Contempt Petition Nos.1391-1419 of 2018 submitted that in terms of the order dated 07.12.2015 passed by this Court at the interim stage, 12,091 candidates were found to be eligible by the State Government. The submission made on behalf of the State was recorded thus:

“At this juncture, we may state that Mr. Bhatia, learned AAG submitted that in pursuance of the direction of this Court on the earlier occasion and prior to that more than 75,000 representations were received and after scanning the same, the State Government has found 12,091 persons eligible for being appointed subject to verification of antecedents. Let the said persons be appointed subject to the said verification within six weeks hence.”

As per his submission, all those 12,091 candidates were to be given appointments subject to verification of the antecedents. Mr. Dave then invited our attention to the reply affidavit filed by Dr. Prabhat Kumar, Additional Chief Secretary, Basic Education, Government of Uttar Pradesh, wherein it has been stated that out of this body of 12,091 candidates, only 400 candidates were

A selected. According to Mr. Dave, nothing has been indicated in the affidavit as to why and in what manner only 400 names could be selected.

Mr. Pallav Shishodia, learned senior counsel appearing for the State drew our attention to Annexure A-2 annexed to said reply affidavit. According to him, after having found 12,091 candidates to be eligible, the State had undertaken an exercise where going by the choice given by the candidates at the stage of counselling, 400 candidates came to be selected. According to him, all the present petitioners did not fulfil the cut-off as against Districts they had opted for and, therefore, they were not selected.

C Having gone through the record, we deem it appropriate to pass the following directions:

A. The entire record including the stages when names of 400 candidates were selected from out of the entire body of 12,091 candidates be placed before the Court. The record of the counselling shall also be made available for perusal of the Court.

Copies of the record need not be filed but the original record shall be made available for perusal of the Court.

E B. A responsible officer who is aware of the intricacies of the matter may also be asked to remain present on the next date of hearing.

List the matters on 27.11.2018.”

F 8. The order dated 29.01.2019 passed by this Court noted the fact that a category wise chart was presented by the State and the respective parties were allowed to make submissions on the basis of that Chart. Next order dated 27.02.2019 noted the submissions of the learned counsel for the Contempt Petitioners about certain irregularities in the Chart and the State was called upon to explain the position. The order was to the following effect: -

G “Pursuant to last order dated 29.01.2019, a chart has been placed by learned counsel for the State of Uttar Pradesh for perusal of this Court. At the same time, case of a candidate named Anuradha Gupta has been placed by way of illustration by Mr. Siddharth Dave, learned counsel for the contempt petitioners.

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According to the illustration Ms. Anuradha Gupta born on 25.09.1980 had secured 101 marks in TET examination and had also participated in the counselling in respect of District Mirzapur. These facts are not disputed by the learned counsel for the respondent-State. The illustration indicates that 25 candidates against category “female backward class - Arts” had also secured 101 marks and all of them are juniors in age to said Anuradha Gupta.

It is also accepted by the respondent-State that if two candidates are at the same level of marks, the governing criteria is to select that person who is senior in age. Going by the criteria, prima facie, Anuradha Gupta ought to have been selected but she was not. And all those 25 candidates who had secured same marks but were juniors in age, were selected.

At the request of Ms. Swarupama Chaturvedi, learned counsel for the State, we adjourn the matter for three weeks so that all such cases can be comprehensively looked into and a report can be presented before this Court.

In order to facilitate the exercise, we give liberty to all the learned counsel appearing for various candidates to give the details of such candidates who had appeared for counselling in one or more districts, where someone with lesser number of marks or junior in age (though had secured same marks) has been selected. A copy of the chart given by Ms. Chaturvedi shall be handed over to Mr. Siddharth Dave from whom copies be obtained by all the other learned counsel. If there be any such illustrations, the details and data in that behalf shall be furnished to Ms. Chaturvedi, learned counsel for the State within two weeks from today. No case shall thereafter be entertained. The state authorities can thereafter check every such illustration and see whether the candidates in question would actually fall in the zone of selection or not. A comprehensive report shall thereafter be presented before this Court.”

9. The responses were thereafter filed and the matter was heard on 22.07.2019. After recording submissions of the parties, the State Authorities were called upon to file an appropriate affidavit as under:-

“Thus, according to the State Government, after considering 75,000 odd representations it had found 12091 candidates to be eligible for appointment, subject to verification of antecedents.

