

A RAM SHARAN MAURYA AND OTHERS

v.

STATE OF U.P. AND OTHERS

(Civil Appeal No. 3707 of 2020 etc.)

B NOVEMBER 18, 2020

**[UDAY UMESH LALIT AND
MOHAN M. SHANTANAGOUNDAR, JJ.]**

Service Law:

- C *Recruitment – To the post of Assistant Teacher of Junior Basic School – By judgment in *Anand Kumar Yadav case ‘Shiksha Mitras’ were given opportunity to be considered for next two recruitments to the post of Assistant Teacher – State amended U.P. Basic Education (Teachers) Service Rules, 1981 making ‘Shiksha Mitras’ eligible for appointment to the post of Assistant Teachers of Junior Basic Schools – Qualification for the same included passing of Teachers Eligibility Test (TET) and Assistant Teacher Recruitment Examination (ATRE) – For ATRE-2018, minimum qualifying marks for General & OBC candidates was 45% and for SC/ST was 40% – Candidates were selected for appointment – National Council for Teachers Education by Notification dated 28.6.2018 laid down that candidates holding B.Ed. degree could be entitled to be appointed as teacher for classes I to V provided they undergo six months bridge course – Rules 1981 were subsequently amended in terms of the NCTE Notification dated 28.6.2018 with retrospective effect – Thereafter ATRE-2019 was notified for filling up 69000 vacancies for Assistant Teachers – The same was conducted without notifying minimum qualifying marks – After conducting the exam, State prescribed minimum qualifying marks i.e. 65% for General category and 60% for all other reserved categories – Writ petitions filed by ‘Shiksha Mitras’ assailing fixation of minimum qualifying marks –*
- G *Single Judge of High Court allowed the writ petition filed by ‘Shiksha Mitras’ – In appeal, Division Bench of High Court reversed the order of Single Judge – Appeal to Supreme Court – Held: NCTE is entitled to lay down the norms for appointment of teachers for classes I to V – Such prescription is binding on the State – Amendment of*

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1981 Rules has to be read in conformity with the NCTE Notification dated 28.6.2018 – The eligibility norms having already been conferred by Notification dated 28.6.2018, amendments to 1981 Rules with retrospective effect cannot be said to have conferred eligibility norms for the first time – Therefore, B.Ed. candidates were rightly allowed to participate in the selection process – Cut-off marks for ATRE-2019 at 65-60% cannot be termed as exclusionary or illegal as the same was designed to garner the best talent which is in consistence with the objectives of RTE Act – Government is empowered to lay down minimum marks from time to time – Such power can be exercised even after the examination is over, provided such exercise is not actuated by any malice or ill-will – National Council for Teachers Education Act, 1993 – Right to Education Act, 2005 – Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 – Rules 2(1)(x), 8 and 14.

Dismissing the appeals preferred by Shiksha Mitras, ex-servicemen and persons with disability and disposing of those filed by B.Ed./B.T.C. candidates, the Court

HELD : 1.1 In Teachers' Eligibility Test (TET) examination held in March, 2018, out of 3,86,000 qualified candidates, Shiksha Mitras were 40,000 only; meaning thereby that a large number of candidates other than Shiksha Mitras had been declared qualified. Paragraph 4(2) of G.O. dated 01.12.2018, referred to certain directives of National Council for Teachers Education (NCTE) which in turn, had dealt with eligibility of B.Ed. candidates. It was, therefore, quite apparent that in the ensuing selection process, considerable number of B.Ed. candidates would participate. In this background, the absence of any challenge to the entitlement of B.Ed. candidates to participate in the process and to appear at Assistant Teacher Recruitment Examination-2019 (ATRE-2019) is crucial. [Para 37][530-B-D]

1.2 Going by the Parliamentary intent in empowering NCTE under the provisions of the National Council for Teachers Education Act, 1993 (NCTE Act) and specific authorization in favour of NCTE under the Notification dated 31.03.2010, the authority of NCTE is beyond any doubt. Though there is no

- A specific regulation as contemplated under Section 32 read with Sections 12 and 12A of the NCTE Act, for the present purposes by virtue of the specific authorization under the Notification dated 31.03.2010, NCTE was entitled to lay down that those holding the qualification of ‘Bachelor of Education’ as detailed in said Notification are entitled to be appointed as teachers for classes I to V. Such prescription on part of the NCTE would be binding. It is for this reason that G.O. dated 01.12.2018 notifying ATRE-2019 clearly stated that the candidates possessing minimum qualifications specified in Notifications issued by the NCTE including one dated 28.06.2018 were entitled to participate in ATRE-2019. [Para 41][534-E-H]

- 1.3 The Notification dated 28.06.2018 being binding on the State Government, the statutory regime put in place by the State has to be read in conformity with said Notification. The eligibility or entitlement being already conferred by Notification dated 28.06.2018, the amendments to Uttar Pradesh basic Education (Teachers) Service Rules, 1981 (1981 Rules) were effected only to make the statutory regime consistent with the directives issued by the NCTE. The right or eligibility was not conferred by amendments effected to 1981 Rules for the first time and therefore the element of retrospectivity present in the concerned amendments has to be read in that perspective. The intent behind those amendments was not to create a right for the first time with retrospective effect but was only to effectuate the statutory regime in tune or accord with NCTE directives. Theoretically, even if such statutory regime was not made so consistent, the concerned candidates holding B.Ed. degrees could still be eligible and could not have been denied candidature for ATRE-2019. [Para 43][535-E-H]

- 1.4 Once, the NCTE laid down that candidates holding B.Ed. degrees would be entitled to be appointed as teachers for classes I to V, provided they undergo a six months’ Bridge Course, the stipulation in 1981 Rules (before 23rd Amendment) that they must first be appointed as trainee teachers must give way to that under the Notification dated 28.06.2018. Said stipulation in 1981 Rules cannot be considered as an additional norm. It ran completely

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counter to that under the Notification dated 28.06.2018 which is why the Amendment in that behalf was given retrospective effect to bring in consistency. The B.Ed. candidates were rightly allowed to participate in the instant selection process. [Paras 45 and 46][536-E-H]

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P. Mahendran and others etc. v. State of Karnataka and others (1990) 1 SCC 411 : [1989] 2 Suppl. SCR 385 ; Madan Mohan Sharma and another v. State of Rajasthan and others (2008) 3 SCC 724 : [2008] 3 SCR 232 – held inapplicable.

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State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and others (2006) 9 SCC 1 : [2006] 3 SCR 638 ; Basic Education Board, U.P. vs. Upendra Rai and others (2008) 3 SCC 432: [2008] 2 SCR 707 ; Dr. Preeti Srivastava and another etc. vs. State of M.P. and others etc. (1999) 7 SCC 120 : [1999] 1 Suppl. SCR 249 – referred to.

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2.1 The percentage of qualifying candidates in ATRE-2018 was 38.83%. The percentage of qualifying candidates in ATRE-2019 was 37.62%, which was almost equal to that in ATRE-2018. However, the number of qualified candidates in ATRE-2018 was less than the number of vacancies; while even with the cut off at 65-60% the number of qualified candidates in the present selection i.e. ATRE-2019 was far in excess of the number of posts. These figures give indications about the nature and the difficulty level of the examinations and show that even with cut off at 65-60%, the percentage of qualifying candidates was almost the same. [Para 48][537-F-H; 538-A]

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2.2 Though the syllabus and subject wise allocation of marks were identical in both i.e. ATRE-18 and ATRE-19, the nature of ATRE-2019 was entirely different. The nature and the difficulty level of both the examinations were different. Therefore it must be accepted that there could be different parameters regarding minimum qualifying marks for ATRE-2019. [Para 50][538-D-F]

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2.3 All the candidates including Shiksha Mitras who appeared in ATRE 2018 formed one class while those who appeared in ATRE 2019 formed another class. There cannot be

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- A *inter se* connection or homogeneity between candidates appearing in one examination or selection with those appearing in another examination or selection. The candidates would undoubtedly compete with each other in the same examination on a para meter which applies to all of them equally. But to say that Shiksha Mitras who appeared in ATRE-2019 must be allowed equality with candidates of ATRE-2018, who were part of a different selection process would be incorrect and illogical. The basic norms of ATRE-2019 must be tested on their own and cannot depend upon para meters or norms on the basis of which ATRE-2018 was held. Otherwise the integrity of the examination process will get defeated and nullified. [Para 51][538-F-H; 539-A-B]

2.4 The object of giving opportunities to Shiksha Mitras was to ensure that they were given fair chance to compete with others so that the best of the lot would be available to take care of primary education in the State. Therefore, it is not correct to say that there should not be a different yardstick for Shiksha Mitras, who had been rendering service as teachers, as against what could be applied for fresh graduates. [Paras 52 and 47 (c)][540-D-E; 537-C-D]

2.5 The fixation at 65-60% level was to garner the best available talent. Even with this qualifying norm, the percentage of qualified candidates in ATRE-2019 was 37.62% which was quite close to 38.83% in ATRE-2018 and the number of qualified candidates was far in excess of the vacancies required to be filled up. Thus, cut off at 65-60% level in the present case, by itself cannot be termed as incorrect or illegal exercise of power. [Para 53][541-B-C]

2.6 Though as a result of the 22nd Amendment, passing of ATRE ceased to be part of Rule 8, the requirement was specifically retained in Rule 14 of 1981 Rules. Further, 60% of the marks scored by a candidate in ATRE, in terms of Appendix I read with Rule 14(2) would go in determining quality points to prepare the merit list. The major portion of quality points being directly relatable to the performance in ATRE, mere fixation at 65-60% level which applied to all the candidates across the board cannot be said to be exclusionary, nor was it intended to deprive

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the Shiksha Mitras of the advantage of weightage for experience. ATRE featured as the common platform on the basis of which individual merit of various candidates could be tested, which is why a major portion of allocable quality points was assigned to the performance in ATRE. In the circumstances, the performance in ATRE-2019 was given adequate and due weightage by fixation of cut off at 65-60% level. [Paras 55 and 56][541-E-G]

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2.7 Therefore, the fixation of cut off at 65-60% in ATRE-2019 was perfectly valid and justified. Considering the large number of candidates who appeared at ATRE-2019 as well as the nature and difficulty level of the examination, the cut off was designed to draw the best available talent. The endeavour on part of the State in attempting to secure the best of the teachers was therefore fully justified. The right to education guaranteed in terms of Article 21A of the Constitution would envisage quality education being imparted to the children which in turn, would signify that the teachers must be meritorious and the best of the lot. Any process which applied equally to all the candidates and was designed to garner the best talent, cannot be called arbitrary or irrational. [Para 57][542-D-F]

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State of M.P. and others vs. Gopal D. Tirthani and others
 (2003) 7 SCC 83 : [2003] 1 Suppl. SCR 797 –
 distinguished.

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3.1 In terms of Rule 2(1)(x) of 1981 Rules, qualifying marks of ATRE are such minimum marks as may be determined ‘from time to time’ by the Government. Clause (C) of Rule 14 of 1981 Rules lays down that a candidate must have ‘passed Assistant Teacher Recruitment Examination conducted by the Government’. Thus, one of the basic requirements for being considered to be appointed as an Assistant Teacher under 1981 Rules is passing of ATRE with such minimum marks as may be determined by the Government. Unlike para 7 of the Guidelines for ATRE-2018 which had spelt out that a candidate must secure minimum of 45% or 40% marks (for ‘general’ and ‘reserved’ categories respectively) for passing ATRE-2018, no such stipulation was available in G.O. dated 01.12.2018 notifying ATRE-2019. Though,

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- A the minimum qualifying marks were set out in the Guidelines for ATRE-2018, it is not the requirement of 1981 Rules that such stipulation must be part of the instrument notifying ATRE. By very nature of entrustment, the Government is empowered to lay down minimum marks '*from time to time*'. If this power is taken to be conditioned with the requirement that the stipulation must be part of the instrument notifying the examination, then there was no such stipulation for ATRE-2019. Such reading of the rules will lead to somewhat illogical consequences. On one hand, the relevant Rule requires passing of ATRE while, on the other hand, there would be no minimum qualifying marks prescribed. A reasonable construction on the relevant rules would therefore imply that the Government must be said to be having power to lay down such minimum qualifying marks not exactly alongside instrument notifying the examination but at such other reasonable time as well. [Para 60][552-E-H; 553-A-B]
- D 3.2 In the present case, the requirement in terms of Rule 2(1)(x) read with Rule 14 is that the minimum qualifying marks as stipulated by the Government must be obtained by a candidate to be considered eligible for selection as Assistant Teacher. It was thus always contemplated that there would be some minimum qualifying marks. What was done by the Government by virtue of its orders dated 07.01.2019 was to fix the quantum or number of such minimum qualifying marks. The candidate had to pass ATRE-2019 and he must be taken to have known that there would be fixation of some minimum qualifying marks for clearing ATRE-2019. [Para 61][553-E-H; 554-A]
- F 3.3 If the Government has the power to fix minimum qualifying marks '*from time to time*', there is nothing in the Rules which can detract from the exercise of such power even after the examination is over, provided the exercise of such power is not actuated by any malice or ill will and is in furtherance of the object of finding the best available talent. [Para 63][554-E-F]

Municipal Corporation of Delhi vs. Surender Singh and others (2019) 8 SCC 67; Jharkhand Public Service Commission vs. Manoj Kumar Gupta (2020) 1 SCALE 504 – relied on.

3.4 If the ultimate object is to select the best available talent and there is a power to fix the minimum qualifying marks, in keeping with the law laid down by this Court, there is no illegality or impropriety in fixation of cut off at 65-60% vide order dated 07.01.2019. The facts on record indicate that even with this cut off, the number of qualified candidates is more than twice the number of vacancies available. [Para 64][555-A-C]

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State of Haryana vs. Subash Chander Marwaha and others (1974) 3 SCC 220 : [1974] 1 SCR 165; State of U.P. etc. v. Rafiquddin and others etc. 1987 (Supp) SCC 401 : [1988] SCR 794 – relied on.

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3.5 It must be accepted that after considering the nature and difficulty level of examination, the number of candidates who appeared, the concerned authorities have the requisite power to select a criteria which may enable getting the best available teachers. Such endeavour will certainly be consistent with the objectives under the Right to Education Act, 2005 (RTE Act). [Para 64][555-C-D]

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3.6 In the circumstances, the view taken by the Division Bench of the High Court is confirmed and it is concluded that in the present case, the fixation of cut off at 65-60%, even after the examination was over, cannot be said to be impermissible. The Government was well within its rights to fix such cut off. [Para 65][555-D-E]

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State of Haryana vs. Subash Chander Marwaha and others (1974) 3 SCC 220: [1974] 1 SCR 165; State of U.P. etc. v. Rafiquddin and others etc. 1987 (Supp) SCC 401: [1988] 1 SCR 794 – relied on.

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K. Manjusree vs. State of Andhra Pradesh and another (2008) 3 SCC 512: [2008] 2 SCR 1025; Hemani Malhotra etc. vs. High Court of Delhi (2008) 7 SCC 11: [2008] 5 SCR 1066 – distinguished.

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P.K. Ramachandra Iyer and others v. Union of India and others (1984) 2 SCC 141: [1984] 2 SCR 200; Umesh Chandra Shukla v. Union of India and others

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- A **(1985) 3 SCC 721:** [1985] 2 Suppl. SCR 367; *Durgacharan Misra v. State of Orissa* (1987) 4 SCC 646; [1987] 3 SCR 1097; *Maharashtra State Road Transport Corporation and others v. Rajendra Bhimrao Mandve and others* (2001) 10 SCC 51; *Tej Prakash Pathak and others vs. Rajasthan High Court and others* (2013) 4 SCC 540; *Yogesh Yadav vs. Union of India and others* (2013) 14 SCC 623; [2013] 8 SCR 194; *Salam Samarjeet Singh v. High Court of Manipur at Imphal and another* (2016) 10 SCC 484; [2016] 9 SCR 771; *Sivanandam C.T. and others v. High Court of Kerala and others* (2018) 1 SCC 239; [2017] 13 SCR 226; *Municipal Corporation of Delhi v. Surender Singh and others* (2019) 8 SCC 67; *Jharkhand Public Service Commission v. Manoj Kumar Gupta* (2020) 1 SCALE 504 – referred to.
- D 4. Consequently, the challenge at the instance of Shiksha Mitras in all these matters, is negated and the appeals preferred by Shiksha Mitras are dismissed. The appeal preferred by the Association of Shiksha Mitras also prayed for absorption of Shiksha Mitras. Such a prayer cannot be granted in view of the pronouncement of the decision of this Court in **Anand Kumar Yadav*. Said appeal is, therefore, dismissed. However, one more opportunity shall be afforded to Shiksha Mitras to compete in the next selection. It is left to the discretion of the State Government to consider the manner and the modalities in which such opportunity can be availed of. [Paras 66 and 67][555-E-H]
- E 5. The cut off at 65-60% having been held valid and justified, the appeals preferred by ex-servicemen or persons with disability are also dismissed. If there are less number of candidates against the vacancies for these categories, such vacancies shall be subject to the Rules in that behalf. If the vacancies cannot be carried forward, the same shall and must enure to the advantage of the candidates in the present selection. [Para 68][556-A-C]
- F 6. Similarly, Writ Petition and appeals arising out of petitions preferred by B.Ed./B.T.C. candidates as well as Contempt
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Petition and all Intervention Applications also stand disposed of A in same terms. [Para 68][556-C]

7. The State Government shall now be entitled to fill up all the concerned posts in terms of the result declared on 12.05.2020 and in accordance with law. [Para 69][556-C-D]

**State of U.P. and another vs. Anand Kumar Yadav and others (2018) 13 SCC 560 : [2017] 10 SCR 428 – referred to.*

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Case Law Reference

[2017] 10 SCR 428	referred to	Para 2	C
[2006] 3 SCR 638	referred to	Para 38.1	
[2008] 2 SCR 707	referred to	Para 38.2	
[1989] 2 Suppl. SCR 385	held inapplicable	Para 42	
[2008] 3 SCR 232	held inapplicable	Para 42	D
[1999] 1 Suppl. SCR 249	referred to	Para 45	
[2003] 1 Suppl. SCR 797	distinguished	Para 52	
[1974] 1 SCR 165	referred to	Para 58	
[1988] 1 SCR 794	referred to	Para 58	E
[1974] 1 SCR 165	referred to	Para 58	
[1984] 2 SCR 200	referred to	Para 58	
[1985] 2 Suppl. SCR 367	referred to	Para 58	
[1987] 3 SCR 1097	referred to	Para 58	F
(2001) 10 SCC 51	referred to	Para 58	
(2013) 4 SCC 540	referred to	Para 58	
[2013] 8 SCR 194	referred to	Para 58	
[2016] 9 SCR 771	referred to	Para 58	G
[2017] 13 SCR 226	referred to	Para 58	

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A	(2019) 8 SCC 67 [2008] 2 SCR 1025 [2008] 5 SCR 1066 (2019) 8 SCC 67	referred to distinguished distinguished relied on	Para 58 Para 61 Para 61 Para 63
B	[1974] 1 SCR 165 [1988] SCR 794	relied on relied on	Para 64 Para 64

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3707 of 2020.

