

# **Mahesh Prasad & Others vs State Of U.P. And Others on 18 May, 2018**

**Author: Surya Prakash Kesarwani**

**Bench: Surya Prakash Kesarwani**

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

(Judgment reserved on 04.05.2018)

(Judgment delivered on 18.05.2018)

Court No. - 07

First Set-Compassionate Appointees

1. Case :- WRIT - A No. - 22142 of 2011

Petitioner :- Mahesh Prasad & Others

Respondent :- State Of U.P. And Others

Counsel for Petitioner :- Anil Tiwari, Santosh Pandey

Counsel for Respondent :- C.S.C., B.P. Singh, K.S. Kushwaha, Nisheeth Yadav

2. Writ-A No. 5451 of 2014

Ram Naresh Dwivedi v. State

3. Writ-A No. 56281 of 2012

Avinash Chandra Shukla v. State

4. Writ-A No.63880 of 2012

Ram Niwas Singh v. State

5. Writ-A No.66828 of 2012

Mahendra Pratap Singh v. State of U.P.

6. Writ-A No.58006 of 2015

Smt.Shakuntala Chaurasiya v. State

7. Writ-A No.37890 of 2012

Subhash Chandra Mishra v. State

8. Writ-A No.26715 of 2015

Dharmendra dKumar Saunkiya v. State

9. Writ-A No.30809 of 2015

Navin Kumar Budhauilya v. State

10. Writ-A No.26716 of 2015

Devesh Kumar Dwivedi v. State

11. Writ-A No.26717 of 2015

Bharat Singh v. State

12. Writ-A No.30806 of 2015

Nripat Singh v. State

13. Writ-A No.30813 of 2015

Brij Kishor v. State

14. Writ-A No.41243 of 2015

Ramrup Sahu v. State

15. Writ-A No.41248 of 2015

Rajnish Kumar Khare v. State

16. Writ-A No.41242 of 2015

Hari Narayan v. State

17. Writ-A No.41247 of 2015

Ajay Narayan Mishra v. State

18. Writ-A No.41244 of 2015

Priyank Agrawal v. State

19. Writ-A No.41240 of 2015

Shakti Kumar v. State

20. Writ-A No.30805 of 2015

Anil Kumar v. State

21. Writ-A No.39140 of 2012

Deep Singh Chauhan and others v. State

22. Writ-A No.7849 of 2015

Avneesh Kumar & 3 others v. State

23. Writ-A No.43497 of 2012

Hari Ram Pandey v. State

24. Writ-A No.35087 of 2012

Mithilesh Kumar & others v. State

25. Writ-A No.62147 of 2008

Kailash Chand & others v. State

26. Writ-A No.25671 of 2016

Sushil Kumar v. State

27. Writ-A No.25672 of 2016

Rakesh Kumar Shukla v. State

28. Writ-A No.25673 of 2016

Subodh Kumar v. State

29. Writ-A No.25674 of 2016

Dhirendra Kumar v. State

30. Writ-A No.25675 of 2016

Anil Kumar v. State

31. Writ-A No.61049 of 2016

Ravi Bhushan v. State

32. Writ-A No.42658 of 2017

Amar Singh & others v. State

33. Writ-A No.42643 of 2016

Kanta Prasad and another v. State

34. Writ-A No.31418 of 2016

Zafaryab Husain v. State

35. Writ-A No.45761 of 2016

Vivek Kumar Saxena v. State

36. Writ-A No.48882 of 2016

Neeraj Kumar Shukla v. State

37. Writ-A No.49258 of 2016

Ravi Shankar Prasad and another v. State

38. Writ-A No.29243 of 2015

Lal Bahadur and others v. State

39. Writ-A No.16392 of 2016

Arun Verma v. State of U.P. and 4 others

40. Writ-A No.26754 of 2016

Sudhir Kumar Ojha And 5 Others v. State Of U.P. And 3 Others

AND

Second Set-B.T.C. 2004-Trainees-Appointees

41. Writ A No. 29020 of 2017

Akash Deep and another Vs. State of U.P. And 3 others

42-Case :- WRIT - A No. - 57686 of 2015

Petitioner :- Vishisht B.T.C. Shikshak Welfare Association And 94 Others

Respondent :- State Of U.P. And 9 Others

Counsel for Petitioner :- Siddharth Khare, Shri Ashok Khare

Counsel for Respondent :- C.S.C., A.K. Yadav, Kailash Singh Kushwaha, Nitin Agarwal, Sri R.B.

43. Writ-A No.58509 of 2015

Surjeet Singh and 20 others v. State of U.P. and 25 others

44. Writ-A No.32861 of 2016

Ajimuddin and 4 other v. State

45. Writ-A No.25667 of 2016

Arun Kumar Singh & others v. State

46. Writ-A No.47839 of 2017

Dr. Janardan Rai and others v. State

47. Writ-A No.53983 of 2017

Paras Nath & others v. State

48. Writ-A No.61312 of 2017

Arun Kumar Verma And 8 Others v. State of U.P. And 6 others

49. Writ-A No.62082 of 2017

Anant Pal Singh and another v. State of U.P. And 17 others

50. Writ-A No.62932 of 2017

Rajesh Kumar Gautam and 8 others v. State of U.P. And 5 others

51. Writ-A No.1720 of 2017

Rakesh Chandra Tiwari and 7 others v. State of U.P. And 4 others

52. Writ-A No.347 of 2018

Rajesh Kumar Mishra And 8 Others v. State Of U.P. And 6 Others

53. Writ-A No.4874 of 2018

Rohan Lal and 32 others v. State of U.P. and 9 others

54. Writ-A No.58197 of 2017

Rajnath Pal and 5 others v. State of U.P. And 5 others

55. Writ-A No.2141 of 2018

Pramod Kumar Singh and 118 others v. State of U.P. And 3 others

56. Writ-A No.3933 of 2018

Sudhir Singh and 203 others v. State of U.P.

57. Writ-A No.5502 of 2018

Manish Kumar Singh and 10 others v. State of U.P. And 4 others

58. Writ-A No.4105 of 2018

Sanjay Kumar Upadhyay v. State of U.P. And 4 others

59. Writ A No. 6088 of 2018

Laxmi Shankar Mishra And 328 other Vs. State of U.P. And 5 others

60. Writ A No. 3017 of 2018

Satya Prakash Singh Vs. State of U.P.



61. Writ A No. 3470 of 2018

Rajeev Kumar Vs. State of U.P. Through Secretary, BEG of U.P.

62. Writ A No. 3586 of 2018

Ram Kumar Singh Vs. State of U.P.

63. Writ A No. 4295 of 2018

Satish Kumar Vs. State of U.P. And others

64. Writ A No. 54621 of 2017

Brijesh Kumar Mishra and 7 others Vs. State of U.p. And 4 others

65. Writ A No. 59590 of 2017

Savita Kumari Vs. State of U.p. And 3 others.

66. Writ A No.5263 of 2018

Praveen Kumar Mishra Vs. State of U.P.

Hon'ble Surya Prakash Kesarwani,J.

1. Heard learned counsels for the petitioners and Sri Ajit Kumar Singh, learned additional Advocate General assisted by Sri Mohan Ji Srivastava, learned standing counsel for State-Respondents and Sri Akhilesh Chandra Srivastava, learned counsel for the U.P. Basic Education Board. On behalf of the petitioners, arguments have been advanced by Sri Ashok Khare, learned senior advocate assisted by Sri Siddharth Khare, Sri Anil Tiwari, Sri Anoop Trivedi, Manoj Kumar Singh, Upendra Kumar, Sri Satya Prakash Shukla, Ashotosh Pratap Singh, Sri Surendra Singh, Sanjay Kumar Yadav, Anil Kumar Singh, Alok Kumar Gupta and Sri Santosh Pandey on 26.10.2017, 20.02.2018, 21.02.2018, 22.02.2018, 07.03.2018 and 04.05.2018.

## 2. Question Involved:

(a) In first set of writ petitions:-

"Whether petitioners appointed on compassionate ground as Untrained Assistant Teacher on fixed pay prior to 01.04.2005 and completed Special BTC Course after 01.04.2005 are entitled to the old Pension Scheme and G.P.F.?"

(b) In second set of writ petitions:-

"Whether petitioners admitted in Special BTC Course 2004 prior to 01.04.2005 getting monthly stipend of Rs.2500/- and appointed in December, 2005 after completion of BTC Course, are entitled to the old Pension Scheme and G.P.F.?"

## Facts of the Case:

3. This bunch of writ petitions have been nominated to me by order of Hon'ble the Chief Justice dated 15.11.2017, 06.12.2017, 06.02.2018 and 27.03.2018. Accordingly, these writ petitions have been heard together.

4. This bunch of writ petitions involve two sets of writ petitioners. The first set of writ petitioners are those who were appointed on compassionate ground as untrained teachers as fixed salary prior to 01.04.2005 under the U.P. Recruitment of Dependants of Government Servant Dying in Harness Rules, 1974 (In short the Rules of 1974) as per clause 3(3)/(4) of the Government Order No.5193/15.05.2004-400(222)/99, dated 04.09.2000 (hereinafter referred to as the "G.O. of 2000") issued under Section 13(1) of the U.P. Basic Education Act, 1972, such untrained teachers were required to complete BTC and on successful completion of BTC, were to be appointed as Assistant Teacher in regular pay scale. The G.O. of 2000 provides that during continuation as untrained Assistant Teacher, they shall be paid prescribed salary as may be decided by the State-Government from time to time. The petitioners of first set of writ petitions being appointees on compassionate ground in terms of the Rules of 1974 and the G.O. of 2000, appointed prior to 01.04.2005, completed their BTC course after 01.04.2005 and got the regular appointed. The controversy arose on account of amendment in the General Provident Fund (Uttar Pradesh) (Amendment) Rules, 2005 vide Notification dated 07.04.2005 effective from 01.04.2005 whereby Rule 4 of the General Provident Fund (Uttar Pradesh) Rules, 1985 was amended. A new defined Contribution Pension Scheme was notified and made applicable to all the employees joining services after 01.04.2005 and the old defined Benefit Pension Scheme and the General Provident Fund Benefit Scheme as were available to Government employees prior to 01.04.2005 were denied to those who would be joining government service after the cut off date, i.e. 01.04.2005.

5. Second set of writ petitioners are those who were admitted in Special BTC Course Programme, 2004 prior to 01.04.2005 but completed the BTC Course after 01.04.2005 and were appointed as Assistant Teachers in December, 2005. They claim their appointment as Government employees under the U.P. Basic Education Act, 1972 with effect from the date of their admission/ selection in

Special BTC Course, 2004, being a job oriented scheme and accordingly they contend that their appointment as Assistant Teacher shall relate back to the date of selection in Special BTC Course and consequently the Old Pension Scheme and the un-amended provisions of the General Provident Fund (Uttar Pradesh) Rules, 1985, would be applicable to them.

Submissions on behalf of Petitioners:

6. Sri Ashok Khare, senior Advocate has submitted as under:-

(i) This batch of writ petitions are in two sets. The first set of petitioners are compassionate appointees. The controversy in their cases is as to whether the date of first appointment on compassionate ground on a consolidated salary shall be treated to be the date of appointment for the purposes of old GPF scheme or their subsequent regularisation in regular pay scale after 01.04.2005 shall be relevant for the purpose of G.P.F. scheme. The second set of petitioners are those who were admitted in Special BTC Course prior to 01.04.2005 but they could be adjusted as assistant teachers subsequently after 01.04.2005, therefore, question is as to whether these assistant teachers adjusted in employment after 01.04.2005 shall be governed by old GPF and pension Scheme or the new Scheme.

The date of appointment of petitioners on compassionate ground shall remain unchanged whether such assistant teachers were appointed on a consolidated salary as untrained teacher or they were subsequently regularised after 01.04.2005. The Government order dated 20.02.2004 (para-12) itself supports the case of the petitioners.

(ii) The real recruitment is the selection for Special BTC Course and after completion thereof, the appointment is automatic. The date of selection for Special BTC course should be treated to be the date of appointment for the purposes of application of the GPF Scheme whether old or new. The recruitment is made on the post of assistant teachers in terms of the provisions of Rule 14 of the U.P. Basic Education Teacher Services Rules, 1981. The Rules and the Conditions of appointment as on the date of selection for Special BTC course shall only be enforceable and not any new conditions or Scheme which came to operate subsequently. Since at the time of selection for Special BTC Course the old GPF Scheme was applicable, therefore, the new GPF Scheme which came into force after 01.04.2005, cannot be applied. Reliance is placed on certain judgments copies of which have been filed in Writ Petition No.57686 of 2015.

(iii) The petitioners were recruited in Special B.T.C. Training 2004 pursuant to advertisement dated 21.2.2004.

(iv) On selection in Special B.T.C. Training Course, the petitioners were being regularly paid stipend in terms of the Scheme being the Government Order dated 20.2.2004 @ Rs.2,500/- per month. On successful completion of the Training, the appointment was automatic. The trainees were not required to face any competition or test for appointment.

(v) As per amended Rule 3 of The Uttar Pradesh Retirement Benefits (Amendment ) Rules, 2005, the rules shall not apply to employees entering in service on or after April 1, 2005 in connection with the affairs of the state borne on pensionable establishment, whether temporary or permanent.

(vi) The General Provident Fund (Uttar Pradesh ) (Amendment) Rules, 2005 specifically provides vide Note-1 to Rule 4 that Apprentices and Probationers shall be treated as temporary Government servants for the purposes of this rule. The office Memorandum of the Government of India, Ministry of Personnel P.G. & Pensions, Department of Pension & Pensioners' Welfare dated 5.3.2008 provides that the employees, who were required to undergo departmental training relating to jobs prior to 1.1.2004 before they were put on regular appointment and were in receipt of stipend during such training would also be covered under the CCS (Pension) Rules, 1972.

(vii) On the basis of the aforesaid Rules, notification and the Government Orders, the petitioners on selection for special B.T.C. Training Course 2004, became probationers and thus, as temporary employees they were being paid stipend of Rs.2,500/- per month. Therefore, they became recruits in government service much prior to 1.4.2005, inasmuch as pursuant to the advertisement of February 2004 for selection in Special B.T.C. Course, the first select list was published on 27.5.2004 and the last select list was published on 7.7.2004. The petitioners and all selected candidates joined the training in August, 2004. Their written examination was held on 17.7.2005 being the final examination in Special B.T.C. Training Course. Thereafter they were appointed as Assistant Teachers under Rule 14 of The Uttar Pradesh Basic Education (Teachers) Service Rules, 1981.

(viii) Therefore, the petitioners being recruits of the State Government, since August 2004, are entitled for benefit of the old Pension Scheme.

7. Sri Anoop Trivedi submits as under:

(i) Sri Anoop Trivedi, learned counsel appearing for the petitioners of Writ-A No.47839 of 2017 has adopted the arguments advanced by Sri Khare, as aforesaid. He further submits that the petitioners were issued letters dated 31.1.2005 for practical training and they were allotted specific schools for practical training where they continued till their appointment.

