REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.9529 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No. 32599 OF 2015)

State of U.P. & Anr. etc. …Appellants

Versus

Anand Kumar Yadav & Ors. etc. …Respondents

WITH

CIVIL APPEAL NOS.9531-9542 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) Nos. 33328-33339 OF 2015)

CIVIL APPEAL NO.9544 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No. 36019 OF 2015)

CIVIL APPEAL NO.9545 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No.19097 OF 2017)
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) ……CCNo.1621 OF 2016)

CIVIL APPEAL NO.9557 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No. 34093 OF 2015)

CIVIL APPEAL NO.9576 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No. 36016 OF 2015)

CIVIL APPEAL NO.9571 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No. 36033 OF 2015)

CIVIL APPEAL NO.9574 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No. 36009 OF 2015)

CIVIL APPEAL NO.9575 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No. 36031 OF 2015)

CIVIL APPEAL NO.9573 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No. 36032 OF 2015)

CIVIL APPEAL NO.9572 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No. 36007 OF 2015)

CIVIL APPEAL NO.9584 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No. 36014 OF 2015)

CIVIL APPEAL NO.9581 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No. 33235 OF 2015)

CIVIL APPEAL NO.9570 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No. 36015 OF 2015)

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(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No. 36006 OF 2015)

CIVIL APPEAL NO.9577 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No. 36003 OF 2015)

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CIVIL APPEAL NOS.9586-9587 OF 2017
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CIVIL APPEAL NO.9578 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No. 36028 OF 2015)

CIVIL APPEAL NO.9605 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No. 36024 OF 2015)

CIVIL APPEAL NO.9579 OF 2017
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CIVIL APPEAL NO.9588 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No. 16169 OF 2016)

CIVIL APPEAL NO.9636 OF 2017
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No.19101 OF 2017)
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) ……CCNo.21726 OF 2015)

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CIVIL APPEAL NO.9696 OF 2017
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(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) ……CCNo.21689 OF 2015)

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(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No. 7131 OF 2016)

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(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) ……CCNo.2678 OF 2016)

CIVIL APPEAL NO.9606 OF 2017

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(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No.19148 OF 2017)
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CONTEMPT PETITION (CIVIL)NO. 453 OF 2016 IN CIVIL APPEAL NOS. 4347-4375 OF 2014

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(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) No.19158 OF 2017)
(ARISING OUT OF SPECIAL LEAVE PETITION (Civil) .....CC No. 14057 OF 2016)

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WRIT PETITION (CIVIL)NO. 826 OF 2016

CONTEMPT PETTION (CIVIL)NO. 781 OF 2016 IN CIVIL APPEAL NOS. 4347-4375 OF 2014

WRIT PETITION (CIVIL)NO. 915 OF 2016

CONTEMPT PETITION (CIVIL)NO. 928 OF 2017 IN WRIT PETITION (CIVIL)NO. 167 OF 2015.

J U D G M E N T

Adarsh Kumar Goel, J.

1. Leave granted. This batch of cases arises out of judgment of the Allahabad High Court dated 12th September, 2015 in Writ Appeal No. 34833 of 2015[1] and connected matters. The High Court allowed the batch of writ petitions and directed as follows:

> *"(i) The amendment made by the State Government by its notification dated 30 May 2014 introducing the provision of Rule 16-A in the Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011 by the Uttar Pradesh Right of Children to Free and Compulsory Education (First Amendment) Rules 2014 is held to be arbitrary and ultra vires and is quashed and set aside;*
>
> *(ii) The Uttar Pradesh Basic Education (Teachers) Service (Nineteenth Amendment) Rules 2014, insofar as they prescribe as a source of recruitment in Rule 5(2) the appointment of Shiksha Mitras; the academic qualifications for the recruitment of Shiksha Mitras in Rule 8(2)(c) and for the absorption of Shiksha Mitras as Assistant Teachers in junior basic schools under Rule 14(6) are set aside as being unconstitutional and ultra vires; and*
> *(iii) All consequential executive orders of the State Government providing for the absorption of Shiksha Mitras into the regular service of the State as Assistant Teachers shall stand quashed and set aside."*

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1 (2015) ILR All 1108 : (2015) 8 ADJ 338 Anand Kumar Yadav vs. UOI

2. Main question for consideration is whether it is permissible to appoint teachers for basic education who do not have the requisite statutory qualifications?

FACTS :

3.1 Brief factual matrix may be noted. U.P. Basic Education Act, 1972 (the 1972, Act) was enacted to regulate and control basic education in the State of U.P. Section 19 of the 1972, Act authorizes the State Government to make rules to carry out the purpose of the Act. U.P. Basic Education (Teachers) Service Rules, 1981 (1981 Rules) lay down sources of recruitment and qualification for appointment of teachers. The National Council for Teachers' Education Act, 1993 (NCTE Act) was enacted by Parliament for planned and coordinated development for teacher education system. The Right of Children to Free and Compulsory Education Act, 2009 (RTE Act, 2009) was enacted by the Parliament for free and compulsory education to all children of the age of 6 to 14 years. Section 23 provides for qualification for appointment of teachers. The NCTE was designated as authority under Section 23(1) to lay down the qualifications for appointment of teachers.

3.2 The NCTE issued notification dated 23rd August, 2010 laying down such qualifications. With regard to teachers appointed prior to the said notification, it was stated that they were required to have qualifications in terms of the National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (the 2001 Regulations), if the teachers were appointed on or after 3rd September, 2001 subject to their undergoing NCTE recognized six months special programme in certain situations. Teachers appointed before 3rd September, 2001 were required to have qualifications as per the prevalent recruitment rules. One of the requirements under the said notification is the requirement of passing Teachers Eligibility Test (TET). However, by letter dated 8th November, 2010, the Central Government sought proposals for relaxation under Section 23 (2) of the RTE Act which was followed by the relaxation Order dated 10th September, 2012 for certain categories of persons which was to operate till 31st March, 2014. Vide letter of the NCTE dated 14th January, 2011, the NCTE accepted the proposal of the State of Uttar Pradesh for training of untrained graduate *Shiksha Mitras* by open and distance learning

but it was made clear that no appointment of untrained teachers was permitted.

3.3 In exercise of powers under the RTE Act, 2009, the RTE Rules, 2010 were framed by the Central Government. At the same time, the State of U.P. also purported to frame rules called U.P. RTE Rules, 2011.

3.4 Reference may now be made to the scheme under which the *Shiksha Mitras* were recruited. On 26th May, 1999, a Government Order was issued by the State of U.P. for engagement of *Shiksha Mitras(*Para-Teacher). The purported object of the Order was to provide universal primary education and for maintenance of teachers student ratio in primary schools by hiring persons who were not duly qualified at lesser cost as against the prescribed salary of a qualified teacher. The Government Order (G.O.) stated that upto the limit of 10,000, *Shiksha Mitras* could be contracted for academic session 1999-2000 at honourarium of Rs.1450 per month. The salient aspects of the scheme as summed up in the impugned judgment of the High Court from the said G.O. were:-

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

3.5. Further G.O.s were issued by the State of U.P. including G.O. dated 1st July, 2001 expanding the scheme and clarifying that the Scheme was not for employment in a regular service but to provide opportunity to the rural youth to render community service.

3.6 Even though *vide* Notification dated 23rd August, 2010, minimum statutory qualification was laid down by the NCTE, the issue for relaxation under Section 23(2) of the RTE Act was taken up by the Union Government for relaxation for the limited interim statutory period and if a particular State did not have adequate institutions for teachers training or did not have the adequate number of candidates during the period. The State Government, in response to the letter of the Central Government, responded by stating that it had appointed *Shiksha Mitras* on contractual basis who were required to be given teachers training. The Central Government issued an Order for relaxation under Section 23(2) subject to certain conditions for the period upto 31st March, 2014.

3.7 The State Government submitted a revised proposal dated 3rd January, 2011 envisaging giving of training to the *shiksha Mitras* which was accepted by the Central Government in terms of the letter dated 14th January, 2011 for two years diploma in elementary education through open and distance learning mode with a clear understanding that no untrained teachers will be appointed.