C From the Judgment and Order dated 06.05.2020 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Special Appeal No. 207 of 2019.

With

- D Civil Appeal Nos. 3708, 3709, 3710, 3711, 3720, 3721, 3722, 3728, 3729, 3725, 3732, 3731, 3724, 3723, 3730, 3726, 3712, 3713, 3714, 3717, 3715, 3716, 3718, 3719, 3727, 3733, 3734 of 2020, Contempt Petition (C) No. 418 of 2020 in Special Leave Petition (Civil) No. 6841 of 2020, Special Leave Petition (Civil) D. No. 13142 of 2020, Writ Petition (Civil) No. 703 of 2020.
- E Ms. Aishwarya Bhati, ASG, K.V. Viswanathan, R. Balasubramanian, Sr. Advs., Harish Pandey, Anup Kumar, Sachin Sharma, Talha Abdul Rahman, Kushagra Pandey, Mohd. Shaz Khan, Udit Konkanthankar, Mukesh Verma, Raj Singh Rana, Anand Nandan, Satya Mitra, Pankaj Kumar Singh, Kamal Kumar Pandey, Yash Pal
- F Dhingra, Akshay Verma, Atul Khenja, D.K. Pandey, Ms. Tanya Agarwal, Ms. Rani Chhabra, Ms. Saroj Tripathi, Naveen Kumar Tripathi, Abhishek Kumar Singh, Dr. Suman Bharadwaj, Vedant Bharadwaj, Ms. Mridula Ray Bharadwaj, Kausar Raza Faridi, D.P. Shukla, Prashant Shukla, Dr. Brij Bhushan K. Jauhar, Gaurav Yadav, Harsh Mahan, Lalit Chahar, Ms. Purnima Jauhari, R.K. Singh, Ms. Neeraj Singh, Kumar Gaurav,
- G Ms. Ritu Reniwal, Ms. Anzu. K. Varkey, Aman Rastogi, Sanjay Rastogi, Ms. Ritu, Abhishek Kishor, Parminder Singh Bhullar, Tom Joseph, Pushkar Sharma, Satish Pandey, Ms. Geeta Verma, Abdul Qadir, Nishit Agrawal, Harsh Mishra, Dr. Vinod Kumar Tewari, Ms. Priyanka Dubey,

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Vivek Tiwari, Amit Pawan, Sahil Bhalaik, Tarun Gupta, Rakesh Mishra, Krishnanand Pandeya, Priyank Upadhyay, Piyush Dwivedi, Rameshwar Prasad Goyal, Ms. Tania Kishore, Satyajeet Kumar, Rakesh Dahiya, Santosh Kumar Tripathi, Advs. for the appearing parties. A

The Judgment of the Court was delivered by

UDAY UMESH LALIT, J.

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1. Except Special Leave Petition (Civil) D.No.13142 of 2020: (i) permission to file Special Leave Petition is granted in all the concerned matters; and (ii) Special Leave to Appeal is granted in all matters.

2. These appeals arise out of the final judgment and order dated 06.05.2020 passed by the Division Bench of the High Court¹ in Special Appeal No.207 of 2019 and all connected matters whereby the Division Bench of the High Court set aside the Order dated 29.03.2019 passed by the Single Judge of the High Court in Writ Petition No.1188(SS) of 2019 and other connected matters. These appeals, *inter alia*, deal with the extent of rights of Shiksha Mitras and benefits conferred upon them by the decision of this Court in *State of U.P. and another vs. Anand Kumar Yadav and others*². C

3. The facts leading to the decision of this Court in *Anand Kumar Yadav*² were set out in said decision as under:- D

“3. Brief factual matrix may be noted. The U.P. Basic Education Act, 1972 (the 1972 Act) was enacted to regulate and control basic education in the State of U.P. Section 19 of the 1972 Act authorises the State Government to make rules to carry out the purpose of the Act. The U.P. Basic Education (Teachers) Service Rules, 1981 (the 1981 Rules) lay down sources of recruitment and qualification for appointment of teachers. The National Council for Teachers’ Education Act, 1993 (NCTE Act) was enacted by Parliament for planned and coordinated development for teacher education system. The Right of Children to Free and Compulsory Education Act, 2009 (the RTE Act, 2009) was enacted by Parliament for free and compulsory education to all children of the age of 6 to 14 years. Section 23 provides for qualification for E

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¹ The High Court of Judicature at Allahabad, Lucknow Bench

² (2018) 13 SCC 560

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- A appointment of teachers. NCTE was designated as authority under Section 23(1) to lay down the qualifications for appointment of teachers.
- 4.** NCTE issued Notification dated 23-8-2010 laying down such qualifications. With regard to teachers appointed prior to the said notification, it was stated that they were required to have qualifications in terms of the National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (the 2001 Regulations), if the teachers were appointed on or after 3-9-2001 subject to their undergoing NCTE recognised six months' special programme in certain situations. Teachers appointed before 3-9-2001 were required to have qualifications as per the prevalent recruitment rules. One of the requirements under the said notification is the requirement of passing Teachers Eligibility Test (TET). However, by Letter dated 8-11-2010, the Central Government sought proposals for relaxation under Section 23(2) of the RTE Act which was followed by the relaxation Order dated 10-9-2012 for certain categories of persons which was to operate till 31-3-2014. Vide Letter of NCTE dated 14-1-2011, NCTE accepted the proposal of the State of Uttar Pradesh for training of untrained graduate Shiksha Mitras by open and distance learning but it was made clear that no appointment of untrained teachers was permitted.
- 5.** In exercise of powers under the RTE Act, 2009, the RTE Rules, 2010 were framed by the Central Government. At the same time, the State of U.P. also purported to frame rules called the U.P. RTE Rules, 2011.
- 6.** Reference may now be made to the scheme under which the Shiksha Mitras were recruited. On 26-5-1999, a Government Order was issued by the State of U.P. for engagement of Shiksha Mitras (Parateacher). The purported object of the Order was to provide universal primary education and for maintenance of teacher student ratio in primary schools by hiring persons who were not duly qualified at lesser cost as against the prescribed salary of a qualified teacher. The Government Order (G.O.) stated that up to the limit of 10,000, Shiksha Mitras could be contracted for academic session 1999-2000 at honorarium of Rs 1450 per

month. The salient aspects of the scheme as summed up in the impugned judgment³ of the High Court from the said G.O. were: (Anand Kumar case³, SCC OnLine All para 17)

- “(i) The appointment of Shiksha Mitras was to be against the payment of an honorarium; A
- (ii) The appointment was to be for a period of eleven months renewable for satisfactory performance; B
- (iii) The educational qualifications would be of the intermediate level; C
- (iv) The unit of selection would be the village where the school is situated and in the event that a qualified candidate was not available in the village, the unit could be extended to the jurisdiction of the Nyaya Panchayat; D
- (v) The services of a Shiksha Mitra could be terminated for want of satisfactory performance; E
- (vi) Selection was to be made at the village level by the Village Education Committee; and F
- (vii) The scheme envisaged the constitution, at the district level, of a Committee presided over by the District Magistrate and consisting, inter alia, of the Panchayat Raj Officer and the District Basic Education Officer among other members to oversee implementation.” G

7. Further G.Os. were issued by the State of U.P. including G.O. dated 1-7-2001 expanding the scheme and clarifying that the scheme was not for employment in a regular service but to provide opportunity to the rural youth to render community service. F
8. Even though vide Notification dated 23-8-2010, minimum statutory qualification was laid down by NCTE, the issue for relaxation under Section 23(2) of the RTE Act was taken up by the Union Government for relaxation for the limited interim statutory period and if a particular State did not have adequate institutions for teachers training or did not have the adequate number of candidates during the period. The State Government, in response G

³ 2015 SCC OnLine All 3997 : ILR 2015 All 1108 [Anand Kumar Yadav vs. Union of India]

- A to the letter of the Central Government, responded by stating that it had appointed Shiksha Mitras on contractual basis who were required to be given teachers training. The Central Government issued an Order for relaxation under Section 23(2) subject to certain conditions for the period up to 31-3-2014.
- B **9.** The State Government submitted a revised proposal dated 3-1-2011 envisaging giving of training to the Shiksha Mitras which was accepted by the Central Government in terms of the Letter dated 14-1-2011 for two years' diploma in elementary education through open and distance learning mode with a clear understanding that no untrained teachers will be appointed.
- C **10.** Finally, the State of U.P. took the following steps which were subject-matter of challenge before the High Court:
- D **10.1.** The Notification dated 30-5-2014 amending the U.P. RTE Rules introducing Rule 16-A authorising the State Government to relax minimum educational qualifications for appointment of Assistant Teachers in Junior Basic Schools.
- E **10.2.** The Notification dated 30-5-2014, amending the 1981 Rules: Rule 8 laid down revised qualifications for appointment of Assistant Master and Assistant Mistress of Junior Basic Schools which qualifications are different from the statutory qualifications under Section 23 of the RTE Act. Rule 5 was amended to add Shiksha Mitras as source for recruitment of teachers in addition to the existing source of direct recruitment in accordance with the existing rules. Rule 14 was also amended to enable Shiksha Mitras to be appointed as teachers against substantive posts without having the qualifications prescribed under Section 23 of the RTE Act.
- F **10.3.** G.O. dated 19-6-2013 was issued giving permission for appointment of Shiksha Mitras on the post of Assistant Teachers in primary schools without having the eligibility and qualifications in terms of the RTE Act, 2009. A time table was laid down for absorption of Shiksha Mitras as Assistant Teachers.
- G **10.4.** The consequential executive orders were issued for absorption of 1,24,000 graduate Shiksha Mitras and 46,000 intermediate Shiksha Mitras.”

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13. Batch of writ petitions was filed before the High Court by persons who claimed to be eligible for appointment and whose chances were affected by filling up of vacancies of teachers by regularising the Shiksha Mitras against the said vacancies..... A

14. Case set out in the petition was that in view of Notification issued by NCTE on 23-8-2010 laying down minimum qualification for appointment of Assistant Teacher for Classes I to VIII, the decision of the U.P. Government dated 19-6-2014 and amendments made by the U.P. Government on 30-5-2014 were in conflict with the Notification issued by NCTE on 23-8-2010 and could not, thus, be justified. TET being a mandatory qualification, the State Government could not make any appointment to the post of teacher without the said qualification. The appointments did not fall under the relaxation clause being post 23-8-2010 Notification and being not covered by the conditions for relaxation. The 1981 Rules of the State could not incorporate a provision for absorption of Shiksha Mitras in violation of law laid down by this Court in *State of Karnataka v. Umadevi (3)*⁴ as their appointment was dehors the 1981 Rules, having not been made after following the rules for appointment of teachers. It was also submitted that the nature of appointment of Shiksha Mitras was contractual to enable them to render community service and not in terms of prescribed qualifications for appointment of teachers. Training by open and distance learning mode was relevant only for teachers validly appointed and not for contractual employees appointed dehors the rules. Moreover, 46,000 Shiksha Mitras were not even graduates which was a condition for approval by NCTE in its letter dated 14-1-2011.....” F

3.1 The decision rendered by the Full Bench of the High Court of Judicature at Allahabad was dealt with as under:-

“17. The findings of the High Court in brief are that having regard to the nature of appointment of Shiksha Mitras, they could not be treated as teachers in terms of the 1981 Rules. They also did not have the qualifications prescribed under the said Rules inasmuch as on the date of appointment, they did not have graduate degree nor they had basic teachers' certificate as prescribed under the 1981 Rules. Reservation policy had also not been followed. No G

⁴ (2006) 4 SCC 1 : 2006 SCC (L&S) 753 H

- A doubt they may have served the need of the hour, their regular appointment in violation of the requisite statutory qualification was illegal. Reference was made to earlier Full Bench judgment in *Sandhya Singh v. State of U.P.*⁵ with regard to the nature of such appointments.
- B **18.** It was further held that Section 23(2) permitted relaxation of minimum qualification for appointment of teachers only for a limited period not exceeding five years and qualification for TET could not be relaxed as held by the Full Bench judgment of the High Court in *Shiv Kumar Sharma v. State of U.P.*⁶ for post-23-8-2010 appointments. Nor pre-23-8-2010 appointments could be saved unless initial appointments were to the post of teachers in terms of applicable rules as stated in the Notification dated 23-8-2010. The amendments to the State RTE Rules, 2011 and the Service Rules of 1981 were in conflict with the mandate of Section 23(2) under which power to relax the minimum qualifications was vested only with the Central Government for a limited period. Moreover, the regularisation of Shiksha Mitras as teachers was not permissible in view of the law laid down in *Uma Devi (3)*⁷. The appointment of Shiksha Mitras was not as teachers nor could it be held to be merely irregular in the absence of their minimum qualifications for the post of teachers which was a distinguishing feature rendering the judgments *State of Karnataka v. M.L. Kesari*⁷ and *Amarendra Kumar Mohapatra v. State of Orissa*⁸ inapplicable.
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- F “**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
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⁵ (2013) 7 ADJ 1 (FB)

⁶ 2013 SCC OnLine All 4097 : (2013) 6 ALJ 366 : 6 ADJ 310 (FB)

⁷ (2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826

⁸ (2014) 4 SCC 583 : (2014) 2 SCC (L&S) 54

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.

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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 view³ taken by the High Court.”

3.3 However, in the peculiar fact situation, following observations were made by this Court:-

“**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.

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- A 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.”
4. Paragraph 33 of the decision in *Anand Kumar Yadav*² thus directed that Shiksha Mitras be given:-
- C a) opportunity to be considered for recruitment if they had acquired or would acquire requisite qualifications in terms of advertisement for recruitment.
- b) for next two consecutive recruitments; and
- D c) in such recruitments, they would be entitled to:-
- i) suitable age relaxation; and
- ii) some weightage for their experience, as may be decided by the authority concerned.
- E 5. After the decision in *Anand Kumar Yadav*², a Press Note was released by the State Government on 21.08.2017, which referred to the directions in aforesaid paragraph 33 and stated:
- F “1. In sequence of compliance of above, Government to such teachers who were absorbed/ adjusted at the post of teacher, they will be deemed reverted on the post of Shiksha Mitra w.e.f. 1.8.2017. They will have option to join duty in their present school or at the school of their original posting.
- G 2. State Government shall organize exam of TET in the month of October 2017 and all such Shiksha Mitras shall be provided an opportunity to acquire the required qualification.
- H 3. After TET examination is held, for the purposes of selection of Assistant Teachers in the Primary Schools under the Board, advertisement of vacancy in appropriate number shall be got published in the month of December 2017 and all the eligible applicants shall be provided with opportunity to make application.

4. In sequence of the order passed by the Hon'ble Supreme Court, amendment was brought in "Uttar Pradesh Basic Shiksha (Teachers) Service Rule, 1981" and for the purposes of recruitment on vacant posts of Assistant Teachers, advertisement shall be made. Above said amendment shall be brought in educational qualification and in determining the factor which shall be as under:-

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a. Existing and proposed amendment in UP Basic Education (Teacher) Service Rule, 1981 for the purposes of selection on the basis of Educational Factor:-

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Appendix

On the basis of Educational factor

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S. No.	Exam	Existing	Proposed
1.	High School	10%	10%
2.	Intermediate	20%	20%
3.	Graduation/ Degree	40%	40%
4.	BTC Training	First Division - 12 Marks (Theory) First Division - 12 Marks (Practical) Second Division – 06 marks (Theory) Second Division – 06 marks (Practical) Third Division – 3 marks (Theory) Third Division – 3 marks (Practical)	First Division - 12 Marks (Theory) First Division - 12 Marks (Practical) Second Division – 06 marks (Theory) Second Division – 06 marks (Practical) Third Division – 3 marks (Theory) Third Division – 3 marks (Practical)
5.	Experience of work as Shiksha Mitra in the Board Schools		For the work done by them as Shiksha Mitra in each complete service year 2.5 marks per year but maximum weightage is 25 marks.

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- A 5. All Shiksha Mitras shall be given honorarium of Rs.10,000/- per month w.e.f. 1.8.2017.”
6. On 09.11.2017, the State Government notified UP Basic (Teachers) Service (20th Amendment) Rules, 2017 amending 1981 Rules⁹. Following expressions were defined in Rule 2 as under:-
- B “(s) “Teacher Eligibility Test” means the Teacher Eligibility Test conducted by the Government or by the Government of India;
- (t) “Qualifying marks in Teacher Eligibility Test” Qualifying marks in Teacher Eligibility Test will be such as may be prescribed from time to time by the National Council for Teacher Education, New Delhi;
- (u) “Trainee teacher” means a candidate who has passed B.Ed./ B.Ed. (Special Education)/D.Ed. (Special Education) and has also passed the teacher eligibility test and has been selected for eventual appointment as assistant teacher in Junior Basic School after successful completion of six months special training programme in elementary education recognised by National Council for Teacher Education (NCTE);
- D (v) “Shiksha Mitra” means a person working as such in junior basic schools run by Basic Shiksha Parishad under the Government Orders prior to the commencement of Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011;
- E Or a person who has been a Shiksha Mitra and appointed as an Assistant Teacher in Junior Basic Schools run by Basic Shiksha Parishad and reverted to work as Shiksha Mitra in pursuance of the judgment of the Apex Court in SLP No. 32599/2015 State of U.P. and others v. Anand Kumar Yadav and others.
- F (w) “Assistant Teacher Recruitment Examination” means a written examination conducted by the Government for recruitment of a person in junior basic schools run by Basic Shiksha Parishad;
- G (x) “Qualifying Marks of Assistant Teacher Recruitment Examination” means such minimum marks as may be determined from time to time by the Government.