(ii) As per provisions of Section 13 of U.P. Basic Education Act, 1972, the U.P. Basic Education Board is required to carry out the directions of the State Government issued from time to time for the efficient administration of the Act.

(iii) The Government Order dated 14.1.2004 and the Government Order dated 20.2.2004 for recruitment in Special B.T.C. were issued by the State Government in exercise of powers conferred under Sections 13 and 14 of the Act, read with Rule 14 of the Rules 1981, which not only mentions the number of vacancies for Special B.T.C. Training Course, but also provides for appointment of assistant teachers as per the vacancies available in different primary schools in the State of U.P. It also provides for applicability of rules of reservation in selection process and payment of stipend @

2500/- per month. Therefore, the selected candidates including the petitioners became recruitees in the service of the State Government. After the Government Orders were issued, the State Council for Educational Research and Training, U.P. was authorised to conduct the entire process for recruitment of candidates for training for Special B.T.C. and appointment.

(iv) In *Sandhya Jain v. State of U.P. and others*, (2005) 3 UPLBEC 2450 (Para-9), this Court held that B.T.C. is a job oriented training which gives legitimate expectations to the candidates after successful completion of training for employment. The notification dated 28.3.2005 issued by the State Government provides for new pension scheme effective from 1.4.2005 which shall apply mandatorily only to new recruits to the service of the State Government.

(v) The contention of the petitioners with regard to the appointment and the procedure adopted, have been accepted in the personal affidavit filed by the Secretary dated 14.4.2018.

(vi) Petitioners were selected pursuant to advertisement and after selection the select list was prepared and petitioners undergone training but during training the New Pension Scheme and the amended G.P.F. Rules came into existence which can not affect the right of the petitioners to Old Pension Scheme and the unamended G.P.F. Rules. The special B.T.C. Course is a job oriented scheme.

(vii) Therefore, it is prayed writ petitions may be allowed.

8. Sri Anil Tiwari (Specially arguing for first set of petitioners) submits as under:

(i) Petitioners were appointed on compassionate ground between the year 2002 to 2003 as untrained teacher under Rule-5 of the U.P. Recruitment of dependents of Government Servants Dying in Harness Rules, 1974 (hereinafter referred to as "Dying in harness Rules") read with Government Order No.5193/15-05-2000-400(220)/99, dated 04.09.2000 (para-4) on a fixed pay. They completed the BTC training in August, 2005. Thereafter they are being paid salary as per regular pay-scale of Assistant Teachers.

(ii) Since the initial appointment of the petitioners itself was in terms of the Dying in harness Rule, read with Government Order dated 04.09.2000 and as such they are lawfully appointed Assistant Teachers in terms of the provisions of the Rule-10 of the the Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as the "the Service Rules, 1981").

(iii) The petitioners fulfilled the essential qualification of "qualifying service" as defined in Rule-3(8) of the Uttar Pradesh Retirement Benefit Rules, 1961( hereinafter referred to as "the Rules, 1961") as on the date of their first entering into service on

the compassionate appointment, therefore, the Rules, 1961 became applicable on the petitioners in view of the provisions of Rule 2(2). The sub-rule (3) was inserted vide notification No.G-3-469/X-2005-301(9)-03 dated 07.04.2005 providing for non-applicability of the Rules, 1961 to employees entering service and posts on or after April 1, 2005 in connection with the affairs of the State, borne on pensionable establishment, whether temporary or permanent.

(iv) The definition of qualifying service given in Rule-3(8) provides that the "qualifying service" means service which qualifies for pension in accordance with the provisions of Article 368 of the Civil Service Regulations. Article 361 of the Civil Service Regulations provides for three conditions of qualifying service, (Firstly)- The service must be under Government; (Secondly)- The employment must be substantive and permanent and (Thirdly)- The service must be paid by Government. These three conditions have been explained in subsequent Articles. The second condition as explained in Article 368 that "Service does not qualify unless the officer holds a substantive office on a permanent establishment", may be relied by the State respondents to deny the benefit of the old pension scheme under the Rules, 1961 and the GPF under the GPF Rule, 1985 on the ground that the petitioners were not holding a substantive office on a permanent establishment as on the cut off date i.e.01.04.2005 as provided in Rule-2(3) of the Rules 1961 and similar provision in the GPF Rules. Such an objection cannot stand in the way of the claim of the petitioners in view of the fact that Article 368 as aforementioned, has been declared ultra vires by a Division Bench of this Court in the case of Board of Revenue and others Vs.Prashidh Narayan Upadhyaya, 2006 (1) ESC, 611 (All.)(D.B.) (Paragraph 10 to 15).

(v) Even otherwise the appointment of petitioners on compassionate ground is a substantive appointment. There is no dispute that the respondent Department is a permanent establishment. Therefore the petitioners being substantively appointed teachers in permanent establishment against substantive vacancy, are entitled for the benefit of pension as per old Pension Scheme under the Rules, 1961 and the GPF under the GPF Rules, 1985.

(vi) Dying in harness is not a source of appointment but an exception and it shall always be treated to be a permanent appointment in view of the law laid down by a Division Bench of this Court in the case of Ravi Kiran Vs. State of U.P. and others, 1999, All. (L.J.) 1745 LCD 641 (DB).

(vii) Under the Pension Rules 1961, even temporary employees are also entitled for pension. The petitioners stand on a better footing being appointees on compassionate ground. The impugned Government Order No.2997/79-5-2011 dated 15.11.2011 (Annexure-CA-4 to the counter-affidavit of respondent No.4 to 7). is in conflict with the Pension Rules, 1961 and the GPF Rules, 1985 as amended by notification dated 07.04.2005. Article 368 and 370 of the Civil Regulation as amended by Notification dated 20.04.1977 explains Article 361 and provides that even temporary service shall

be included within the meaning of the qualifying service subject to certain exceptions specified therein.

(viii) The reference of Article 368 of Civil Service Regulation in Rule 3(8) of the Pension Rules, 1961 is a legislation by reference and therefore all amendment or invalidity declared by judicial pronouncement with respect to Article 368 shall be read at all relevant point of time in Rule-3(8) of the Rules, 1961.

9. Learned counsel for the petitioners of first set of writ petitions further submits that the controversy with regard to compassionate appointees is concluded by the Lucknow Bench judgment of this Court in Ravindra Nath Taigor vs. State of U.P. and others, 2018 (3) ADJ 641 (LB), therefore, the first set of writ petitions deserves to be allowed.

Submissions on behalf of Respondents:

10. Sri Ajit Kumar Singh, learned additional Advocate General assisted by Sri Mohan Ji Srivastava, learned standing counsel for State-Respondents and Sri Akhilesh Chandra Srivastava, learned counsel for Basic Education Board U.P. submits as under:

(i) Process of completion of teachers training course does not amount to commencement of the recruitment process. The recruitment process shall begin only when advertisement under Rule 14 of the U.P. Basic Education Teachers (Service) Rules, 1981, is issued.

(ii) Special B.T.C. Course is an essential eligibility for appointment on the post of Assistant Teachers. Since, the petitioners have completed their Special B.T.C. Course after 1.4.2005, therefore, they were not assistant teachers prior to the cut off date 1.4.2005 for applicability of the Old Pension Scheme and G.P.F. Scheme.

(iii) Stipend paid to Special B.T.C. Course trainees in terms of the Government Order dated 20.2.2004 is not a salary rather it is a payment to trainee students like Scholarship. Only after completion of Special B.T.C. Course, the trainees acquired eligibility for appointment as assistant teachers. The eligibility has been provided in Rule 8 of U.P. Basic Education Teachers (Service) Rules 1981. The eligibility for appointment as assistant teachers have been provided in Rule 8(1)(ii) of the Rules. Thus, all the candidates acquired the eligibility under the rules only in the month of December 2005. Relaxation under Rule 10 is applicable to the candidates mentioned therein which does not cover the petitioners. Thus, no relaxation in the appointment of the petitioners as assistant teachers, were made.

(iv) Advertisement for Special B.T.C. Course 2004, Government Order dated 20.2.2004 (Paragraph nos. 1,2 and 9 to 12) and the orders impugned, particularly, the order dated 31.3.2014 (Annexure-16-F to Writ Petition No.57686 of 2015), which also refers to Government Order No.159/79-5-2004-127/97-TC dated 14.1.2004,

sanctioning Special B.T.C. programme for 46,189 candidates possessing qualification of B.Ed./L.T. He also relied upon the judgment of Hon'ble Supreme Court in the case of Devendra Singh v. State of U.P. and others JT 2007(7) SC-13 (paragraph 5,7 and 10) and a Full Bench judgment of this Court in Shiv Kumar Sharma and others v. State of U.P. and others 2013 (6) ADJ 310 (FB) (paras 2, 3, 4, 7,11 and 99). With respect to the 1st Set of petitions, he relied upon a judgment of the Lucknow Bench of this Court in Service Single No.7762 of 2017 (Ravindra Nath Tagor v. State of U.P. through Secretary, Basic Education, Lucknow and others) and other connected petitions decided on 28.2.2018. He referred to another decision of the Lucknow Bench in Namoo Narayan Rai and others v. State of U.P. and others, 2018(1) ESC 221 (All)(LB), whereby a learned Single Judge has referred to larger Bench the question "Whether amendment of Rule 4 of the U.P. Basic Education (Teachers) Service Rules 1981 and Government Order dated 1.4.2005 is retrospective or prospective.

(v) A Division Bench in Special Appeal No.274 of 2016 (Jitendra Kumar Gautam and 50 others Vs. State of U.P. and 3 others) decided on 2.5.2016, has laid down the law that Rules, 1981 deals with the post training scenario and acquiring of B.T.C. qualification is altogether a different concept as by that time person is still acquiring qualification for post. Only when candidates acquired training qualification and possess to their credit teacher eligibility test qualification alongwith other eligibility criteria Prescribed under 1981 Rules, then only as per provision contained in 1981 Rules, candidature of the candidate has to be considered and merely because candidate has proceeded to complete Training Course, same ipso-facto cannot be construed as a guarantee of ensuring appointment. When a person has been in the process of acquiring qualification, it cannot be said that selection process has commenced.

(vi) The petitioners acquired the eligibility after they completed the Special B.T.C. Course and thereafter they were appointed some time in November 2005. The New Pension Scheme and the amended provisions of the G.P.F. (Uttar Pradesh) Rules 2005, came into force w.e.f. 7.4.2005. Therefore, as on the date of appointment of the petitioners as Assistant Teacher in December 2005, Old Pension Scheme or the unamended G.P.F. Rules were not in existence rather the New Pension Scheme and the amended G.P.F. Rules were applicable. Therefore, the petitioners are not entitled for the benefit of Old Pension Scheme or the unamended provisions of G.P.F. Rules.

(vii) In paragraph 10 of the personal affidavit dated 14.4.2018, filed by the Secretary, Basic Education, Government of U.P. Lucknow, the entire details of the procedure adopted in selection and appointment of the petitioners of second set, has been given which has not been disputed by the petitioners. Therefore, there does not remain any dispute that the petitioners were appointed only in December 2005 and not prior to coming into force of the New Pension Scheme or the amended provisions of the G.P.F. (Uttar Pradesh) Rules. Consequently, only the amended G.P.F. Rules and the New Pension Scheme are applicable to the petitioners.



(viii) As per provisions of Rule 23 of the U.P. Basic Education (Teachers) Service Rules 1981, all persons on appointment in a substantive vacancy shall be placed on probation for a period of one year. The word "Probation" has been used in note one appended to the amended Rule 4 of the G.P.F. (Uttar Pradesh) (Amendment) Rules 2005, providing that apprentices and probationers shall be treated as temporary Government Servant for the purposes of the Rules. Since the petitioners were not appointed on the day when they were selected for Special B.T.C. Course and as such they can neither be said to be a probationer nor they were placed on probation for a period of one year under Rule 23 of the Rules 1981. The word "apprentice" has not been defined either under the Rules 1981 or under the G.P.G. Rules. The word "apprentice" has been defined in the Apprentices Act, 1961 in Section 2(aa) of the Apprentices Act, 1961, to mean a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship. The word "apprenticeship" has been defined in Section 2(aaa) of the Act 1961 to mean a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices. The Basic Education Department is neither an industry nor an establishment under the Apprentices Act, 1961, nor there was any contract of apprenticeship between the petitioners and the respondents-Basic Education Department/State Government. Therefore, mere admission for Special B.T.C. was not an appointment of the petitioners. Consequently, the Old Pension Scheme and the unamended G.P.F. Rules are not applicable to them.

#### Discussion and Findings:-

##### First Set of Writ Petitions-Compassionate Appointees:-

11. Undisputedly, the petitioners being dependants of deceased employees of U.P. Basic Education Board (hereinafter referred to as 'the Board'), who died in harness, applied for appointment under the Dying-in-Harness Rules read with the G.O. dated 04.09.2000. They were appointed as untrained Assistant Teachers in Basic Schools on different dates prior to 01.04.2005 on fixed pay of Rs.2750/- per month. Immediately thereafter, they were sent for training in terms of the G.O. dated 04.09.2000. They completed their training after 01.04.2005 and thereafter they were duly appointed as Assistant Teachers in Basic Schools in regular pay scale.

12. According to the petitioners, since the date of their appointment as untrained Assistant Teachers was prior to 01.04.2005, therefore, they shall be governed by the Old Pension Scheme and unamended General Provident Fund (Uttar Pradesh) Rules, 1985 and not by the new Pension Scheme and the amended General Provident Fund (Uttar Pradesh) Rules. The controversy is concluded by a judgment of Lucknow Bench of this Court in Ravindra Nath Taigor (supra) (paras 13 to 17), as under:

"13. The entire dispute runs around the interpretation of GO of 2000. Since the GO of 2000 is issued by the state government, exercising its power under section 13 of the Basic Education Act, the

Board is bound by it. It is the said GO of 2000 by which petitioners were appointed. Clause 3(1) of the said GO provides that appointments under the Dying in Harness Rules shall be made as per the provisions of U.P. Dying in Harness Rules (5th Amendment) Rules, 1999 (The originally are U.P. Dying in Harness Rules 1974). The GO of 2000 itself provides the modification in the appointment process, as for appointment of assistant teachers in basic schools, along with education qualifications, B.T.C. training is also must. Thus, these appointments are made as per the Dying in Harness Rules 1974, as they stood amended/modified in the year 1999, subject to further amendment/modification provided by the GO of 2000. Clause-3(3) of the said GO of 2000 provides that the qualified applicants shall be entitled as per the post vacant at the district level and in case the posts are not available, supernumerary posts are to be created, as far as possible, within a period of three months from the date application is made for appointment under the said GO of 2000. Clause-3(4) provides that such dependents of the deceased employee, who on the date of application are having educational qualification on the post of assistant teachers but are not having training qualification, shall be given the benefit of appointment as untrained teachers, so far as possible, within a period of three months of their application. Such dependents of the deceased, after their appointment as untrained teacher, shall be given admission in the next batch, in the training institute of the concerned district, for B.T.C training. For getting a appointment in a primary school as Assistant Teacher, as a beneficiary of Dying in Harness Rules, they have to complete the B.T.C. training. During the said B.T.C. course, they would be paid fixed salary, as fixed by the Government from time to time. After passing their training course, they shall be given regular appointment as assistant teachers in a primary school on regular pay scale. The appointing authority and the district training institute were made responsible to ensure that the untrained teachers, on their being appointed under 'Dying in Harness Rules', are given training in the very next batch starting after their appointment. Any person failing to clear the said training examination would be given appointment as a Class-IV employee and his appointment as untrained teachers shall be automatically treated to have ended. The said Government Order was made effective from 08.01.1999.

