

[2019] 13 S.C.R. 1056

A GOVT. OF NCT DELHI & ORS.

v.

PRADEEP KUMAR & ORS.

(Civil Appeal No. 8259 of 2019)

B OCTOBER 24, 2019

**[R. BANUMATHI, A. S. BOPANNA AND
HRISHIKESH ROY, JJ.]**

Service Law:

- C *Recruitment – Of Special Education Teachers – In the NCT of Delhi – Essential qualification wherefor inter-alia was Central Teacher Eligibility Test (CTET) – For reservation in OBC Category, the recruitment advertisement required such candidates to possess caste certificate issued by Govt. of Delhi – Respondents/candidates, who had CTET qualification by availing 5% relaxation in the qualifying marks in the CTET from their respective States (not Delhi) applied under reserved category of OBC and appeared in written test – They were denied candidature as not eligible because they were CTET qualified as OBC outsider, and not from Delhi – Original Application against the order rejecting their candidature was allowed by Central Administrative Tribunal directing the authorities to appoint the candidates by considering their merit position in the unreserved category – Tribunal’s order was upheld by High Court – Appeal to Supreme Court – Held: Since the candidates are not certified as OBC by Govt. of NCT of Delhi they cannot be considered eligible in the OBC category – They also cannot be considered against unreserved category because there is an express bar under Office Memoranda on migration to unreserved category of those reserved category candidates, who had availed of relaxation in the qualification.*
- D *Reservation – Principles of reservation under the Constitution are intended to be confined to a specifically earmarked category and the unreserved category must be protected to avoid dilution of competence and merit.*
- E *Reservation – Principles of reservation under the Constitution are intended to be confined to a specifically earmarked category and the unreserved category must be protected to avoid dilution of competence and merit.*
- F *Reservation – Principles of reservation under the Constitution are intended to be confined to a specifically earmarked category and the unreserved category must be protected to avoid dilution of competence and merit.*
- G *Reservation – Principles of reservation under the Constitution are intended to be confined to a specifically earmarked category and the unreserved category must be protected to avoid dilution of competence and merit.*

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Allowing the appeal, the Court

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HELD: 1. For reservation in the OBC category under Clause 6 (iii) of Advertisement No.1/13, the OBC candidates were required to be in possession of caste certificate issued by the Govt. of Delhi only. Therefore, in the Delhi recruitment process, the respondents did not possess OBC (Delhi) certificate and thus they could not be considered for the OBC category vacancies. Further, as per the CTET guidelines, unreserved candidates are required to obtain 60% marks to qualify in the CTET. Since the Respondents obtained less than 60% in CTET, their candidature could be valid only under the OBC category. However due to absence of certificate of OBC status by Government of NCT, Delhi and by virtue of clause 6(iii) of the recruitment advertisement which bars reservations to outsider OBC, the Respondents are ineligible for the applied post. They may however compete against the unreserved vacancies, if they pass CTET with minimum 60% marks. Admittedly, none of the Respondents are certified by the GNCT of Delhi as OBC and neither do they possess the requisite 60% marks in CTET for qualification for the one-tier exam, as per the Advertisement. An OBC candidate not certified in the State/Territory outside of Delhi cannot be eligible to avail of employment in reserved category posts earmarked for OBCs who are certified by the Delhi Government. [Paras 14, 15, and 23][1064-B-F; 1067-F]

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2. The OM^s dated 01.07.1998 and 04.04.2018 issued by the Department of Personnel & Training issued specific instructions to the effect that when a relaxed standard is applied in selecting a reserved category candidate, in age limit, experience, qualification, additional chances in written examination etc., such candidates will be counted against reserved vacancies. There is an express bar on migration to the unreserved category of those reserved category candidates who had availed of relaxation including those for qualification. The prescription of the eligibility qua CTET, in the advertisement, will therefore have to be understood bearing in mind, the contents of the OM dated 01.07.1998. To apply the advertisement in the present facts will not be correct. The same OM dated 01.07.1998.