H ⁹ UP Basic Education (Teachers) Service Rules, 1981

(y) "Guidelines of Assistant Teacher Recruitment A
Examination" means such guidelines as may be determined from
time to time by the Government."

6.1. The sources of recruitment of teachers now set out in Rule 5
were:-

"5. Sources of recruitment. - The mode of recruitment to the
various categories of posts mentioned below shall be as follows :

(a)	(i) Mistresses of Nursery Schools	By direct recruitment as provided in Rule 14.
	(ii) Assistant Masters and Assistant Mistresses of Junior Basic Schools	By direct recruitment as provided in Rule 14.
(b)	(i) Headmistresses of Nursery Schools	By promotion as provided in Rule 18.
	(ii) Headmasters and Headmistresses of Junior Basic Schools	By promotion as provided in Rule 18.
	(iii) Assistant Masters of Science-Maths for Senior Basic Schools	By promotion as provided in Rule 18.
	(iv) Assistant Mistresses of Science-Maths for Senior Basic Schools	By promotion as provided in Rule 18.
	(v) Assistant Masters of other than Science Maths for Senior Basic Schools	By promotion as provided in Rule 18.
	(vi) Assistant Mistresses of other than Science Maths for Senior Basic Schools	By promotion as provided in Rule 18.
	(vii) Headmasters of Senior by promotion as provided in Rule 18 Basic Schools.	
	(viii) Headmistresses of Senior by promotion as provided in Rule 18 Basic Schools.	

Provided that if suitable candidates are not available for promotion to the posts mentioned at (v) and (vi) above, appointment may be made by direct recruitment in the manner laid down in Rule 15." H

A 6.2. The Essential Qualifications for appointment to the posts referred to in Clause (a) of Rule 5 were stipulated in Rule 8(1) as under:-

“8. Academic Qualifications-(1) The essential qualifications of candidates for appointment to a post referred to in clause (a) of Rule 5 shall be as shown below against each:

	Post	Academic Qualifications
B	(i) Mistresses of Nursery School	Bachelors degree from a University established by law in India or a degree recognised by the Government equivalent thereto together with Certificate of teaching (Nursery) from recognised training institution of Uttar Pradesh and any other training course recognised by the Government as equivalent thereto and teacher eligibility test passed conducted by the Government or by the Government of India.
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D	(ii) Assistant Master and Assistant Mistresses of Junior Basic Schools	ii.(a) Bachelors degree from a University established by law in India or a degree recognised by the Government equivalent thereto together with any other training course recognised by the Government as equivalent thereto together with the training qualification consisting of a Basic Teacher's Certificate (BTC), two years BTC (Urdu) Vishisht BTC. Two year Diploma in Education (Special Education) approved by Rehabilitation council of India or four year Degree in Elementary Education (B.Ed.), two years Diploma in Elementary Education (by whatever name known) in accordance with the National Council of Teacher of Education (Recognition, Norms and Procedure), Regulation or any training qualifications to be added by National Council for Teacher Education for the recruitment of teachers in primary education and teacher eligibility test passed conducted by the Government of India and passed Assistant Teacher recruitment Examination conducted by the Government.
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	(b) A trainee Teacher who has completed successfully six months special training programme in elementary education recognized by National Council for Teacher Education. (c) a shikshamitra who possessed bachelors degree from a University established by law in India or a degree recognised by the Government equivalent thereto and has completed successfully two year distant learning B.T.C. course or basic Teacher's Certificate (B.T.C.), Basic Teacher's Certificate (B.T.C.) (Urdu) or Vishisht B.T.C. conducted by the State Council of Educational Research and Training and passed the Teacher Eligibility Test conducted by the Government of India and passed Assistant Teacher recruitment Examination conducted by the Government.	A
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(iii) Trainee Teacher	iii. Bachelors degree from a University established by law in India or a degree recognized by the Government equivalent thereto together with B.Ed./B.Ed.(Special Education)/D.E.d.(Special Education) qualification and passed the teacher eligibility test conducted by the Government or by the Government of India. However, in case of B.Ed. (Special Education)/D.Ed.(Special Education) a course recognised by Rehabilitation Council of India (RCI) only shall be considered.	E
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Thus, Shiksha Mitras became eligible for appointment to the posts of "Assistant Masters and Assistant Mistresses of Junior Basic Schools" and the required academic qualifications as stated in Rule 8 were:-

- a) Bachelor's degree from a University.

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- A b) Successful completion of two years distant learning of B.T.C. course or its equivalent course.
c) Passing of the Teachers' Eligibility test ('TET', for short).
d) Passing of Assistant Teacher Recruitment Examination
- B ("ATRE", for short) conducted by the State Government.

6.3. Rule 14 dealt with determination of vacancies and preparation of list as under:-

- "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 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 teacher eligibility test passed, conducted by the Government or by the Government of India and passed Assistant Teacher Recruitment Examination conducted by the Government.
 - E (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 of vacancies 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 newspapers 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 A
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 school 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. B

(2) The appointing authority shall scrutinize the applications received in pursuance of the advertisement under clause (a) or (b) of sub-rule (1) of Rule 14 and prepare a list of such persons as appear to possess the prescribed academic qualifications and be eligible for appointment. C

(3) (a) The names of candidates in the list prepared under sub-rule (2) in accordance with clause (a) 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: D

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

(b) The names of candidates in the list prepared under sub-rule (2) in accordance with clause (b) 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 : F

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 (c) sub-rule (1) of Rule 14 for appointment as assistant teacher shall be same as the list prepared under clause (b) 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 G

- A 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).
- B (5) The list prepared under sub-rule (2) and arranged in accordance with clause (a) and (b) of sub-rule (3) of Rule 14 shall be forwarded by the appointing authority to the selection committee."
- C 6.4. Appendix I referable to Rule 14(3)(a) and Appendix II referable to Rule 14(3)(b) as amended by the 20th Amendment were as under:-

"APPENDIX-I¹⁰

[See Rule 14 (3)a]

Quality points and weightage for selection of candidates

	Name of Examination/Degree	Quality points
D	1. High School	<u>Percentage of Marks in the examination x 10</u> 100
E	2. Intermediate	<u>Percentage of Marks in the examination x 10</u> 100
F	3. Graduation Degree	<u>Percentage of Marks in the examination x 10</u> 100
	4. B.T.C. Training	<u>Percentage of Marks in the examination x 10</u> 100
F	5. Assistant Teacher Recruitment Examination	<u>Percentage of Marks in the examination x 60</u> 100
G	6. Weightage Teaching experiences as shikshamitra 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.

¹⁰ Appendix-I Subs. by Noti. No.2282/LXXIX-5-2017-282-98 dated 9th Nov., 2017 (Twentieth Amendment) Rules, 2017. Published in U.P. Gazette. Extra., Part 4, Section H (Ka), dated 9th November, 2017 (w.e.f. 9.11.2017).

Notes I—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. A

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.” B

“APPENDIX-II¹¹

[See Rule 14 (3)(b)]

Quality Points for Selection of candidates

	Name of Examination/Degree	Quality points
1.	High School	<u>Percentage of Marks</u> 10
2.	Intermediate	<u>Percentage of Marks x 2</u> 10
3.	Graduation Degree	<u>Percentage of Marks x 4</u> 10
4.	Bachelor of Education (B.Ed.)/B.Ed. (Special Education)/B.Ed. (Special Education)	<u>Percentage of Marks x 3</u> 10

Note – 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. If two or more candidates have equal quality point; and age, the name of the candidate shall be placed in the list in English alphabetical order.” F

7. On 09.01.2018, a G.O. was issued framing Guidelines for ATRE to be conducted in 2018 (“ATRE-2018”, for short) for filling up 68,500 posts of Assistant Teachers for junior basic schools. Paragraph 7 of the Enclosure to the G.O. prescribed the minimum qualifying marks for ATRE 2018 as minimum of 67 marks out of 150 i.e. 45% for General and OBC candidates and 60 out of 150 i.e. 40% for SC/ST candidates. Paragraphs 4.1, 5 and 7 of the Enclosure to G.O. were:- G

¹¹Appendix Ins. by (Sixteenth Amendment) Notification No.3338/LXXIX-5-2012-14(10)-2010, dated 4 December, 2012 (w.e.f. 4-12-2012)

- A “4. The minimum qualification for the application:-
 (1) In Rule 8 of the Uttar Pradesh Basic Education (Teachers) Service (20th Amendment) Rules, 2017 the described educational, training passed, Government of India or by the State Government the organized Teachers Eligibility Examination (Primary Level) passed candidates will be eligible for filing the application in the Assistant Teachers Recruitment Examination, 2018.
- B 5. The Subject Matter and the Structure of the Recruitment Examination of the Assistant Teachers:-
 By the office of the Secretary, Uttar Pradesh Basic Education Council, Allahabad and in accordance with the advertisement which has been published vide Advertisement bearing No.Basic Education Council/15876/2017-18 dated 28.10.2017:-
 Time of the examination 3.00 hours Total Marks 150
 D Type of questions very small question No. of question 150
 The level of the Subject Matter:-
 (1) Hindi Language, Sanskrit and English, Science, Maths, environment and Social Studies (upto Class 12 level).
 (2) Teaching Efficiency, Child Psychology, Information Technology, Life Efficiency Management and Attitutde – (Upto D.L.Ed. syllabus).

	SUBJECT	SYLLABUS	MARKS
F	Hindi Language, Sanskrit and English	Grammar and unread story and poem, Grammar Comprehension	40
G	Science	Science in daily life, movement force, energy, distance, light, sound, world of creature, healthy human body, cleanliness and nutrition, environment and natural resources, the goods and state of goods.	10
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Maths	Numeric competency, mathematical operations, decimal, locations valid, variant, interest, profit-loss, percentage division, factor, unitary rule, general mathematics, area average volume, ratio and all the problems, general Geometry, general statistics	20
Environment and the General studies	Construction of the Earth, Rivers, Mountain, Island, Ocean and Lives, Natural Property, Latitude and Longitude, Solar System, Indian Geography, India Freedom Movement, Indian Social Reformer, Constitution of India, Our Government Arrangement, Traffic and Road Safety, Indian Economics and challenges, our culture ancestor, environment conservation, natural calamity management	10
Teaching Efficiency	The method of teaching and efficiency, the theory of teaching, present Indian social and primary education, inclusive education, new endeavour of the preliminary education, educational valuation and measurement preliminary education efficiency, educational management and administration	10

A	Child Psychology	Personal Variance, the factors which affect the child development, identification of the need of learning, the creation of the theory of the environment of reading and in the class education its practical use and merit, special arrangement for the handicapped (Divyangjan) students.	10
B			
C			
D	General Knowledge/ Current Affairs	Important current affairs – relating to the International, National, State the important events place personality, constructions, International, relating to the State the important accident place, personality, construction, International and National Award / Sports, Indian, culture and Arts etc.	30
E			
F	Logic Knowledge	Analogies, assertion and reason, binary logic, classification, clocks and calendars, coded inequalities, coding-decoding, critical reasoning, cubes number series, puzzles, symbols and notations, venn diagrams and dice, data interpretation, direction sense test, grouping and selections, inferences, letter series.	5
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A	Information Technology	Development efficiency, Art Teaching and in the School Management Area information technology computer, internet, smartphone, OER (Open Educational Resources), in the education the important Apps, digital, the information regarding use of the education materials.	5
B	Life Efficiency/ Management and Attitude	Commercial Character and Policy, Motivation Role of Teaching (facility giver, listener, guider, motivator, consultant), Constitutional and Humanitarian merit, punishment and Award arrangement and its effective use.	10
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7. Qualifying Marks:

1. In the Assistant Teachers Recruitment Examination, the candidates who are participating for them the examination result will be issued / given on the website. For the General and OBC Class candidates who receive 67 marks out of total 150 marks viz. 45% marks or more and then only those General and OBC Class candidates will be issued passed certificate in the Assistant Teachers Recruitment Examination.
2. For the Scheduled Caste / Scheduled Tribes candidates the minimum qualifying marks will be 40% viz. 60 marks out of total 150 marks.
3. Only by passing the Assistant Teachers Recruitment Examination will not give any right of employment to those candidates because for this appointment only this is one of the eligible measurement.”

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- A 8. On 15.03.2018, by 22nd Amendment, 1981 Rules were amended removing the requirement of passing of ATRE from the essential qualifications contained in Rule 8. However, the requirement was retained in Rule 14 dealing with the procedure for selection of Assistant Teachers. The relevant part of Rule 8(1) dealing with Academic Qualifications for “Assistant Master and Assistant Mistresses of Junior Basic Schools” read as follows:-
- B “ii. (a) Bachelors degree from a University established by law in India or a degree recognised by the Government equivalent thereto together with any other training course recognized by the Government as equivalent thereto together with the training qualification consisting of a Basic Teacher’s Certificate (BTC), two year BTC (Urdu) Vishisht BTC. Two year Diploma in Education (Special Education) approved by the Rehabilitation Council of India or four year degree in Elementary Education (B.El.Ed.), two year Diploma in Elementary Education (by whatever name known) in accordance with the National Council of Teacher Education (Recognition, Norms and Procedure) Regulations, 2002 or any training qualifications to be added by National Council for Teacher Education for the recruitment of teachers in primary education.
- C and
- D teacher eligibility test passed conducted by the Government or by the Government of India.”
- E Rule 14 dealing with Procedure of selection stood substituted as under:-
- F “14(1)(a) – Determination of vacancies
- G 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
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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.

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(b) Recruitment Examination- For every notified vacancy under clause (a) for recruitment of Assistant Master or Assistant Mistress of Junior Basic School, a separate Assistant Teacher Recruitment Examination shall be conducted by the Government.

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(c) 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 training programme in elementary education recognized 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.

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(d) 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.

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(2) Preparation of Merit List – The appointing authority shall scrutinize the applications received in pursuance of the advertisement under clause (a) or clause (c) of sub-rule (1) and

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- A 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 (a) 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.
- B Provided that if two or more candidates obtain equal marks, the candidates senior in age shall be placed higher.
- C Provided that a person working as Shiksha Mitra in Junior Basic Schools run by Basic Shiksha Parishad shall be given weightage in the recruitment of the post of Assistant Teacher, only in two consecutive Assistant Teacher Recruitment Examination conducted by the Government after July 25, 2017.
- D (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:
- E 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 clause (a) and (b) of sub-rule (3) of rule 14 shall be forwarded by the appointing authority to the selection committee.”
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9. In March, 2018, TET examination was held, in which approximately 3,86,000 candidates including about 40,000 Shiksha Mitras qualified. A

10. On 21.05.2018, a G.O. was issued relaxing the qualifying marks of 45-40% to 33-30% for General and Reserved categories respectively. This relaxation was challenged by filing W.P. No.20404 of 2018 by some candidates and the operation of said G.O. was stayed by the High Court vide Order dated 23.07.2018. B

11. On 27.05.2018 ATRE-2018 was conducted. In the results, 41,556 candidates were declared to have qualified with qualifying marks of 45-40% out of which, 40296 candidates applied for counselling and were selected for appointment on 13.08.2018. About 4500 candidates were added to this number after re-evaluation process. C

12. On 28.06.2018, the National Council for Teachers Education (“NCTE”, for short) amended its OM dated 23.08.2018. The notification dated 28.06.2018 was to the following effect:- D

“F.No.NCTE-Regl 012/16/2018.- In exercise of the powers conferred by sub-section (1) of Section 23 of Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009) and in pursuance of notification number S.O. 750(E), dated the 31st March, 2010 issued by the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, the National Council for Teacher Education (NCTE) hereby makes the following further amendments to the notification number F.N. 61-03/20/2010/NCTE(N&S), dated the 23rd August, 2010, published in the Gazette of India, Extraordinary, Part III, Section 4, dated the 25th August, 2010, hereinafter referred to as the said notification namely:- E

(1) In the said notification, in para 1 in sub-para (i), in clause (a) after the words and brackets “Graduation and two year Diploma in Elementary Education (by whatever name known), the following shall be inserted, namely:- F

OR

“Graduation with at least 50% marks and Bachelor of Education (B.Ed.)” G

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- A (2) In the said notification in para 3, for sub-para(a), the following sub-para shall be substituted namely:-
- “(a) who has acquired the qualification of Bachelor of Education from any NCTE recognised institution shall be considered for appointment as a teacher in classes I to V provided the person so appointed as a teacher shall mandatorily undergo a six month Bridge Course in Elementary Education recognised by the NCTE, within two years of such appointment as primary teacher”
- B 13. On 26.09.2018, while dealing with the issue as to the stage at which the weightage is to be given to Shiksha Mitras for their experience in terms of the directions of this Court in *Anand Kumar Yadav*² and 1981 Rules, Division Bench of the High Court of Judicature at Allahabad in *Kulbhushan Mishra and another vs. State of U.P. and others* (Special Appeal No. 812 of 2018 etc.) observed:-
- C D “...we are of the considered view that weightage was not contemplated to be added to the marks obtained by a person in the Assistant Teacher Recruitment Examination.”
- E 14. On 01.12.2018, a G.O. was issued notifying 2nd ATRE (“ATRE-2019”, for short) for filling up 69,000 vacancies of Assistant Teachers.
- F E Paragraphs 1, 4.1, 4.2 and 5 of the Annexure to the G.O. were:-
- “In the schools managed by the Basic Education Department the teachers imparting education have major role in the development of girls and boys studying in the schools. It has been therefore decided that in order to fill the vacant seats of the teachers in the primary schools a state level Assistant Teachers Recruitment Examination will be conducted.
- G F Only those candidates who are graduate, trained and those who have passed the Teachers Eligibility Test will be eligible to appear in the said examination.
- H G 4. The minimum qualification, age and residence for the application:-
- I H (1) In Rule 8 of the Uttar Pradesh Basic Education (Teachers) Service (22nd Amendment) Rules, 2018 the described educational, training passed, Government of India or by the State Government

the organized Teachers Eligibility Examination (Primary Level) A
passed candidates will be eligible for filing the application in the
Assistant Teachers Recruitment Examination, 2019.