14. Thus, a bare perusal of the said Government Order shows that the petitioners were given an appointment as untrained teachers. They were to be given a further appointment as assistant teachers in basic school after completing their training. Thus, their first appointment was as untrained teachers under the Dying in Harness Rules, 1974 as amended with regard to them. The law with regard to the nature of appointments under the said Dying in Harness Rules is well settled by this court by number of its judgments, to be of permanent nature. Reference is made in case of Yogendra Ram Chaurasiya Vs. State of U.P. and Others; 2002 (5) AWC 3708. Relevant paragraphs of the said judgment are quoted below:-

"4. The learned Counsel for the Appellant submits that the appointment of the Appellant was made on compassionate grounds under the provisions of Dying in Harness Rules, which appointment cannot be treated as temporary appointment and rather it was permanent appointment and, therefore, the services could not have been terminated under the provisions U.P. Temporary Government Servants (Termination of Service) Rules, 1975. He relied upon the decision in the case of Ravi Karan Singh v. State of U.P. and Ors. 1991 (1) ALR 754.....

7. The Division Bench of this Court in the case of Ravi Karan Singh has held that:

"an appointment under the Dying in Harness Rules has to be treated as a permanent appointment otherwise if such appointment is treated to be a temporary appointment, then it will follow that soon after the appointment, the service can be terminated and this will nullify the very purpose of the Dying-in-Harness Rules because such appointment is intended to provide immediate relief to the family on the sudden death of the bread earner. We, therefore, hold that the appointment under Dying-in-Harness Rules is a permanent appointment and not a temporary appointment, and hence the provisions of U.P. Temporary Government Servant (Termination of Services) Rules, 1975, will not apply to such appointments."

9. In view of the decision of this Court in the case of Ravi Karan Singh with which we respectfully agree, any appointment made under the provisions of Dying-in-Harness Rules is to be treated as a permanent appointment and not a temporary appointment. This is also clear from the Government order dated 23.1.1976 filed as Annexure-2 to the writ petition wherein it has been mentioned that the dependent of deceased employee appointed on compassionate ground under the provisions of Dying-in-Harness Rules should not be retrenched even where the strength of the employee is being reduced. Thus, we hold that the appointment of the Appellant-writ Petitioner is to be treated as permanent appointment and not a temporary appointment....."

15. Submission of respondents, that, the petitioners were never appointed prior to the year 2005 and were appointed only after completing their training, after the year 2005, is nothing but a misreading of GO of 2000. The petitioners, as per the aforesaid GO of 2000, were appointed on permanent basis as untrained teachers and were given appointment as trained assistant teachers in basic school after completion of their training. Thus, merely because they were appointed on fixed salary would not make them any less a government employee than the other government employee. The continuity of the employment is reflected in the Government Order itself. Even on failing in the training course, the fact that they would be given appointment as a Class-IV employee, shows the intent of the government to give them a permanent job, one way or other. The respondents could not show anything from any rules, including pension/provident fund rules, which would require petitioners, for any reason, to be treated differently than other permanent employees. The old provisions of the pension and provident fund scheme were applicable to all other employees appointed prior to 01.04.2005. Here petitioners are also appointed on permanent basis, prior to 01.04.2005, as untrained teachers, who cleared their training and thereafter, given appointment as assistant teachers in basic schools. Thus, so far as the petitioners are concerned, there is no dispute that their appointment as trained assistant teachers in basic school are in continuation of their earlier appointment as untrained teachers.

16. Thus, there is no reason to treat them as being appointed for the first time, on completion of their training, after the year 2005. Since the petitioners were appointed prior to the year 2005, they are not impacted by the notifications dated 07.04.2005. They are persons who were appointed permanently before 01.04.2005 and are entitled to be treated at par with all other similarly appointed permanent assistant teachers in basic school, for the purpose of their pension and

provident fund benefits. Since, the Government Order dated 15.11.2011 is contrary to the aforementioned rules/directions of the State Government issued under Section 13 of the Basic Education Act, hence, the same is not sustainable.

17. Hence, all these writ petitions are allowed and Government Order dated 15.11.2011 is quashed. Petitioners shall be given all the provident fund, pension and other benefits, as are available to other permanent employees of the Board, appointed prior to 01.04.2005. "

(Emphasis supplied by me)

13. Respectfully following the judgment in the case of Ravindra Nath Taigor (supra), the first set of writ petitions (compassionate appointees) are allowed and it is held that the petitioners (compassionate appointees) appointed as untrained Assistant Teachers prior to 01.04.2005 shall be entitled to be treated at par with all similarly situate permanent Assistant Teachers in Basic Schools for the purposes of their pension and provident fund benefits. The old Pension Scheme and the unamended GPF Rules shall be applicable to them.

14. The judgment in the case of Namo Narayan Rai and others (supra), relied by the learned Additional Advocate General contending that similar controversy has been referred to a larger bench, appears to be misconceived. In the case of Namo Narayan Rai and others (supra), the petitioners of that writ petition assailed the Government Order dated 24.05.2017 and consequential order dated 27.05.2017 passed by the Executive Engineer, Tubewell Division and prayed for a direction to the concerned respondents to continue to make GPF deduction from the salary and not to compel them to fill up pension forms as per new Pension Scheme introduced on 28.03.2005 to be effective from 01.04.2005. Considering the case of those petitioners who were part time tubewell operators and whose services were regularised after 01.04.2005, this court found that in view of the judgment of Division Bench in Special Appeal No.240 of 2009, (State of U.P. vs. Dukh Haran Singh) and the order of Hon'ble Supreme dismissing the Special Leave to Appeal (C) No.27713 of 2009 holding that the period of service rendered as parttime tubewell operators prior to regularisation, are neither substantive/ permanent nor temporary and, therefore, only the services rendered after regularisation shall qualify for pension. The court found that in the case of State of U.P. vs. Tubewell Operators Welfare Association (supra), Istagar Ahmad and others vs. State of U.P. and others (supra), Brijpal Singh and others vs. State of U.P. and others (supra) and Shiv Shankar Lal and others vs. State of U.P. and others (supra), neither Rules of 1985 were placed in its entirety nor the fact that petitioners had already perfected their right to subscribe to the fund by virtue of rule 4 of 1985 Rules was placed or noticed. For this reason, the matter was referred to larger Bench.

Second Set- Special B.T.C. Course 2004 and Trainees Appointees:

15. By Government order dated 14.01.2004, The State Government granted sanction for Special BTC Training Course for 46189 candidates having B.Ed./ L.T. Qualification. The aforesaid Government Order is reproduced below:

"izs"kd] Jherh uhjk ;kno] izeq[k lfpo] f'k{kk} mRrj izns'k 'kkluA lsok esa] 1- funs'kd jkT; 'kSf{kd vuqla/kku vkSj izf'k{k.k ifj"kn] mo izo y[kuÅ 2- f'k{kk funs'kd ¼csfld½] mRrj izns'k] y[kuÅ f'k{kk ¼45½ vuqHkkx y[kuÅ % fnukad % 14 tuo]h] 2004 fo"k;%& mRrj izns'k esa fof'k"V choVholho izf'k{k.k O;oLFkk ds lEcU/k esa egksn;] mi;qZDr fo"k; ij jk"Vªh; v/;kid f'k{kk ifj"kn }kjk mRrj izns'k gsrq fof'k"V choVholho dk;ZØe dks ekU;rk fn;s tkus ds vuqØe esa eq>s ;g dgus dk funsZ'k gqv kS fd Jh jkT;iky }kjk lE;d fopkjsijkUr 46189 ¼4fN;kfyl gktj ,d lS uoklh½ cho,Mo@ ,yoVho ;ksX;rk/kkjh vH;fFkZ;ksa dks N% ekg ds fof'k"V choVholho izf'k{k.k ds vk;kstu dh Lohd`fr iznku dh tkrh gSA 2- bl gsrq funs'kd] jkT; 'kSf{kd vuqla/kku vkSj izf'k{k.k ifj"kn }kjk vko';d rÏoksa dks fpUgkafdr djrs gq, N% ekg dk ,d l'ku izf'k{k.k dk;ZØe ftlesa rhu ekg dk fØ;kRed i{k Hkh 'kkfey gS] rS;kj dj;k tk;sxk ftlds vk/kkj ij p;fur vH;fFkZ;ksa dks lEcU/kr tuinksa ds fy, fu/kkZfjr ftyk f'k{kk ,oa izf'k{k.k laLFkku esa ;g izf'k{k.k fn;k tk;sxk 3- fof'k"V choVholho izf'k{k.k gsrq vH;FkhZ ds p;u dh dk;Zokgh rFkk izf'k{k.k dh O;oLFkk fuEufyf[kr ekxZ&funsz'kksa] 'krksZ ,oa izfrcU/kks ds v/khu dh tk;sxh%& ¼41½ funs'kd] jkT; 'kSf{kd vuqla/kku vkSj izf'k{k.k ifj"kn }kjk izns'k ds fofHkUu lekpkj&i=ks esa O;kid izpkj&izlkj ds ek/;e ls ch-,M-@ ,y-Vh- mRrh.kZ vH;fFkZ;ksa ls vkosnu&i= ekaxs tk;saxs ¼42½ jk"Vªh; v/;kid f'k{kk ifj"kn }kjk ekU;rk izkIr@ vuqeU; fo'ofu|ky;ksa] ekU;rk izkIr egkfo|ky;ksa rFkk jkT; ljdkj@ dsUnz ljdkj }kjk lapkfyr egkfo|ky;ksa@ izf'k{k.k egkfo|ky;ksa ls laLFkkr ch-,M-@ ,y-Vh- izf'kf[kr vH;FkhZ gh lanHkZxr p;u ds fy, vgZ gksxsA vf/kokl izek.k i= ds vHkko esa vH;FkhZ vugZ gksaxs vkSj ,sls vH;FkhZ dk vH;FkZu Lor% gh fujLr gks tk;sxk ¼44½ fof'k"V choVholho izf'k{k.k gsrq vkosnu 'kqDy :o 50@& gksxkA vuqlwfr tkfr@vuqlwfr tutkfr ds fy, ;g 'kqYd :- 20@& gksxkA mDr 'kqYd iz'kklfud vf/kdkjh] jkT; 'kSf{kd vuqla/kku vkSj izf'k{k.k ifj"kn] mo izo y[kuÅ ds in uke ls cSad Mªk¶V vkosnu i= ds lFk ns; gksxk ¼45½ vH;fFkZ;ksa ls vkeaf=r vkosnu&i= ds fu/kkZfjr izk:i esa gh leLr vko';d lwpuk,a ekaxh tk;saxh rFkk dksbZ izek.k&i= layXu djus dh O;oLFkk ugha j[kh tk;sxhA mDr izk:i esa vH;fFkZ;ksa dh vksj ls vafdr fooj.k dh lR;rk ds lEcU/k esa ;g ?kks"k.kk i= 'kiFk&i= ds izk:i esa izkIr fd;k tk;sxk ftlesa vH;FkhZ dh vksj ls ;g vUMjVsfdaX nh tk;sxh fd ;fn vafdr fooj.k vLR; ik;s tk;sxs rks u dsoy mldk vH;FkZu fujLr dj fn;k tk;sxk] vfiRq mlds fo:) oS/kkfud dk;Zokgh Hkh dh tk ldrh gSA ¼46½ vkosnudsZvkksa dks ;g Hkh ?kks"k.kk vkosnu&i= esa djuh gksxh fd tks fooj.k mUgksus vkosnu i= esa vafdr fd;s gSa muls lEcU/kr izek.k&i=@ vad i= vkosnu djus dh frFk ds iwoZ muds ikl miyC/k gSA vkosnu&i= izsf"kr djus ds fnukad ds ckn ds fuxZr izek.k&i=@ vad i= ekU; u gksaxs ¼47½ fof'k"V choVholho izf'k{k.k gsrq vH;FkhZ dh vk;q ,d tqykbZ] 2004 dks U;wure 18 o"kZ dh gksuh pkfg, vkSj 35 o"kZ ls vf/kd ugha gksuh pkfg,A vuqlwfr tkfr;ksa] vuqlwfr tutkfr;ksa] fiNM+s oksZ ds vH;fFkZ;ksa vkSj Lora=rk laxzke lsukfu;ksa ds vkfJrksa dh fLFkfr esa mPprj vk;q lhek esa ikap o"kZ ,oa HkwriwoZ lSfud ds ekeys esa rhu o"kZ f'kfFkyuh; gksxh ¼48½ miyC/k fjfDr;ksa ds izfr 50 izfr'kr vH;FkhZ foKku oxZ ds rFkk 50 izfr'kr vH;FkhZ lkfgR;d oxZ ds p;fur fd;s tk;saxsA bls lFk gh miyC/k fjfDr;ksa ds lkis{k