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- A There is an express bar on migration to the unreserved category of those reserved category candidates who had availed of relaxation including those for qualification. The prescription of the eligibility qua CTET, in the advertisement, will therefore have to be understood bearing in mind, the contents of the OM dated 01.07.1998. [Paras 21.1 and 22][1066-B-C; 1067-C-D]
- B *Deepa EV v Union of India (2017) 12 SCC 680 – relied on.*
 - 3. In the present case, the candidates (i.e. the respondents) belong to States other than Delhi. Being OBC (outsiders), they could have been considered only under the unreserved category if they secure at least 60% marks in the CTET. The respondents admittedly did not secure 60% and thus were ineligible. [Para 23][1067-E]
 - 4. The respondents are competing for general category vacancies. All others in this group have obtained their CTET eligibility qualification, securing the normal pass marks without availing any relaxation of pass norms. On the other hand, the respondents despite their lesser marks in the CTET examination, could qualify only because they availed the relaxation benefits as OBC category examinees. Their eligibility qualification is secured under relaxed norms meant for OBC category and therefore it is not proper to consider them to be eligible for the general category vacancies. [Para 24][1067-G-H; 1068-A]
 - 5. The respondents with their CTET qualification under relaxed norms would be eligible for OBC category posts provided their OBC status is certified and recognized by the Delhi Government. But such not being the case, they are ineligible for the reserved category vacancies. To allow them to migrate and compete for the open category vacancies would not be permissible simply because, they have secured the CTET qualification with relaxation of pass marks meant for those belonging to the OBC category. As the respondents have not secured the normal pass marks for general category, their eligibility for the general category vacancies is not secured. Therefore, their performance in the selection examination would be of no relevance, in the present process. [Para 25][1068-D-E]
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6. The present case concerns qualifications obtained with concession in pass marks. Such concession would have a direct impact on standards of competence and merit in the recruitment of Special Education Teachers. The principles of reservation under the Constitution of India are intended to be confined to a specifically earmarked category and the unreserved category must be protected, to avoid dilution of competence and merit. [Para 26] [1068-D-E]

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Vikas Sankhla & Ors. V. Vikas Agarwal & Ors. (2017)
1 SCC 350 : [2016] 7 SCR 639 – distinguished.

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[2016] 7 SCR 639	distinguished.	Para 6
(2017) 12 SCC 680	relied on.	Para 22

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8259 of 2019.

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From the Judgment and Order dated 21.01.2019 of the High Court of Delhi at New Delhi in W.P. (C) No. 557 of 2019.

Ms. Madhavi Diwan, ASG, R. Bala Subramanium, Sr. Adv., Mahaling Pandarge, Ayush Puri, B. V. Balaram Das, Advs. for the Appellants.

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Ms. Aishwarya Bhati, Sr. Adv., Sachin Chauhan, Ms. Chitrangda R., Celeste Agarwal, Nitin Chaudhary, R. C. Kaushik, Advs. for the Respondents.

The Judgment of the Court was delivered by

HRISHIKESH ROY, J.

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1. Leave granted.
2. Heard Ms Madhavi Divan, Learned Additional Solicitor General of India representing the appellants. The Learned Senior Counsel Ms Aishwarya Bhati, represents the contesting Respondent Nos. 2-6. The respondents and few others had filed the O.A. No. 1047 of 2014 before the Central Administrative Tribunal (CAT) and the same was allowed on 20.08.2018 (*Annexure P/5*). The resultant challenge by the appellants was dismissed under the impugned order of the High Court of Delhi in the Writ Petition (C) No. 557 of 2019, which has led to the present appeal.