(2) By the National Teachers Education Council, New Delhi the B
Minimum Qualification with regard to the Class-1 to Class-5 the
issued Notification dated 23.08.2010, 29.07.2011, 12.11.2014 and
28.11.2014 (has been described in Appendix-2 in preamble 1.2)
and on 28.06.2018 fixed eligible candidates are entitled to file
application in the Assistant Teachers Recruitment Examination,
2019.”

5. The Subject Matter and the Structure of the Recruitment C
Examination of the Assistant Teachers:-

Time of the examination 2.30 hours (from 11.00 a.m. to 13.30
p.m.) Total Marks 150

Type of questions very small optional question, No. of questions D
150

The level of the Subject Matter:-

(1) Hindi Language, Sanskrit and English, Science, Maths,
Environment and Social Studies (upto Class 12 level).

(2) Teaching Efficiency, Child Psychology, Information Technology, E
Life Efficiency Management and Attitude – (Upto D.L.Ed.
syllabus).”

The tabular chart appended thereafter was identical to one in F
G.O. dated 09.01.2018 for ATRE-2018. The chart dealt with same
subjects with identical syllabus and marks against each subject.

15. An advertisement was thereafter issued on 29.12.2018 notifying
that ATRE-2019 would be conducted on 06.01.2019.

16. On 03.01.2019, an order was passed by the High Court of G
Judicature at Allahabad in Writ A No.27461 of 2018 to the following
effect:-

“The grievance raised by means of the present writ petition is
that without notifying the minimum qualifying marks the
respondents are going to conduct written examination of Assistant
Teacher Recruitment Examinatin-2019 on 06.01.2019.

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- A According to the petitioners, earlier when the examinations were conducted, minimum qualifying marks were duly declared by the respondents. In this regard the circular issued by the State Government dated 01st December, 2018 (Annexure-1 to the writ petition) has been placed before this Court.
- B Standing Counsel has put in appearance on behalf of respondent nos. 1 and 3. Sri A.K. Yadav has put in appearance on behalf of respondent no.2.
- All the respondents are granted three days' time to seek instruction in the matter.
- C Put up this matter as fresh on 08.01.2019."
17. ATRE-2019 was conducted on 06.01.2019 without there being any specification of minimum qualifying marks.
18. However, on the next day i.e. on 07.01.2019, following order was passed by the Special Secretary to the State Government:-
- D "To
- E 1. Director,
State Education Research and Training Council, Uttar Pradesh,
Lucknow.
- F 2. Secretary, Exam Controller Authority, U.P. Prayagraj.
Basic Siksha Anubhag – 4 Lucknow Date 07 January 2019.
Subject:- Regarding prescribing the minimum qualifying marks in respect of 'Assistant Teacher Recruitment Exam 2019' for Primary Schools run by Uttar Pradesh, Basic Siksha Council.
- G Sir,
Refer to the letter no. B.S.C. 16426-27/2018-19 dated 05 January, 2019 of the Secretary, Basic Siksha Council regarding aforesaid subject, whereby it has been requested to prescribe the minimum qualifying marks for the 'Assistant Teacher Recruitment Exam 2019'.
- H 2. In this regard I have been directed to state that after proper deliberation by the Government, in pursuant to the G.O. No.2056/ 68-4-2018 dated 01.12.2018 issued for conducting the 'Assistant

Teacher Recruitment Exam 2019', for the purpose of result minimum qualifying marks are being prescribed. This Minimum Qualifying Marks will be only for 'Assistant Teacher Recruitment Exam 2019':-

- (a) For the candidates of General Category, candidates getting 97 marks of the total 150 meaning 65% and more will be considered passed for 'Assistant Teacher Recruitment Exam 2019'. A
 - (b) For the candidates of all other Reserved Categories, candidates getting 90 marks of the total 150 meaning 60 percent and more will be considered passed for 'Assistant Teacher Recruitment Exam 2019'. B C
 - (c) Candidates qualified on the basis of aforesaid 'a' and 'b' will be eligible to apply against the 69000 vacancies advertised and on qualifying merely on the basis of aforesaid minimum marks will not have any claim for recruitment because this exam is only one of the eligible standard for recruitment. D
 - (d) In case of more candidates qualifying than the prescribed number of posts (69000), of the total qualified candidates, eligible candidates will be selected on the basis of final merit list against the advertised posts in accordance with Appendix-I of twentieth Amendment of Uttar Pradesh Basic Siksha (teachers) Rules, 1981. Remaining candidates will automatically be out from the selection process and they will not have any claim on the basis of the 'Assistant Teacher Recruitment Exam 2019'. E
 - (e) No communication will be entertained in respect of the Minimum Qualifying Marks." F
19. On or about 16.01.2019, the first petition namely W.P. No.118(SS) of 2019 was filed by some Shiksha Mitras challenging the aforementioned Order dated 07.01.2019 and assailing the fixation of minimum qualifying marks. About 99 Writ Petitions in all were filed by Shiksha Mitras questioning the Order dated 07.01.2019. G
20. On 24.01.2019, 23rd Amendment to 1981 Rules was published. By this Amendment, the essential qualifications in Rule 8(ii) were substituted as under:- H

- A “(ii)(a) Bachelors degree from a University established by law in India or a degree recognized by the Government equivalent thereto together with any other training course recognised by the Government as equivalent thereto together with the training qualification consisting of a Basic Teacher’s Certificate (BTC), two year BTC (Urdu) Vishisht BTC. Two year Diploma in Education (Special Education) approved by Rehabilitation council of India or four year Degree in Elementary Education (B.El.Ed.), two year Diploma in Elementary Education (by whatever name known) in accordance with the National Council of Teacher Education (Recognition, Norms and Procedure), Regulations 2002,
- B C Graduation with at least fifty percent marks and Bachelor of Education (B.Ed.), provided that the person so appointed as a teacher shall mandatorily undergo a six month Bridge Course in Elementary Education recognised by the NCTE, within two years of such appointment as primary teacher or any training qualifications to be added by National Council of Teacher Education for the recruitment of teachers in primary education.
- D

and

teacher eligibility test passed conducted by the Government or by the Government of India.”

- E Consequently, Graduates having 50 per cent or more marks and holding degree of Bachelor of Education (B.Ed.) became eligible for posts of Assistant Master and Assistant Mistresses in Junior Basic Schools in the manner laid down in the Amendment. The concerned provisions in 1981 Rules dealing with eligibility of such candidate were given F retrospective effect from 01.01.2018.

21. On 07.03.2019, 24th Amendment to 1981 Rules was published further amending Rule 8(ii) by adding sub-clause (aa) after sub-clause (a) to the following effect:-

- G “(aa) Graduation with at least fifty percent marks and Bachelor of Education (B.Ed.), provided that the person so appointed as a teacher shall mandatorily undergo a six month Bridge Course in Elementary Education recognised by the NCTE, within two years of such appointment as primary teacher or any training qualifications to be added by National Council of Teacher Education for the recruitment of teacher in primary education,
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and teacher eligibility test passed conducted by the Government A or by the Government of India.”

This Amendment gave retrospective effect to sub clause (aa) of Rule 8(ii) from 28.06.2018.

22. A Single Judge of the High Court allowed W.P. No.1188(SS) of 2019 (Mohd. Rizwan and others vs. State of U.P.) and other 98 Writ Petitions by common judgement and order dated 29.03.2019. Some of the relevant passages from the judgement are:-

“1. The order under challenge is Government Order bearing No.46/68-4-2019-2056/2019 dated 7.1.2019 issued by the Special Secretary, Basic Education Anubhag-4, Government of U.P., Lucknow fixing the minimum qualifying marks for Assistant Teacher Recruitment Examination, 2019 as 65% for general category and 60% for reserved category. Undisputedly, no minimum qualifying marks have been fixed vide Government Order dated 01.12.2018 and notification/advertisement dated 05.12.2018, pursuant to which, the examination in question has been conducted on 6.1.2019. Undisputedly, the exercise for fixing minimum qualifying marks have been started pursuant to the letter bearing no. B.Sh.P.-16426-27/2018-19 dated 5.1.2019 preferred by the Secretary, Board of Basic Education to the Government making request for fixation of minimum qualifying marks for the examination in question, meaning thereby, the State Government must be intending something other way to declare the result of Assistant Teacher Examination, 2019.

...

157. Under the given circumstances it has been noted that the Assistant Teacher Recruitment Examination may not be treated as shortlisting examination by prescribing such a high minimum qualifying marks as the same may affect the rights of the petitioners (Shiksha Mitras) who may likely to be deprived from getting weightage of 25 marks which is statutory prescription in the 22nd Amendment. Further, since the Assistant Teacher Recruitment Examination is not the minimum qualification prescribed by the Academic authority and the same has been added in the Rules of 1981 by way of 20th and 22nd Amendment, therefore, the qualifying marks should be minimum qualifying marks. Further, the said

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- A qualifying marks should be seen like minimum. Further, the Shiksha Mitras should be subjected for the same treatment as has been given to them in earlier examination of Assistant Teacher Recruitment Examination-2018 in terms of judgment of Hon'ble Apex Court in re: Anand Kumar Yadav (*supra*). Since this examination would be the second and last examination for the Shiksha Mitras in terms of the aforesaid judgement of Hon'ble Apex Court, therefore, this examination i.e. Assistant Teacher Recruitment Examination-2019 should be conducted in a similar manner as the Assistant Teacher Recruitment Examination-2018 has been conducted.
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- D 159. To be more precise, since to provide weightage to the candidates, who have qualified Assistant Teacher Recruitment Examination, is a legal prescription under Rule 14(3)(a) of the Rules and the same weightage has been provided in the earlier examination to those candidates, who have qualified Assistant Teacher Recruitment Examination with the minimum 45% and 40% qualifying marks, therefore, enhancing the qualifying marks up to 65% and 60%, permitting the candidates, who are having B.Ed. qualification and quality point marks of those candidates may not be determined as per Appendix-I is nothing but appears to be an attempt to oust those persons, who are eligible for the weightage.
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- F 163. It would be apt to consider here the relevant provision of law, which provides about qualifying marks in Teacher Eligibility Test and qualifying marks in Assistant Teacher Recruitment Examination. As per Rule 2(t) of the Rules 1981 (as amended by Twenty Second Amendment, 2018), qualifying marks in Teacher Eligibility Test will be such as may be prescribed from time to time by the NCTE, whereas as per Rule 2(x), qualifying marks of Assistant Teacher Recruitment Examination means such minimum marks as may be determined from time to time by the Government. Conjoint reading of aforesaid provisions reveals that for Teacher Eligibility Test, qualifying marks shall be prescribed by the NCTE and there is no rider as to what qualifying marks should be fixed,
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therefore, for Teacher Eligibility Test, the qualifying marks is 60% A and 55% for both the category and there is no quarrel on it.

164. However, in Assistant Teacher Recruitment Examination, it has categorically been indicated in Rule 2(x) that the qualifying marks means such minimum marks determined by the State Government from time to time. On account of aforesaid prescription, the State Government has firstly determined the minimum qualifying marks as 45% and 40% for both the categories and thereafter, for the same selection of Assistant Teacher Recruitment Examination, it has been fixed as 33% and 30% as the State Government could have determined any minimum marks from time to time, therefore, it is the domain of the State Government to fix the qualifying marks for the Assistant Teacher Recruitment Examination, but such qualifying marks should be ‘minimum’ and ‘minimum’ should be seen like ‘minimum’. ‘Minimum’ may not be seen as ‘maximum’.

165. Further, since the person, who qualifies the Assistant Teacher Recruitment Examination with minimum qualifying marks shall not be appointed on the post of Assistant Teacher, rather, he/she shall only be eligible to reach in the next stage, thereby he/she shall be awarded weightage and the his/her total quality points shall be calculated. On the basis of total quality points, the candidate shall come in the zone of eligible candidate, who shall be appointed according to his/her merit. Meaning thereby, qualifying the examination of Assistant Teacher Recruitment Examination does not make the person eligible to be selected on the post of Assistant Teacher, but it only makes him/her eligible to get weightage, therefore, the submission of learned counsel for the State-respondents that so as to short list the eligible candidates, merit of Assistant Teacher Recruitment Examination has been enhanced up to 65% is misfit argument.

...

172. Admittedly, the examinees were not aware about the decision of the State Government regarding minimum qualifying marks before the examination in question so besides the fact that rules of game may not be fixed after start of the game, one more aspect is relevant here that in view of the dictum of Hon’ble Apex Court in re: P.V. Indirsan (2) (supra) and Rahul Dutta (supra) the

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- A minimum eligibility marks should be declared before the examination and if the marks have not been fixed prior to the examination in question, may not be fixed later on, therefore the impugned order dated 07.01.2019 would be said to have been issued in derogation of aforesaid laws of the Hon'ble Apex Court.
- B 173. Therefore, in view of the aforesaid findings I am of the considered view that by not declaring the minimum qualifying marks of Assistant Teacher Recruitment Examination before holding examination is causing prejudice to the petitioners, including all aspirants, as they have been denied an opportunity to adequately prepare for the result. Further, since the State Government had to conduct two examinations to appoint Assistant Teacher pursuant to the direction of Hon'ble Apex Court in re: Anand Kumar Yadav (*supra*), therefore, the manner of these two examinations should be similar inasmuch as for Shiksha Mitras, Assistant Teacher Recruitment Examination-2019 was the second and last examination to get benefit of weightage as per judgement of Anand Kumar Yadav (*supra*)."

22.1 While considering the issue of eligibility of B.Ed. candidates, it was observed:-

- E "154. It is true that there is no challenge in any of the writ petitions that the inclusion of B.Ed. candidates is unwarranted and uncalled for and they may not be selected getting quality point marks as per Appendix-I, but circumstances under which the aforesaid anomaly has been committed by the State Government has nowhere been explained in the counter affidavit or by way of argument.

...

- G 168. I also find favour in the submission of Sri U.N. Misra that it cannot be comprehended as to what is the object of enhancing minimum qualifying marks from 45% to 65% for Assistant Teacher Recruitment Examination when it is only a qualifying examination. Mr. U.N. Misra has rightly submitted that if the averment of the counter affidavit is believed to be correct, the said enhancement has been made to select the best available candidates, then who are the best candidates, as per State-respondent. Since the inclusion of B.E.d. candidates have been made in the present
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examination, therefore, it appears that the enhancement has been made to oust the Shiksha Mitras from the selection in question and to select the B.Ed. candidates. If it is the intention of the State-respondent to enhance the minimum qualifying marks, then it would be violative to the rules itself which categorically provides that the Shiksha Mitras would be getting 25 marks as weightage.

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178. Besides, the counsel for the State-respondent could not convince as to how the quality points marks of B.Ed. candidates would be determined / calculated as per Appendix – I when these B.Ed. candidates would not be getting any marks for item no.4 [marks of B.T.C] and item no.6 [weightage of 25 marks]. If these B.Ed. candidates are given quality point marks as per Appendix-II, they can easily get marks for all the items but quality points marks for this examination would be calculated as per Appendix-I.

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179. This Court is unable to comprehend the rationale behind it but since this particular point has not been directly assailed, therefore, no order on this point needs to be issued.

180. However, it clearly reveals that neither the Board of Basic Education nor the State Government has carried out proper exercise before conducting selection in question permitting B.Ed. candidates in the present selection in question which increased the number of aspirants drastically without deciding the method for calculating their quality points marks, without determining the vacancies for them as B.Ed. candidates are different from B.T.C. candidates, enhancing the minimum qualifying marks for the Assistant Teacher Recruitment Examnatoin-2019 by way of G.O. dated 07.01.2019 and conducting Assistant Teacher Recruitment Examination-2019 differently from Assistant Teacher Recruitment Examination-2018 whereas the State Government was to conduct two examinations in a same manner as per dictum of Hon'ble Apex Court. This unexplained anomaly may convince this Court to quash the entire selection process but keeping in view the fact that large number of candidates have already appeared in selection process, therefore, this Court is only examining/testing the fitness of Government Order dated 07.01.2019.”

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A 22.2 It was concluded:-

“181. Considering the entire facts and circumstances of the issue and case law so cited by the learned counsel for the respective parties I am of the considered view that the Government Order dated 07.01.2019 is not sustainable in the eyes of law being

B arbitrary and violative of Article 14 of the Constitution of India as it makes an unreasonable classification by giving different treatment to two groups of identically situated persons appearing in two consecutive examinations and there is no valid reason and justification for drastically increasing minimum qualifying marks without having any nexus with the object sought to be achieved.

C It further appears that the Government Order dated 07.01.2019 is nullifying the beneficial direction of the Hon’ble Apex Court in re: Anand Kumar Yadav (supra), pursuant to which 25 marks of weightage has been prescribed under Rule 14(3)(a) of the Rules 1981 (22nd Amendment, 2018) purposely for practical experience which is an integral part of merit.”

D 23. On 14.06.2019, 25th Amendment to 1981 Rules was published. By this Amendment, Appendix I which was referable to Rule 14(3)(a) was amended as under:-

“APPENDIX-I

E Quality points and weightage for selection of candidates

	Name of Examination/Degree	Quality points
1.	High School	<u>Percentage of Marks in the examination x 10</u> 100
2.	Intermediate	<u>Percentage of Marks in the examination x 10</u> 100
3.	Graduation Degree	<u>Percentage of Marks in the examination x 10</u> 100
4.	Training Qualifications of Rule	<u>Percentage of Marks in the examination x 10</u> 100
5.	Assistant Teacher Recruitment Examination	<u>Percentage of Marks in the examination x 60</u> 100

6.	<u>Weightage</u> Teaching experiences as shikshamitra 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, which ever is less	A B
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Note:

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 candidates shall be placed in the list in English alphabetical order.”

23.1 Appendix II, referable to Rule 14(3)(b) was omitted by the same Amendment.

23.2 Resultantly, Appendix I as it now stands after said Amendment, is the only and common Appendix for both the sources referred to in Rule 14.