50 izfr'kr efgykvska ,oa 50 izfr'kr iq:"kksa dk p;u fd;k tk;sxkA 1/49 1/2 vH;fFkZ;ksa ds gkbZLdwy] b.VjehfM,V] Lukrd ds led{k ,oa ch-,M-@ ,y-Vh- ds izkIrkadks ds izfr'kr ds ;ksx ds vk/kkj ij vkj{k.k lEcU/kh O;oLFkkvksa dks n`f"Vxr j[krs gq, jkT; Lrjh; Js"Brk lwph rS;kj dh tk;sxhA 1/410 1/2 jkT; ljdkj }kjk vH;fFkZ;ksa ds p;u esa fofHkUu tkfr;ksa@ oxksZ dks vuqeU; vkj{k.k iznku fd;k tk,xk] ysfdu vH;fFkZ;ksa ds izkIrkadks ds izfr'kr ds ;ksx ds vk/kkj ij mDror~ p;u dh frfFk dks jkT; ljdkj dk tks vkj{k.k uhfr izHkkoh gksxh] ogh bl p;u ij Hkh ykxw gksxhA 1/411 1/2 fofk"V ch-Vh-lh- izf'k{k.k ds nkSjku dksbZ izf'k{k.k 'kqYd ugh fy;k tk;sxkA 1/412 1/2 izns'k 'kklu }kjk fufnZ"V ds izfr fofk"V ch-Vh-lh- izf'k{k.k gsrq p;fur vH;fFkZ;ks dks :- 2500 dk Nk=o`fRr 1/4LVkbZis.M 1/2 izfrekg ns; gksxkA ;g Nk=o`fRr 1/4LVkbZis.M 1/2 vH;FkhZ dks rc rd vuqeU; jgsxk] tc rd foHkx }kjk Js"Brk Øe esa okafNr izf'k{k.k vH;FkhZ }kjk iw.kZ dj jkT; 'kSf{kd vuqla/kku ,oa izf'k{k.k ifj"kn ds fu;a=k esa jftLV<sup>a</sup>kj] foHkxh; ijh{kk,a] m-iz- }kjk vk;ksftr fyf[kr rFkk iz;ksxkRed ijh{kk mRrh.kZ dj visf[kr izek.k i= izkIr dj ifj"knh; izkFkfed fo|ky;ksa esa lgk;d v;/kid ds in ij fu;fer fu;qfDr izkIr ugha dj ysaxsA 1/413 1/2 p;fur vH;FkhZ dks izf'k{k.k dk;ZØe ds iath;u ds le; vkosnu&i= esa mfYyf[kr leLr izek.k&i=ksa dh ewy izfr;kW izek.ku gsrq izLrqr djuh gksxhA 1/414 1/2 lHkh vkosnurdK vH;FkhZ vius x`g tuin ds ftyk f'k{kk ,oa izf'k{k.k laLFkku esa gh vkosnu djsaxsA p;u gsrq fu/kkZfjr le;&ljkf.kh funs'kd] jkT; 'kSf{kd vuqla/kku vkSj izf'k{k.k ifj"kn }kjk foKku izlkj.k dh frfFk 24 tuo]h] 2004 izkFkZuk&i= izkIr gksus dh vfUre frfFk 16 Qjoh] 2004 vkosnu&i=kas dks NkWWuk ,oa lwph cukuk 1 ekpZ] 2004 xq.kkadks dk fu/kkZj.k ,oa p;u 1 vizSy] 2004- ifj.kke dh ?kks"k.kk 7 vizSy] 2004- izek.k&i=ksa@ vad&i=ksa vkfn dh tkap e.Myh; lfejr }kjk vizSy 2004- izf'k{k.k 15 ebZ] 2004 d`i;k mijksDrkuqlkj dk;Zokgh lqfuf'pr djsaA Hkonh;] 1/4uhjk ;kno 1/2 izeq[k lfpo] f'k{kk la[k& 159 1/41 1/2 @79&5&2004 rn~fnukad izfrfyfi fuEufyf[kr dks lwpuk ,oa vko';d dk;Zokgh gsrq iszf"kr%& 1- jkT; ifj;kstuk funs'kd] mRrj izns'k lHkh ds fy;s ifj;kstuk ifj"kn] mRrj izns'k] y[kuÅA 2- lfpo] mRrj izns'k csfld f'k{kk ifj"kn] bykgkcknA 3- jftLV<sup>a</sup>kj] foHkxh; ijh{kk;sa] mRrj izns'k] bykgkcknA 4- xkMZ QkbyA vkKk ls] 1/4gfjjkt fd'kksj 1/2 lfpo"

16. The aforesaid G.O. was amended by G.O.17.01.2004 only to the extent that application by all candidates shall be submitted to District Institute of Education and Training (for short 'DIET') in their own district. The said G.O. was further amended by G.O. dated 20.01.2004 providing that all applicants shall submit their applications in "S.C.E.R.T., Lucknow". Accordingly, an advertisement dated 22.01.2004 was issued inviting applications for Special BTC Training, 2004. Subsequently, vide G.O. No.533/79-5-2004-127/97 T.C., dated 20.02.2004, the earlier G.O. dated 14.01.2004 was modified as under:

"la[k % 533 @ 79&5&2004&127@ 97 Vholho izs"kd] gfjjkt fd'kksj lfpo moizo 'kkluA lsok esa] 1- funs'kd] jkT; 'kSf{kd vuqla/kku ,oa izf'k{k.k ifj"kn] moizo] y[kuÅA 2- f'k{kk funs'kd 1/4csfld 1/2] moizo] fu'kkrxat] y[kuÅA f'k{kk vuqHkx&5 y[kuÅ % fnukad % Qjoh 20] 2004 fo"k;%& moizo csfld f'k{kk ifj"kn }kjk lapkfy izkFkfed fon~;ky;ksa esa lgk;d v;/kidksa dh O;oLFkk ds laca/k esaA egksn;] mi;ZqDr fo"k; ds laca/k esa eq>s ;g dgus dk funs'k gqv kS fd moizo csfld f'k{kk ifj"kn }kjk lapkfy izkFkfed fon~;ky;ksa esa fjDr lgk;d v;/kidksa ds inkSaj ij cho,Mo@ ,yoVho

;ksX;rk/kkjH vH;fFkZ;ksa dks fof'k"V choVholho dk izf'k{k.k fnykdj p;u fd;s tkus ls lacaf/kr 'kklukns'k la[k; 159@79&5&2004&127@97 Vhlh] fnukad 14 tuojh 2004 esa Jh jkT;iky fuEufyf[kr la'kks/ku fd;s tkus dh Lohd`fr iznku djrs gaSA ¼41½ cho,Mo@ ,yoVho vH;fFkZ;ksa ds vfrfjDr Lukrd 'kSf{k d ;ksX;rk okys lhoiho,Mo] Mhoiho,Mo ,oa choiho,Mo izf'k{k.k izkIr ,sls vH;FkhZ Hkh mi;qZDr fof'k"V choVholho izf'k{k.k gsrq vkosnu djus ds fy;s ik= gksaxs] ftUgksaus izns'k esa lapkfyr ekU;rk izkIr fo'ofon~;ky;ksa rFkk jkT; n~okjk lapkfyr egkfon~;ky;ksa@ izf'k{k.k egkfon~;ky;ksa ls laLFkkxr Nk= ds :i esa izf'k{k.k izkIr fd;k gksA ¼42½ fof'k"V choVholho izf'k{k.k gsrq vH;FkhZ dh vk;q 1 tqykbZ 2004 dks U;wure 18 o"kZ dh gksuh pkfg;s vkSj 40 o"kZ ls vf/kd ugha gksuh pkfg;sA vuqlwfr tkfr] vuqlwfr tutkfr;ksa] finM+s oxksZ ds vH;fFkZ;ksa vkSj Lora=rk laxzke lsukfu;ksa ds vkfJrksa dh fLFkfr esa mPprj vk;q lhek esa 5 o"kZ ,oa HkwriwoZ lSfud ds ekeys esa 3 o"kZ f'kfFkyuh; gksxhA 2& mijksDr ds Oe esa fof'k"V choVholho izf'k{k.k gsrq vH;FkhZ ds p;u dh dk;Zokgh rFkk izf'k{k.k dh O;oLFkk fuEufyf[kr eksZ funks'kksa] 'krksZ ,oa izfreU/kksa ds v/khu dh tk;sxhA ¼41½ funks'kd] jkT; 'kSf{k d vuqla/kku vkSj izf'k{k.k ifj"kn }kjk izns'k ds fofHkUu lepkj&i=kas esa O;kid izpkj&izlkj ds ek;/e ls ch-,M-@ ,y-Vh-] choiho,Mo] lhoiho,Mo ,oa Mhoiho,Mo mRrh.kZ vH;fFkZ;ksa ls vkosnu&i= ekaxs tk;saxsA ¼42½ jk"Vah; v/;kid f'k{kk ifj"kn }kjk ekU;rk izkIr@vuqeU; fo'ofon~;ky;ksa] ekU;rk izkIr egkfon~;ky;ksa rFkk jkT; ljdkj@ dsUnz ljdkj }kjk lapkfyr egkfon~;ky;ksa@ izf'k{k.k egkfon~;ky;ksa ls laLFkkxr cho,Mo@ ,yoVho izf'k{k.k vH;FkhZ rFkk Lukrd 'kSf{k d ;ksX;rk okys lhoiho,Mo] Mhoiho,Mo ,oa choiho,Mo izf'k{k.k izkIr ,sls vH;FkhZ ftUgksaus izns'k esa lapkfyr@ izf'k{k.k egkfon~;ky;ksa ls laLFkkxr Nk= ds :i esa izf'k{k.k izkIr fd;k gks gh lanHkZxr p;u ds fy;s vgZ gksaxsA ¼43½ lHkh vkosnurdK&vH;FkhZ dk mRrj izns'k dk ewy fuokl ¼4Mksfelkby½ gksuk vfuok;Z gksxkA mRrj izns'k ds x`g tuin ds vf/kokl izek.k i= ds vHkko esa vH;FkhZ vugZ gksaxs vkSj ,sls vH;FkhZ dk vH;FkZu Lor% gh fujLr gks tk;sxkA ¼44½ fof'k"V ch-Vh-lh- izf'k{k.k gsrq vkosnu 'kqYd : 50@& gksxkA vuqlwfr tkfr@ vuqlwfr tutkfr ds fy; ,g 'kqYd :- 20@& gksxkA mDr 'kqYd iz'kklfud vf/kdkjh] jkT; 'kSf{k d vuqla/kku vkSj izf'k{k.k ifj"kn] m-iz- y[kuÅ ds in uke ls cSad M<sup>a</sup>k¶V vkosnu i= ds lkFk ns; gksxkA ¼45½ vH;fFkZ;ksa ls vkeaf=r vkosnu&i= ds fu/kkZfjr izk:i esa gh leLr vko';d lwpuk,a ekaxh tk;saxh rFkk dksbZ izek.k&i= layXu djus dh O;oLFkk ugha j[kh tk;sxhA mDr izk:i esa vH;fFkZ;ksa dh vksj ls vafdr fooj.k dh lR;rk ds lEcU/k esa ;g ?kks"k.kk i= 'kiFk&i= ds ik:i esa izkIr fd;k tk;sxk ftlesa vH;FkhZ dh vksj ls ;g vUMjVsfdaX nh tk;sxh fd ;fn vafdr fooj.k vLR; ik;s tk;saxs rks u dsoy mldk vH;FkZu fujLr dj fn;k tk;sxk] vfrq mlds fo:) oS/kkfud dk;Zokgh Hkh dh tk ldrh gSA ¼46½ vkosnurdKZvkas dks ;g Hkh ?kks"k.kk vkosnu&i= esa djuh gksxh fd tks fooj.k mUgkasus vkosnu i= esa vafdr fd;s gS muls lEcU/kr izek.k&i=@ vad i= vkosnu djus dh frfFk ds iwoZ muds ikl miyC/k gSA vkosnu&i= izsf"kr djus ds fnukad ds ckn ds fuxZr izek.k&i=@ vad i= ekU; u gksaxsA ¼47½ fof'k"V choVholho izf'k{k.k gsrq vH;FkhZ dh vk;q ,d tqykbZ] 2004 dks U;wure 18 o"kZ dh gksuh pkfg, vkSj 40 o"kZ ls vf/kd ugha gksuh pkfg,A vuqlwfr tkfr;ksa] vuqlwfr tutkfr;ksa] finM+s oxksZ ds vH;fFkZ;ksa vkSj Lora=rk laxzke laukfu;ksa ds vkfJrksa dh fLFkfr esa mPprj vk;q lhek esa ikap o"kZ ,oa HkwriwoZ lSfud ds ekeys esa rhu o"kZ f'kfFkyuh; gksxhA ¼48½ miyC/k fjDr;ksa ds izfr 50 izfr'kr vH;FkhZ foKku oxZ ds rFkk 50 izfr'kr

vH;FkhZ lkfgfR;d oxZ ds p;fur fd;s tk;saxsA blDs lkFk gh miyC/k fjfDr;ksa ds lkis{k 50 izfr'kr efgykvsA ,oa 50 izfr'kr iq:"kksa dk p;u fd;k tk;sxkA ¼9½ vH;fFkZ;ksa ds gkbZLdwy] b.VjehfM,V] Lukrd ds led{k ,oa ch-,M-@ ,y-Vh-] choiho,Mo] lhoiho,Mo ,oa Mhoiho,Mo ds izkIrkadksa ds izfr'kr ds ;ksx ds vk/kkj ij vkj{k.k lEcU/kh O;oLFkkvksa dks n`f"Vxr j[krs gq, jkT; Lrjh; Js"Brk lwph rS;kj dh tk;sxhA ¼10½ jkT; ljdkj }kjk vH;fFkZ;ksa ds p;u esa fofHkUu tkfr;ksa@ oxksZ dks vuqeU; vkj{k.k iznku fd;k tk,xk] ysfdu vH;fFkZ;ksa ds izkIrkadks ds izfr'kr ds ;ksx ds vk/kkj ij mDror~ p;u dh frfFk dks jkT; ljdkj dh tks vkj{k.k uhfr izHkkoh gksxh] ogh bl p;u ij Hkh ykxw gksxhA ¼11½ fof"V ch-Vh-lh- izf'k{k.k ds nkSjku dksbZ izf'k{k.k 'kqYd ugha fy;k tk;sxkA ¼12½ izns'k 'kklu }kjk fufnZ"V ds izfr fof"V ch-Vh-lh- izf'k{k.k gsrq p;fur vH;fFkZ;ksa dks :- 2500 dk Nk=o`fRr ¼LVkbZis.M½ izfrekg ns; gksxkA ;g Nk=o`fRr ¼LVkbZis.M½ vH;FkhZ dks rc rd vuqeU; jgsxk] tc rd foHkkx }kjk Js"Brk Øe esa okafNr izf'k{k.k vH;FkhZ }kjk iw.kZ dj jkT; 'kSf{kd vuqla/kku ,oa izf'k{k.k ifj"kn ds fu;a=.k esa jftLVªkj] foHkkxh; ijh{kk,a] m-iz-] }kjk vk;ksfr fyf[kr rFkk iz;ksxkRed ijh{kk mRrh.kZ dj visf{kr izek.k i= izkIr dj ifj"kn; izkFkfed fo|ky;ksa esa lgk;d v/;kid ds in ij fu;fer fu;qfDr izkIr ugha dj ysaxsA ¼13½ p;fur vH;FkhZ dks izf'k{k.k dk;ZØe ds iath;u ds le; vkosnu&i= esa mfYyf[kr leLr izek.k&i=ksa dh ewy izfr;kW izek.ku gsrq izLrqr djuh gksxhA ¼14½ LHkh vkosnudsZ vH;FkhZ jkT; 'kSf{kd vuqla/kku vkSj izf'k{k.k ifj"kn eq[;ky;] tsoohoVholho] dSEil] y[kuÅ eas gh vkosnu djsaxsA 'kklukns'k la[;k 159@79&5&2004&127@97Vholho fnukad 14 tuojh 2004 ds lanHkZ@Øe esa iwoZ esa tks vkosnu i= jkT; 'kSf{kd vuqla/kku vkSj izf'k{k.k ifj"kn moizo y[kuÅ esa izkIr gq, gksaxs mudks vLohdkj ugh fd;k tk;sxk vfiRq p;u djrs le; mudks Hkh lfEefyr djrs gq, mu ij Hkh fopkj fd;k tk;sxkA p;u gsrq fu/kkZfjr le;&lkfj.kh funs'kd] jkT; 'kSf{kd vuqla/kku vkSj izf'k{k.k ifj"kn }kjk foKkiu izlkj.k dh frfFk 23 Qojh] 2004 izkFkZuk&i= izkIr gksus dh vfUre frfFk 15 ekpZ] 2004 vkosnu&i=ksa dks NkWWuk ,oa lwph cukuk 31 ekpZ] 2004 xq.kkadks dk fu/kkZj.k ,oa p;u 20 vizSy] 2004- ifj.kke dh ?kks"k.kk 30 vizSy] 2004- izek.k&i=ksa@ vad&i=ks vkfn dh tkap e.Myh; lfefr }kjk ebZ 2004- izf'k{k.k 15 twu] 2004 d`i;k mijksDrkuqlkj dk;Zokgh lqfuf'pr djsaA Hkonh;] ¼4gfjjkt fd'kksj½ lfpo la[;k& 533¼41½@79&5&2004 rn~fnukad izfrfyfi fuEufyf[kr dks lwpuk ,oa vko';d dk;Zokgh gsrq iszf'kr%& 1- jkT; ifj;kstuk funs'kd] mRrj izns'k LHkh ds fy;s ifj;kstuk ifj"kn] mRrj izns'k] y[kuÅ 2- lfpo] mRrj izns'k csfld f'k{k ifj"kn] bykgkcknA 3- jftLVªkj] foHkkxh; ijh{kk;sa] mRrj izns'k] bykgkcknA 4- xkMZ QkbyA vkKk ls] ¼4gfjjkt fd'kksj½ lfpo"