3.8 Finally, the State of U.P. took following steps which were subject matter of challenge before the High Court:

A. Notification dated 30th May, 2014 amending U.P. RTE Rules introducing Rule 16-A authorizing the State Government to relax minimum educational qualifications for appointment of Assistant Teachers in Junior Basic Schools.

B. Notification dated 30th May, 2014, amending the 1981 Rules:- Rule 8 laid down revised qualifications for appointment of Assistant Master and Assistant Mistress of Junior Basic Schools which qualifications are different from the statutory qualifications under Section 23 of the RTE Act. Rule 5 was amended to add *Shiksha Mitras* as source for recruitment of teachers in addition to the existing source of direct recruitment in accordance with the existing rules. Rule 14 was also amended to enable *Shiksha Mitras* to be appointed as teachers against substantive posts without having the qualifications prescribed under Section 23 of the RTE Act.

C. G.O. dated 19th June, 2013 was issued giving permission for appointment of *Shiksha Mitras* on the post of Assistant Teachers in

primary schools without having the eligibility and qualifications in terms of RTE Act, 2009. A time table was laid down for absorption of *Shiksha Mitras* as Assistant Teachers.

D. The consequential executive orders were issued for absorption of 1,24,000 graduate *Shiksha Mitras and 46,000* intermediate *Shiksha Mitras*.

4. From the above resume of facts, following points are clear :

(i) *Shiksha Mitras* were appointed on contractual basis to enable the rural youth to render community service on honorarium which was less than the pay scale of teachers.

(ii) They were not required to have the statutory qualifications for appointment of teachers.

(iii) The impugned notifications and the G.O. of the U.P. Government to regularize and appoint *Shiksha Mitras* as teachers in regular pay scale do not conform to the statutory requirement of qualifications for appointment of teachers in terms of Notification dated 23rd August, 2010.

(iv) Relaxation provisions under Section 23(2) could neither apply forever nor could apply to *Shiksha Mitras* who were not appointed as teachers in terms of statutory qualifications and on pay scale of teachers.

(v) Training undergone by them in terms of proposal of the State Government is not a substitute for the statutory qualifications as per mandate of Section 23 of the RTE Act.

(vi) Regularization was not on posts on which the *Shiksha Mitras* were appointed and were working but on the post of teachers on which neither they were initially appointed nor they were qualified.

The Statutory provisions and relevant documents

5. Significant provisions/ notifications to which reference is necessary are as follows :

(i) Section 23 of the RTE Act

> ***"23.*** *Qualifications for appointment and terms and conditions of service of teachers.-(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.*

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification: Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years. … … … … … …"

(ii) Notification dated 23rd August, 2010 under Section 23(1) of the RTE Act :

"Notification dated 23rd August, 2010

NATIONAL COUNCIL FOR TEACHER EDUCATION
NOTIFICATION

New Delhi, the 23rd August, 2010

F. No. 61-03/20/2010/NCTE/(N & S).-In exercise of the powers conferred by Sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009), and in pursuance of Notification No. S.O. 750(E) : MANU/HRDT/0013/2010 dated 31st March, 2010 issued by the Department of School Education and Literacy, Ministry of Human Resource Development, Government of India, the National Council for Teacher Education (NCTE) hereby lays down the following minimum qualifications for a person to be eligible for appointment as a teacher in class I to VIII in a school referred to in clause (n) of Section 2 of the Right of Children to Free and Compulsory Education Act, 2009, with effect from the date of this notification:-

1. *Minimum Qualifications:-*

(i) CLASSES I-V

(a) Senior Secondary (or its equivalent) with at least 50% marks and 2 year Diploma in Elementary Education (by whatever name known)

OR

Senior Secondary (or its equivalent) with at least 45% marks and 2 year Diploma in Elementary Education (by whatever name known), in accordance with the NCTE (Recognition Norms and Procedure), Regulations 2002.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor of Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 2 year Diploma in Education (Special Education)

AND

(b) Pass in the Teacher Eligibility Text (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

(ii) Classes VI-VIII

(a) B.A/B.Sc. and 2 year Diploma in Elementary Education (by whatever name known)

OR

B.A/B.Sc. with at least 50% marks and 1 year Bachelor in Education (B.Ed.)

OR

B.A/B.Sc. with at least 45% marks and 1 year Bachelor in Education (B.Ed.), in accordance with the NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard.

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor in Elementary Education (B.El.Ed.)

OR

Senior Secondary (or its equivalent) with at least 50% marks and 4 year BA/B.Sc. Ed or B.A.Ed./B.Sc. Ed.

OR

B.A./B.Sc. with at least 50% marks and 1 year B.Ed. (Special Education)

AND

(b) Pass in the Teacher Eligibility Text (TET), to be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE for the purpose.

2. *Diploma/Degree Course in Teacher Education:- For the purposes of this Notification, a diploma/degree course in teacher education recognized by the National Council for Teacher Education (NCTE) only shall be considered. However, in case of Diploma in Education*

(Special Education) and B.Ed (Special Education), a course recognized by the Rehabilitation Council of India (RCI) only shall be considered.

3. *Training to be undergone:- A person-(a) with B.A/B.Sc. with at least 50% marks and B.Ed. qualification shall also be eligible for appointment for class I to V upto 1st January, 2012, provided he undergoes, after appointment, an NCTE recognized 6 month special programme in Elementary Education.*

(b) with D.Ed. (Special Education) or B.Ed. (Special Education) qualification shall undergo, after appointment, an NCTE recognized 6 month special programme in Elementary Education."

(iii) Extract from NCTE Regulations, 2001 laying down qualifications for recruitment of teachers:-

III. Elementary

(a) Primary

(i) Senior Secondary School certificate of Intermediate or its equivalent; and

(ii) Diploma or certificate in basic teachers training of a duration of not less than two years. OR

Bachelor of Elementary Education (B EI Ed)

(b) Upper Primary (Middle school section)

(i) Senior Secondary School certificate or Intermediate or its equivalent; and

(ii) Diploma or certificate in elementary teachers training of a duration of not less than two years.

OR

Bachelor of Elementary Education (B EI Ed) OR Graduate

(iv) Appendix-9 laying down norms and standards for diploma in elementary education through open and distance learning:-

> "*Preamble.--(i) The elementary teacher education programme through Open and Distance Learning System is intended primarily for upgrading the professional competence of working teachers in the elementary schools (primary and upper primary/middle). It also envisages bringing into its fold those teachers who have entered the profession without formal teacher training.*
>
> *(ii) The NCTE accepts open and distance learning (ODL) system as a useful and viable mode for the training of teachers presently serving in the elementary schools. This mode is useful for providing additional education support to the teachers and several other educational functionaries working in the school system.*"

(v) Letter of the Central Government 8th November, 2010 for relaxation of norms fixed by NCTE :

> *"3. In order to enable the Central Government to provide relaxation under sub-section (2) of section 23 to a State, it is considered necessary to obtain relevant information from the State Government relating to demand of teachers and availability/ supply of qualified persons who are eligible for appointment as a teacher. Accordingly, a State Government, which intends to seek relaxation under the said sub-section would be required to make a request to the Central Government by providing the following information:*

(a) Quantitative information as per the format prescribed in the Annexure to the Guideline.

(b) Nature of relaxation sought, separately for classes I to V and VI to VIII, along with justification;

(c) The time period for which relaxation is sought;

(d) The manner in which and the time period within which the State Government would enable teachers, appointed with relaxed qualification, to acquire the prescribed qualification;

(e) The manner in which and the time period within which the State Government would enable existing teachers, not possessing the prescribed qualification, to acquire the prescribed qualification. Reference in this regard is invited to para 4 of the aforementioned Notification of the NCTE;

(f) Any other information the State Government may like to furnish in support of its request for seeking relaxation under section 23(2).

4. The condition of passing TET will be relaxed by the Central Government.

5. The Central Government will examine the request of the State Government based on the proposal submitted by the State Government and additional information which the Central Government may request the State Government to furnish, take a decision to issue Notification under section 23(2) of the Act. Only after the Notification is issued would the State Government or a local authority or any aided/ unaided school in the State appoint teachers with the relaxed qualification in accordance with

terms and condition mentioned in the said Notification."