24. Special Appeals arising from the judgment and order dated 29.03.2019 passed by the Single Judge, were allowed by the Division Bench of the High Court by its common judgment and order dated 06.05.2020. It must be stated that though 99 Writ Petitions were allowed by the Single Judge, appeals were preferred only in 24 matters. Therefore, many Shiksha Mitras who had succeeded before the Single Judge, were not parties before the Division Bench.

25. Two principal issues were considered by the Division Bench of the High Court; one relating to the fixation of 65-60% as minimum qualifying marks for ATRE-2019 and particularly after the holding of the examination; and the other concerning the eligibility of B.Ed. candidates for the posts of Assistant Teachers under 1981 Rules.

25.1 With regard to the first issue, the conclusions of the Division Bench were:-

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- A “71. In Anand Kumar Yadav (*supra*), the Hon’ble Supreme Court merely provided that the Shiksha Mitras shall be given an opportunity to participate in the selection process at hand in two consecutive selections, irrespective of age while being given benefit of age relaxation as determined by the State Government, in an open and transparent selection process along with other duly qualified candidates and it nowhere provided that the Shiksha Mitras shall constitute a homogeneous class apart from other duly qualified candidates participating in the selection process. The Hon’ble Supreme Court while keeping in mind the interest of the school children held that the regularization of unqualified Shiksha Mitras on the post of Assistant Teacher was illegal as the school children whose interests, though were not duly represented, had a right to obtain quality education from duly qualified teachers under the provisions of Right to Education Act and gave due importance to the merit of the candidates who are ultimately going to be appointed on the post of Assistant Teacher as the ultimate losers would be the small primary school children if the merit is compromised in the selection process.
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- E 72. As a common parlance, qualifying marks are prescribed after the examination is conducted as the Recruiting Authority is in a position to assess how the candidates have performed and determine the benchmark keeping in mind the number of vacancies. The State Government rightly in the advertisement dated 1.12.2018 did not declare the cutoff marks for qualifying the ATRE – 2019.
- F 73. Thus, the arguments of the writ petitioners and finding recorded by the learned Writ Court that the increase in cut-off marks from 45% and 40% to 65% and 60% by the Government Order dated 07.01.2019 is nullifying the beneficial direction of the Hon’ble Supreme Court in Anand Kumar Yadav (*supra*) has no legs to stand, and is pre-mature as the benefit is available only at the time of recruitment, once they hold the prescribed minimum qualifications and their names are published in the merit list prepared under Rule 14(2) of the 1981 Rules.”
- G
- H 25.2 The issue regarding the eligibility of B.Ed. candidates was dealt with as under:-

“81. By virtue of the amendment in the NCTE notification dated 23.8.2010 on 28.6.2018, the appellants of Special Appeal No.165(D) of 2019 participated in the TET examination on 18.11.2018 and qualified the same and therefore becoming eligible for appearing in the ATRE 2019, the writ petitioners knowing well about the amendment in the notification dated 23.8.2010 by NCTE notification dated 28.6.2018, they never challenged the validity of the said notification and thus, the notification issued by the NCTE being under a Central Enactment which is referable to Entry 66 of list I of the Seventh Schedule is binding upon the State Government and even a legislative exercise done by the State in the matter of laying down of standards in education would have to yield to the notifications of the NCTE inasmuch as the exercise of power by the State Government is referable to Entry 25 of List III of the Seventh Schedule, which besides being in the concurrent list is, subject to Entry 63, 64, 65 and 66 of List – I. The State Government rightly followed the mandate issued by the NCTE and permitted the B.Ed. candidates to appear in the second ATRE - 2019.

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87. The educational qualifications fixed by the NCTE for appointment as Assistant Teachers are binding on the recruitment made by the State Governments. The participation of B.Ed. candidates was never challenged before the learned Writ Court and the observations made in the impugned order dated 29.3.2020 pertaining to participation of B.Ed. candidates in the selection process are merely the obiter dicta having no bearing on the issue raised before the learned Writ Court regarding the legality and validity of the Government Order dated 7.1.2019 whereby the minimum qualifying marks had been fixed for ATRE – 2019 examination.

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89. The Apex Court in the case of State of U.P. vs. Shiv Kumar Pathak (*supra*), has held that the eligibility conditions for appointment of Assistant Teachers as laid down by the NCTE are binding on the State Government as the NCTE is the competent authority for fixing such educational qualifications and therefore, the B.Ed. candidates had been included by the State Government

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...

- A in clause 4 (2) of statutory guidelines dated 1.12.2018. In the aforesaid clause, it is very categorically stated that the notification dated 28.6.2018 issued by the NCTE whereby B.Ed. candidates were made eligible for appointment as Teacher in Primary Schools for teaching classes I to V provided the person so appointed as an Assistant Teacher shall mandatorily undergo six months' Bridge Course in Elementary Education recognised by the NCTE within two years after such appointment as Assistant Teachers.
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- C 92. Thus, we are of the view that once the B.Ed. candidates were made eligible to be considered for appointment to the post of Assistant Teacher, subject to them acquiring the minimum qualification, the State Government was bound to permit them to participate in the ARTE – 2019 passing which is the minimum qualification to be considered for appointment to the post of Assistant Teacher. Accordingly, the State Government carried out the necessary amendments to the 1981 Rules to align them with the NCTE notification, prior to commencement of the recruitment process.”
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25.3 The operative directions issued by the Division Bench of the High Court were :-

- E “105. For the reasons aforementioned, it cannot be said that the Government Order dated 7.1.2019 is violative of Article 14 of the Constitution of India nor it makes an unreasonable classification or is nullifying the judgement of the Apex Court in the case of Anand Kumar Yadav (*supra*). Accordingly, we set aside the impugned order 29.3.2019 passed in Writ Petition No.1188 (SS) of 2019 and other connected matters filed by Shiksha Mitras and dismiss the said writ petitions by allowing all the Special Appeals and direct the State of U.P. to declare the result of examination which was held on 6.1.2019 in terms of the Government Order dated 7.1.2019 at the earliest as directed by the Apex Court in the case of Bhola Prasad Shukla v. Union of India and others (*supra*). All applications for intervention/impleadment/civil miscellaneous applications are also disposed of in same terms.”
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H 26. Accordingly, the result was declared by the Examining Body on 12.05.2020 and 1,46,060 candidates were declared successful.

Thereafter, U.P. Basic Education Board issued an advertisement on 16.05.2020 inviting applications from those candidates who were declared successful in ATRE-2019.

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27. Being aggrieved by the decision of the Division Bench of the High Court, the present appeals by special leave have been preferred by various appellants. A Writ Petition has also been preferred. Broadly, the matters can be classified into three categories. Those filed by i) Shiksha Mitras, ii) Persons having B.Ed./BTC qualifications; and iii) Ex-servicemen or persons with disability etc. These matters squarely deal with the aforestated two issues considered by the Division Bench of the High Court in the judgement under appeal.

B

However, SLP (Diary) No.13142 of 2020 filed by persons who were not parties at any stage of the proceedings in the High Court, seeks permission to file special leave petition and submits that they be given the benefit of erroneous questions in the examination. Since the issue raised in said petition is unconnected with the rest of the matters, permission to file special leave petition is not granted. The concerned petitioners are at liberty to agitate the issue, if required, in properly instituted proceedings.

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Rest of the matters can be tabulated in following three categories: -

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A] Filed by Shiksha Mitras

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Sr. No.	Civil Appeals arising from	Petitioners/ Applicants
i	SLP (C) No.6841 of 2020	275
ii	SLP (C) No.6847 of 2020	4
iii	SLP (C) No.7817 of 2020	34
iv	SLP(C)No. (D.No.12246) of 2020	27
v	SLP(C)No. (D.No.11450) of 2020	795
vi	SLP(C)No. (D.No.13259) of 2020	23
vii	SLP(C)No. (D.No.12452) of 2020	98
viii	SLP(C)No. (D.No.14138) of 2020	174
ix	SLP(C)No. (D.No.11452) of 2020	1352
x	SLP (C) No.6842 of 2020	11
xi	SLP (C) No.6687 of 2020	4

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A	xii	SLP(C) No. (D.No.11331) of 2020	5
	xiii	SLP (C) No.6848 of 2020	6
	xiv	SLP (C) No.6845 of 2020	24
	xv	SLP (C) No.6850 of 2020	3
B	xvi	SLP (C) 6851 of 2020	166
	xvii	SLP(C)No. (D.No.13872) of 2020	246
	xviii	SLP (C) No.6846 of 2020	By Association
	xix	SLP(C) No. (D.No.13888) of 2020	80

B] Filed by B.Ed./BTC Candidates

C	Sr. No.	Writ Petition and Civil Appeals arising from	Petitioners/ Applicants
	i	SLP(C) No. (D.No.12016) of 2020	4
	ii	SLP(C)No. (D.No.12798) of 2020	62
D	iii	SLP(C) No. (D.No.13517) of 2020	4
	iv	SLP(C) No. (D.No.13182) of 2020	45
	v	SLP(C) No. (D.No.13639) of 2020	5
	vi	WP (C) No.703 of 2020	2

C] Filed by Ex-Servicement or Persons with Disability

E	Sr. No.	Civil Appeals arising from	Petitioners/ Applicants
	i	SLP(C) D. No.12189 of 2020	75
	ii	SLP(C) (D.No.11446) of 2020	56
F	iii	SLP(C) No. (D.No.13288) of 2020	16
	iv	SLP(C) No. (D.No.12792) of 2020	13

28. While issuing notice in the matters, by Order dated 21.05.2020, the State Government was called upon by this Court to furnish details regarding:-

- G “(i) How many Shiksha Mitras are presently working in the State and how many Shiksha Mitras appeared in the instant selection process;
- (ii) How many Shiksha Mitras secured more than 45% marks in General Category or more than 40% marks in reserved category;”

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29. In the counter affidavit filed on behalf of the State, following A details were provided in paragraphs 6, 18 and 32:-

“6. The brief facts of the case are that in the State of Uttar Pradesh, out of 1,78,000 ‘Siksha Mitras’, who were given fortuitous appointments as Primary Teachers on contractual basis, a total of approximately 1,37,500 ‘Siksha Mitras’ were absorbed as Assistant Teachers in Junior Basic Schools. Their absorption into the regular service of State as Assistant Teachers by amendment made by the State Government by its notification dated 30.05.2014 introducing the provision of Rule 16-A in the U.P. Right of Children to Free and Compulsory Education Rules, 2011 by the U.P. Right of Children to Free and Compulsory Education (First Amendment) Rules, 2014 and consequential executive orders of the State Government were challenged before Hon’ble High Court of Judicature at Allahabad in Writ-A No.34833 of 2014, Anand Kumar Yadav and others v. Union of India.

...

18. It is submitted that the details of total number of candidates and Shiksha Mitras who participated and qualified in ATRE-2019 are as under;

1	Total Registered Candidates	4,31,466
2	Total Appeared Candidates	4,09,530
3	Total Qualified candidates in General Category Cut Off 65%	36,614
4	Total Qualified candidates in Reserved Category Cut Off 60%	1,09,446
	Total Qualified (Point 3+4)	1,46,060
5	Total Shiksha Mitra Appeared in Exam	45,357
6	Shiksha Mitra passed in General category Cut Off of 65%	1561
7	Shiksha Mitra passed in Reserved category Cut Off of 60%	6457
	Total Shiksha Mitra Passed (point 6+7)	8,018
	Information in reference of Cut Off 45% or 40%	

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A	1	Shiksha Mitra who secured marks between 45% to 65% General category Approx	8,858
B	2	Shiksha Mitra who secured marks between 40% to 60% Reserved category Approx	23,771
		Total of 1+2	
C	3	Candidate Secured marks between 45% to 65% General category (other than Shiksha Mitra) Approx	65,080
D	4	Candidate Secured marks between 40% to 60% Reserved category (other than Shiksha Mitra) Approx	1,50,426
		Total of 3+4	
			2,15,506

32. In compliance of Order dated 21.05.2020 the details are given herein below,

E	Sl. No.	Particulars	Details
	1	Number of Shiksha Mitras presently working in the State	1,52,330
	2	Number of Shiksha Mitras appeared in ATRE-2019	45,357
F	3	Number of Shiksha Mitras securing more than 45% in General Category	9386
	4	Number of Shiksha Mitras securing 40% marks in reserved category	23,243
		Total (3) & (4)	32,629
G	5	Number of Shiksha Mitras securing 65% marks in General Category	1561
	6	Number of Shiksha Mitras securing more than 60% marks in Reserved category	6457
H		Total (5) & (6)	8018

29.1. It was also submitted in the counter affidavit:- A

“11. It is submitted that guidelines for ATRE-2018 was issued for recruitment of 68,500 Assistant Teachers. It is pertinent to mention herein that the ATRE is merely a qualifying examination and which is conducted for a particular year of vacancy. Thus ATRE-2018 was conducted for filling up 68500 vacancies of Assistant Teachers. Clause 1 (Kha) of guidelines dated 09.01.2018 for ATRE-2018 clearly stipulates that the examination is valid for this very recruitment only. Further Clause 7(3) states that passing of ATRE will not give any right of employment to those candidates because this is only one of the qualifying criteria of selection. B C

12. The total number of candidates who participated in ATRE-2018 are 1,07,873 out of which 41556 qualified. Total number of Shiksha Mitras who participated in ATRE-2018 are 34,311 out of which finally 8588 qualified. D

13. Thus it is apparent that ATRE-2018 was conducted as qualifying examination for a particular year of appointment where qualifying marks were prescribed as 45% and 40% for General and Reserved Category candidates. Therefore relief sought by Petitioners that the cut off marks of ATRE-2018 be fixed for ATRE-2019 is totally misconceived. E

...

26. Thus it is submitted that fixing of qualifying marks does not amount to bringing a change in the process of examination or changing any criteria. In any view of the matter after the examination are over, the candidate qualifying in merit from top alone are entitled for recruitment and while doing so, there is a likely hood that a percentage fixed by the State Government may further rise in as much as against the 69000 vacancies, 4.10 lacs candidates have appeared. Thus, prescribing minimum qualifying marks is neither illegal nor arbitrary. The Hon’ble High Court in the impugned Judgement has discussed in detail and held that the fixing cut off marks is neither arbitrary nor discriminatory. The Ld. Division bench in para 72 and 73 of the impugned judgement has held that State government has rightly in the advertisement dated 01.12.2019 did not declare the cut off marks for applying in ATRE-2019 as the recruiting authority is in a position to assess F G H

- A how the candidates have performed and determine the benchmark keeping in mind the number of vacancies. The Hon'ble High Court further held that the beneficial direction of this Hon'ble Court in Anand Kumar Yadav case is available to Petitioners once they hold the prescribed minimum qualifying marks.
- B
- C 28. The contention of Petitioners that Shiksha Mitras who appeared in ATRE-2018 and ATRE-2019 form a homogeneous class is totally misconceived. The Hon'ble Division Bench has rightly rejected the contention of the Petitioners that they do not constitute a homogeneous class. It is submitted that this Hon'ble Court in the case of Anand Kumar Yadav case never held that Shiksha Mitras constitute homogeneous class. It is submitted that both the examinations were conducted under different guidelines for different vacancies therefore it is wholly misconceived arguments that there should be same cut off marks for both ATRE."
- D 30. It must be stated here that except for the posts held by Shiksha Mitras presently working and who appeared in ATRE-2019, the State Government was permitted by interim orders passed by this Court, to fill up the remaining posts of Assistant Teachers in Junior Basic Schools.
- E 31. The contest in the present case is principally between Shiksha Mitras on one side, who are aggrieved by fixation of minimum qualifying marks at 65-60% levels and permitting B.Ed. candidates to participate in the selection process; while the opposition is from the State Government and B.Ed./BTC candidates who are Non Shiksha Mitras.
- F 32. The submissions on behalf of Shiksha Mitras were advanced by Mr. P.S. Patwalia, Mr. C.A. Sundaram, Mr. Rakesh Dwivedi, Dr. Rajiv Dhawan, Mr. Nidhesh Gupta, Mr. V. Shekhar, Mr. S. Guru Krishna Kumar, Ms. Meenakshi Arora, Mr. Dinesh Diwedi, Mr. K.T.S. Tulsi, Mr. Jayant Bhushan, learned Senior Advocates and Mr. Gaurav Agrawal and Ms. Tanya Agarwal, learned Advocates. Their submissions were :-
- G a) 1,37,500 Shiksha Mitras who were initially absorbed in regular service and whose absorption was set aside as a result of the orders passed by the Full Bench of the High Court of Judicature at Allahabad and by this
- H

Court in *Anand Kumar Yadav*², constituted A
a homogeneous class.

- b) As against the minimum qualifying percentage which was at the level of 45-40% for ATRE-2018, the fixation of minimum qualifying percentage at the level of 65-60% for ATRE-2019 created unnatural and arbitrary distinction between two sets of Shiksha Mitras. B
- c) Such fixation at 65-60% was done after the examination and would amount to changing the rules of the game post examination. Reliance was placed on the judgments of this Court in *K. Manjusree vs. State of Andhra Pradesh and another*¹² and other cases. C
- d) Being in service for last more than 15 years where they were required to obtain essential qualifications and prepare for ATRE-2019 while discharging their service obligations, Shiksha Mitras could not be put at the same level as fresh graduates having B.Ed./BTC qualifications. D
- e) The fixation of minimum qualifying percentage in ATRE-2019 at 65-60% incorporated an exclusionary element as against Shiksha Mitras who, despite being entitled to weightage for their experience as Shiksha Mitras in terms of specific amendment in 1981 Rules, were now being denied said benefit. E
- f) In terms of 1981 Rules, only 60% of the score obtained in ATRE would be considered along with other parameters in arriving at the quality points. However, ATRE-2019 turned into a principal selection criteria. F
- g) With 5% reservation for ex-servicemen, seats allocable to them come to 3450 against which G

¹²(2008) 3 SCC 512

- A about 650-700 candidates applied. At 65-60% cut off level, very few of them would stand a chance. Similar would be the situation in respect of other reserved categories such as physically handicapped and dependants of freedom fighters. All these categories would have greater chances at 45-40% cut off.
- B

With regard to the issue of eligibility of B.Ed. candidates, some of the learned counsel submitted:-

- C i) In terms of 1981 Rules, as they stood when ATRE-2019 was conducted, the persons holding B.Ed. degree could not be appointed as Assistant Teachers but would first be appointed as Trainee Teachers; and they could be considered for the posts of Assistant Teachers only after their successful completion of six months' training as Trainee Teachers.
- D ii) As per Rule 14(b), it was upto the Government to consider and decide the number of candidates to be appointed as Trainee Teachers, which exercise was never done.
- E iii) 23rd, 24th and 25th Amendments to 1981 Rules were effected after ATRE-2019 was held. The retrospective effect granted to these amendments was beyond the rule making power of the State Government and thus could not save the obvious illegality.
- F

- G 33. Ms. Aishwarya Bhati, learned Additional Solicitor General appeared for the State while Mr. H.N. Salve, Mr. R. Venkataramani, Mr. Pallav Shishodiya, Mr. K.V. Vishwanathan and Ms. V. Mohana, learned Senior Advocates appeared for B.Ed./BTC candidates. Their submissions were:-

- H A) The State was within its rights to fix cut off marks at 65-60% level. As per Rule 2(1)(x) of 1981 Rules, qualifying marks in respect of ATRE would be "such minimum marks as

may be determined from time to time by the A
Government".