17. In view of the afore-quoted new G.O. dated 20.02.2004, a fresh advertisement dated 21.02.2004 was issued by "Rajya Shaikshik Anusandhan Aur Prashikshan, U.P." (hereinafter referred to as 'the Training Board'), as under:

"jkT; 'kSf{kd vuqla/kku vkSj izf'k{k.k ifj"kn] moizo foKfir jk"Vªh; v/;kid f'k{k ifj"kn }kjk ekU;rk izkIr@vuqeU; fo'ofon~;ky;ksa] ekU;rk izkIr egkfon~;ky;ksa rFkk jkT; ljdkj }kjk lapkfyR@LFkkfir egkfon~;ky;ksa@izf'k{k.k egkfo/kky;ksa ls laLFkkxr ch-ih-,M+@Mh-ih-,M-@lh-ih-,M- izf'kf[kr Lukrd ;ksX;rk/kkjh vH;fFkZ;ksa ls fof"V ch-Vh-lh- izf'k{k.k] 2004 ds fy;s vkosnu i= vkeaf=r fd;s tkrs gSA bl gsrq bPNqd ,oa



vgZ vH;FkhZ vius vkosnu i= fu/kkZfjr izk:i ij lHkh lwpukvksa lfgr bl izdkj Hksts fd iathd`r Mkd ls mudk vkosnu i= 15 ekpZ] 2004 rd funs'kd] jkT; 'kSf{kd vuqla/kku vkSj izf'k{k.k ifj"kn] tsochoVholho dSEil] fu'kkrxat] y[kuÅ 226007 dks vo'; izkIr gks tk,A Mkd?kj ds foyEc ds dkj.k mDr frfFk rFkk le; ds ckn izkIr gksus okys vH;fFkZ;ksa ds vkosnu i=ksa dks Lohdkj ugh fd;k tk;sxA bls fy, vH;FkhZ Lo;a mRrjnk;h gksaxsA cho,Mo@,yoVho izf'kf{kr Lukrd ;ksX;rk/kkjh vH;fFkZ;ksa ds fof'k"V choVholho izf'k{k.k 2004 gsrq lepkj i=ksa esa 22@23 tuo]h] 2004 dks izdkf'kr foKfIr esa vkosnu djus okys vH;fFkZ;ksa ds fy, vkosnu i= izkIr gksus dh vfUre frfFk 16 Qojh 2004 ls c<+k dj 15 ekpZ 2004 dh tkrh gSA iwoZ esa izdkf'kr foKfIr esa vH;fFkZ;ksa dh vk;q 1-7-2004 dks U;wure 18 o"kZ ,oa vf/kdre 35 o"kZ fu/kkZfjr dh x;h Fkh ftlesa vuqlwfpr tkfr;ksa] vuqlwfpr tutkfr;ksa] fiNM+s oxksZ ds vH;fFkZ;ksa vkSj Lora=rk laxzke lsukfu;ksa ds vkfJrksa ds fy;s mPprj vk;q lhek 5 o"kZ ,oa HkwriwoZ lSfudksa ds fy, 3 o"kZ rd f'kfFkyuh; FkhA lEizfr vH;fFkZ;ks dh mPprj vk;q lhek 1-7-2004 dks 40 o"kZ la'kksf/kr dh tkrh gS] ftlesa vuqlwfpr tkfr;ksa] vuqlwfpr tutkfr;ksa] fiNM+s oxksZ ds vH;fFkZ;ks vkSj Lora=rk laxzke lsukfu;ksa ds vkfJrksa dh fLFkfr esa mPprj vk;q lhek 5 o"kZ ,oa HkwriwoZ lSfudksa ds fy, 3 o"kZ rd f'kfFkyuh; gksxhA cho,Mo@,yoVho ;ksX;rk/kkjh vH;fFkZ;ks ds fy, 'ks"k 'krsZ] funsZ'k iwoZ izdkf'kr foKfIr ds vuqlkj ;Fkkor~ jgsaxhA ftu cho,Mo@,yoVho vFkok choiho,Moj] lhoiho,Moj ,oa Mhoiho,Moj vH;fFkZ;ksa us iwoZ esa izdkf'kr foKfIr ds vuqdze esa vkosnu i= izsf"kr fd;k gS] mUgsa iqu% vkosnu djus dh vko';drk ugh gSA 1-vk;q lhek&vH;FkhZ dh vk;q 1-7-2004 dks 40 o"kZ ls vf/kd u gksaA vuqlwfpr tkfr;ks] vuqlwfpr tutkfr;ksa] fiNM+s oxksZ ds vH;fFkZ;ksa vkSj Lora=rk laxzke lsukfu;ksa ds vkfJrksa dh fLFkfr esa mPprj vk;q lhek 5 o"kZ ,oa HkwriwoZ lSfudksa ds fy, 3 o"kZ rd f'kfFkyuh; gksxhA 2- fu/kkZfjr ;ksX;rk&jk"Vah; v/;kid f'k{k.k ifj"kn }kjk ekU;rk izkIr jkT; ljdkj }kjk lapkfyr@LFkkfir fo'ofon~;ky;ksa] ekU;rk izkIr egkfon~;ky;ksa@izf'k{k.k egkfon~;ky;ksa ls laLFkkxr ch-ih-,M-@Mh-ih-,M-@lh-ih-,M- izf'kf{kr Lukrd ;ksX;rk/kkjhA 3-vkj{k.k&vH;fFkZ;ksa ds izf'k{k.k gsrq p;u dh Js"Brk lwph rS;kj djrs le; mRrj izns'k 'kklu }kjk rn~le; ykxw vkj{k.k uhfr@fu;eksa ds vuqlkj vkj{k.k ns; gksxkA 4- vkosnu 'kqYd&js[kkafdr cSad M<sup>a</sup>k¶V ¼jk"Vah;d`r cSad ls fuxZr½ ds :i esa :o 50@&¼ipkl :i;s½ dh Qhl ¼vuqlwfpr tkfr@tutkfr ds fy, :o 20@&chl :i;s½ tks iz'kkldud vf/kdkjh] jkT; 'kSf{kd vuqla/kku vkSj izf'k{k.k ifj"kn] y[kuÅ ds inuke gksxkA 5- p;u izfdz;k&¼i½ vH;fFkZ;ksa dh Js"Brk lwph jkT; Lrj ij gkbZLdwy vFkok led{k] b.VjehfM,V vFkok led{k rFkk Lukrd vFkok led{k Lrj ds izkIrkadksa ds izfr'kr ,oa izf'k{k.k ;ksX;rk dh mRrh.kZ izkIrkadksa ds izfr'kr ds vk/kkj ij rS;kj dh tk;sxA ¼ii½ dgy fJDr inksa ds lkis{k 50 izfr'kr efgyk rFkk 50 izfr'kr iq:"k vH;fFkZ;ksa }kjk Js"Brk ds vk/kkj ij Hkjk tk;sxA efgyk rFkk iq:"k oxZ esa 50 izfr'kr foKku oxZ rFkk 50 izfr'kr dyk@vU; oxZ ds vH;FkhZ fy, tk;saxsA 6- vU; funsZ'k&¼i½ vkosnu i= iathd`r Mkd ls gh vfUre frfFk 15 ekpZ 2004 rd ifj"kn eq[;ky;] y[kuÅ esa izkIr dj;k tkldrk gSA fu/kkZfjr le; ds ckn vkosnu i= Lohdkj u gksaxs rFkk Mkd?kj ds foyEc ds dkj.k f'k{k. foHkx mRrjnk;h u gksxkA ¼ii½ ,d vH;FkhZ }kjk ,d gh vkosnu i= fn;k tk;sxA ,d ls vf/kd dh fLFkfr esa vkosnu i= fujLr ekuk tk;sxA ¼iii½ ,d fyQkQs esa dsoy ,d gh vkosnu i= Hkstk tk,A ¼iv½ fyQkQs ds Åij Li"V :i ls Pfof'k"V ch-Vh-lh- izf'k{k.k 2004 x`g tuin dk uke-----ß vfuok;Zr% vafdr fd;k tk,A ¼v½ bl foKku ds QyLo:i fof'k"V

ch-Vh-lh- izf'k{k.k gsrq p;fur vH;fFkZ;ksa dks e.My@izns'k ds fdllh tuin esa izf'k{k.k dh lqfo/kk dh miyC/krk ds vk/kkj ij vkaofVr fd;k tk;sxkA ¼vii½ vkosnu i= fu/kkZfjr izk:i esa eksVs dkxt ij ,d gh i`"B ij gksuk vfuok;Z gSA ¼vii½ vkosnu i= dh lwpuk,a LoPN fy[kkoV esa gksa rFkk tks lwpuk vH;FkhZ ls lEcU/kr u gks mls Pxb fd;k tk,A ¼viii½ vkosnu i= ds lkFk fu/kkZfjr 'kqYd ds :i esa ns; cSad Mªk¶V ds vykok vkSj dksbZ vfHkys[k ¼vad i=@izek.k i=½ layXu ugh fd;s tk;saxsA tkap ds le; vfHkys[k lR; ik;s tkus ij gh fof'k"V ch-Vh-lh- izf'k{k.k dh vuqefr iznku dh tk;sxhA dksbZ Hkh vfHkys[k vlR; ik;s tkus ij vH;FkhZ dk p;u Lor% fujLr gks tk;sxk vkSj mlds fo:) fu;ekuqlkj oS/kkfud dk;Zokgh dh tk;sxhA ¼ix½ vkosnu i= esa fn;s x;s ?kks"k.kk dh frfFk ds ckn dh frfFk dk dksbZ vad i=@izek.k i= ekU; ugh gksxkA ¼x½ vH;FkhZ dk mRrj izns'k dk ewy fuoklh ¼Mksfelkby½ gksuk vfuok;Z gksxkA tkfr izek.ki= rFkk x`g tuin dk vf/kokl izek.ki= l{ke vf/kdkjh }kjk fuxZr gksuk pkfg,A mRrj izns'k ds x`g tuin ds vf/kokl izek.k i= ds vHkko esa vH;FkhZ vugZ gksaxs vkSj ,sls vH;FkhZ dk vH;FkZu Lor% gh fujLr gks tk;sxkA funs'kd jkT; 'kSf{kd vuqla/kku vkSj izf'k{k.k ifj"kn] moizo fu'kkrxat] y[kuÅA fof'k"V ch-Vh-lh- izf'k{k.k 2004 gsrq vkosnu i= dk izk:i 1- vH;FkhZ @ vH;fFkZu h d k u k e ¼fgUnh esa ½

¼ v a x z s t h d s d S f i V y y s V l Z e s a ½

2- fyax & ¼1½ efgyk ¼2½ iq:"k

3- firk@ifr dk uke

4 - x ` g t u i n d k i r k

xzke@eksgYyk ----- Mkd?kj ----- tuin ----- fiudksM

5- tUefrFk ¼vaxzsth vadksa esa½ frfFk ekg o"kZ

6- vk;q 1-7-2004 dks o"kZ ekg fnu

7- vkj{k.k oxZ@Js.kh ¼d½ ¼41½ lkekU; ¼42½ vuqlwfpr tkfr ¼43½ vuqlwfpr tutkfr ¼44½ fiNM+h tkfr ¼k½ ¼45½ fodykax ¼46½ Lora=rk laxzke lsukuh ds vkfJr ¼47½ HkwriwoZ lSfud 8- 'kSf{kd ;ksX;rk,a % 1- foKku oxZ 2- dyk oxZ 3- vU;oxZ Ø-la- mRrh.kZ ijh{k k laLFkk dk uke o"kZ Js.kh izkIrkad iw.kkZad izfr'kr 1- gkbZLdwy@led{k -----

2- b.VjehfM,V@led{k

3- \*Lukrd@led{k foKku@dyk@vU; oxZ

4- \*cho,M@,yoVh@ch-ih-,M-@Mh-ih-,M-@lh-ih-,M- lS)kfUrd

$\frac{1}{4}$ tkS lEcfU/kr u gks mls dkV nsaA $\frac{1}{2}$

iz;ksxkRed

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vkosnu 'kqYd dk fooj.k

cSad dk uke

cSad M<sup>a</sup>k¶V dk uEcj rFkk fnukad

cSad

fVii.kh% lHkh lwpuk;sa LoPN ,oa Li"V iBuh; fy[kh tk;A dzeKad 2] 7 rFkk 8 ls lEcfU/kr lwpuk dze'k% fyax] vkj{k.k oxZ@Js.kh rFkk 'kSf{kd ;ksX;rk,a ds vUrxZr oxZ ds iwoZ mfYyf[kr la[;k dk mYys[k lEcfU/kr ckDl esa fd;k tk,A ?kks"k.kk eSa 'kiFkiwoZd vfHkdFku djrk@djrH gwW fd vkosnu i= ds dzeKad 1 ls 9 rd mijksDr leLr fooj.k lR; gSa rFkk dksbZ rF; fNik;k ugh x;k gSA ;fn p;u ds iwoZ vFkok ckn esa tkap ds mijUr dksbZ Hkh fooj.k vLR; vFkok xyr ik;k x;k rks lEcfU/kr laLFkku@izkf/kdkjh dks vf/kdkj gksxk fd esjs vH;FkZu dks u dsoy fujLr dj nsa] vfirq esjs fo:) oS/kkfud dk;Zokgh Hkh djsaA eS ;g Hkh ?kksf"kr djrk@djrH gwW fd tks lwpuk,a vkosnu i= ds dzeKad 4 ls 8 rd vafdr gS muls lEcfU/kr ewy izek.k i= @vad i= vkosnu djs dh frfFk esa esjs ikl miyC/k gSA layXud% mDror~ cSad M<sup>a</sup>k¶V uao -----