(vi) Rule 5 of the 1981 Rules as amended on 30th May, 2014 :

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

(a) (i) Mistresses of Nursery School	*By direct recruitment as provided in rules 14 and 15;*
(ii) Assistant Masters and Assistant Mistresses of Junior Basic Schools	*By direct recruitment as provided in rules 14 and 15;* *or* *By appointment of such Shiksha Mitras as are engaged as Shiksha Mitra and working as such on the date of commencement of the Uttar Pradesh Basic Education (Teachers) (Nineteenth Amendment) Rules, 2014.**

(vii) Amendment to Rule 8 of the 1981 Rules in terms of the Notification dated 30th May, 2014 defining qualification for eligibility for appointment of a teacher:

(ii) Assistant Master and Assistant Mistresses of Junior Basic Schools	*(ii)(a) Bachelors degree from a University established by law in India or a degree recognized by the Government equivalent thereto together with any other training course recognized by the Government as equivalent thereto together with the training*

qualification consisting of a Basic Teacher's Certificate (BTC), two years BTC (Urdu), Vishisht BTC and teacher eligibility test passed, conducted by the Government or by the Government of India;

(b) a Trainee Teacher who has completed successfully six months special training programme in elementary education recognized by NCTE;

(c) A Shiksha Mitra who possessed Bachelors degree from a University established by law in India or a degree recognized by the Government equivalent thereto and has completed successfully two years distant learning BTC course or Basic Teacher's Certificate (BTC), Basic Teacher's Certificate (BTC) (Urdu) or Vashist BTC conducted by the State Council of Educational Research and training (SCERT).

(emphasis supplied)

(viii) Rule 14 (6)(a) of the 1981 Rules as amended on 30th May, 2014 :

"*14(6)(a) The Shiksha Mitra after obtaining the certificate of successful completion of two years distant BTC course or Basic Teacher's Certificate (BTC), Basic Teacher's Certificate (BTC) (Urdu) or Vishisht BTC conducted by State Council of Educational Research and Training (SCERT) shall be appointed as assistant teachers in junior basic schools against substantive post. To appoint the Shiksha Mitras as assistant teachers*

in junior basic schools, the appointing authority shall determine the number of vacancies including the number of vacancies to be reserved for candidates belonging to the Scheduled Castes, the Scheduled Tribes, Other Backward Classes and other categories under Rule 9."

(ix) Rule 16-A introduced into the U.P. RTE Rules, 2011 on 30th May, 2014:

"16-A. Notwithstanding anything contained in rules 15 and 16, the State Government may, in order to implement the provisions of the Act, by order make provisions for relaxation of minimum educational qualification for appointment of such Shiksha Mitras as Assistant Teachers in Junior Basic Schools as are considered otherwise eligible."

(x) Government Order dated 19th June, 2014 :

"2. In reference to the above subject I have been directed to say that the permission for appointment of Shiksha Mitra's on the post of assistant teacher in primary schools by the U.P. Basic Education Board is being given as follows:

*1. **Eligibility-** those Shiksha Mitra who have been working in Junior Basic Schools run by the U.P. Basic Education Board prior to the framing of U.P. Right of Children to Free and Compulsory Education Rules 2011.*

*2. **Age-** the minimum age limit will be sixty years for the Shiksha Mitra's to be appointed on the post of Assitant Teacher.*

*3. **Educational Qualification-** those Shiksha Mitras who have graduation degree through a University established under a law or its equivalent and also have passed B.T.C. two years course through ODL System under State Council for Education, Research and Training, B.T.C. (Urdu), Special B.T.C.*

4. **Selection Process-**

A. Shiksha Mitras who have passed B.T.C. two years course through ODL System under State Council for Education, Research and Training, B.T.C. (Urdu), Special B.T.C. and after obtaining its certificate they will be given substantive appointment on the post of assistant teacher in junior basic school run by the U.P. Basic Shiksha Parishad. In order to give them the substantive appointment on the post of assistant teacher in junior basic school run by the U.P. Basic Shiksha Parishad, the appointing authority will determine the number of vacancy and shall also consider the grant of reservation to schedule caste, schedule tribe and other backward classes as per rule 9 of the U.P. Basic (Teacher) Service Rules, 1981.

B. The appointing authority shall prepare a list under Rule 9(2)(c) of those shikshamitras who are eligible for appointment.

C. The list which has been prepared for appointment on the post of assistant teacher for junior basic shool shallbe arrange din the ascending order of the Date of Birth meaning a candidate who is elder in age will be placed higher.

If the date of birth of two Shiksha Mitras is common then their name shall be arranged in accordance with alphabetical order (English)

D. Shiksha Mitra will not be considered to be eligible for substantive appointment on the post of Assistant teacher in junior basic school unless his name is included in the abovementioned list.

E. A list prepared by the appointing authority under Cl. (C) above shall be forwarded to a selection committee constituted under Rule 16 of the U.P. basic education (teachers) Service Rules, 1981 which shall be as follows:-

(A)	*Principal, District Institute of education and training*	*Chairman*
(B)	*District basic education officer*	*Member/ Secretary*
(C)	*Principal of Govt. Girls Inter College situated at district headquarter*	*Member*
(D)	*An expert in Hindi, Urdu or other languages appointed by the District Magistrate*	*Member*

Note:- If the selection committee constituted in the manner as stated above does not include a person belonging to Schedule caste, Schedule Tribe, OBC then the district magistrate shall appoint any officer of the district belonging to above caste as a member of the selection committee.

F. The selection committee shall after going through the list prepared under clause (C) and after verifying the educational and training certificates of the Shiksha Mitras shall after its due approval forward the same to the appointing authority.

G. The appointing authority shall issue the appointment order in accordance with Rule 20 of the U.P. Basic Education (teachers) Service Rules, 1981 meaning all appointments made under these rules shall be given posting through written orders in accordance with U.P. Basic Education (teacher) posting rules, 2008 (as amended).

(5) Time table for absorption of trained and eligible Shikshamitras on the post of assistance teacher in first phase.

1- To make available the list of candidates to District Basic Education Officer who have qualified two years BTC training through distance mode from District Institute of Education and Training	*Till 30 June, 2014*
2- Publication of the advertisement by the	*Within one*

District Basic Education officer for the counseling of Shiksha Mitras including the name, date of counselling and place of counselling.	*week of the receipt of the list.*
3- Participation of the Shiksha Mitras in the counselling with their educational/ training certificates and residence/ caste certificates.	*From 10 July, 2014 to 22 July, 2014*
4- Process of Approval of the selection list by Selection Committee	*Till 25th July, 2014*
5- Process of issuance of appointment letter	*Till 31.07.2014*

3. Therefore it is requested to ensure the appointments of the Shiksha Mitras in primary schools run by U.P. Basic Education Board in accordance with the determined conditions and the time table."

Proceedings before the High Court

6. Batch of Writ Petitions were filed before the High Court by persons who claimed to be eligible for appointment and whose chances were affected by filling up of vacancies of teachers by regularizing the *Shiksha Mitras* against the said vacancies, praying as under:

> *"(a) A writ, order or direction in the nature of certiorari quashing the notifications dated 30.5.14 issued by the State Government notifying the U.P. Right of Children to Free and Compulsory Education (First Amendment) Rules 2014 and U.P. Baisic Shiksha Adhyapak Seva (19th Sansodhan) Niyamawali 2014 (Annexure Nos.22A & 22B);*

(b) A writ, order of direction in the nature of certiorari quashing the Government Orders dated 7.2.13 and 16.6.14 (Annexure Nos.21 & 23)

(c) A writ, order or direction of a suitable nature restraining the respondents from taking any action on the basis of the impugned notifications/ Government Orders;

(d) Any other writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case; and

(e) Award cost of the petition to be paid to the petitioners."