- B) The order dated 07.01.2019 itself disclosed that the proposal for fixing the cut off was initiated on 05.01.2019 i.e. before ATRE-2019 was held on 06.01.2019. The proposal stated that approximately 11 lakh candidates had appeared in TET-2018 out of which 3,86,000 were declared successful and "there being a possibility of competition", it was proposed that the cut off marks be fixed at 5% higher than TET Examination". B
- C) The reasons for fixing the cut off marks at 65-60% level were:- C
- (i) to narrow down the scope of selection because of the increased number of applications; and D
 - (ii) to achieve improvement in academic performance whereby meritorious candidates with higher marks would alone be permitted to enter the zone of consideration. E
 - (iii) The pattern of ATRE-2019 was completely different. As against short descriptive answers required in ATRE-2018, the emphasis in ATRE-2019 was on multiple choice-objective questions. F G
- D) There was no change in the rules of game as the cut off marks were prescribed for the first time by order dated 07.01.2019. Reliance was placed on the decision of this Court in H

- A *Yogesh Yadav vs. Union of India and others¹³ and Jharkhand Public Service Commission vs. Manoj Kumar Gupta¹⁴.*
- E) The ATRE was valid only for recruitment of that particular year and the candidates had to abide by the conditions of recruitment pertaining to the concerned ATRE examination. Shiksha Mitras who participated in ATRE-2018 and in ATRE-2019 did not form a homogeneous class.
- B Since 60% marks from ATRE would be taken into account while preparing quality points, there was no occasion for any candidate not doing his best at ATRE-2019. Thus, non-disclosure of cut off marks in the advertisement/Guidelines was inconsequential.
- C F) The eligibility and entitlement of B.Ed. candidates to take part in ATRE-2019 was never in challenge before the Single Judge.
- D G) In the Guidelines dated 01.12.2018, under the heading '*minimum qualifications*', it was specifically mentioned that the eligibility of the candidates would be in terms of minimum qualifications fixed by NCTE through its various notifications including one dated 28.06.2018.
- E H) 1981 Rules were amended prior to the commencement of recruitment process which now provided for recruitment of B.Ed. candidates directly to the post of Assistant Teacher subject to their undergoing post-appointment training which was in accordance with law.
- G 34. It was also submitted by Ms. Bhati, learned Additional Solicitor General that the State would provide one more opportunity to Shiksha Mitras to compete in the next selection to dispel any impression of

¹³ (2013) 14 SCC 623

H ¹⁴ (2020) 1 SCALE 504

prejudice but the present selection be allowed to go ahead with cut off at A 65-60% level.

34.1 In the written submissions filed on behalf of the State, an example was placed as under:-

“3. A tabular chart showing that a candidate who has throughout obtained 70% marks will be left out by a Shiksha Mitra who has obtained 50% marks throughout his career in case cut off marks are reduced to 45% & 40% from 65% & 60%.

% of marks taken for preparing final merit list as per Rule 14 [Quality Marks]	Marks of a Candidate other than Shiksha Mitra with throughout 70% academic record	Marks of a Shiksha Mitra having 50% academic record
High School 10%	7	5
Intermediate 10%	7	5
Graduation 10%	7	5
Training Certificate 10%	7	5
Marks obtained in ATRE-2019	42 (in case he gets 70%)	27 (in case he gets 45% in ATRE)
Weightage 2.5 marks per year to Shiksha Mitras upto 25 Marks	No Weightage	25 marks in toto
Total Marks	70 marks	72 Marks

Thus, it is clear that not only quality of teachers will be compromised but a meritorious candidate will be ignored in case cut off marks are reduced to 45% & 40% from 65% & 60%.”

A 34.2 In the written submissions filed on behalf of B.Ed./BTC candidates, following charts were also presented:-

“On important statistics of ATRE 2018 and 2019

	S. No.	Parameter	ATRE 2018	ATRE 2019
B	1	Total Number of Vacancies	68500	69000
	2	Total Number of Candidates who appeared	1,07,000	4,09,530
C	3	Qualifying Marks	40-45%	60-65%
	4	Total Number of qualified candidates	41,556 (38.83%)	1,46,078 (37.62%)
D	5	Total number of <i>Shiksha Mitras</i> that participated	34,311	45,357
	6	Total Number of <i>Shiksha Mitras</i> that qualified	8588 (25.02%)	8,018 (17.67%)
E	7	Total number of <i>Shiksha Mitras</i> that secured between 40-45% and 60-65% marks in ATRE 2019	N/A	32,629
	8	Total number of other candidates that secured between 40-45% and 60-65% marks in ATRE 2019	N/A	2,15,506
F	9	Total number of candidates who will qualify as per 40-45% cut-off	41,556 (38.83%)	4,02,2013 (98.21%)

G “The following chart illustrates how a Shiksha Mitra having 35% marks through out his academic career (except 50% in BTC, which is passing marks) would be selected if the qualifying marks in ATRE-2019 is lowered to 45%, whereas a BTC candidates having secured 67% marks through out his academic career would be left out:

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	Matric (10% of %)	10+2 (10% of %)	Grad (10% of %)	BTC/B.Ed. (10% of %)	Weightage 2.5/annum	ATRE- 19 (60% of %)	Total marks
S.M with 35% in academics	3.5	3.5	3.5	5	25	27 (45%)	67.5
Other with 67% in academics	6.7	6.7	6.7	6.7	0	40.2 (67%)	67

35. As stated in the counter affidavit of the State, out of 1,78,000 Shiksha Mitras who were given fortuitous appointments as Primary Teachers on contractual basis, 1,37,500 Shiksha Mitras were absorbed as Assistant Teachers in Junior Basic Schools. Their absorption was subject matter of challenge and the orders passed by the State conferring the advantage of absorption were set aside on the ground that no such benefit could be conferred upon persons who did not have the requisite qualifications to be appointed as Assistant Teachers in Junior Basic Schools. The number of 1,37,500 has some significance as ATRE-2018 and ATRE-2019 were conducted to fill up 68,500 and 69,000 posts of Assistant Teachers respectively; the aggregate being 1,37,500.

After suitable amendments to 1981 Rules, Shiksha Mitras became eligible for appointment to the posts of "Assistant Masters and Assistant Mistresses of Junior Basic Schools" provided they acquired the academic qualifications prescribed in 1981 Rules.

As per para 34 of the counter affidavit, 1,52, 330 Shiksha Mitras are presently working in the State and 45, 357 Shiksha Mitras appeared in ATRE-2019. Thus, more than 1,02,000 Shiksha Mitras did not appear in ATRE-2019 either because they did not have the requisite qualifications or they were not interested in competing for the posts of Assistant Teachers.

36. According to the record, out of 1,46,060 candidates who qualified in ATRE-2019, 8018 are Shiksha Mitras while B.Ed. and BTC candidates are 97,368 and 38,610 respectively and the candidates having other qualifications are 2064. As against the total number of qualified candidates, 8018 Shiksha Mitras thus constitute 17.67%. It must be noted here that B.Ed. candidates were not allowed to participate in the earlier selection process and could not appear at ATRE-2018. Their entitlement, as a matter of fact, arose for the first time after ATRE-

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- A 2018. Even when B.Ed. candidates were out of contest, the percentage of qualified Shiksha Mitras in ATRE-2018 (25.02%) was not substantially high as is evident from the chart extracted in paragraph 34.2 hereinabove.

37. We must now consider the issue of eligibility of B.Ed. candidates in the present selection. In TET examination held in March,

- B 2018, out of 3,86,000 qualified candidates, Shiksha Mitras were 40,000 only; meaning thereby that a large number of candidates other than Shiksha Mitras had been declared qualified. Paragraph 4(2) of G.O. dated 01.12.2018, referred to certain directives of NCTE which in turn, had dealt with eligibility of B.Ed. candidates. It was, therefore, quite C apparent that in the ensuing selection process considerable number of B.Ed. candidates would participate. In this background, the absence of any challenge to the entitlement of B.Ed. candidates to participate in the process and to appear at ATRE-2019 is crucial.

But we do not propose to rely only on this aspect and proceed to consider whether the candidates holding B.Ed. degrees are entitled in

- D law to be considered eligible in the present selection process.

38. The National Council for Teachers Education Act, 1993 ('the NCTE Act', for short) was enacted, *inter alia*, to provide for the regulation and proper maintenance of norms and standards in the teacher education system. Chapter II of the NCTE Act deals with establishment

- E of the Council while Chapter III deals with 'Functions of the Council'. Some of the functions of the Council, as laid down in Section 12, are as under:-

"12. Functions of the Council.- It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and coordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of performing its functions under this Act, the Council may—

- F (a)-(b)
G (c) co-ordinate and monitor teacher education and its development in the country;
(d) lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognised institutions;

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(e) lay down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum; A

(f)-(m) B

(n) perform such other functions as may be entrusted to it by the Central Government.”

38.1 The NCTE Act, as originally enacted, was primarily concerned with regulating standards in “teacher education system”. The provisions of the NCTE Act came up for consideration in *State of Maharashtra vs. Sant Dnyaneshwar Shikshan Shastra Mahavidyalaya and others*¹⁵. This Court held:- C

“**62.** From the above decisions, in our judgment, the law appears to be very well settled. So far as coordination and determination of standards in institutions for higher education or research, scientific and technical institutions are concerned, the subject is exclusively covered by Entry 66 of List I of Schedule VII to the Constitution and the State has no power to encroach upon the legislative power of Parliament. It is only when the subject is covered by Entry 25 of List III of Schedule VII to the Constitution that there is a concurrent power of Parliament as well as the State Legislatures and appropriate Act can be made by the State Legislature subject to limitations and restrictions under the Constitution. D

63. In the instant case, admittedly, Parliament has enacted the 1993 Act, which is in force. The preamble of the Act provides for establishment of National Council for Teacher Education (NCTE) with a view to achieving planned and coordinated development of the teacher-education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher-education system and for matters connected therewith. With a view to achieving that object, the National Council for Teacher Education has been established at four places by the Central Government. It is thus clear that the field is *fully and completely* E

¹⁵ (2006) 9 SCC 1

- A occupied by an Act of Parliament and covered by Entry 66 of List I of Schedule VII. It is, therefore, not open to the State Legislature to encroach upon the said field. Parliament *alone* could have exercised the power by making appropriate law. In the circumstances, it is not open to the State Government to refuse permission relying on a State Act or on “policy consideration”.
- B 38.2 In ***Basic Education Board, U.P. vs. Upendra Rai and others***¹⁶, the issue was whether the provisions of the NCTE Act related to the ordinary educational institutions and whether they would override the provisions of U.P. Basic Education Act and Rules made thereunder.
- C This Court held:-
- D “22. It may be mentioned that the word “institution” is defined in Section 2(e) of the NCTE Act to mean an institution which offers courses or training in *teachers’ education*. Thus, the NCTE Act does not deal with the ordinary educational institutions like primary schools, high schools, intermediate college or university. The word “institution” as defined in Section 2(2) [*sic* 2(e)] only means teachers’ training institutes and not the ordinary educational institutions. Hence, it is only the teachers’ training institutions which have to seek grant of recognition or continuation of recognition from the Regional Committee. The ordinary educational institutions do not have to seek any such recognition or continuation under the NCTE Act. In fact, the NCTE Act does not relate to the ordinary educational institutions at all. We, therefore, fail to understand how it can be said that the NCTE Act overrides the U.P. Basic Education Act and the Rules made thereunder. In fact, the two Acts operate in altogether two different fields. The NCTE Act deals with the teachers’ training institutions while the U.P. Basic Education Act deals with the ordinary primary schools in U.P. and not any teachers’ training institute. The argument of learned counsel for the respondent is thus wholly misconceived.”
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- F
- G 38.3 The NCTE Act was thereafter amended in 2011 by Act* 18 of 2011 and after such amendment the long title to the Act now reads ‘an Act to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and co-ordinated development

¹⁶ (2008) 3 SCC 432

H * National Council for Teachers Education (Amendment) Act (18 of 2011)

of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system *including qualifications of school teachers* and for matter connected therewith'. A

By the same amendment Section 12A was inserted in the NCTE Act, the relevant part of said Section being:- B

"12A. Power of Council to determine minimum standards of education of school teachers.- For the purpose of maintaining standards of education in schools, the Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run aided or recognised by the Central Government or a State Government or a local or other authority:

... "

Section 32 of the NCTE Act empowers the NCTE to make regulations by issuing notification in the official gazette generally to carry out the provisions of the NCTE Act which regulations may now provide for '*the qualifications of teachers under 12A*'. D

38.4 It is thus clear that for maintaining standards of education in schools, the NCTE is now specifically empowered to determine the qualifications of persons for being recruited as teachers in schools or colleges. In addition to regulating standards in "teacher education system", the NCTE Act now deals with regulation and proper maintenance of norms and standards in respect of qualifications of persons to be recruited as teachers. E F

39. Having noted the aforesigned change in the scope and ambit of the NCTE Act, another development must also be noticed. The Right of Children to Free and Compulsory Education Act, 2009 ('the RTE Act', for short) was enacted by the Parliament, *inter alia*, to provide to the children in the age group of six to fourteen years "full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards". Section 23 of the RTE Act deals with qualifications for appointment of teachers and states:- G

[#] Section 32(2)(dd) of the NCTE Act

- A **"23. Qualifications for appointment and terms and conditions of service of teachers.-**
- (1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.
- B (2)
- (3)"
- C 40. By Notification dated 31.03.2010, the Central Government, in exercise of powers conferred under Section 23 of the RTE Act authorised the NCTE as an "Academic Authority" to lay down the minimum qualifications for a person to be eligible for appointment as a teacher.
- D The Notification dated 28.06.2018 issued by the NCTE was in exercise of power so conferred upon it by virtue of the Notification dated 31.03.2010. In terms of the Notification dated 28.06.2018, the qualification of 'Bachelor of Education' from any NCTE recognised institution shall now be a valid qualification for appointment as a teacher in classes I to V provided the person so appointed as a teacher mandatorily undergoes six months' Bridge Course in elementary education within two years of such appointment.
- E 41. Going by the Parliamentary intent in empowering NCTE under the provisions of the NCTE Act and specific authorization in favour of NCTE under said Notification dated 31.03.2010, the authority of NCTE is beyond any doubt. Though there is no specific regulation as contemplated under Section 32 read with Sections 12 and 12A of the NCTE Act, for the present purposes by virtue of the specific authorization under the Notification dated 31.03.2010, NCTE was entitled to lay down that those holding the qualification of 'Bachelor of Education' as detailed in said Notification are entitled to be appointed as teachers for classes I to V. Such prescription on part of the NCTE would be binding. It is for this reason that G.O. dated 01.12.2018 notifying ATRE-2019 clearly stated that the candidates possessing minimum qualifications specified in Notifications issued by the NCTE including one dated 28.06.2018 were entitled to participate in ATRE-2019.
- F 42. The eligibility and entitlement of B.Ed. candidates in law, thus being beyond any doubt, the next question to be considered is whether
- G H

without making appropriate consequential amendments to 1981 Rules before ATRE-2019 was held, the candidates possessing B.Ed. qualification could be allowed to take part in ATRE-2019. Reliance was placed on the following observations from the decisions of this Court.

i) *P. Mahendran and others etc. v. State of Karnataka and others*¹⁷

B

“4. In the absence of any express provision contained in the amending Rules it must be held to be prospective in nature. The Rules which are prospective in nature cannot take away or impair the right of candidates holding Diploma in Mechanical Engineering as on the date of making appointment as well as on the date of scrutiny by the Commission they were qualified for selection and appointment.”

C

ii) *Madan Mohan Sharma and another v. State of Rajasthan and others*¹⁸

D

“...Once the advertisement had been issued on the basis of the circular obtaining at that particular time, the effect would be that the selection process should continue on the basis of the criteria which were laid down and it cannot be on the basis of the criteria which has been made subsequently”

43. The Notification dated 28.06.2018 being binding on the State Government, the statutory regime put in place by the State has to be read in conformity with said Notification. The eligibility or entitlement being already conferred by Notification dated 28.06.2018, the amendments to 1981 Rules were effected only to make the statutory regime consistent with the directives issued by the NCTE. The right or eligibility was not conferred by amendments effected to 1981 Rules for the first time and therefore the element of retrospectivity present in the concerned amendments has to be read in that perspective. The intent behind those amendments was not to create a right for the first time with retrospective effect but was only to effectuate the statutory regime in tune or accord with NCTE directives. Theoretically, even if such statutory regime was not made so consistent, the concerned candidates holding B.Ed. degrees could still be eligible and could not have been denied candidature for ATRE-2019.