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gLrk{kj

LFkku  $\frac{1}{4}$ tuin dk uke $\frac{1}{2}$

$\frac{1}{4}$ vH;FkhZ@vH; fFkZuh $\frac{1}{2}$ "

18. Subsequently, the State Government issued an order dated 02.07.2004 issuing directions as under:

"isz"kd] gfjjkt fd'kksj] lfpo] mRrj izns'k] 'kkluA lsok esa] funs'kd jkT; 'kSf{kd vuqla/kku ,oa izf'k{k.k ifj"kn] moizo] y[kuÅA i=kad % f'k{kk vuqHkx&5 fnukad % 02 tqykbZ] 2004 fo"k; % fof'k"V choVholho izf'k{k.k 2004 ds lEcU/k esaA egksn;] mi;qZDr fo"k;d 'kklu dks lEcksf/kr vkids i= la[;k jk'kSo@2423@2004&05 fnukad 16 twu] 2004 ds lUnHkZ esa eq>s ;g dgus dk funs'k gqv kS fd iz'uxr izdj.k esa 'kklu Lrj ij lE;d fopkjksijUr fuEukuqlj dk;Zokgh fd, tkus dk fu.kZ; fy;k x;k gSS& 1- vU; jkT;ksa ls lacaf/kr choiho,Mo] lhoiho,Mo] lhoiho,Mo izf'k{k.k izkIr vH;fFkZ;ksa] ftUgsa eko mPp U;k;ky; esa p;u eas 'kkfey fd;s tkus ds vkns'k fn;s x;s gS vkSj ;fn mUgksaus jk"V<sup>a</sup>h; v/;kid f'k{kk ifj"kn ls ekU;rk izkIr izf'k{k.k laLFkkyksa ls ;ksX;rk izkIr dh gS] ds ekeys esa eko mPp U;k;ky; ds vkns'k dk vuqiky fd;k tk;s] fdUrq ;g NwV dsoy izf'kZx.kksa dks gh vuqeU; gksxhA 2- ,slh izf'k{k.k laLFkk;sa tks orZeku esa vLrRo esa u gksus ds dkj.k jk"V<sup>a</sup>h; v/;kid f'k{kk ifj"kn dh lwph esa ugh gS ysfdu

mu laLFkkuksa ds vH;FkhZ miyC/k gS ;Fkk jkt dh; jpukRed izf'k{k.k egkfon~;ky;] y[kuÅ jkt dh; csfld V<sup>a</sup>sfuax dkyst] okjk.klh vkfna ;g laLFkk;sa jkT; ljdkj }kjk lapkfyr FkhA blh izdkj dfri; v'kkldh; izf'k{k.k egkfon~;ky; Hkh jkT; ljdkj dh lgk;rk ls lapkfyr Fks] ysfdu mudk uke vc jk"V<sup>a</sup>h; v/;kid f'k{kk ifj"kn dh lwph esa ugha gS D;ksafd og 'kklu }kjk lekIr dj fn;s x;s gSaA ,sls izf'k{k.k laLFkkvksa ls mRrh.kZ vH;fFkZ;ksa ds laca/k esa mfpr gksxk fd mu vH;fFkZ;ksa dks p;u esa 'kkfey fd;k tk, vkSj muds vH;FkZu ij fopkj fd;k tk,A 3- lhoiho,Mo izf'k{k.k o"nKZ 1996&97 ls lekIr fd;k tk pqdk gSA ysfdu mu izf'k{k.k laLFkkvksa ls mRrh.kZ vH;FkhZ vHkh Hkh miyC/k gS tcfD mudk uke jk"V<sup>a</sup>h; v/;kid f'k{kk ifj"kn }kjk tkjh lwph esa ugh gSAvr% tks laLFkk, jkT; ljdkj }kjk ekU;rk izkIr muls izf'k{k.k izkIr vH;fFkZ;ksa dks 'kkfey fd;k tk,A 2& mijksDr ds vfrfjDr fuEu fcUnqvksa ij Hkh dk;Zokgh lqfuf'pr dh tk, & ¼d½ izns'k ds leLr ftyk f'k{kk ,oa izf'k{k.k laLFkkvksa eas 15 tqykbZ] 2004 ls 100&100 ds nks Qsjksa esa izf'k{k.k izkjEHk fd;k tk;sa ftyk f'k{kk ,oa izf'k{k.k laLFkku esa fy, tkus okys ls)kfUrd izf'k{k.k ds fy, vkj{k.k dks n`f"Vxr j[krs gq, Js"Brk ds dze ds vuqlkj vH;fFkZ;ksa dks Hkstk tk,A ¼k½ 'ks"k lHkh p;fur vH;fFkZ;ksa dks 15 tqykbZ] 2004 esa csfld f'k{kk ifj"kn }kjk lapkfyr izkFkfed fon~;ky;ksa esa iz;ksxkRed izf'k{k.k gsrq lEc) dj fn;k tk,A tSls&tSls ftyk f'k{kk vkSj izf'k{k.k laLFkkuksa esa muds izf'k{k.k djkus ds LFkku fjdR gksa] bUgsa Js"Brk dze esa vkj{k.k dks /;ku esa j[krs gq, izf'k{k.k gsrq Hkstk tk,A ¼x½ ftu izf'k{k.k.kkfFkZ;ksa dk rhu ekg dk ls)kfUrd rFkk rhu ekg dk iz;ksxkRed izf'k{k.k lekIr gksrk tk,xk] mudh ijh[kk dh O;oLFkk] ijh[kk fu;ked izkf/kdkjh ds ek/;e ls dh tk,xhA buds ijh[kk mRrh.kZ djus ds mijUr fu;eksa ds vUrxZr fu;qfDr lgk;d v/;kid ds in ij dh tk,A ¼?½ mu izkFkfed fon~;ky;ksa ftuesa f'k{kdksa ds in fjdR gSa rFkk f'k{kdksa ds vHkko esa f'k{k.k dk;Z izHkkfor gks jgk gSA cUn izkFkfed fon~;ky;ksa] ,dy v/;kid fon~;ky;ksa rFkk f'k{kdksa ds vHkko okys fon~;ky;ksa dh lwph f'k{kk funs'kd ¼csfld½ ls izkIr gksus ij iz;ksxkRed izf'k{k.k gsrq fof'k"V choVholho izf'k{k.kkfFkZ;ksa dks mu fon~;ky;ksa ls lEc) fd;k tk,A d`i;k mijksDrkuqlkj dk;Zokgh lqfuf'pr djrs gq, d`r dk;Zokgh ls 'kklu dks voxr djkus dk d"V djsaA Hkonh;

¼gffjkt fd'kksj½ lfpo la[;k% 2167¼41½@79&5&2004 rnf nukadA izfrfyfi%& fuEufyf[kr dks lwpukFkZ ,oa vko';d dk;Zokgh gsrq izsf"kr& 1- jkT; ifj;kstuk funs'kd] moizo lHkh ds fy, f'k{kk ifj;kstuk ifj"kn] fu'kkrxat] y[kuÅ 2- f'k{kk funs'kd ¼csfld½] mRrj izns'k] fu'kkrxat] y[kuÅ 3- lfpo] moizo] csfld f'k{kk ifj"kn] bykgkcknA vkKk ls] ¼fnus'k pUnz dukSft;k½ fo'ks"k lfpo"

19. It appears that thereafter, the applications pursuant to the advertisement dated 21.02.2004 were examined and a list of selected candidates was forwarded by the Director, Training Board to Principals of DIET vide letter dated 11.07.2004. Another letter No.3900-4048/ 2004-05 dated 11.07.2004 was issued by the Director, Training Board to District Basic Education Officers in Uttar Pradesh issuing certain instructions for examining the certificates before sanctioning them for attachment in prior schools for practical training. As per afore-quoted instructions dated 02.07.2004, the candidates who have completed their three months of "Saidhantik training" and three months practical training, would appear for examination which shall be conducted by the Controller of Examination (Pariksha Niyamak Pradhikari) and all those candidates who pass the

examination, shall be appointed as Assistant Teacher in accordance with Rules.

20. By order dated 07.03.2018 and 04.04.2018, this Court directed the Secretary Basic Education, Government of U.P. Lucknow to submit specific reply to five queries, which were replied by the aforesaid Secretary by personal affidavit dated 14.04.2018, as under:

_____ Queries _____	_____ Replied by Personal _____
Affidavit of Secretary, U.P. Basic Education Department, Government of U.P.	
L u c k n o w     d a t e d     1 4 . 0 4 . 2 0 1 8	

(a) Whether in appointment of the petitioners as assistant teachers, the State Government has followed the procedure provided in the U.P. Basic Education Teachers (Service) Rules, 1981 ?

6. That reply to query (a) of the said order is most respectfully submitted that the procedure provided in Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 were followed except notifying the vacancies to the employment exchange and notifying vacancies in two daily news papers having adequate circulation in the State as well as in the concerned district inviting applications from candidates possessing prescribed training qualification from the district concerned.

(b) If the answer to question No.(a) is in affirmative then; produce the copy of the advertisement inviting applications for appointment as assistant teachers.

8. That reply to query (b) of the said order is most respectfully submitted that no fresh advertisement inviting applications for appointment as assistant teacher was made but the advertisement made in daily newspaper in Amar Ujala dated 10.11.2005 was made for counselling and scrutinizing the documents for the purpose of appointment of successful candidates of Special B.T.C. Training 2004.

(c) What procedure was actually adopted by the State Government /Board in the appointment of the petitioners and others for filling up of 46,189 posts of assistant teachers?

10(xii) That on 22.08.2005 the Secretary, Government of U.P., issued a letter to the Director, Basic Education, Lucknow and the Director, S.C.E.R.T. Lucknow for appointment/ absorption of the successful trained candidates of Special B.T.C. Training 2004.

(xiii) That the Director, Basic Education/ Chairman, Basic Education Board, Uttar Pradesh issued a letter dated 31st October, 2005 for giving appointment to the successful candidates of Special B.T.C. Training 2004. In this letter it was categorically mentioned that the appointment of the Special B.T.C. 2004 candidates would be done strictly in accordance with the provisions of U.P. Basic Education Teachers (Service) Rules, 1981. In the aforesaid letter, direction was issued by the

Director, Basic Education U.P., Lucknow that the the procedure of U.P. Basic Education Teachers (Service) Rules, 1981 would be strictly followed. It was further clarified that the process for selection including advertisement etc, for these candidates had already been done by the S.C.E.R.T., in such circumstances there was no need of fresh advertisement inviting applications from the candidates. Along with the said letter, a copy of the U.P. Basic Education Teachers (Service) Rules, 2004 (10th Amendment) was enclosed. It was further mentioned in the said letter that according to the U.P. Basic Education Teachers (Service) Rules, 1981 for appointment of the teachers, a selection committee was constituted under the chairmanship of the principal of DIET. Therefore, before issuing appointment letters a direction was further issued to ascertain the convening of the district level selection committee and for verification of the certificates of the candidates. The candidates should be directed to appear along with the original documents.

(xv) That on 28.11.2005 a letter of Secretary, Government of Uttar Pradesh addressed to the Director, S.C.E.R.T. and Director, Basic Education, Lucknow was issued for appointment of successful candidates of Special B.T.C. Training 2004.

Note: Sub-paras (i) to (xi) and (xvi) have not been reproduced above since it mainly refers to various government orders, instructions and advertisement and most of them have already been narrated in foregoing paragraphs of this judgment.

(i) If any advertisement under Rule 14 of the U.P. Basic Education (Teachers) Services Rules, 1981, was actually issued, then whether by such an advertisement the applications were invited in terms of the Rule 14 of the Rules from persons possessing prescribed training qualification?

12. That reply to query (i) of the said order is most respectfully submitted that advertisement as contemplated under rule 14 of the U.P. Basic Education Teachers (Service) Rules, 1981 regarding notifying vacancies in Employment Exchange and in two news papers having adequate circulation with State as well as in concerned district inviting applications from candidates possessing prescribed training qualification from the district concerned, were not published, but one advertisement was given in Amar Ujala on 10.11.2005 inviting successful candidates of Special B.T.C. 2004 for counselling for the purpose of appointment and also because as direction was issued on 31.10.2005 by the Director, S.C.E.R.T. Lucknow that the procedure of U.P. Basic Education Teachers (Service) Rules, 1981 would be strictly followed. It was further clarified that the proceeding for selection including advertisement etc. for these candidates had already been done by the S.C.E.R.T., in such circumstances there was no need of fresh advertisement inviting applications from the candidates.

(ii) Whether any order of the State Government or a Government Order can override the specific provisions of Rules 8 and 14 of the Uttar Pradesh Basic Education (Teacher) Services Rules, 1981 framed under Section 19 of the Uttar Pradesh Basic Education Act, 1972?

14. That reply to query (ii) of the said order is most respectfully submitted that as per the settled law the Government order or any order of the State Government cannot override the rules 8 and 14 of the U.P. Basic Education Teachers (Service) Rules, 1981 framed under Section 19 of the Basic

Education Act, 1972.

(Emphasis supplied by me)

21. Rule 8 of the Service Rules, 1981 provides for educational qualification, Rule 9 provides for reservation, Rule 10 provides for relaxation for Ex-Service Men and certain other categories, Rule 13 provides for physical fitness, Rule 14 provides for determination of vacancy and process for recruitment, Rule 20 provides that all appointments made under these Rules shall be made by means of written orders as provided under the U.P. Basic Shiksha (Teachers) (Posting) Rule, 2008 (hereinafter referred to as the "Posting Rules, 2008"). The provisions of Rules 8, 14, 20 and 23 of the Service Rules, 1981, are reproduced below:

"8. (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 Qualification

(i) Mistress of Nursery School Certificate of Teaching (Nursery) from a recognized training institution in Uttar Pradesh or any other training qualification recognised by the Government as equivalent thereto.

(ii) Assistant Master and Assistant Mistress of Junior Basic School A Bachelor's Degree from a University established by law in India or a Degree recognised by the Government as equivalent thereto together with the training qualification consisting of a Basic Teacher's Certificate, Vishist Basic Teacher's Certificate (B.T.C.) two years BTC Urdu Special Training Course, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other training course recognised by the Government as equivalent thereto :

Provided that the essential qualification for a candidate who has passed the required training course shall be the same which was prescribed for admission to the said training course.