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- A 3. The matter pertains to the recruitment of Special Education Teachers under the Govt. of NCT of Delhi. The Advertisement No. 01/2013 (*Annexure P/1*) was issued by the Delhi Sub-ordinate Services Selection Board where, for the vacancies of Special Education Teachers against Post Code 01/13, the following essential qualifications were stipulated:-
- B “.....
- i) Graduate with B.ED (Special Education) or B.ED. with a two years Diploma in Special Education or Post Graduate Professional Diploma in Special Education or any other equivalent qualification approved by Rehabilitation Council of India.
- ii) Central Teacher Eligibility Test (CTET) conducted by Central Board of Secondary Education (CBSE).
- ”
- D 4. The respondents had obtained the CTET i.e. Central Teacher Eligibility Test qualification, under the relaxed pass norms for the OBC category, in States other than Delhi. They offered their candidature for the vacancies in Delhi and appeared in the recruitment test. But their candidature were held to be not-eligible, through the office order dated 19.02.2014 (*Annexure P/2*). The ground mentioned in the order is that the applicants are “*CTET qualified as OBC but OBC outsider*”.
- F 5.1 Aggrieved by the above decision of the Delhi Sub-ordinate Services Selection Board, the Original Applicants (9 in number), together filed the OA No. 1047 of 2014 before the CAT. The Applicants who belong to the OBC Category had acquired the CTET qualification by availing 5% relaxation in the qualifying marks in the CTET, from their respective States but had participated in the written examination conducted for the vacancies in Delhi. Before the CAT, the Original Applicants projected that they secured more marks than the last selected candidates under the General Category and yet, their candidature was rejected notwithstanding the fact that claim for selection is based entirely on the basis of their performance in the recruitment test.
- H 5.2 However, the Govt. of NCT of Delhi, on the other hand contended before the Tribunal that for claiming benefits intended for the OBC Category vacancies in Delhi, the OBC Certificate must be issued by the Government of Delhi. Since respondents are not recognized as OBC in Delhi, they cannot claim eligibility qua the CTET criterion, with lower pass marks, in the CTET examination.

6. The Tribunal considered the rival contention and observed that rejection of the candidature of the Original Applicants would mean that the appellants do not recognize the CTET qualification. Relying on *Vikas Sankhla & Ors. V. Vikas Agarwal & Ors.*¹, the Tribunal took the view that there shall be no bar in considering meritorious applicants in the unreserved category if no weightage was given to CTET marks in preparation of the final merit list. Consequential direction was issued to the authorities for appointment of Original Applicants, in terms of their respective position in the merit list.

7. The Tribunal's Order was challenged in the High Court by the Govt. of NCT of Delhi. In the Writ Petition (C) No. 557 of 2019, the appellants contended that the Respondents cannot avail concession under the OBC category as they were permanent residents of other states. The Respondents could not also be considered under the unreserved category, as the same would be subject to minimum 60% marks for the general category in order to be CTET qualified. Therefore, the appellants argued before the High Court that notwithstanding the performance of the respondents in the recruitment test, their candidature for the General Category vacancies is not valid.

8. The High Court under the impugned Order, however noted that the Advertisement did not specify that the candidates who applied on the basis of the CTET qualification with lower pass marks, would not be eligible for the General Category vacancies if they have secured less than 60% marks in the CTET examination. The High Court accordingly held that once the candidate had obtained the CTET qualification, the marks secured in the qualification examination is immaterial for consideration of their candidature, for the unreserved category vacancies. As the performance of the respondents were more meritorious than others selected in the unreserved category, the Tribunal's decision in favour of the respondents was upheld and accordingly, the Writ Petition filed by the appellants came to be dismissed.

9.1. The appellants challenged the decision of the Delhi High Court with the contention that the respondent having secured the eligibility qualification under relaxed norms for the OBC Category are in-eligible to be considered against General Category vacancies. Ms Madhavi Divan, learned Additional Solicitor General of India submits that the respondents having obtained the eligibility qualification with lower pass

¹ (2017) 1 SCC 350

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- A marks under relaxed norms for the OBC Category, were rightly found to be ineligible for employment in the General Category vacancies in Delhi.

9.2. Dealing with the facts and the ratio of *Vikas Sankhala* (*Supra*) Ms Divan argues that this Judgment was erroneously applied

- B by the Tribunal to the facts in the instant case inasmuch as for the present recruitment under Advertisement No.01/13, mere qualification in the CTET (instead of marks), will have a bearing whereas, the marks in the CTET examination, did have a bearing in the recruitment process in the case of *Vikas Sankhala* (*supra*). The learned Additional Solicitor General makes a distinction between CTET being an eligibility qualification as in C the present case and the CTET marks influencing the final merit in the selection, as was the situation in the recruitment process in Rajasthan. She specifically argues that the judgment in the *Vikas Sankhala* (*supra*) was rendered in the peculiar facet of recruitment in that case and the ratio thereof will not apply in the present matter.