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¹⁷ (1990) 1 SCC 411

¹⁸ (2008) 3 SCC 724

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- A 44. Pertinently, the performance in ATRE is one of the indicia that goes into making of quality points which in turn have to be considered at the stage of preparation of merit list for selection. By the time the actual process of selection was undertaken, the statutory regime in the form of 1981 Rules was perfectly consistent and in order.
- B The decisions relied upon and quoted above therefore have no application to the instant case.
- C 45. The decision of the Constitution Bench of this Court in *Dr. Preeti Srivastava and another etc. vs. State of M.P. and others etc.*¹⁹ was also relied upon to submit that since the requirements in 1981 Rules (as they stood before 23rd Amendment) in so far as entitlement of B.Ed. candidates was concerned, were in addition to the conditions emanating from the Notification dated 28.06.2018, it must be independently satisfied and as such there could be no retrospective amendment to 1981 Rules. In said decision, it was held by this Court.
- D “39. ... In every case the minimum standards as laid down by the Central statute or under it, have to be complied with by the State while making admissions. It may, in addition, lay down other additional norms for admission or regulate admissions in the exercise of its powers under Entry 25 List III in a manner not inconsistent with or in a manner which does not dilute the criteria so laid down.”
- E As held by this Court, an additional norm laid down by the State would certainly be applicable and enforceable. But once, the NCTE laid down that candidates holding B.Ed. degrees would be entitled to be appointed as teachers for classes I to V, provided they undergo a six months’ Bridge Course, the stipulation in 1981 Rules (before 23rd Amendment) that they must first be appointed as trainee teachers must give way to that under the Notification dated 28.06.2018. Said stipulation in 1981 Rules cannot be considered as an additional norm. It ran completely counter to that under the Notification dated 28.06.2018 which is why the Amendment in that behalf was given retrospective effect to bring in consistency.
- F 46. In the circumstances, we approve the conclusions drawn by the High Court with regard to this issue and hold that the B.Ed. candidates were rightly allowed to participate in the instant selection process.
- H ¹⁹(1999) 7 SCC 120

47. We now deal with the questions concerning fixation of 65- A
60% as minimum qualifying marks for ATRE 2019.

The first question deals with the submission that such fixation was arbitrary and irrational and can be considered under following sub-heads:-

- (a) Whether there could be different parameters regarding minimum qualifying marks in ATRE-2019 as against those in ATRE-2018. B
- (b) Whether Shiksha Mitras who appeared in ATRE-2018 and ATRE-2019 constituted one single homogenous class. C
- (c) Should there not be a different yardstick for Shiksha Mitras, who had been rendering service as teachers, as against what could be applied for fresh graduates. D
- (d) Should not “minimum qualifying marks” appear to be minimum? Was not the cut off at 65-60% per se arbitrary; E
- (e) Could ATRE-2019 be converted into an exclusionary test and thereby deny to the Shiksha Mitras the benefit of weightage for experience. F

The second question concerns about the correctness of the exercise of power in such fixation after ATRE-2019 was held.

48. For selection of 68,500 posts, 1,07,000 candidates had participated in ATRE-2018; and with qualifying marks at 45-40%, 41,556 candidates had qualified. The percentage of qualifying candidates was thus 38.83%. On the other hand, 4,09,530 candidates participated in the present selection process for 69,000 posts and with 65-60% cut off marks, 1,46,078 candidates had qualified. The percentage of qualifying candidates this time was 37.62%, which was almost equal to that in ATRE-2018. However, the number of qualified candidates in ATRE-2018 was less than the number of vacancies; while even with the cut off at 65-60% the number of qualified candidates in the present selection was far in excess of the number of posts. These figures give indications about the nature G

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- A and the difficulty level of the examinations and show that even with cut off at 65-60%, the percentage of qualifying candidates was almost the same.
 - 49. It is true that the total number of posts of Assistant Teachers sought to be filled up by ATRE-2018 and 2019 was 1,37,500, the exact
- B number of Shiksha Mitras whose absorption as Assistant Teachers was set aside; and that Shiksha Mitras were granted certain benefits in terms of the directions issued by this Court in *Anand Kumar Yadav*². One of the submissions was that all Shiksha Mitras who were granted such benefit constituted a homogenous class and as such there could not be any inter se distinction between Shiksha Mitras who appeared in ATRE-2018 on one hand and those who appeared in ATRE-2019 on the other. It was also contended that the syllabus for both the examinations with allocation of marks for different subjects being identical, any distinction between two sets of Shiksha Mitras and subjecting those who appeared at ATRE-2019 to considerably high cut off would be arbitrary and illogical.
- C 50. It needs to be stated here that though the syllabus and subject wise allocation of marks were identical, the nature of ATRE-2019 was entirely different. The questions in ATRE-2018 were descriptive in nature and the duration of examination was three hours. However, those in ATRE 2019 were multiple choice – objective questions and the duration
- E of examination was also different. Rather than writing descriptive answers to questions which was the modality in ATRE-2018, multiple choices were given and the correct answer was to be tick marked in ATRE 2019. Naturally, the nature and the difficulty level of both the examinations were different. Sub question (a) must therefore be answered in the affirmative and it must be accepted that there could be
- F different parameters regarding minimum qualifying marks for ATRE-2019.
- G 51. All the candidates including Shiksha Mitras who appeared in ATRE 2018 formed one class while those who appeared in ATRE 2019 formed another class. There cannot be *inter se* connection or homogeneity between candidates appearing in one examination or selection with those appearing in another examination or selection. The candidates would undoubtedly compete with each other in the same examination on a par meter which applies to all of them equally. But to say that Shiksha Mitras who appeared in ATRE-2019 must be allowed H equality with candidates of ATRE-2018, who were part of a different

selection process would be incorrect and illogical. The basic norms of ATRE-2019 must be tested on their own and cannot depend upon parameters or norms on the basis of which ATRE-2018 was held. Otherwise the integrity of the examination process will get defeated and nullified.

Shiksha Mitras were given chances in two successive selections and some of the Shiksha Mitras who had failed in ATRE-2018 appeared in ATRE-2019 in exercise of such chance. Those who could not clear ATRE-2018 with 45-40% cut off cannot now be heard to say that the same cut off ought to be maintained when the nature of examination and the difficulty level had completely changed.

We, therefore, reject the submission that Shiksha Mitras who appeared in ATRE-2018 and ATRE-2019 formed a homogenous class and answer sub question (b) accordingly. The candidates who appeared in ATRE-2018 between themselves formed one class while those who appeared in ATRE-2019 formed another class. The merit of one class had to be tested on the basis of the examination which the candidates forming that class had undergone and no parameters or norms of the earlier examination could be imported or implanted in the latter examination.

52. Relying on the decision of this Court in *State of M.P. and others vs. Gopal D. Tirthani and others*²⁰, it was submitted that Shiksha Mitras who had been discharging their services as teachers could not be put at the same level with fresh graduates having B.Ed./BTC qualifications. In that case, this Court was called upon to consider setting apart of certain seats by the State Government for in service candidates in Post Graduate courses. It was observed by this Court: -

“21. ... There is nothing wrong in the State Government setting apart a definite percentage of educational seats at postgraduation level consisting of degree and diploma courses exclusively for the in-service candidates. To the extent of the seats so set apart, there is a separate and exclusive source of entry or channel for admission. It is not reservation. In-service candidates, and the candidates not in the service of the State Government, are two classes based on an intelligible differentia. There is a laudable purpose sought to be achieved. In-service candidates, on attaining higher academic achievements, would be available to be posted

²⁰ (2003) 7 SCC 83

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- A in rural areas by the State Government. It is not that an in-service candidate would leave the service merely on account of having secured a postgraduate degree or diploma though secured by virtue of being in the service of the State Government. If there is any misapprehension, the same is allayed by the State Government obtaining a bond from such candidates as a condition precedent to their taking admission that after completing PG degree/diploma course they would serve the State Government for another five years. Additionally, a bank guarantee of rupees three lakhs is required to be submitted along with the bond. There is, thus, clearly a perceptible reasonable nexus between the classification and the object sought to be achieved.”

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- D This Court was considering validity of certain percentage of seats earmarked for in-service candidates and it found the classification to be correct, having nexus with the object of ensuing availability of competent professionals in the rural parts of the State. On the other hand, the object of giving opportunities to Shiksha Mitras was to ensure that they were given fair chance to compete with others so that the best of the lot would be available to take care of primary education in the State. In our view, the submission does not deserve acceptance. Sub question (c) is answered accordingly.
- E 53. It was further submitted that the fixation of cut off at 65-60% was at a considerably high level and ceased to be “minimum qualifying marks” as contemplated by the relevant provisions of 1989 Rules. This submission found favour with the Single Judge of the High Court who observed that the minimum qualifying marks must appear to be minimum.
- F The minimum marks required to pass the TET examination are at a level of 60% for open category. Those who desired to be teachers had already gone through a process rigorous enough to test their ability with minimum passing percentage at 60%. Moreover, 60% of the marks scored by a candidate in ATRE-2019 would go to determine the quality points allocable to a candidate. Leaving aside the weightage
- G allowable for Shiksha Mitras, the overall academic performance of a candidate thus constituted about 40% of quality points whereas a large chunk thereof depended upon the performance in ATRE-2019. In terms of 1981 Rules, a candidate would be required to “pass” ATRE and thus ATRE was not only an examination that had to be cleared to get into the zone of consideration but 60% of marks scored in that examination would
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be used for the purposes of preparation of merit list. From the perspective of selection, ATRE deserved adequate importance and emphasis. The reason was obvious that all the candidates would be tested on a parameter or a norm which would be equal and identical to all the competing claimants.

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The fixation at 65-60% level was to garner the best available talent. Even with this qualifying norm, the percentage of qualified candidates in ATRE-2019 was 37.62% which was quite close to 38.83% in ATRE-2018 and the number of qualified candidates was far in excess of the vacancies required to be filled up. Thus, cut off at 65-60% level in the present case, by itself cannot be termed as incorrect or illegal exercise of power. Sub question (d) is answered accordingly.

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54. It was then submitted that going by the provisions of 1981 Rules, the performance in ATRE was supposed to be only one of the indicia. However, by fixing the cut off at 65-60% level, instead of subserving the requirement of furnishing one of the indicia, ATRE-2019 became an exclusionary test. It was submitted that the performance in ATRE overshadowed every other parameter and in the process the benefit of weightage that every Shiksha Mitra was entitled to, stood denied to him.

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55. Though as a result of the 22nd Amendment, passing of ATRE ceased to be part of Rule 8, the requirement was specifically retained in Rule 14 of 1981 Rules. Further, 60% of the marks scored by a candidate in ATRE, in terms of Appendix I read with Rule 14(2) would go in determining quality points to prepare the merit list. The major portion of quality points being directly relatable to the performance in ATRE, mere fixation at 65-60% level which applied to all the candidates across the board cannot be said to be exclusionary. ATRE featured as the common platform on the basis of which individual merit of various candidates could be tested, which is why a major portion of allocable quality points was assigned to the performance in ATRE. In the circumstances, the performance in ATRE-2019 was given adequate and due weightage by fixation of cut off at 65-60% level.

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56. The submission that as a result of such fixation large number of Shiksha Mitras were denied advantage of weightage as determined under the provisions of 1981 Rules, also does not deserve acceptance. In ***Kulbhushan Mishra and another vs. State of U.P. and others***, the Division Bench of the High Court had concluded that weightage allocable

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- A to the experience of Shiksha Mitras was not contemplated to be added to the marks obtained by a person in the ATRE. All the Shiksha Mitras were thus aware that they had to qualify in the ATRE and they would be entitled to weightage for their experience only thereafter. More than 8000 Shiksha Mitras did qualify in ATRE-2019, which number must have included those who had earlier failed to make it in ATRE-2018. Those Shiksha Mitras who were meritorious and took the examination with seriousness that it deserved, certainly succeeded in securing marks more than the cut off of 65-60%. The directions issued by this Court in *Anand Kumar Yadav*²were to ensure that regardless of any other considerations, Shiksha Mitras would have opportunity to match their skills against other candidates. Viewed thus, the fixation of cut off at 65-60% which was intended to select the best of the candidates cannot be termed as exclusionary nor was it intended to deprive the Shiksha Mitras of the advantage of weightage for experience. Sub question (e) must therefore be answered against Shiksha Mitras.
- D 57. While answering the first question, we therefore conclude that the fixation of cut off at 65-60% in ATRE-2019 was perfectly valid and justified. Considering the large number of candidates who appeared at ATRE-2019 as well as the nature and difficulty level of the examination, the cut off was designed to draw the best available talent. The endeavour on part of the State in attempting to secure the best of the teachers was therefore fully justified. It needs no emphasis that the right to education guaranteed in terms of Article 21A of the Constitution would envisage quality education being imparted to the children which in turn, would signify that the teachers must be meritorious and the best of the lot. Any process which applied equally to all the candidates and was designed to garner the best talent, cannot be called arbitrary or irrational.
- E 58. With regard to the second question, it is clear from the record that the cut off at 65-60% for ATRE-2019 was declared a day after the examination was held. As is reflected from the Order dated 07.01.2019, the process was initiated on 05.01.2019 but the actual declaration was on 07.01.2019. The correctness of such exercise was called in question by Shiksha Mitras and certain decisions of this Court were relied upon. The basic submissions were that the candidates ought to have been made aware of the cut off well in advance and the fixation of cut off after the examination was over, would be incorrect and invalid.
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We may now consider some of the decisions relied upon by either A side.

A] In *State of Haryana vs. Subash Chander Marwaha and others*²¹, a bench of two judges of this Court considered the question whether the action of the State in appointing first seven persons from the list of qualified candidates leaving out other qualified candidates when there were enough vacancies, was correct. It was observed:- B

“10. One fails to see how the existence of vacancies give a legal right to a candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate’s name appears in the list will not entitle him to a mandamus that he be appointed. Indeed, if the State Government while making the selection for appointment had departed from the ranking given in the list, there would have been a legitimate grievance on the ground that the State Government had departed from the rules in this respect. The true effect of Rule 10 in Part C is that if and when the State Government propose to make appointments of Subordinate Judges the State Government (i) shall not make such appointments by travelling outside the list, and (ii) shall make the selection for appointments strictly in the order the candidates have been placed in the list published in the Government Gazette. In the present case neither of these two requirements is infringed by the Government. They have appointed the first seven persons in the list as Subordinate Judges. Apart from these constraints on the power to make the appointments, Rule 10 does not impose any other constraint. There is no constraint that the Government shall make an appointment of a Subordinate Judge either because there are vacancies or because a list of candidates has been prepared and is in existence.” C D E F

B] In *State of U.P. etc. v. Rafiquddin and others etc.*²², the distinction between a normal test and a competitive examination in the light of the submission that the minimum marks were fixed without notice to the candidates, was brought out by this Court as under:- G

²¹ (1974) 3 SCC 220

²² 1987 (Supp) SCC 401

- A “**12.** The Division Bench of the High Court observed that the Commission had no authority to fix any minimum marks for the viva voce test and even if it had such a power it could not prescribe the minimum marks without giving notice to the candidates. The Bench further observed that if the Commission had given notice to the candidates before the steps for holding the competitive examination were taken the candidates may or may not have appeared at the examination. In our opinion the High Court committed a serious error in applying the principles of natural justice to a competitive examination. There is a basic difference between an examination held by a college or university or examining body to award degree to candidates appearing at the examination and a competitive examination. The examining body or the authority prescribes minimum pass marks. If a person obtains the minimum marks as prescribed by the authority he is declared successful and placed in the respective grade according to the number of marks obtained by him. In such a case it would be obligatory on the examining authority to prescribe marks for passing the examination as well as for securing different grades well in advance. A competitive examination on the other hand is of different character. The purpose and object of the competitive examination is to select most suitable candidates for appointment to public services. A person may obtain sufficiently high marks and yet he may not be selected on account of the limited number of posts and availability of persons of higher quality. Having regard to the nature and characteristics of a competitive examination it is not possible nor necessary to give notice to the candidates about the minimum marks which the Commission may determine for purposes of eliminating the unsuitable candidates. The rule of natural justice does not apply to a competitive examination.”

(Emphasis supplied)

- C] The procedure for selection of ten posts of District and Sessions Judges (Grade-II) by direct recruitment was in issue in **K. Manjusree**¹². According to the resolution dated 30.11.2004, the method of selection comprised of a written examination for 75 marks and oral examination for 25 marks. There would be minimum percentage of marks required for passing the written examination and the successful candidates would

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be called for interview; and the merit would be determined, according to the aggregate of marks in written and oral examinations. There was thus no requirement of any minimum qualifying marks in the oral interview. However, after the entire process was over, the Sub-Committee introduced a cut off percentage for oral examination, as a result of which, certain candidates stood disqualified. While dealing with the challenge by four such candidates, a bench of three judges of this Court observed:

“27. But what could not have been done was the second change, by introduction of the criterion of minimum marks for the interview. The minimum marks for interview had never been adopted by the Andhra Pradesh High Court earlier for selection of District & Sessions Judges, (Grade II). In regard to the present selection, the Administrative Committee merely adopted the previous procedure in vogue. The previous procedure as stated above was to apply minimum marks only for written examination and not for the oral examination. We have referred to the proper interpretation of the earlier Resolutions dated 24-7-2001 and 21-2-2002 and held that what was adopted on 30-11-2004 was only minimum marks for written examination and not for the interviews. Therefore, introduction of the requirement of minimum marks for interview, after the entire selection process (consisting of written examination and interview) was completed, would amount to changing the rules of the game after the game was played which is clearly impermissible. We are fortified in this view by several decisions of this Court. It is sufficient to refer to three of them — *P.K. Ramachandra Iyer v. Union of India*²³, *Umesh Chandra Shukla v. Union of India and others*²⁴ and *Durgacharan Misra v. State of Orissa*²⁵.²⁶”

(Emphasis supplied)

After considering the earlier decisions in *P.K. Ramachandra Iyer and others v. Union of India and others*²³, *Umesh Chandra Shukla v. Union of India and others*²⁴, *Durgacharan Misra v. State of Orissa*²⁵ and *Maharashtra State Road Transport Corporation and others v. Rajendra Bhimrao Mandve and others*²⁶, this Court observed:

²³ (1984) 2 SCC 141

²⁴ (1985) 3 SCC 721

²⁵ (1987) 4 SCC 646

²⁶ (2001) 10 SCC 51

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- A “**33.** The Resolution dated 30-11-2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview.
- B Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee wants to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the Selection Committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.
- C **36.** The Full Court however, introduced a new requirement as to minimum marks in the interview by an interpretative process which is not warranted and which is at variance with the interpretation adopted while implementing the current selection process and the earlier selections. As the Full Court approved the Resolution dated 30-11-2004 of the Administrative Committee and also decided to retain the entire process of selection consisting of written examination and interviews it could not have introduced a new requirement of minimum marks in interviews, which had the effect of eliminating candidates, who would otherwise be eligible and suitable for selection. Therefore, we hold that the action of the Full Court in revising the merit list by adopting a minimum percentage of marks for interviews was impermissible.”
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This Court, thus, allowed the challenge and directed the High Court to prepare a fresh merit list in regard to 83 candidates who had qualified in the written examination with reference to their marks in written test and interview without applying any minimum marks for interviews.