7. Case set out in the petition was that in view of Notification issued by the NCTE 23rd August, 2010 laying down minimum qualification for appointment of Assistant Teacher for classes I to VIII, the decision of the U.P. Government dated 19th June, 2014 and amendments made by the U.P Government on 30th May, 2014 were in conflict with the Notification issued by the NCTE on 23rd August, 2010 and could not, thus, be justified. The TET being a mandatory qualification, the State Government could not make any appointment to the post of teacher without the said qualification. The appointments did not fall under the relaxation clause being post 23rd August, 2010 notification and being not covered by the conditions for relaxation. The 1981 Rules of the

State could not incorporate a provision for absorption of S*hiksha Mitras* in violation of law laid down by this Court in ***State of Karnataka versus Uma Devi*** [2] as their appointment was *de hors* the 1981 Rules, having not been made after following the rules for appointment of teachers. It was also submitted that the nature of appointment of *Shiksha Mitras* was contractual to enable them to render community service and not in terms of prescribed qualifications for appointment of teachers. Training by open and distance learning mode was relevant only for teachers validly appointed and not for contractual employees appointed *de hors* the rules. Moreover, 46,000 *Shiksha Mitras* were not even graduates which was a condition for approval by the NCTE in its letter dated 14th January, 2011. There could be no permanent exemption from TET and relaxation could only be for a limited period. Relaxation could be only for teachers already appointed and not for *Shiksha Mitras*. On the date of regular appointment in terms of the G.O., the *Shiksha Mitras* did not have the requisite statutory qualifications under Section 23 of the RTE Act.

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2 (2006) 4 SCC 1

8. The Writ Petitions were opposed by the State Government and the *Shiksha Mitras* by stating that the Scheme of the *Shiksha Mitras* was to meet a situation where sufficient trained teachers were not available while the constitutional mandate of imparting elementary education was to be fulfilled. The *Shiksha Mitras* were also teachers and their appointments were made on recommendation of Village Education Committee which had a statutory status. They had undergone training as per Appendix-9 to the 2009 Regulation of the NCTE and having regard to the fact they worked for nearly 16 years, the State Government was justified in regularizing their services.

9. The Full Bench of the High Court considered the matter after framing following issues:

> *"(1) Whether the appointment of Shiksha Mitras in pursuance of the Government Order dated 26 May 1999 was of a statutory character;*
>
> *(2) Whether the State Government did have the power, by virtue of Section 13(1) of the Basic Education Act 1972 and having due regard to the provisions of Entry 25 of the Concurrent List to the Seventh Schedule, to issue the Government Order dated 26 May 1999;*
>
> *(3) Whether the Government Order dated 26 May 1999 can be regarded as a valid exercise of*

power under Article 162 of the Constitution, where the Service Rules of 1981 were silent in regard to the appointment of untrained teachers;

(4) Whether the Village Education Committees had a statutory character by virtue of Section 11 of the U.P. Basic Education Act, 1972;

(5) Whether the appointment of Shiksha Mitras can be regarded as being made against substantive posts, since the number was determined in the ratio of students to teachers in the proportion of 1:40;

(6) Whether the permission granted by NCTE on 14 January 2011 is a valid permission under Section 16(3)(d) of the NCTE Act;

(7) Whether the petitioners could be regarded as being persons aggrieved to challenge the permission granted by NCTE;

(8) Whether the effort on the part of the State to grant training to untrained teachers can be regarded as a reasonable effort and not mala fide;

(9) Whether the appointment of Shiksha Mitras has been duly protected by the proviso to Section 12-A and could be validly brought into the regular cadre of Assistant Teachers by amendment of the Service Rules of 1981;

(10) Whether the power of NCTE to lay down minimum qualifications could only be exercised by framing Regulations under Section 32 of the NCTE Act; and

(11) Would the effect of the insertion of Section 12-A suspend the effect and operation of the notification dated 23 August 2010."

10. The findings of the High Court in brief are that having regard to the nature of appointment of *Shiksha Mitras*, they could not be treated as teachers in terms of 1981 Rules. They also did not have the qualifications prescribed under the said Rules in as much as on the date of appointment, they did not have graduate degree nor they had basic teachers' certificate as prescribed under the 1981 Rules. Reservation policy had also not been followed. No doubt they may have served the need of the hour, their regular appointment in violation of the requisite statutory qualification was illegal. Reference was made to earlier Full Bench judgment in ***Km Sandhya Singh versus State of Uttar Pradesh***[3] with regard to the nature of such appointments.

11. It was further held that Section 23(2) permitted relaxation of minimum qualification for appointment of teachers only for a limited period not exceeding five years and qualification for TET could not be relaxed as held by the Full Bench judgment of the High Court in ***Shiv Kumar Sharma versus State of Uttar Pradesh***[4] for post 23rd August, 2010 appointments. Nor pre 23rd August, 2010 appointments could be saved unless initial

3 2013 (7) ADJ 1 (FB)
4 2013 (6) ADJ 310 (FB)

appointments were to the post of teachers in terms of applicable rules as stated in the Notification dated 23rd August, 2010. The amendments to the State RTE Rules, 2011 and the Service Rules of 1981 were in conflict with the mandate of Section 23(2) under which power to relax the minimum qualifications was vested only with the Central Government for a limited period. Moreover, the regularization of *Shiksha Mitras* as teachers was not permissible in view of the law laid down in ***Uma Devi (supra)***. The appointment of *Shiksha Mitras was not* as teachers nor it could be held to be merely irregular in absence of their minimum qualifications for the post of teachers which was a distinguishing feature rendering the judgments ***State of Karnataka versus M.L. Kesari***[5] and ***Amarendra Kumar Mohapatra versus State of Orissa***[6] inapplicable.

Rival Contentions :

12. We may now deal with the contentions raised before this Court in assailing the judgment of the High Court. Following are

5 (2010) 9 SCC 247
6 (2014) 4 SCC 583

the broad contentions of the appellants, the State of U.P. and the *Shiksha Mitras*;

(i) Free and compulsory education to children of the age of 6 to 14 is a fundamental right under Article 21A which was earlier a directive principle under Article 45 of the Constitution. For elementary education of children of this age, extremely learned teachers were not required nor are affordable. This is the reason that as against the requirement of 3 lakhs, the State of U.P. had about 1 lakh teachers. The *Shiksha Mitras* scheme was to achieve the object of education for all at less cost. The *Shiksha Mitras* were duly selected and had undergone training at district training institutes. Most of them were graduates and all of them were at least intermediate. It was submitted that NCTE *vide* letter dated 26th October, 2015 clarified to the State Government that TET was applicable to teachers appointed after 25th August, 2010. Those appointed earlier and are in continuous service did not require the TET. It was also submitted that *vide* Notification dated 13th April, 2017, the Central Government had extended the time for acquiring minimum qualification upto 31st March, 2019 exercising its power under Section 23(2) of the Act in respect of the State of

Assam. Reference was also made to the Right of Children to Free and Compulsory Education (Amendment) Bill, 2017 (Bill No. 75 of 2017) whereby a proviso was to be added to Section 23(2) permitting four years further time from the date of amendment for acquiring minimum qualification required under Section 23(1) of the Act.

(ii) Article 243G of the Constitution provides for *punchayat's* functions as institution for self governance with respect to schemes of social justice in relation to matters listed in *XI Schedule* which includes under Entry 17 Education, including primary and secondary schools. Thus, the scheme of *Shiksha Mitras* was consistent with the said provision and enabled decentralization of powers.

(iii) If qualified persons are not available, government is free to frame policy in absence of legislation as held in ***Sant Ram Sharma versus State of Rajasthan***[7] .

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7 (1968) 1 SCR 111 at 119

(iv) The Notification dated 23rd August, 2010 was repugnant to the regulations framed by the NCTE and the said regulations have to prevail in case of repugnancy.

(v) In any case power under Article 142 should be exercised by this Court in the interest of justice in the light of observations in ***Union Carbide Corporation versus Union of India*** [8]***.***

(vi) The regularization cannot be held to be invalid in view of long length of service of the *Shiksha Mitras* in view of the law laid down by this Court in ***M.L. Kesari***[9] and ***Amarendra Kumar Mohapatra (supra)***. Referring to abridged report of the "Development and Professional Competence of Para-Teachers" by the EdCII (India) Limited (A Government of India Enterprise), it was submitted that large scale appointment of para teachers has led to lower pupil teacher ratio. Thus, it was submitted that the impact of appointment of *Shiksha Mitras* has advanced the constitutional cause of elementary education for all.