- D 9.3. The learned Additional Solicitor General projects that it is not a case of candidates obtaining CTET qualification on the basis of age relaxation or fee waiver in which situation, respondents marks in the CTET examination may have no bearing. But when the respondents had qualified in the CTET examination securing below the normal pass E marks (60%), they were rightly held to be ineligible for the General category vacancies, in the State of Delhi.

- F 10.1 Per contra, Ms. Aishwarya Bhati, the learned Senior Counsel for the respondents has argued that when the essential qualification in the advertisement does not stipulate any minimum marks for eligibility, the respondents having obtained the CTET qualification, cannot be found to be ineligible.

- G 10.2 The Respondents project that they secured higher marks in the recruitment test then few candidates selected for the General category vacancies and therefore rejection of their candidature would mean merit being ignored for appointment.

10.3 Supporting the decision of the High Court and the Tribunal, Ms Bhati argues that the ratio in *Vikas Sankhala* (*supra*) was rightly applied to give relief to the Original Applicants who claim appointment on the basis of their merit position in the recruitment test.

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11. In the present Appeal, we are required to focus on the following A issues:-

- i. Whether the respondents who have secured the CTET qualification form outside Delhi as OBC candidate by availing 5% relaxation in the qualifying marks be considered for employment against the post of Special Education Teacher in the B Government of NCT, Delhi?
- ii. Whether the Respondents, after availing concession under the OBC category can compete for seats under the unreserved category?

12. The records here show that the National Council for Teacher Education ['NCTE'] issued Notification dated 23.08.2010, that provided for the minimum qualifications for a person to be eligible for appointment as a teacher. It provided, inter alia, that applicants for the post of teachers (falling in the specified criteria of the Notification) shall have to pass the Teacher Eligibility Test ['TET'] which will be conducted by the appropriate Government in accordance with NCTE's guidelines. Pursuant to this Notification, vide Order dated 11.02.2011, the NCTE issued Guidelines for conducting the TET. The Guidelines provided that a person who scores 60% in the TET examination will be considered as TET pass. Further, concessions to persons belonging to the disadvantaged category, in accordance with their extant reservation policy was also provided.

13. The Directorate of Education, Delhi (appellant No.3) by its Notification dated 07.10.2011, stated that for appointment to the schools of Delhi, the GNCT, Delhi will recognize the CTET conducted by the Central Board of Secondary Education (CBSE). By another Notification dated 30.11.2012, appellant No.3 added the following to the aforementioned Notification dated 07.10.2011:-

“.....

..

The CBSE is issuing CTET marks statements to the candidates with conditions that candidates securing 60% and above marks will be considered as CTET qualified. Further, the NCTE vide notification 29.07.2011 specifically provided that “Relaxation up

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- A to 5% in the qualifying marks shall be allowed to the candidates belonging to reserved categories such as SC/ST/OBC/PH. Therefore, candidates belonging to reserved categories such as SC/ST/OBC/PH shall be allowed relaxation upto 5% in the qualifying marks, in CTET conducted by the CBSE
- B 14. The reservation for the OBC category under Clause 6(iii) of Advertisement No.1/13 being relevant, is extracted as under:-
6. RESERVATION BENEFITS:
- C (iii) The OBC candidates must be in possession of filled prescribed Annexure I, along with his/her caste certificate issued by the Govt. of Delhi only.
- D 15. In the Delhi recruitment process, the respondents did not possess OBC (Delhi) certificate and thus they could not be considered for the OBC category vacancies. Further, as per the CTET guidelines, unreserved candidates are required to obtain 60% marks to qualify in the CTET. Since the Respondents obtained less than 60% in CTET, their candidature could be valid only under the OBC category. However due to absence of certificate of OBC status by Government of NCT, Delhi and by virtue of clause 6(iii), as above, which bars reservations to
- E outsider OBC, the Respondents are ineligible for the applied post. They may however compete against the unreserved vacancies, if they pass CTET with minimum 60% marks. Admittedly, none of the Respondents are certified by the GNCT of Delhi as OBC and neither do they possess the requisite 60% marks in CTET for qualification for the one-tier exam, as per Advertisement 1/13 and therefore the contention of the Appellants F do have acceptable basis.
- G 16. At this stage we need to discuss the *Vikas Sankhala* judgment in some detail as the High Court and the Tribunal granted relief to the respondents on the basis of this Judgment. The recruitment in *Vikas Sankhala*, related to Rajasthan where the candidates who availed concession in the CTET examination, were allowed to migrate to Unreserved (or general) category vacancies, if they were more meritorious than the general category candidates.
- H 17. The question, therefore, to be answered here is whether the above case pertaining to recruitment in Rajasthan with candidates competing for vacancies in their home State, would apply to the situation