D] Relying on the decision in **K. Manjusree**¹², a bench of two judges of this Court in **Hemani Malhotra etc. vs. High Court of Delhi**²⁷, concluded:-

“15. There is no manner of doubt that the authority making rules regulating the selection can prescribe by rules the minimum marks both for written examination and viva voce, but if minimum marks are not prescribed for viva voce before the commencement of selection process, the authority concerned, cannot either during the selection process or after the selection process add an additional requirement/qualification that the candidate should also secure minimum marks in the interview. Therefore, this Court is of the opinion that prescription of minimum marks by the respondent at viva voce test was illegal.”

(Emphasis supplied)

E] In **Tej Prakash Pathak and others Vs. Rajasthan High Court and others**²⁸, a bench of three judges was called upon to consider a situation identical to that considered in **State of Haryana vs. Subash Chander Marwaha and Others**²¹, where only three candidates were selected while others were ruled out despite there being vacancies. This Court doubted the decision in **K. Manjusree**¹² and referred the matter to a larger bench. Some of the observations were as under: -

“1. Leave granted.

“5. ... the rules of the game ... the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced.”

“27. ... changing the rules of the game after the game was played ... is clearly impermissible.”

The above, and statements to the similar effect have petrified into a rule of law in the context of employment under the State

²⁷ (2008) 7 SCC 11

²⁸ (2013) 4 SCC 540

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- A or its instrumentalities. Whether such principle of law is immutable, what are those “rules of the game” which cannot be changed after the game is either commenced or played, in our opinion requires an authoritative pronouncement by a larger Bench of this Court.”
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- C **6.** Therefore, the appellants challenged the selection process on the ground that the decision of the Chief Justice to select only those candidates who secured a minimum of 75% marks would amount to “changing the rules of the game after the game is played”—a cliché whose true purport is required to be examined notwithstanding the declaration of this Court in *Manjusree*¹²case that it is “clearly impermissible”.
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- E **14.** Unfortunately, the decision in *Subash Chander Marwaha*²¹ does not appear to have been brought to the notice of Their Lordships in *Manjusree*¹². This Court in *Manjusree* relied upon *P.K. Ramachandra Iyer v. Union of India*²³, *Umesh Chandra Shukla v. Union of India*²⁴ and *Durgacharan Misra v. State of Orissa*²⁵. In none of the cases, was the decision in *Subash Chander Marwaha*²¹ considered.
- F **15.** No doubt it is a salutary principle not to permit the State or its instrumentalities to tinker with the “rules of the game” insofar as the prescription of eligibility criteria is concerned as was done in *C. Channabasaviah v. State of Mysore*²⁹, etc. in order to avoid manipulation of the recruitment process and its results. Whether such a principle should be applied in the context of the “rules of the game” stipulating the procedure for selection more particularly when the change sought is to impose a more rigorous scrutiny for selection requires an authoritative pronouncement of a larger Bench of this Court. We, therefore, order that the matter be placed before the Hon’ble Chief Justice of India for appropriate orders in this regard.”

F] In ***Yogesh Yadav***¹³, the attempt on part of the authorities in employing a cut off to select the best candidates was questioned. A bench of two Judges of this Court observed:-

“13. The instant case is not a case where no minimum marks are prescribed for viva voce and this is sought to be done after the written test. As noted above, the instructions to the examinees provided that written test will carry 80% marks and 20% marks were assigned for the interview. It was also provided that candidates who secured minimum 50% marks in the general category and minimum 40% marks in the reserved categories in the written test would qualify for the interview. The entire selection was undertaken in accordance with the aforesaid criterion which was laid down at the time of recruitment process. After conducting the interview, marks of the written test and viva voce were to be added. However, since a benchmark was not stipulated for giving the appointment. What is done in the instant case is that a decision is taken to give appointments only to those persons who have secured 70% marks or above marks in the unreserved category and 65% or above marks in the reserved category. In the absence of any rule on this aspect in the first instance, this does not amount to changing the “rules of the game”. The High Court has rightly held that it is not a situation where securing of minimum marks was introduced which was not stipulated in the advertisement, standard was fixed for the purpose of selection. Therefore, it is not a case of changing the rules of the game. On the contrary in the instant case a decision is taken to give appointment to only those who fulfilled the benchmark prescribed. The fixation of such a benchmark is permissible in law. This is an altogether different situation not covered by *Hemani Malhotra* case²⁷. ”

G] In ***Salam Samarjeet Singh vs. High Court of Manipur at Imphal and another***³⁰, there was disagreement between two judges of this Court. Banumathi, J. did not accept the submission that the fixation of minimum marks for ‘interview’ amounted to changing the “rules of the game” and concluded that fixing of 40% marks for interview was consistent with the concerned Rules. Shiva Kirti Singh, J. took a different view while relying upon the decision in ***K. Majushree***¹² and ***Hemani Malhotra***²⁷. The matter, therefore stands referred to a larger Bench.

³⁰ (2016) 10 SCC 484

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- A H] In *Sivanandam C.T. and others vs. High Court of Kerala and others*³¹, while dealing with the correctness of the decision in fixing minimum qualifying marks for interview after the process was over, a bench of two judges of this Court relied upon the order in *Tej Prakash Pathak*²⁸ and referred the matter to a larger Bench.
- B I] The facts in *Municipal Corporation of Delhi vs. Surender Singh and others*³² show that the selection was for the posts of Assistant Teachers (Primary) in the schools of the appellant and clause 25 of the advertisement provided discretion to the Selection Board to fix minimum qualifying marks for each category of vacancies. A bench of two judges of this Court observed:-
- C “**18.** From a perusal of the said clause it is noticed that though under the very clause there are no cut-off marks specified, Clause 25 would, however, provide the full discretion to DSSSB to fix the minimum qualifying marks for selection. In the instant case, keeping in view that the recruitment was for the post of Assistant Teacher (Primary) and also taking note of the orders passed by the High Court in an earlier petition requiring the maintenance of minimum standards, DSSSB while preparing the select list had stopped the selection at a point which was indicated as the cut-off percentage. In a circumstance where Clause 25 was depicted in Advertisement No. 1/2006, when the private respondents herein and the other petitioners before the High Court were responding to the said advertisement, if at all they had a grievance that the clause is arbitrary and might affect their right ultimately since no minimum marks that is to be obtained have been indicated therein, they were required to assail the same at that stage. On the other hand, despite being aware of the clause providing discretion to DSSSB to fix the minimum qualifying marks, they have participated in the selection process by appearing for the qualifying examination without raising any protest. In that circumstance, the principle of probate and reprobate would apply and the private respondents herein or any other candidate who participated in the process cannot be heard to complain in that regard.
- F **19.** It is no doubt true that the select list was concluded at the particular cut-off point wherein the last selected candidate under

³¹ (2018) 1 SCC 239

H ³² (2019) 8 SCC 67

the unreserved category had obtained 89.25%. The said decision had been taken by DSSSB to ensure the minimum standard of the teachers that would be recruited and the appellant herein being the recruiting agency in any event, did not have objection. In any event, it is not the case of the petitioners that they had obtained higher marks than the candidate who was shown as the last candidate in the merit list. If that was the position and when it is noticed that the appellant and the other writ petitioners had secured lesser percentage of marks than the last candidate included in the merit list, there could not have been any further consideration whatsoever in the course of judicial review. To that extent, the learned Single Judge, from the observations as noticed above has kept in view all aspects of the matter and in that light had arrived at the conclusion that no error was committed either by DSSSB or the appellant herein.”

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(Emphasis supplied)

J] In ***Jharkhand Public Service Commission vs. Manoj Kumar Gupta and another***¹⁴, the cut off in respect of Paper III was fixed after the examination. Reversing the decision of the High Court, a bench of two Judges of this Court observed:-

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“7. A perusal of Clause 4.1 of the scheme clearly indicates that the moderation committee has been constituted only for the purpose of deciding the cut-off marks in each subject for declaring the result. The advertisement clearly indicates that only those candidates who obtained 50% marks in Paper I and II would be eligible to take the test in Paper III. The minimum qualifying marks in case of General/OBC candidates was 50%. At this stage, there was no need to fix the qualifying marks for Paper III. That need will arise only when the moderation committee meets and decides what should be the level of competence expected from the people who are to be considered for appointment as Lecturers. It is for the moderation committee to decide what should be the cut-off marks. There could be the subject where all the people who qualified Paper I and II get very low marks in Paper III and the moderation committee may be justified in lowering the standards and prescribing lower qualifying standards. On the other hand, there may be a subject where there are many candidates who do extremely well in Paper III

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- A and the moderation committee may decide to fix a higher minimum standard. The constitution of a moderation committee is normally done only to do this sort of moderation.
- B 8. As far as the finding of the High Court that the rules of the game were changed after the selection process had started, we are of the considered view that this is not the case as far as the present case is concerned. There were no minimum marks provided for Paper III in the advertisement. This could be done by the moderation committee even at a later stage. This is not a change brought about but an additional aspect brought in while determining the merit of the candidates who are found fit to be eligible for consideration for appointment of Lecturers.”
- C 59. Having set out relevant portions from the decisions of this Court, the answer to the second question will depend upon whether the present case is fully covered by the principles laid down in *K. Manjusree*¹². If the case is so covered, in keeping with the Orders of reference in *Tej Prakash Pathak*²⁸, *Salam Samarjeet Singh*³⁰ and *Sivanandam*³¹, the instant matter must either be referred to a larger Bench to be heard along with those matters or must await the decision in the reference to the larger Bench.
- D 60. In terms of Rule 2(1)(x) of 1981 Rules, qualifying marks of ATRE are such minimum marks as may be determined ‘*from time to time*’ by the Government. Clause (C) of Rule 14 of 1981 Rules lays down that a candidate must have ‘*passed Assistant Teacher Recruitment Examination conducted by the Government*’. Thus, one of the basic requirements for being considered to be appointed as an
- E Assistant Teacher under 1981 Rules is passing of ATRE with such minimum marks as may be determined by the Government. Unlike para 7 of the Guidelines for ATRE-2018 which had spelt out that a candidate must secure minimum of 45% or 40% marks (for ‘general’ and ‘reserved’ categories respectively) for passing ATRE-2018, no such stipulation was available in G.O. dated 01.12.2018 notifying ATRE-2019. Though, the
- F minimum qualifying marks were set out in the Guidelines for ATRE-2018, it is not the requirement of 1981 Rules that such stipulation must be part of the instrument notifying ATRE. By very nature of entrustment, the Government is empowered to lay down minimum marks ‘*from time to time*’. If this power is taken to be conditioned with the requirement
- G that the stipulation must be part of the instrument notifying the examination,
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then there was no such stipulation for ATRE-2019. Such reading of the rules will lead to somewhat illogical consequences. On one hand, the relevant Rule requires passing of ATRE while, on the other hand, there would be no minimum qualifying marks prescribed. A reasonable construction on the relevant rules would therefore imply that the Government must be said to be having power to lay down such minimum qualifying marks not exactly alongside instrument notifying the examination but at such other reasonable time as well. In that case, the further question would be at what stage can such minimum qualifying marks be determined and whether by necessity such minimum qualifying marks must be declared well before the examination.

61. **K. Manjusree¹²** and **Hemani Malhotra²⁷**were the cases which pertained to selections undertaken to fill up posts in judicial service. In these cases, no minimum qualifying marks in interview were required and the merit list was to be determined going by the aggregate of marks secured by a candidate in the written examination and the oral examination. By virtue of stipulation of minimum qualifying marks for interview, certain candidates, who otherwise, going by their aggregate would have been in zone of selection, found themselves to be disqualified. The stipulation of minimum qualifying marks having come for the first time and after the selection process was underway or through, this Court found such exercise to be impermissible.

These were cases where, to begin with, there was no stipulation of any minimum qualifying marks for interview. On the other hand, in the present case, the requirement in terms of Rule 2(1)(x) read with Rule 14 is that the minimum qualifying marks as stipulated by the Government must be obtained by a candidate to be considered eligible for selection as Assistant Teacher. It was thus always contemplated that there would be some minimum qualifying marks. What was done by the Government by virtue of its orders dated 07.01.2019 was to fix the quantum or number of such minimum qualifying marks. Therefore, unlike the cases covered by the decision of this Court in **K. Manjusree¹²**, where a candidate could reasonably assume that there was no stipulation regarding minimum qualifying marks for interview, and that the aggregate of marks in written and oral examination must constitute the basis on which merit would be determined, no such situation was present in the instant case. The candidate had to pass ATRE-2019 and he must be

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- A taken to have known that there would be fixation of some minimum qualifying marks for clearing ATRE-2019.

Therefore, there is fundamental distinction between the principle laid down in *K. Manjusree*¹² and followed in *Hemani Malhotra*²⁷ on one hand and the situation in the present case on the other.

- B 62. We are then left with the question whether prescription of such minimum qualifying marks by order dated 07.01.2019 must be set aside merely because such prescription was done after the examination was conducted. At this juncture, it may be relevant to note that the basic prayer made in the leading Writ Petition before the single Judge C was to set aside the order dated 07.01.2019. What could then entail as a consequence is that there would be no minimum qualifying marks for ATRE-2019, which would run counter to the mandate of Rule 2(1)(x) read with Clause (C) of Rule 14. It is precisely for this reason that what was submitted was that the same norm as was available for ATRE-2018 D must be adopted for ATRE-2019. In order to lend force to this submission, it was argued that Shiksha Mitras who appeared in ATRE-2018 and ATRE-2019 formed a homogeneous clause and, therefore, the norm that was available in ATRE-2018 must be applied. This argument, on the basis of homogeneity, has already been dealt with and rejected.

- E 63. If the Government has the power to fix minimum qualifying marks '*from time to time*', there is nothing in the Rules which can detract from the exercise of such power even after the examination is over, provided the exercise of such power is not actuated by any malice or ill will and is in furtherance of the object of finding the best available talent.

- F In that respect, the instant matter is fully covered by the decisions of this Court in *Municipal Corporation of Delhi vs. Surender Singh*³² and *Jharkhand Public Service Commission vs. Manoj Kumar Gupta and another*¹⁴. In the first case, the power entrusted under Clause 25 of the advertisement also provided similar discretion to the Selection Board to fix minimum qualifying marks for each category of vacancies. G While construing the exercise of such power, it was found by this Court that it was done '*to ensure the minimum standard of the teachers that would be recruited*'. Similarly, in *Jharkhand Public Service Commission*¹⁴, the exercise of power after the examination in paper III was over, was found to be correct and justified.

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64. If the ultimate object is to select the best available talent and there is a power to fix the minimum qualifying marks, in keeping with the law laid down by this Court in *State of Haryana vs. Subash Chander Marwaha and Others*²¹, *State of U.P. vs. Rafiquddin and Others*²², *Municipal Corporation of Delhi vs. Surender Singh*³² and *Jharkhand Public Service Commission vs. Manoj Kumar Gupta and another*¹⁴, we do not find any illegality or impropriety in fixation of cut off at 65-60% vide order dated 07.01.2019. The facts on record indicate that even with this cut off the number of qualified candidates is more than twice the number of vacancies available.

It must be accepted that after considering the nature and difficulty level of examination, the number of candidates who appeared, the concerned authorities have the requisite power to select a criteria which may enable getting the best available teachers. Such endeavour will certainly be consistent with the objectives under the RTE Act.

65. In the circumstances, we affirm the view taken by the Division Bench of the High Court and conclude that in the present case, the fixation of cut off at 65-60%, even after the examination was over, cannot be said to be impermissible. In our considered view, the Government was well within its rights to fix such cut off.

66. Consequently, the challenge at the instance of Shiksha Mitras in all these matters, specifically referred to in Para 27 hereinabove, is negated and the appeals preferred by Shiksha Mitras are dismissed.

The appeal arising out of SLP(C) No.6846 of 2020 preferred by the Association of Shiksha Mitras also prayed for absorption of Shiksha Mitras. Such a prayer cannot be granted in view of the pronouncement of the decision of this Court in *Anand Kumar Yadav*². Said appeal is, therefore, dismissed.

67. Though we have rejected the challenge on behalf of the Shiksha Mitras and dismissed their appeals, we hope that in keeping with the submissions made on behalf of the State, as recorded in paragraph 34 hereinabove, one more opportunity shall be afforded to Shiksha Mitras to compete in the next selection. We leave it to the discretion of the State Government to consider the manner and the modalities in which such opportunity can be availed of. Needless to say, the matter in that behalf is entirely left to the discretion of the State Government.

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- A 68. In the appeals preferred by ex-servicemen or persons with disability, it was submitted that as against the vacancies earmarked for these categories, very few candidates had applied and at 65-60% cut off the number of qualified candidates was far lesser. The cut off at 65-60% having been held valid and justified, these appeals are also dismissed.
- B If there are less number of candidates against the vacancies for these categories, such vacancies shall be subject to the Rules in that behalf. If the vacancies cannot be carried forward, the same shall and must enure to the advantage of the candidates in the present selection.

Similarly, Writ Petition (Civil)No.703 of 2020 and appeals arising out of petitions preferred by B.Ed./B.T.C. candidates as well as Contempt Petition (Civil) No. 418 of 2020 and all Intervention Applications also stand disposed of in same terms. No costs.

69. The State Government shall now be entitled to fill up all the concerned posts in terms of the result declared on 12.05.2020 and in accordance with law.

Kalpana K. Tripathy

Matters disposed of.