- A It appears that the process that was undertaken however did not result in giving appointment orders to all 12091 candidates. As stated in para 21 of the affidavit dated 01.10.2016, out of this body of 12091 candidates, only 391 candidates came to be appointed as the others did not take part in the selection process or had not opted for certain Districts or could not be selected
- B going by the cut off for the concerned Districts.
- C The affidavit thus stated that though opportunity was given to all 12091 candidates for counseling, the State could fill up only 391 posts. The affidavit further stated that one more opportunity was given by the State so that any candidate who was left out could ventilate his grievance and the advertisement was accordingly published on 06.02.2016. The affidavit then stated that a further step was undertaken by the State and another advertisement was published on 08.02.2016 giving an opportunity to any candidate who was left out from being considered when the list of 12091 candidates was formalized. Para 25 of the affidavit stated as under:
- D “25. That as per the advertisement dated 30.11.2011 there were 72825 vacancies and till dated 64257 vacancies have been filled up and in addition to it, appointment letters are being issued in respect of 1536 posts, as per the parameters fixed by this Hon’ble Court and following the procedure prescribed in the recruitment Rules. The remaining vacancies belong to special horizontal reservation categories of handicapped persons, Dependants of Freedom Fighters, ex-servicemen and also the scheduled caste and scheduled tribe candidates and these remaining vacancies
- E cannot be filled up by the candidates of any other category.
- F It is pertinent to mention that 862 candidates who were given ad hoc appointment on the basis of order of this Hon’ble Court dated 07.12.2015, are not included in the 64257 filled up vacancies and also the 1536 posts against which appointment letters are being issued.”
- G The matter was thereafter heard in April, 2017 and final judgment was pronounced in 2017.
- H Mr. Pallav Sishodia, learned senior advocate appearing for the State submitted that the stand so taken in the affidavit dated

01.10.2016 was never controverted by any of the candidates nor any grievance was projected on behalf of them. Mr. Sishodia submits that the grievance was raised more than a year after disposal of the matter in July, 2017. A

Mr. Siddharth Dave, Mr. Ajit Sinha, Mr. V. Shekhar, Ms. V. Mohana and Mr. N.K. Mody, learned Senior Advocates appearing on behalf of some of the candidates submitted that the figures coming forth from the aforesaid orders dated 2.11.2015 and 7.12.2015 were completely at variance with the contents of the affidavit. It was submitted that if 43777 candidates were already appointed and 15058 were undergoing training as reflected in the order dated 2.11.2015, it meant that as on 2.11.2015, 58,135 candidates were already given appointments or were undergoing training. The vacancy situation projected on 2.11.2015 at 14640 was thereafter crystalised to the number of 12091 who were found to be eligible in all respects. If out of 12091 only 391 candidates were appointed, it would not be possible for the State Government to indicate in the affidavit that 64257 persons were already given appointment. In that situation, the number of candidates who were appointed would be 58135 plus such number of candidates as were drawn from the list of 12091 candidates. B C D

Though we cannot disregard the fact that the challenge has been raised more than a year after the final judgment, we call upon the State Government to indicate on affidavit by a competent person (the name of Ms. Renuka Kumar, Additional Chief Secretary [Basic Education] Govt. of U.P., Lucknow, was suggested by the learned counsel for the State) giving the following details: E F

- (a) District-wise break-up of the last candidates in various categories in the District who were given appointments by October, 2016?
- (b) Whether any fresh appointments were effected after October, 2016? G
- (c) Whether any person other than the one who satisfied the requirement laid down by this Court in its order dated 27.7.2015 as modified by further orders of this Court was given appointment? If so, the name, age, and marks H

A obtained by every such candidate as against the cut off.”

10. An affidavit of compliance has since then been filed by Ms. Renuka Kumar, Additional Chief Secretary, Department of Basic Education, Government of U.P., responding to queries raised in the order dated 22.07.2019 as under :-

B “(a) District-wise break-up of the last candidates in various categories in the District who were given appointment by October, 2016?

C As per the information furnished by the District authorities related to the said recruitment since the selections were made to the vacancies allotted to the district class/category wise, the information was provided on a prescribed format by each district showing the breakup of the last selected candidates in various categories in the district who were given appointments as a Trainee Teacher. As reported by the district authorities 64257 appointments were made before October, 2016 and 1536 selections/ appointments were under process to be completed which is mentioned in the affidavit filed on 01 Oct, 2016. In addition to said selections, in compliance of the Hon’ble Supreme Court’s order dated 07.12.2015, 862 candidates were selected on ad-hoc basis against the list of 1100 candidates before 01 Oct, 2016. District wise breakup of last candidate in various category in 75 district, as furnished by the district authorities is annexed here with as Annexure No.A-1.

F (b) whether any fresh appointments were effected after October, 2016?

G As reported by the district level authorities, no fresh selection/ appointment was made after October 2016 except the candidates against 1536 posts who were under process and reported in the affidavit dated 01-10-2016.

H (c) Whether any person other than the one who satisfied the requirement laid down by this Court in its order dated 27.7.2015 as modified by further orders of this Court was given appointment? If so, the name, age, and marks obtained by every such candidates as against the cut off.