in the present case where candidates from other states obtaining qualification under relaxed norms, are aspiring for general category vacancies in Delhi. A

18. The decision of *Vikas Sankhala* (supra) was arrived at due to certain peculiar facts in the case. The recruitment process of teachers therein stipulated that 20% of the final result calculation of every aspirant will be based on the candidate's TET result marks. Thus, candidates who obtained CTET qualification after availing concession, had naturally secured lower marks in the total aggregate compared to those, who appeared in the unreserved category and did not avail such concession in pass marks. In those facts, it was held that the resultant reduced marks in the 20% component will neutralize the benefits of eligibility given to reserved candidates, who thereafter had to compete with unreserved students without any concessions and also overcome the disadvantage they had in the 20% component. On this aspect, the following was the Court's observation:- B

"...once this differentiation is understood, it would lead to the conclusion that no concession becomes available to the reserved category candidate by giving relaxation in the pass marks in TET insofar as recruitment process is concerned." C

19. The above excerpts reveal the Court's concern for maintaining equality in the recruitment process. However, in the present recruitment process, in the absence of a compensatory disadvantage or balancing factor, the ratio in *Vikas Sankhala* cannot be applied for the respondents who obtained CTET qualification by virtue of concession given to OBC categories. In other words, the concession benefit is not neutralized in the Delhi recruitment process. Thus, a level playing field and a fair treatment is not achieved, by inappropriately applying the ratio of *Vikas Sankhala* without having regard to the peculiarity of facts of that case where, a different selection yardstick was applied. E

20. As noted above, although there was no balancing out of the relaxation for the selection process in Delhi unlike the process in *Vikas Sankhala*'s decision, the CAT erroneously applied the ratio of the Rajasthan case for giving relief to the respondents. F G

21.1 In *Vikas Sankhala*, the Court considered the implication of the Circular dated 11.05.2011 issued by the Department of Personnel, government of Rajasthan, (A, Gr.II) bearing ref.no.No.F.7(1) DOP/A- H

- A II/99 that expressly allowed migration to the unreserved category irrespective of any concession availed by the candidate of the reserved category if he/she had secured more marks than the last Unreserved category candidate who is selected. But here the OMs dated 01.07.1998 and 04.04.2018 issued by the Department of Personnel & Training would bear consideration. Contrary to the circular dated 11.05.2011 in *Vikas Sankhala* (supra), the two OMs referred by Ms Divan, issued specific instructions to the effect that when a relaxed standard is applied in selecting a reserved category candidate, in age limit, experience, qualification, additional chances in written examination etc., such candidates will be counted against reserved vacancies.
- B 21.2 For better understanding, the implications of the afore noted OM dated 01.07.1998 (ref.36011/1/98-Estt.(Res), Ministry of Personnel, Public Grievances and Pensions), the relevant portion is extracted below:-

“..... 3.
- C In this connection, it is clarified that only such SC/ST/OBC candidates who are selected on the same standard as applied to general candidates shall not be adjusted against reserved vacancies. In other words, when a relaxed standard is applied in selecting an SC/ST/OBC candidates, for example in the age limit, experience, qualification, permitted number of chances in written examination, extended zone of consideration larger than what is provided for general category candidates etc., the SC/ST/OBC candidates are to be counted against reserved vacancies. Such candidates would be deemed as unavailable for consideration against unreserved vacancies.....”
- D 21.3 In the same context, the relevant part of the second OM dated 04.04.2018 (Ref.No.F.No.43011/4/2018-Estt.(Res.)] issued by the Ministry of Personnel, Government of India), reiterating in substance, what was stated in the earlier O.M. of 01.07.1998, is extracted as below, for ready reference:-