(vii) It was next submitted that even though regularization may not be permitted, the State can specify a source for fresh

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8 (1991) 4 SCC 584
9 (2010) 9 SCC 247

recruitment with relaxed educational qualification as held in ***Official Liquidator versus Dayanand***[10]***.***

(viii) Order I Rule 8 C.P.C. having not been followed and all *Shiksha Mitras* having not been impleaded as parties before the High Court, the High Court judgment should be held to be a nullity in view of law laid down in ***Amrit Lal Berry versus Collector of Central Excise, New Delhi***[11]***, Ramchander Sunda versus Union of India***[12] and ***Common Cause, A Registered Society versus Union of India***[13].

13. The above submissions have been opposed by the original writ petitioners. They support the impugned judgment. Their contentions are summarized as follows:

i. While free and compulsory education for children of age of 6 to 14 years was a constitutional mandate and ad hoc arrangements may have been necessary in absence of qualified teachers being available, having trained and qualified teachers was equally important for maintaining quality of education. If the

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10 (2008) 10 SCC 1
11 (1975) 4 SCC 714 para 28
12 (1999) 9 SCC 105
13 (1994) 5 SCC 557 para 2

Parliament incorporates a minimum mandatory statutory qualification and views lack of such qualification as being detrimental to the development and growth of young children and the quality of education, the same cannot be ignored. Moreover, the State had no legislative or other competence to dilute the educational standards laid down by the Parliament on a subject falling under Entry 25 of the Concurrent List.

ii. The High Court has clearly and rightly found that the impugned rules/ decisions of the State of U.P. were in conflict with the mandate under Section 23(1) of the RTE Act. Even the training imparted to *Shiksha Mitras* did not render them eligible in terms of Section 23(1). Neither the relaxation provision under Section 23(2) (which was meant only for duly appointed teachers) was applicable for appointing *Shiksha Mitras* as teachers nor the relaxation power was applicable to post 23rd August, 2010 appointees (except for a limited period). Proposed amendment giving further time for acquiring minimum qualifications was applicable to otherwise validly appointed teachers only.

iii. Article 243G or the concept of de-centralization of powers to the *Panchayats* did in any manner permit violation of a valid legislation on the subject.

iv. There was no basis whatsoever for holding the 23rd August, 2010 Notification to be in any manner *ultra vires*.

v. Power under Article 142 of the Constitution should be exercised to advance justice and not to defeat the Parliamentary mandate for advancement of proper education.

vi. Alleged non-compliance of provisions of Order 1 Rule 8 CPC was inconsequential in the present case as the State and the *Shiksha Mitras* were duly represented. The whole issue has been considered by the Full Bench of the High Court. Moreover, due publication of proceedings in this Court has been made and the view point of all the *Shiksha Mitras* has been placed before this Court. All the *Shiksha Mitras* had given undertaking in terms of their condition of appointment that they will not claim any right to employment. Reliance was placed on ***Surayya Begum (MST)***

versus Mohd. Usman [14] and ***Olga Tellis versus Bombay Municipal Corporation*[15]**.

vii. Regularization of *Shiksha Mitras* as teachers is contrary to the law laid down by this Court in **Uma Devi (supra), *Union of India versus Arulmozhi Iniarasu*[16]** and ***Grah Rakshak, Home Guards Welfare Association versus State of Himachal Pradesh*[17].** Judgments in ***M.L. Kesari*[18]** and ***Amarendra Kumar Mohapatra* (supra)** are not applicable. The *Shiksha Mitras* were not being regularized against the posts of *Shiksha Mitras (*which was only an *ad hoc* arrangement) but against post of teachers for which mandatory statutory qualification was required. Even if a different source for recruitment was permissible, the same could not be against the mandate of law with regard to the minimum statutory qualifications. Reliance was placed on ***Yogesh Kumar versus Govt. of NCT, Delhi*[19]**and ***K. Narayanan versus State of Karnataka*[20].**

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14 (1991) 3 SCC 114
15 (1985) 3 SCC 545
16 (2011) 7 SCC 397 para 23
17 (2015) 6 SCC 247 para 33
18 (2010) 9 SCC 247
19 (2003) 3 SCC 548 Para 5
20 (1994) Suppl.(1) Page 44 Para 6

Questions before the Court :

14. Thus, questions which need to be gone into are:

i) Whether under the scheme of appointment of *Shiksha Mitras*, they could be treated as teachers appointed as per applicable qualifications?

ii) If *Shiksha Mitras* were not duly appointed teachers, could they be regularized as teachers?

iii) Whether qualification laid down under Section 23(1) of the RTE Act was applicable or stood relaxed in the case of Shiksha Mitras?

iv) Whether statutory qualifications in a Central Statute on a concurrent list subject could be relaxed by a State legislative/ administrative action?

Our consideration and reasons:

15. We have given serious thought to the rival submissions on the above questions and have also perused the findings of the High Court thereon. We have also perused the relevant statutory provisions, notifications, orders of Central Government and other authorities and the decisions cited at the Bar. We have seriously considered the fact that the matter involves 1.78 lakhs persons and the question whether benefit once given to them (even unlawfully) ought to be now withdrawn if the view taken by the High Court is found to be correct.

16. At the outset, we may note that fundamental right to free and compulsory education is one of the most important rights as without education one may never know his other rights. It goes without saying that right to education is right to quality education. Concern for unsatisfactory quality of education has been expressed by this Court on several occasions. This Court in ***Ashoka Kumar Thakur v. Union of India***[21] observed as under:

> ***"422.*** *In Unni Krishnan [1993] 1 SCC 645, Reddy, J. observed that the quality of education in government schools was extremely poor and that the schools were woefully inadequate to the needs of the children. He noted that many countries spend 6% to 8% of gross domestic*

21 (2008) 6 SCC 1 – Ashok Kumar Thakur v. Union of India

product on education. Our expenditure on education is just 4% of GDP.

423. *Though an improvement over past performance, the overall education picture leaves much to be desired. The bad news is really bad. Even where we have seen improvement, there is still failure. A survey by Pratham, an NGO, fleshes out the acute problems found in rural schools. (See ASER 2007—Rural Annual Status of Education Report for 2007, published on 16-1-2008.) The survey covered 16,000 villages. As Pratham indicates, there are an estimated 140 million children in the age group of 6 to 14 years in primary schools. Of these 30 million cannot read, 40 million can recognise a few alphabets, 40 million can read some words, and 30 million can read paragraphs. Over 55 million of these children will not complete four years of school, eventually adding to the illiterate population of India. The national literacy rate is 65%.*

424. *24 districts with more than 50,000 out of school children means we have failed 24 times over. 71 districts in which there are 60 students per teacher is just as bad, if not worse. According to Pratham (and in-line with the Ministry of HRD's six-month review), the number of out of school children has hovered around 7,50,000. (p. 6) Moreover, it goes without saying that children need proper facilities. Today, just 59% of schools can boast of a usable toilet. (p. 49)*

425. *The quality of education is equally troubling. For Standards I and II, only 78.3% of students surveyed could recognise letters and read words or more in their own language. (p. 47) In 2006, it was even worse—only 73.1% could do so. It is disheartening to peruse the statistics for Standards III to V, where only 66.4% could read Standard I text or more in their own language in 2007. (p. 47) As Pratham stated at p. 7:*

> *"What should be more worrying though, is the fact that in Class 2, only 9 per cent children can read the text appropriate to them, and 60 per*

> *cent cannot even recognise numbers between 10 and 99.”*
>
> ”

17. To make the right to education meaningful, a qualified teacher undoubtedly has significant role. In this regard we may quote with approval the following observations dealing with the importance of a trained teacher in the Full Bench judgment of the High Court in ***Shiv Kumar Sharma***(supra):