As reported by the district level authorities related to the said recruitment no person other than the ones who satisfied the requirement laid down by this Court in its order dated 27.7.2015 as modified by further orders of this Court was given appointment. It is clarified here that in the Hon'ble Supreme Court's order dated 27.07.2015 the criterion/parameters fixed by the Hon'ble Supreme Court in earlier orders are mentioned. The 862 ad-hoc selections against the 1100 candidates list were made in compliance of Hon'ble Supreme Court's order dated 07.12.2015. It is pertinent to mention here that some of the candidate selected among 862 candidates on ad-hoc basis do not fulfill the criterion/parameters fixed by Hon'ble Supreme court in its order dated 27.07.2015 and earlier orders. It is to be submitted that the details of these candidates were given in the affidavit of 1.10.2016 at paras 9-14 therefore which are not being repeated for the sake of brevity. In any case these deviations cannot be presented as precedent nor any claim was ever made to this effect. However, for ready reference the details of these 862 candidates are annexed hereto as Annexure A-2."

11. Following facts, therefore, emerge from the record:-

- (a) Large number of vacancies were lying unfilled while the Civil Appeals were pending in this Court. Taking into account the interest of the student community those appointments were required to be made. A principle was, therefore adopted by order dated 17.12.2014 that those who had obtained more than 70% marks in TET Examination from the general category and those who had obtained more than 65% marks from the reserved categories be given appointments. The idea was clear that such candidates would normally stand selected in the ultimate process of selection. It was, however, made clear that such appointments would not entitle the selected candidates to raise any claim in equity.
- (b) In the selection process undertaken thereafter, initially 29,174 candidates were selected and a direction was issued on 25.02.2015 to fill up those posts.
- (c) The next order dated 02.11.2015 recorded that as against 72,825 posts which were advertised, 43,077 candidates

- A were appointed, who after completion of training were actually working while 15,058 candidates were undergoing training, leaving about 14,640 posts still vacant.
- B (d) The exercise of selecting those who had secured minimum marks in terms of criteria devised by order dated 17.12.2014 also resulted in finding 12,091 persons eligible subject to verification of antecedents, as was recorded in the order dated 07.12.2015
- C (e) The list of these 12091 candidates was published and it is a matter of record that the names of the contempt petitioners were part of this list.
- D (f) According to para 21 of the Affidavit dated 01.10.2016 (which has been referred to in the order dated 22.07.2019) out of these 12091 candidates, only 391 candidates could be appointed as the others either did not take part in the selection process or had not opted for certain Districts or could not be selected going by the cut-off for the concerned District. This development had happened way back in October 2016 and the affidavit was on record since then.
- E (g) The State thereafter published another advertisement on 06.02.2016 so that if any candidate was left out, his candidature could be considered. Steps were thereafter taken and another advertisement was published on 08.02.2016. Para 25 of the Affidavit dated 01.10.2016 as quoted in the order dated 22.07.2019, dealt with this issue in clear terms and was thus part of the record.
- F (h) Aforesaid para 25 of the Affidavit thus made it clear that as on the date when the affidavit was filed, 64,257 vacancies were filled up and 1,536 appointment letters were being issued in addition. It was also stated that 862 candidates were given ad-hoc appointments in terms of the order dated 07.12.2015 and were not included in the number of 64,257. These three figures aggregate to number 66,655.
- G
- H

- (i) Thus, the reasons for not appointing all the persons who were part of list of 12,091 candidates were available on record from October 2016 onwards. A
- (j) At no stage any grievance was made till the matter was disposed of in July 2017 which gave the status of permanency to those who were appointed under various interim orders passed by this Court. B
- (k) The grievance was made for the first time almost a year after when these contempt petitions were filed.
- (l) The order dated 22.07.2019 had, therefore, observed that the Court could not disregard the fact that challenge had been raised more than a year after the final Judgment. Even then, the State Government was called upon to indicate on affidavit certain issues. The reason was obvious that if there was large scale infraction of interim orders passed by this Court which merged in the final Judgment, the matter could still have been considered. C D
- (m) However, the response filed by the State Government now indicates with clarity that no fresh appointments were effected after 2016 and no person other than those who satisfied the requirements laid down by this Court in its Order dated 27.07.2015 as modified by further orders, was given any appointment. The State Government has also placed on record the District wise break-up of all candidates appointed in various categories in all 75 Districts of the State. E
- (n) Even after the filing of the response by the State, as indicated in para 10 hereinabove, nothing substantial could be pointed out by any of the candidates or contempt petitioners. F

12. In the circumstances, we do not see anything wrong in the process undertaken by the State Government in pursuance of various interim orders passed by this Court and also in pursuance of the Judgment and final order dated 25.07.2017¹. The fact that out of 12,091 candidates only few could be selected and the reasons for non-selection of rest of the candidates, were part of the record since October 2016. In any case, response filed by the State is also clear. In the totality of G H

- A the circumstances, in our view, there has not been any violation of any of the orders passed by this Court as alleged in the contempt petitions or otherwise.

13. We, therefore, see no reason to interfere in these contempt petitions which are directed to be closed.

Ankit Gyan

Contempt petitions closed.