(2) The essential qualification of candidates for appointment to a post referred to in sub-clause (iii) and (iv) of clause (h) of Rule 5 for teaching Science, Mathematics, Craft or any language other than Hindi, and Urdu shall be as follows :-

(i) A Bachelor's Degree from a University established by Law in India or a Degree recognised by the Government as equivalent thereto with science, Mathematics, Craft or particular language, as the case may be, as one of the subjects, and

(ii) Training qualification consisting of a Basic Teacher's Certificate, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of teaching or any other training course recognised by the Government as equivalent thereto.

(3) The minimum experience of candidates for promotion to a post referred to in clause (b) of Rule 5 shall be as shown below against each -

(i) Headmistress of Nursery School At least five years' teaching experience as permanent Mistress of Nursery School

(ii) Headmaster or Headmistress of Junior Basic School and Assistant Master or Assistant Mistress of Senior Basic School At least five years teaching experience as permanent Assistant Mistress or Assistant Master of Junior Basic School, Assistant Master or Assistant Mistress of Junior Basic School and Assistant Master or Assistant Mistress of Senior Basic School.

(iii) Headmaster or Headmistress for Senior Basic School At least three years' experience as permanent Headmaster or Headmistress of Junior Basic School or permanent Assistant Master or Assistant Mistress of Senior Basic School as the case may be :

Provided that if sufficient number of suitable or eligible candidates are not available for promotion to the posts mentioned at serial numbers (ii) and (iii) the field of eligibility may be extended by the Board by giving relaxation in the period of experience.

(4) The essential qualification of candidates for appointment to the posts referred to in clause (a) and sub-clause (iii) and (iv) of clause (b) of Rule 5 for teaching Urdu language shall be as follows :-

(i) A Bachelor's Degree from a University established by Law in India or a Degree recognised by the Government as equivalent thereto with Urdu as one of the subjects.

Note. - A candidate who does not possess the aforesaid qualification in Urdu, shall be eligible for appointment, if he possesses a Master's degree in Urdu.

(ii) Basic Teacher's Certificate from any of the training centres in Lucknow, Agra, Mawana in district Meerut and Sakaldiha in district Chandauli established by the Government for imparting training for teaching Urdu or any other training qualification recognised by the Government as equivalent thereto.

(5) The essential qualifications of candidates having proficiency in Urdu for appointment to the posts referred to in sub-clause (ii) of clause (a) of Rule 5 for teaching in Urdu medium shall be as follows :-

(i) A Bachelor's Degree from a University established by Law in India or a Degree recognised by the Government as equivalent thereto. The qualifications for proficiency in Urdu will be such as may be prescribed from time to time by the



Government.

(ii) Training Qualification of two years B.T.C. Urdu special training course.

14. Determination of vacancies and preparation of list. - (1) 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, dependants of freedom fighters and other categories under Rule 9 and notify the vacancies to the Employment Exchange and in at least two newspapers having adequate circulation in the State as well as in the concerned district inviting applications from candidates possessing prescribed training qualification from the district concerned.

(2) The appointing authority shall scrutinise the applications received in pursuance of the advertisement and the names of candidates received from the Employment Exchange and prepare a list of such persons as appear to possess the prescribed academic qualifications and be eligible for appointment.

(3) The Regional Assistant Director of Education (Basic) may, on the application of a candidate, and for reasons to be recorded, direct that his name be included at the bottom of the list prepared under sub-rule (2).

(4) The names of candidates in the list prepared under sub-rule (2) shall then be arranged in such manner that the candidates who have passed the required training course earlier in point of time shall be placed higher than those who have passed the said training course later and the candidates who have passed the training course in a particular year shall be arranged in accordance with the quality points specified in the Appendix.

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

(6) The list prepared under sub-rule (2) and arranged in accordance with sub-rule (4) shall be forwarded by the appointing authority to the Selection Committee.

20. Appointment to be made by order. - All appointments made under these rules shall be made by means of written orders.

23. Probation. - (1) All persons on appointment in a substantive vacancy shall be placed on probation for a period of one year.

(2) The appointing authority may allow continuous service, rendered in an officiating or temporary capacity on a post included in the cadre of the service or on any other higher post under the Board to be taken into account for the purpose of computing the period of probation.

(3) The appointing authority may for reasons to be recorded, extend the period of probation in individual cases specifying the exact date up to which the extension is granted. Such extension shall not ordinarily exceed two years.

(4) If it appears to the appointing authority at any time during or at the end of the period of probation, as the case may be, that a probationer has not made sufficient use of his opportunities or has otherwise failed to give satisfaction, he may be reverted to his substantive post, if any, or if he does not hold a lien on any post, his services may be dispensed with.

(5) A person who is reverted or whose services are dispensed with under sub-rule (4) shall not be entitled to any compensation."

(Emphasis supplied by me)

22. In the case of Devendra Singh and others Vs. State of U.P. and others (2007) 9 SCC 491, Hon'ble Supreme Court considered the Government Order in question dated 14.01.2004 and provisions of the Service Rules, 1981 and held, as under:

" In order to resolve the controversy it is just and necessary to notice the salient features of the policy decision of the Government of Uttar Pradesh dated 14.1.2004. It is clear from a bare reading of the policy that the Government had resolved to arrange the Special BTC Training Course spread over a period of six months to all those 46,189 B.Ed./L.T. qualified candidates. The selection is for the purposes of imparting training and not recruitment into any service as such. Only such candidates who completed their training of B.Ed./L.T. as regular students in universities recognized by the National Teachers Education Board, recognized colleges and training institutes conducted by the State Government/ Central Government alone were eligible for the selection into the course. The policy provides the age of the applicant must be minimum of 16 years and not more than 35 years as on 1st July, 2004. However, some relaxation has been made in favour of scheduled caste, scheduled tribe, backward class candidates and others with which we are not concerned in this case. The most important feature of the policy is that a State level merit list is required to be prepared on the basis of percentage of marks obtained in High School considering the rules regarding reservation. The policy directs the payment of stipend of Rs. 2500/- per month to the selected candidates for the special BTC training until "he is duly appointed on the post of Assistant Teacher in the basic school after passing the written and practical examinations conducted by the Registrar, Departmental Examinations, Uttar Pradesh and obtaining the required certificate, under the control of State Council for Education Research and Training, on completing the required training in the merit process."

"10. The learned counsel for the appellants relying upon the statement made in the counter affidavit filed in these appeals wherein it is conceded that sub-rules (3) to (6) of Rule 14 are not deleted submitted that the matter should be sent back for

re-consideration of the High Court by duly applying the effect of sub-rules (3) to 6 of Rule 14 of the Rules. The submission was that the merit list is required to be prepared in accordance with sub-rules (3) to (6) of Rule 14 of the Rules. The submission in our considered opinion is totally misconceived. We have already noticed that the U.P. Basic Education (Teachers) Service Rules, 1981 deal with the post training scenario. The Rules deal with the selection and appointment of teachers from amongst the candidates already possessing the training qualifications. The Rules do not deal with the selection of the candidates into Basic Training Course. The reliance placed upon the said Rules by the appellants in support of their contention is totally untenable and unsustainable. These Rules do not have any bearing in the matter of selection of candidates into Basic Training Course, 2004. The policy decision of the Government dated 14.1.2004 deals with the arrangement of the Special BTC Training Course for the period of six months for those 46,189 B.Ed./L.T. qualified candidates. The process of selection of the candidates for the said training and the arrangement of the training is required to be conducted in accordance with the guidelines, directions, conditions and restrictions incorporated thereunder. None of the appellants qualified themselves for undergoing the said training course inasmuch as they were not selected as they were not found meritorious or over aged as the case may be. It is not demonstrated as to how the appellants were entitled for selection to undergo Special BTC Training Course, 2004. The validity of the policy decision dated 14.1.2004 is not impugned in these appeals."

(Emphasis supplied by me)

23. In Special Appeal No.274 of 2016, Jitendra Kumar Gautam and 50 others vs. State of U.P. and 3 others, decided on 02.05.2016, the claim of the petitioners that "once they have pursued, Special B.T.C. Course and have passed Teacher Eligibility Test, then in all eventuality they should be offered appointment referable to the vacancies against which they have received training for Special B.T.C. Course 2007 and 2008" was rejected by a Division Bench of this Court considering the provisions of Rules 8 and 14 of the Service Rules, 1981 as under:

"The recruitment of teachers in basic schools run by Uttar Pradesh Board of Basic Education is governed by statutory rules, namely, Uttar Pradesh Basic Education Teachers Service Rules, 1981 which provides recruitment, qualification and other conditions of service. Rule 8, as quoted above, provides for qualification to be possessed for appointment as Assistant Teacher in basic schools, Rule 14 provides for determination of vacancy and preparation of list for the post of Mistress of Nursery Schools and Assistant Master or Assistant Mistress of Junior Basic Schools and Rule 15 provides for notification of vacancies and preparation of list for certain posts of Assistant Masters of Senior Basic School and Mistress of Senior Basic Schools. Rule 16 provides for constitution of Selection Committee, Rule 17 provides for procedure for direct recruitment to post of teaching a language and Rule 17A provides procedure for direct recruitment to a post other than languages. There has been shortage of teachers in primary schools due to non availability of candidates possessing teachers

training qualification as prescribed under Rule 8. The State of U.P. issued various Government orders from time to time, initiating process for imparting special basic teachers training to large number of candidates and also imparted the same. In this context references are made to Special B.T.C. 1998, 2004, 2007-08 and 2010.

Petitioners claim is that once they have pursued, Special B.T.C. Course and have passed Teacher Eligibility Test, then in all eventuality they should be offered appointment referable to the vacancies against which they have received training for Special B.T.C. Course 2007 and 2008.

Issue that is being raised by the petitioners/appellant has no substance for the simple reason that identical challenge pertaining to Special B.T.C. 2004 has been repelled by the Apex Court in the case of Devendra Singh and others Vs. State of U.P. and others (2007) 9 SCC 491 by following order.

" In order to resolve the controversy it is just and necessary to notice the salient features of the policy decision of the Government of Uttar Pradesh dated 14.1.2004. It is clear from a bare reading of the policy that the Government had resolved to arrange the Special BTC Training Course spread over a period of six months to all those 46,189 B.Ed./L.T. qualified candidates. The selection is for the purposes of imparting training and not recruitment into any service as such. Only such candidates who completed their training of B.Ed./L.T. as regular students in universities recognized by the National Teachers Education Board, recognized colleges and training institutes conducted by the State Government/ Central Government alone were eligible for the selection into the course. The policy provides the age of the applicant must be minimum of 16 years and not more than 35 years as on 1st July, 2004. However, some relaxation has been made in favour of scheduled caste, scheduled tribe, backward class candidates and others with which we are not concerned in this case. The most important feature of the policy is that a State level merit list is required to be prepared on the basis of percentage of marks obtained in High School considering the rules regarding reservation. The policy directs the payment of stipend of Rs. 2500/- per month to the selected candidates for the special BTC training until "he is duly appointed on the post of Assistant Teacher in the basic school after passing the written and practical examinations conducted by the Registrar, Departmental Examinations, Uttar Pradesh and obtaining the required certificate, under the control of State Council for Education Research and Training, on completing the required training in the merit process."

"10. The learned counsel for the appellants relying upon the statement made in the counter affidavit filed in these appeals wherein it is conceded that sub-rules (3) to (6) of Rule 14 are not deleted submitted that the matter should be sent back for re-consideration of the High Court by duly applying the effect of sub-rules (3) to 6 of Rule 14 of the Rules. The submission was that the merit list is required to be prepared in accordance with sub-rules (3) to (6) of Rule 14 of the Rules. The submission in our

considered opinion is totally misconceived. We have already noticed that the U.P. Basic Education (Teachers) Service Rules, 1981 deal with the post training scenario. The Rules deal with the selection and appointment of teachers from amongst the candidates already possessing the training qualifications. The Rules do not deal with the selection of the candidates into Basic Training Course. The reliance placed upon the said Rules by the appellants in support of their contention is totally untenable and unsustainable. These Rules do not have any bearing in the matter of selection of candidates into Basic Training Course, 2004. The policy decision of the Government dated 14.1.2004 deals with the arrangement of the Special BTC Training Course for the period of six months for those 46,189 B.Ed./L.T. qualified candidates. The process of selection of the candidates for the said training and the arrangement of the training is required to be conducted in accordance with the guidelines, directions, conditions and restrictions incorporated thereunder. None of the appellants qualified themselves for undergoing the said training course inasmuch as they were not selected as they were not found meritorious or over aged as the case may be. It is not demonstrated as to how the appellants were entitled for selection to undergo Special BTC Training Course, 2004. The validity of the policy decision dated 14.1.2004 is not impugned in these appeals."

The Apex Court in the said judgement laid down that 1981 Rules deals with post-training scenario. The Apex Court thus clearly distinguished in the said judgement the two different process and held that appointment is to be regulated by the 1981 Rules.

View to the similar effect has been expressed in the case of Prabhakar Singh Vs. State of U.P. 2013(1) ADJ 651, wherein a Division Bench of our Court has been dealing with Special B.T.C. Training Course, 2007 imparted in two batches, wherein training of first batch was completed in April, 2011 and of second batch in September, 2011 as well as with Special B.T.C. Course 2008. In the case of Prabhakar Singh two main issues were raised. Same are as follows:-

"(i) Whether for the candidates who have passed BTC/special B.T.C. after the notification dated 23.08.2010 issued under Section 23 of the 2009 Act, the selection process shall be treated to have commenced from the date of issuance of advertisement by DIET/Director, SCERT inviting applications for selection to BTC/Special BTC so as to make them eligible for appointment under Paragraph 5 of the notification dated 23.08.2010?

(ii) Whether the candidates who are BA/BSc with at least 50% marks and possesses B.Ed qualification are eligible for appointment as Assistant Teacher to teach Class 1 to V as per clause 3 of the notification dated 23.08.2010 without they having passed Teacher Eligibility Test (TET)?

Said issues have been answered in the case of Prabhakar Singh as follows:-

(i)The appellants/other eligible candidates who have passed BA/BSc with 50% and are B.Ed being fully eligible for appointment as Assistant Teacher to teach Classes I to V as per Clause 3 of the notification dated 23rd August, 2010, as amended from time to time, are entitled for consideration for their appointment on vacant posts of Assistant Teachers in Classes I to V. The State authorities including the concerned District Basic Education Officers are directed to consider the claim of such persons while considering the appointment on the post of Assistant Teacher in institutions to teach Classes I to V.

(ii)The State is directed to issue a corrigendum so that all eligible candidates as per clause 3 of the notification dated 23.8.2010 as amended i.e. candidates having 50% marks in B.A./B.Sc. with B.Ed. should also be permitted to participate in the ongoing process of appointment of trainee teachers. At least 15 days time be allowed to submit applications by above mentioned candidates.

(iii)The prayer of the appellants possessing BTC/Special BTC qualifications obtained after 23.8.2010 to issue direction to appoint them giving benefit of paragraph 5 of the notification dated 23rd August, 2010 cannot be accepted.