> ***“55. … … …****The training of a child, that is an integral part of child development, is essential for his grooming, as a human mind, without proper training is like a horse without a bridle difficult to ride. Children in their cradle of life with the help of teachers can mould their lives for higher ambitions in their manhood. To assess and mould children with these ideals is the job of a skilled teacher and the art of such skill is pedagogy. Teachers have to serve the larger interest of the society as they are building the future. Henry Brooks Adams said, "A teacher affects eternity; he can never tell where his influence stops" and more appropriately Christa Mcauliffe said " I touch the future. I teach". This requires the possession of virtues like sacrifice and honour which in turn brings respect to the status of a teacher and infuses confidence in the pupil.*
>
> ***56.*** *Many children are victims of apathy and wrongly motived parental treatment. Their emotional and skilful assessment, and proper treatment, has to be handled within the clinic of an elementary school where the sole physician is none else than a trained teacher. A candidate possessing a mere educational or a training qualification without any genuine attribute may not necessarily be a good teacher.*

57. *It is in this background that one may remember those who have contributed to this skilful art of pedagogy. In the modern world the great philosopher and Educationist Rousseau, followed by the Swiss Predecessor of his German Pupils, Pestalozzi, are worth remembering. They were followed by the famous Germans Herbart and Froebel. The English with Lancaster and Bell followed suit and in the modern world it would be improper to forget the great contributions of Maria Montessori.*

58. *We do not wish to pile up names but this is only to emphasize that a great scientific contribution has been made to this skilful art of pedagogy. If one goes through the works of these great people, one can understand that child evelopment and teaching children is no easy task and cannot be confined with the acquisition of a couple of degrees as a supplement to the complete attribute required of a teacher. The narrow meaning of qualification therefore that was being pressed into service by Sri Rahul Agrawal cannot be countenanced in view of the vast ocean of understanding that is required of a skilful teacher.*

59. *In the instant case the skill of the teacher should be lined with such ingredients that it kindles the spark of a child and balances a group of mentally uneven children. The duty of a good teacher is to bring the student into contact with the learning of fruitful elements that ensue an enduring significance in life, affirmative information of all modes of intellectual, systematical and practical activity that play a major part in the building of human mind and spirit. Their interplay is the exercise that has to be undertaken by a teacher. This exercise, particularly, in a class room of infants should be underlined with methods that are elastic enough to fit the varying needs of different types of children. The cultivation of mental training and discipline is the prime object of good teaching. We celebrate 5th of September each year as Teachers' Day to commemorate the birth of our late President Dr. S. Radhakrishnan. He defined the good qualities of a teacher as follows:*

> *A good teacher must know how to arouse the interest of the pupil in the field of study for which he is responsible,*
>
> *he must himself be a master in the field and be in touch with the latest developments in his subject,*

he must himself be a fellow traveler in the exciting pursuit of knowledge … … … … … … … … …

61. *Describing the role model of teachers, our Former President of India Dr. A.P.J. Abdul Kalam, narrated his experience in his teachers' day speech on 5th September, 2003 and said that a school must have the best of teachers who have the ability to teach, love teaching and build moral qualities.*

62. *These are the challenges of teaching which have been referred to in the guidelines dated 11th February, 2011. It is in order to ensure that the candidate is possessed of such attributes. The guidelines further provide that a candidate will be presumed to have succeeded in the test if he scores 60% or more. Some confessions have been given for reduction in the said percentage in the case of scheduled caste, scheduled tribes, and other backward classes as well as differently abled persons.*

63. *The reason for this is that the art of teaching is designed to educate a child. Education is not mere acquisition of qualifications but is an overall development of a child to ensure growth and development. It is the awakening of the inner self and faculty of the child to the ways of the world. The teacher therefore should be possessed such qualities that he satisfies the curiosity of a child that enables him not only to read but to distinguish what is worth reading. The job of a teacher is not to fill the time-table with dull unintelligible tasks. This violates common sense and creativity brutally. Teaching and training cannot be effected in the absence of knowledge about the mind which is to receive them.*

64. *It is the systematic and purposeful construction of a personality, so that it leaves an everlasting effect on the mind. The job of a teacher is to get across the confidence in a pupil, that there were good reasons for everything the teacher did. He has to be transparent and he cannot leave a pupil to guess that there are any hidden answers. A good teacher would like the pupil to lead the way. The teacher would follow and let the pupil know that his efforts would be recognised. This confidence would help the child to develop a strength in himself to cope up with his own world by observing and solving problems. The art of teaching should not be confined only to oral transmissions because what one hears one can forget. However, what one sees, one remembers but what one. does he understands. This is what should teaching be comprised of. The teacher should therefore be in a position to infuse into a child such attributes that he or she acquires the ability to assume responsibility for himself/herself. A psychological independence that enables him/her to decide at the same time and differentiate right from wrong. This capacity of a child which lies concealed in him has to be discovered in a way that the child finds this world an interesting place to live in. For this good teaching may be 1/4th preparation and 3/4th performance.*

65. *A teacher is like a professional as said by Danny Hillis, "A layman knows he has to kick it; and an amateur knows where to kick it; a professional knows how hard." This quality should be possessed professionally by a teacher as the object of teaching a child is to enable him to get alone without a teacher.*

66. *The skill of such a performance has to be assessed because teaching is a great art to educate youth to enable him to find out and discover his own peculiar aptitudes or create where none exists. A teacher has to create inclinations in the child which may serve as substitutes. The level of inspiration that has to be infused in a child should be such that he is able to make a mark in life as a complete human being. One should remember that "millions see the apple fall, but Newton was the one to ask why?" The job of*

a teacher at the primary level is to generate this element of curiosity in a child.

67. *For this teachers have to be attributed with qualities that they are able to handle the weak and the nervous, the mediocre and intelligent with measured skill. This expertise is a onerous task and is a substantial part of pedagogy. To teach a child to become self sufficient is the art which has to be developed with caution so as not to destroy the fragile confidence by using harsh methods. The teacher eligibility test appears to be designed for this purpose.*

68. *It is to be remembered that teachers are to impart education to those souls who are between the period of innocence of childhood and the folly of youth. It is this aspect of pedagogy to educate a child to lead life that attains importance.*

69. *The art of dealing with children also involves knowing what not to say, and on the other hand patiently answering the unpredictable questions of an inquisitive child. A teacher should not give answers to children to remember only, but he should be able to give them problems to solve. It is then that the potentiality of the human race is better put to use "because a child is not a vase to be filled but a fire to be lit." (Francois Rabelais) . A Chinese Proverb goes a long way to say "give a man a fish and you feed him for a day. Teach a man to fish and you feed him for a lifetime." Teaching is infusing of ideas instead of stuffing the brain with facts. William Arthur Ward a famous educationist said that The mediocre teacher tells, a Good teacher explains, a Superior teacher demonstrates but the great teacher inspires."*

70. *Children come from different backgrounds often being victimised by unwise and wrongly motived parental treatment. The teacher has to be more careful for he is enjoined with the duty of child development. This therefore is the background-in which the teachers role attains immense significance. It is for such reasons that the Union*

and the State appear to have come up with the necessity of a teacher eligibility test.

71. *The importance of teaching and a teacher's selection should be to find out whether a candidate fulfils and is possessed of such attributes, that is capable of bringing out the best to ensure child development. "The art of teaching is the art of assisting discovery (Mark Van Doran)". This compulsory attribute is therefore to be assessed by the State while judging the capability of a teacher and which therefore is an essential qualification and not only a minimum qualification. The essential nature of this test therefore leaves no room for doubt that mere possession of educational qualification and a teachers training course is not sufficient to assess the capacity of a teacher.*

72. *Sir Winston Churchill while assessing the role of a teacher observed that the Head Masters of elementary schools have powers at their disposal with which even Prime Ministers have never been vested with. The reason is that the school master has to reckon not only with his pupils human tendency to run, but also with the unwisdom of parents in their early dealings with early tendency; elimination of wrong doing, not by plainly repressive methods is also one of the arts that has to be possessed by a skilful teacher.*

73. *All this goes to fulfil the objectives with which Article 45 of the Constitution of India was incorporated under the United Nations declaration which says that mankind owes to the child the best it has to give. An infant who does not know how to express himself, enters in an elementary school where he has to be taught his initial alphas and betas. The pronunciation, sentence-forming, elementary grammar and understanding of his first alphabets have to be installed in his mind with expertise. It is for this reason that the curriculum of the TET includes proficiency in the language of the medium of instruction, an optional language for a better understanding with the student, mathematics to assess the investigative strength of the mind and finally environmental studies to gauge the overall awareness of human life and nature. This has to be coupled*

with moral education and discipline and this entire combination in one performance is the skill of a teacher. He has to handle the weak and the nervous, the mediocre and intelligent, with an adequate measured skill for which a basic attribute with intelligence is required to be possessed by a teacher. A teacher cannot employ methods like knocking of a child because such methods do not always turn a timid boy into a courageous one nor does it turn a spoilt brat into an angel. Nonetheless it is useful to remember Bishop Fulton J Sheen who said "Every child should have an occasional pat on the back, as long as it is applied low enough and hard enough". For teachers and guardians the proverb "Give a child enough rope, and you will trip" is also a cautionary note. The acquisition of such expertise is what is desired to be assessed and that is what the teacher eligibility test is designed for. It is only to assess these qualities that would qualify a teacher for being appointed as such and therefore the teacher eligibility test is not a mere eligibility criteria but a qualification as prescribed in addition to the academic and training qualifications.