G “.....As per instructions issued vide this Department's OM No.36012/2/96-Estt.(Res) dated 02.07.1997, in direct recruitments to Central Government jobs and services, the reserve category candidates who
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are selected on the same standards as applied to general candidates will not be adjusted against reserved vacancies. As per instructions issued vide DOP & T OM No.36011/1/98-Estt.(Res) dated 01.07.1998, only when a relaxed standard is applied in selecting a reserved candidates, for example in the age limit, experience, qualification, permitted number of chances in written examination, etc., such candidates will be counted against reserved vacancies.....”

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22. From the above extract of the two OMs, it is quite apparent that, unlike in *Vikas Sankhala*, there is an express bar on migration to the unreserved category of those reserved category candidates who had availed of relaxation including those for qualification. The prescription of the eligibility qua CTET, in the advertisement, will therefore have to be understood bearing in mind, the contents of the OM dated 01.07.1998. To apply the advertisement in the present facts will not be correct. The same OM dated 01.07.1998 was considered in *Deepa EV v Union of India*² and we feel that the Court was correct in the view, vis-à-vis the OM dated 01.07.1998.

23. The other distinguishing aspect in *Vikas Sankhala* (supra) is that the candidates who had applied under the reserved category belonged to Rajasthan. For the selection and aspirants from the same State i.e., Rajasthan, the Court allowed such candidates to migrate to the unreserved category. In the present case, however, the candidates (i.e. the respondents) belong to States other than Delhi. Being OBC (outsiders), they could have been considered only under the unreserved category if they secure at least 60% marks in the CTET. The respondents admittedly did not secure 60% and thus were ineligible. Moreover, an OBC candidate not certified in the State/Territory outside of Delhi cannot be eligible to avail of employment in reserved category posts earmarked for OBCs who are certified by the Delhi Government.

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24. It is important to keep in mind that the respondents are competing for general category vacancies. All others in this group have obtained their CTET eligibility qualification, securing the normal pass marks without availing any relaxation of pass norms. On the other hand, the respondents despite their lesser marks in the CTET examination, could qualify only because they availed the relaxation benefits as OBC category examinees. Their eligibility qualification is secured under relaxed norms meant for OBC category and therefore we do not think it is proper

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² (2017) 12 SCC 680

- A to consider them to be eligible for the general category vacancies and contention to the contrary is unacceptable.

25. The respondents with their CTET qualification under relaxed norms would be eligible for OBC category posts provided their OBC status is certified and recognized by the Delhi government. But such not

- B being the case, they are ineligible for the reserved category vacancies. To allow them to migrate and compete for the open category vacancies would not be permissible simply because, they have secured the CTET qualification with relaxation of pass marks meant for those belonging to the OBC category. As the respondents have not secured the normal pass marks for general category, their eligibility for the general category vacancies is not secured. Therefore, their performance in the selection examination would be of no relevance, in the present process.

26. As earlier discussed, this case concerns qualifications obtained with concession in pass marks. Such concession would have a direct impact on standards of competence and merit in the recruitment of Special

- D Education Teachers. The principles of reservation under the Constitution of India are intended to be confined to a specifically earmarked category and the unreserved category must be protected, to avoid dilution of competence and merit. If *Vikas Sankhala* (supra) is interpreted shorn of its peculiar facts, as has been suggested by the respondents' counsel, E it would in our perception, considering that respondents secured the qualification under relaxed norms, would lead to dilution of merit in the unreserved category. The arguments made to the contrary by the respondents is therefore rejected.

- F 27. In view of the forgoing, the High Court and the Tribunal erred in granting relief to the respondents. The impugned judgment of the High Court of Delhi in Writ Petition (C) No. 557 of 2019 dated 21.1.2019 is set aside and this appeal is allowed. No order as to costs.