Judgement in the case of Prabhakar Singh to a limited extent has been doubted, and on reference being made, a full Bench of our Court, in the case of Shiv Kumar Sharma Vs. State of U.P. 2013(6) ADJ 310, has approved the judgement of Prapbhakar Singh to the extent of laying down the interpretation of commencement of recruitment process under Clause-5 of notification dated 23.08.2010 but has disapproved and overruled the ratio of said decision in relation to grant of exemption and relaxation from Teacher Eligibility Test and Teacher Eligibility Test is mandatory to be acquired for candidates referred to in Clause 1 and Clause 3(a).

Once law on the subject is clear that 1981 Rules deals with post-training scenario and acquiring of B.T.C. qualification is altogether different concept as by that time person is still acquiring qualification for post. Petitioners certainly have completed the process of acquiring training qualification, but at the point of time, when appointment is to be offered, then certainly appointment has to be undertaken in consonance with the provision as contained in 1981 Rules. Only when candidates acquire training qualification and possess to their credit Teacher Eligibility Test qualification alongwith other eligibility criteria prescribed under 1981 Rules, then only as per the provision contained in 1981 Rules, candidature of the candidate has to be considered and merely because candidate has proceeded to complete Training Course, same ipso-facto cannot be construed as a guarantee of ensuring appointment. When a person has been in the process of acquiring qualification, it cannot be said that selection process has commenced.

Much emphasis has been laid on the fact, that various incumbents alongwith completion of training course have been offered appointment in their respective District. We have examined the claim of petitioners-appellants, and same has no leg to stand, then selection process would commence, once process of selection is undertaken, as is envisaged under 1981 Rules and not at all prior to it, if some incumbents in some District have been offered appointment, same cannot be a ground to act

contrary to law.

With the above, present Special Appeal stands dismissed."

(Emphasis supplied by me)

24. Retirement benefits admissible to a government employee is governed by U.P. Retirement Benefits Rules, 1961 and the General Provident Fund (U.P.) Rules, 1985. On 07.04.2005 U.P. Retirement Benefits (Amendment) Rules, 2005 were notified amending the U.P. Retirement Benefits Rules 1965. This notification reads as follows:-

"THE UTTAR PRADESH RETIREMENT BENEFITS (AMENDMENT) RULES, 2005

1. (1) These rules shall be called the Uttar Pradesh Retirement Benefits (Amendment) Rules, 2005.

(2) They shall and be deemed to have come into force with effect from April, 1, 2005.

2. In the Uttar Pradesh Retirement Benefits Rules, 1961 in rule 2, after existing sub-rule (2) the following new sub-rule shall be inserted namely-

"(3) These rules shall not apply to employees entering services and posts on or after April 1, 2005 in connection with the affairs of the state borne on pensionable establishment, whether temporary or permanent."

25. Similarly another notification dated 07.04.2005, known as the General Provident Fund (U.P.) (Amendment) Rules 2005 was published amending the General Provident Fund (U.P.) Rules, 1985, as follows:-

"1. Short title and commencement .-(1) These rules may be called the General Provident Fund (Uttar Pradesh)(Amendment) Rules, 2005.

(2) They shall be deemed to have come into force with effect from April 1, 2005.

2. In the General Provident Fund (Uttar Pradesh) Rules, 1985 for existing Rule 4 set out in Column-1 below, the rules as set out in Column-2 shall be substituted, namely:-

Column-1	Column-2
Existing rule	Rules as hereby substituted

4. Conditions of eligibility.-All permanent Government servants and all temporary Government servants, other than those appointed on contract and re-employed pensioners, whose service are likely to continue for more than a year shall subscribe to the fund from the date of joining the service:

Note1.- Apprentices and probationers shall be treated as temporary government servants for the purpose of this rule.

Note2.-Temporary government servants (including apprentices and probationers) who have been appointed against regular or temporary vacancies and are likely to continue for more than a year shall subscribe to the Fund from the date of joining the service.

Note 3.- Executive authorities should inform the Account Officer as soon as a government servant becomes liable to subscribe to the Fund.

4. Conditions of eligibility.-All permanent government servants and all temporary government servants, other than those appointed on contract and re-employed pensioners, whose service are likely to continue for more than a year shall subscribe to the fund from the date of joining the service:

Provided that no government servant entering service on or after April 1, 2005 shall subscribe to the fund.

Note 1.-Apprentices and probationers shall be treated as temporary government servants for the purpose of this rule.

Note 2.- Temporary government servants (including apprentices and probationers) who have been appointed against regular or temporary vacancies and are likely to continue for more than a year shall subscribe to the Fund from the date of joining the service.

Note 3.-Executive authorities should inform the Account Officer as soon as a government servant becomes liable to subscribe to the Fund.

26. Thus, a new defined contribution pension scheme was notified and made applicable to employees joining services after 01.04.2005 and the old defined benefit pension scheme and the general provident fund benefits schemes, as were available to the government employees, were denied for those who would be joining services after the cut-off date, i.e. 01.04.2005.

27. The Government Order dated 14.01.2004 is a policy decision of the State Government whereby the Government has resolved to arrange the Special BTC Training Course for a period of six months to 46189 B.Ed./ L.T. qualified candidates. Advertisement dated 21.02.2004 was issued pursuant to the aforesaid policy decision inviting applications from eligible candidates for Special BTC Training Course. Only such candidates who completed their training of B.Ed./L.T. as regular students in universities recognized by the National Teachers Education Board, recognized colleges and training institutes conducted by the State Government/ Central Government alone were eligible for the selection in the aforesaid training course. The aforesaid policy decision itself discloses the provision made in the policy decision for stipend of Rs. 2500/- per month to the selected candidates for the



special BTC training until they are duly appointed on the post of Assistant Teachers in basic schools after passing the written and practical examinations conducted by the Registrar, Departmental Examinations, Uttar Pradesh and obtaining the required certificate, under the control of State Council for Education Research and Training, on completing the required training. This makes it abundantly clear that the selection under the aforesaid Advertisement dated 21.02.2004 pursuant to aforesaid Government Orders, was merely for acquiring necessary qualification for being eligible for appointment as Assistant Teacher under the Service Rules, 1981. As per own admission of the State Government in the personal affidavit of the Secretary, Basic Education dated 14.04.2018 (quoted in para-20), no advertisement inviting applications for appointment as Assistant Teacher was issued. Thus, selection of the petitioners in Special BTC Training Course, 2004 pursuant to the advertisement dated 21.02.2004 was neither the selection nor appointment as Assistant Teacher in basic schools under the Service Rules, 1981. It was merely a selection for acquiring a qualification.

28. The Service Rules, 1981 deal with the post training scenario. It deals with the selection and appointment of teachers from amongst the candidates who possessed the training qualification. Thus, these Rules do not deal with the selection of candidates for Special BTC Course. These Rules do not have any bearing in the matter of selection of candidates in the Basic Training Course, 2004. The process of selection of the candidates for Basic Training Course, 2004 and the arrangement of training as required to be conducted in accordance with the guidelines, directions, conditions and restrictions incorporated thereunder, have nothing to do with the process of selection and appointment under the Service Rules, 1981. None of the petitioners were qualified for appointment under the Service Rules, 1981 until they passed the Basic Training Course, 2004. Thus, mere on selection or on passing out the said Basic Training Course, 2004, the petitioners cannot be said to be in government employment.

29. The appointment of Assistant Teacher in basic schools is governed by the provisions of Service Rules, 1981. Rule 8 provides for Academic Qualification which includes an essential qualification for a candidate to possess the required training course certificate as specified in the Rules. After a candidate acquires essential qualification specified under Rule, 8, then he becomes eligible to apply for appointment to the post of Assistant Teacher. Rule 14 provides the procedure for determination of vacancies. It provides that the appointing authority, i.e. District Basic Education Officer, 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, dependants of freedom fighters and other categories under Rule 9 and notify the vacancies to the Employment Exchange and in at least two newspapers having adequate circulation in the State as well as in the concerned district inviting applications from candidates possessing prescribed training qualification from the district concerned. Under sub-Rule (2) of Rule 14, the appointing authority shall scrutinise the applications received pursuant to the advertisement and the names of candidates received from the Employment Exchange and prepare a list of such persons as appear to possess the prescribed academic qualifications and eligibility for appointment. Under sub-Rule (4) of Rule 14, the names of candidates in the list prepared under sub-rule (2) shall then be arranged in such manner that the candidates who have passed the required training course earlier in point of time shall be placed higher than those who have passed the said training course later and the candidates who have passed the training course in a particular year shall be arranged in accordance with the quality

points specified in the Appendix. Under sub-Rule (5) of Rule 14, no person shall be eligible for appointment unless his or her name is included in the list prepared under sub-rule (2). Under sub-Rule (6) of Rule 14, the list prepared under sub-rule (2) and arranged in accordance with sub-rule (4) shall be forwarded to the appointing authority by the Selection Committee. As per Rule 20, the appointment shall be made by means of written orders. As per Rule 23, all persons on appointment in a substantive vacancy shall be placed on probation for a period of one year.

30. The fact that neither any advertisement under Rule 14 of the Service Rules, 1981 was issued inviting application from candidates possessing the prescribed training qualification from the district concerned nor the provisions of sub-rules (2)/ (3)/ (4)/ (5)/(6) were followed, are evident from own admission of the State Government in the personal affidavit of the Secretary, Basic Education, Government of U.P. Lucknow dated 14.04.2018 (briefly quoted in para-20 above). After the petitioners had completed their Special BTC Course, 2004, they were directly called by advertisement dated 10.11.2005 for counselling and scrutinising documents without adopting the process of selection contemplated under Rule 14 of the Service Rules, 1981. It has also been admitted in the affidavit that it is the settled law that the Government order or any order of the State Government cannot override the rules 8 and 14 of the Service Rules, 1981 framed under Section 19 of the Basic Education Act, 1972. The aforesaid factual positions have also been admitted by the petitioners as evident from the submissions of their counsels noted in paragraphs-6, 7 and 8 above and the affidavits filed by them in reply to the personal affidavit of the Secretary Basic Education dated 14.04.2018. These reply affidavits dated 30.04.2018 and 11.05.2018 have been filed by the petitioners in Writ-A No.57686 of 2015 and in Writ-A No.47839 of 2017 respectively. The aforesaid factual and legal position leaves no manner of doubt that the petitioners were neither appointed in terms of the provisions of Service Rules, 1981 prior to 01.04.2005 nor they were government employees/ assistant teachers as on the date when the U.P. Retirement Benefits (Amendment) Rules, 2005 and the General Provident Fund (U.P.) (Amendment) Rules 2005 came into force. Therefore, the petitioners shall not be governed by the old Pension Scheme or the unamended General Provident Fund (U.P.) Rules, 1985.

31. Since the controversy involved in these writ petitions are limited to the questions framed in para 2 above, therefore, I do not propose to express any final opinion with regard to validity of the appointments of the petitioners under the Service Rules, 1981 and, therefore, this issue is left open.

32. By acquiring the training qualification, the petitioners possessed to their credit teacher's eligibility test qualification along with other eligibility criteria prescribed under Rule 8 of the Service Rules, 1981. Only thereafter they became eligible to be considered pursuant to an advertisement under Rule 14 of the Service Rules, 1981, which was not issued. Merely that the petitioners completed training course, the same ipso facto cannot be construed as a guarantee of ensuring appointment. The petitioners were in process of acquiring essential qualification by pursuing Special BTC Training Course, 2004, which cannot be said to be the commencement of selection process under Rule 14. According to their own admitted case, they were appointed in December, 2005 on which date neither the old Pension Scheme nor the un-amended provisions of GPF Rules were in force. Therefore, the petitioners are not entitled for the benefits of the old pension scheme or the un-amended provisions of GPF Rules. The period of their training being part of Special BTC

2004, cannot be said to be probation period under Rule 23 of the Service Rules, 1981 since probation is a stage subsequent to selection process under Rule 14 and appointment under Rule 20 of the Service Rules, 1981.

33. In view of the above discussion, I do not find any merit in the second set of writ petitions. Consequently, all the writ petitions of second set deserve to be dismissed.

34. In result, WRIT - A No. - 22142 of 2011, Writ-A No.5451 of 2014 , Writ-A No.56281 of 2012, Writ-A No.63880 of 2012, Writ-A No.66828 of 2012, Writ-A No.58006 of 2015, Writ-A No.37890 of 2012, Writ-A No.26715 of 2015, Writ-A No.30809 of 2015, Writ-A No.26716 of 2015, Writ-A No.26717 of 2015, Writ-A No.30806 of 2015, Writ-A No.30813 of 2015, Writ-A No.41243 of 2015, Writ-A No.41248 of 2015, Writ-A No.41242 of 2015, Writ-A No.41247 of 2015, Writ-A No.41244 of 2015 Writ-A No.41240 of 2015, Writ-A No.30805 of 2015, Writ-A No.39140 of 2012, Writ-A No.7849 of 2015, Writ-A No.43497 of 2012, Writ-A No.35087 of 2012, Writ-A No.62147 of 2008, Writ-A No.25671 of 2016, Writ-A No.25672 of 2016, Writ-A No.25673 of 2016, Writ-A No.25674 of 2016, Writ-A No.25675 of 2016, Writ-A No.61049 of 2016, Writ-A No.42658 of 2017, Writ-A No.42643 of 2016, Writ-A No.31418 of 2016, Writ-A No.45761 of 2016, Writ-A No.48882 of 2016, Writ-A No.49258 of 2016, Writ-A No.29243 of 2015, Writ-A No.16392 of 2016 Writ-A No.26754 of 2016 (all of first set) succeed and are, hereby, allowed. Impugned orders, if any, are quashed. Competent authorities shall pass appropriate orders, in the light of the observations made above in Paras-11 to 14, within six weeks from the date of presentation of a certified copy of this order, AND Writ A No. 29020 of 2017, WRIT - A No. - 57686 of 2015, Writ-A No.58509 of 2015, Writ-A No.32861 of 2016, Writ-A No.25667 of 2016, Writ-A No.47839 of 2017, Writ-A No.53983 of 2017, Writ-A No.61312 of 2017, Writ-A No.62082 of 2017, Writ-A No.62932 of 2017, Writ-A No.1720 of 2017, Writ-A No.347 of 2018, Writ-A No.4874 of 2018, Writ-A No.58197 of 2017, Writ-A No.2141 of 2018, Writ-A No.3933 of 2018, Writ-A No.5502 of 2018, Writ-A No.4105 of 2018, Writ A No. 6088 of 2018, Writ A No. 3017 of 2018, Writ A No. 3470 of 2018, Writ A No. 3586 of 2018, Writ A No. 4295 of 2018, Writ A No. 54621 of 2017, Writ A No. 59590 of 2017, Writ A No.5263 of 2018 (all of second set) fail and are, hereby, dismissed.

Order Date :- 18.05.2018 NLY