74. *It would be apt to quote Charles Dickens in his famous book "Hard Times" where the quality of a teacher has been expressed from another angle as follows:*

> *“What I want is facts. Teach these boys and girls nothing but facts. Facts alone are wanted in life. Plant nothing else, and root out everything else.”*

75. *The role of teaching is therefore of a mediator of learning, a parent substitute, a controller of students' behaviour, an agent of social change and finally a judge of achievement. The teacher who enters a school imparting elementary education has to act like a group leader who can remove the hindrances of doubts in the mind of an infant and generate creative development. Above all he has to in still in the mind of a youngster all virtues of courage and honesty as this part of education is a vital portion of*

child development. It is in the early years that the importance of education has to be preached so as to achieve what a former U.S. President Garfield said "Next in importance to freedom and justice is education without which the other two cannot be entertained."

18. In the impugned judgment the Full Bench of the High Court highlighted the importance of the prescribed TET qualification as follows:

"93. *The object and purpose of introducing the TET is to ensure that a teacher who embarks upon instructing students of primary and upper primary classes is duly equipped to fulfill the needs of the students, understands the relevance of education for a child at that stage and can contribute to the well rounded development of the child. Teaching a child is not merely a matter of providing information. Deeply embedded in the process of imparting education is sensitivity towards the psyche of the child, the ability to understand the concerns of a young student of that age, the motivations which encourage learning and the pitfalls which have to be avoided. The emphasis on clearing the TET is to ensure the maintenance of quality in imparting primary education. These requirements which have been laid down by NCTE fulfill an important public purpose by ensuring a complement of trained teachers who contribute to the learning process of children and enhance their growth and development. These requirements should not be viewed merely as norms governing the relationship of a teacher with the contract of employment. These norms are intended to fulfill and protect the needs of those who are taught, namely, young children. India can ignore the concerns of its children only at the cost of a grave peril to the future of our society. The effort of the State Government to by-pass well considered norms which are laid down by NCTE must be disapproved by the Court. We have done so on the ground that the State Government lacks the legislative power and competence to do so. Equally, fundamental is the concern that a relaxation of the*

> *norms prescribed by an expert body will result in grave detriment to the development and growth of our young children and the provision of quality education to them. Providing quality education is crucial for students belonging to every strata of society. Education which is provided in schools conducted by the Basic Education Board should not be allowed to degenerate into education of poor quality which it will, if the norms which are prescribed by an expert body under legislation enacted by Parliament in the national interest are allowed to be ignored by the State Government on the basis of parochial or populist perceptions. Such an attempt is ultra vires the statutory powers of the State and is arbitrary and violative of Article 14 of the Constitution."*

19. We are in agreement with the above observations. We are unable to agree that even unqualified teachers ought to be allowed to continue ignoring the legislative mandate or that we should exercise our jurisdiction under Article 142 to undo the said mandate. Consideration for career of 1.78 lac Shiksha Mitras, over and above their legal right, cannot be at the cost of fundamental right of children to free quality education by duly qualified teachers in terms of legislative mandate.

20. We may now further examine the question whether the Shiksha Mitras have, under the law, right to be appointed or absorbed as teachers de hors the prescribed qualifications. In this regard, the finding in the impugned judgment is as follows:

"58. *The essential characteristics of the Shiksha Mitra Scheme envisaged, firstly, that each appointment was made on a contractual basis for a stipulated term of eleven months, renewable subject to satisfactory performance and on an honorarium. Secondly, the Scheme, as notified, contemplated that the engagement of Shiksha Mitras was not in the regular service of the State, as indeed it could not have been, having due regard to the provisions of the Service Rules of 1981 which held the field in regard to the constitution of a cadre of teachers imparting basic education and regularly engaged for that purpose. Thirdly, each of the persons appointed as Shiksha Mitras was placed on notice of the fact that this was a Scheme envisaging service by the unemployed youth for the benefit of the community against the payment of an honorarium. Shiksha Mitras were not entitled to the payment of a salary in the regular pay scale but would only receive a Mandeya (honorarium). The application form which every prospective candidate was required to fill up in terms of the Government Order dated 1 July 2001, envisaged a statement of acceptance that the candidate would be bound by the terms and conditions governing the Scheme. The consent form required to be filled in by every candidate envisaged that he/she would not be treated as a regular employee of the State Government and would only be entitled to the payment of honorarium. Moreover, Clause 3 of Form-II appended to the Government Order stipulated that the training which was imparted to a candidate was only to enable him or her to render community service in the capacity of a Shiksha Mitra. Fourthly, appointments as Shiksha Mitras were not against sanctioned posts as determined by the Board of Basic Education with the previous approval of the State Government under Rule 4 of the Service Rules of 1981. Fifthly, the manner of making appointments and the procedure for recruitment was not in conformity with the provisions contained in Rules 14, 15, 16 and 17 of the Service Rules of 1981. Instead, what the Shiksha Mitra Scheme envisaged, was that appointments should be made by Village Education Committees at the village level. At the district level, there was a Committee chaired by the District Collector and consisting, inter alia, of the District Panchayat Raj Officer and the Basic Education*

Officer. The District Level Committee was constituted to oversee the implementation of the Scheme in the district. Sixthly, the qualification which was prescribed for appointment as a Shiksha Mitra under the Government Order dated 26 May 1999 was the possessing of an intermediate qualification. Prior thereto, an amendment was made in the Service Rules on 9 July 1998 by which Rule 8 was amended to prescribe the holding of a graduate degree for appointment as a regular teacher. Under the Service Rules of 1981, a regular teacher was required to also possess a basic teacher's certificate. This was not a requirement for Shiksha Mitras under the Government Order. Shiksha Mitras did not fulfill the qualifications for a regular teacher under the Service Rules of 1981. Seventhly, the manner in which reservations were to be worked out under the Rules of 1981 was evidently not the manner in which reservations in the recruitment of Shiksha Mitras would operate. At the highest, what has been urged before the Court by the Additional Advocate General and supporting counsel is that the selection of Shiksha Mitras at the village level envisaged that a Shiksha Mitra to be appointed should belong to the same category as the Gram Pradhan, thereby resulting in a rough and ready adoption of the norm of reservation. This is certainly not the manner in which the policy of reservation as envisaged by the State is implemented in the case of regularly selected candidates, including by the application of the roster and implementing horizontal and vertical reservations. Rule 9, it must be noted, envisages reservation not only for the Scheduled Castes, Scheduled Tribes and Other Backward Classes, but other categories also including the dependents of freedom fighters and ex-servicemen. Moreover, the orders of the State Government also contemplate horizontal reservation across various classes. These aspects leave no manner of doubt that the engagement of Shiksha Mitras was envisaged under an administrative scheme by the State Government on a contractual basis with a specified purpose and object and de hors the governing provisions of the applicable Service Rules of 1981. ... ...

... ...

62. *The submission which has been urged on behalf of the State and by some of the supporting counsel, is that Section 11 of the U.P. Basic Education Act, 1972 contemplates the constitution of Village Education Committees. This does not render the Shiksha Mitra Scheme a statutory scheme. The function of Village Education Committees as defined in sub-section (2) of Section 11 is to establish, administer, control and manage basic schools in the Panchayat area and to discharge such other functions pertaining to basic education as may be entrusted by the State Government. This, in our opinion, does not render the Scheme of appointing Shiksha Mitras of a statutory nature or character. If such a Scheme was to be intended to have a statutory flavour, there could have been no escape from the requirement of complying with the norms which govern the regular teachers of basic schools as prescribed in the Service Rules of 1981. On the contrary, compliance with the Service Rules of 1981 was sought to be obviated by engaging barefoot volunteers across the State on a contractual basis for which an administrative scheme was envisaged under the Government Order dated 26 May 1999. Similarly, the power of the State Government to issue directions to the Board of Basic Education in Section 13 was not the power which the State Government wielded while issuing diverse Government Orders that govern the Shiksha Mitra Scheme. The power to issue directions under Section 13 could not have been exercised contrary to the provisions of the Service Rules of 1981 which were made by the State Government in exercise of the subordinate law-making power. Even if it is held that Village Education Committees were entrusted with the duty of selecting Shiksha Mitras in pursuance of the provisions of Section 11(2)(g), the fact remains that appointments of Shiksha Mitras were independent of and not subject to the discipline of the provisions of the Service Rules of 1981. Neither was the engagement against sanctioned posts nor were the provisions for recruitment envisaged in the Service Rules of 1981 followed. They were not qualified candidates. Understanding the true nature and purpose of Shiksha Mitras lies at the heart of the dispute in the present case.*

... ...

70. *Evidently, Shiksha Mitras could not either seek the benefit of clause (a) or clause (c) of Para 4 of the notification dated 23 August 2010. They were not teachers appointed in accordance with the Regulations of 3 September 2001 since, admittedly they did not possess the BTC qualification. Moreover, Shiksha Mitras did not have the benefit of clause (c) of Para 3 since any appointment made prior to 3 September 2001 had to be in accordance with the prevalent recruitment rules. The engagements of Shiksha Mitras were de hors the recruitment rules and were not in accordance with the Service Rules of 1981 which apply to appointments of basic teachers in the State of Uttar Pradesh. The proviso to subsection (2) of Section 23 governs persons who are teachers and who, at the commencement of the RTE Act of 2009, did not possess the minimum qualifications prescribed under sub-section (1). They were given a period of five years to acquire the minimum qualifications. The proviso would govern persons who were recruited as teachers in the State of Uttar Pradesh under the Act and the Service Rules of 1981 and can have no application to Shiksha Mitras. ... ...*

... ...

75. *The State Government moved the Central Government for the grant of permission on 24 December 2010 in which it disclosed the functioning of 1.78 lac Shiksha Mitras of whom 1,24,000 were stated to be graduates. The State Government indicated in its letter that these persons were engaged on a contract basis and with a stipulation of a minimum qualification of intermediate though, under the service rules, the prescribed qualification was a graduate degree. Subsequently, on 3 January 2011, a revised proposal was submitted which envisaged training being imparted to 1,24,000 graduate Shiksha Mitras out of a total complement of 1,70,000. The permission which was granted by NCTE on 14 January 2011 was specifically in the context of the request made on 3 January 2011 for granting permission for the training of 1,24,000 untrained graduate Shiksha Mitras. Eventually, what seems to have transpired was that the State Government issued a Government Order on 14 August 2012 so as to provide for training to those*

Shiksha Mitras who had acquired graduate degrees by 25 July 2012. However, it is not in dispute before this Court that training was imparted not only to graduate Shiksha Mitras who were within the terms of the permission granted by NCTE by its letter dated 14 January 2011, but also to 46,000 Shiksha Mitras holding the intermediate qualification which was not within the purview of the permission which was granted by NCTE on 14 January 2011. NCTE had not permitted the State of U.P. to train the non-graduate Shiksha Mitras through the open and distance learning methodology. NCTE, we must note, has stated in its counter-affidavit filed in these proceedings, that it was not specifically apprised of the nature of the engagement of Shiksha Mitras by the State. The counter-affidavit which has been filed by NCTE, insofar as is material, reads as follows: "That the rationale for including the T.E.T. as minimum qualification for a person to be eligible for appointment as a teacher is that it would bring national standards and benchmark to quality teaching before the recruitment process is completed for appointing a candidate as a trained teacher. That it is pertinent to mention here that since the State Authorities have not clearly sent the report that initial engagement of Shiksha Mitras was for a period of 11 months, as such the nomenclature of these Shiksha Mitras as untrained teacher was not in consonance with the provisions so issued after the Right of Children to Free and Compulsory Education Act, 2009 came into effect." The State has disputed this. … … …

***80.** What has happened in the State of Uttar Pradesh is that the State Government, in a clear violation of the mandate of Section 23(2) which vests the power to relax the minimum qualifications in the Central Government, has arrogated to itself a power which it lacks, to grant exemption from the mandatory qualifications which are laid down by NCTE in their application to Shiksha Mitras in the State. The State Government has, in our view, acted in clear violation of its statutory powers. Parliament has legislated to provide, in no uncertain terms, that any relaxation of the minimum educational qualifications can only be made by the Central Government. However, Rule 16-A which has been introduced by the State Government by a notification dated*

30 May 2014 purports to provide a non-obstante provision which will operate notwithstanding anything contained in Rules 15 and 16 of the State Rules. Rules 15 and 16 of the State Rules were originally formulated in a manner consistent with the provisions of Section 23(2) and the provisions contained in Rules 17 and 18 of the Central Rules of 2010. However, as a result of the introduction of Rule 16-A, the State Government has assumed to itself the power to make provisions for relaxing the minimum educational qualifications for appointment of Shiksha Mitras as Assistant Teachers in junior basic schools "as are considered otherwise eligible and in order to implement the provisions of the Act". There can be no manner of doubt that far from implementing the provisions of the Act, the State Government by its amendment of the subordinate legislation has purported to negate the very object and purpose of the RTE Act of 2009. ... ...

86. *The contention that the experience gained by Shiksha Mitras over the course of their engagement should obviate the need of obtaining the essential qualification cannot be accepted for more than one reason. Firstly, the essential qualification must be held by the person on the date of entry into the service. If the entry be preceded by a selection process it is liable to be tested with reference to the date of advertisement. Viewed from any angle, the Shiksha Mitras did not possess the requisite qualification on either of the relevant cut off dates. Secondly, the experience that may have been gained by a person has never been construed as a substitute for an essential qualification that is statutorily prescribed. Acceptance of this contention would have grave ramifications, fall foul of settled precedent on the subject and be against the basic tenets of Article 16 and principles governing public employment. ... ...*

94. *The issue before the Court is in regard to the legality of the absorption. Articles 14 and 16 of the Constitution provide for equality in matters of public employment. The limit on the power of the State to grant regularization was considered by a Constitution Bench of the Supreme Court in*

a judgment in Secretary of State of Karnataka v. Umadevi (2006) 4 SCC 1. Emphasizing the principle of the Yule of equality' in public employment, the Constitution Bench Court held as follows:

> *"...Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued." ... ...*

95. *The Supreme Court held that there may be cases where certain appointments were not illegal but were irregular. These are situations where an appointment has been made (i) of duly qualified persons; and (ii) in duly sanctioned vacant posts and the employees would have continued to work for more than ten years without the intervention of the orders of the Court or tribunal. In those cases, the judgment of the Supreme Court in Umadevi left it open to the State Governments, the Union Government and their instrumentalities to take steps to regularize, as a one time measure, the services of such irregularly appointed persons. The relevant observation in that regard is as follows:*

> *"One aspect needs to be clarified. There may be cases where irregular ppointments (not illegal*

appointments) as explained in S.V. NARAYANAPPA (AIR 1967 SC 1071), R.N. NANJUNDAPPA (1972)1 SCC 409, and B.N. NAGARAJAN (1979) 4 507, and referred to in paragraph 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of Courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of Courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."

... ...

101. *The Central Government has exercised powers under sub-section (2) of Section 23 on 10 September 2012. The Union Ministry of Human Resource Development, in its notification, has granted a relaxation until 31 March 2014 only in respect of persons referred to in sub-clause (a) of Clause (1) of Para 3 of the notification dated 23 August 2010 as amended. This category covers persons with*

BA/BSc degrees with at least fifty percent marks and holding a BEd qualification. While issuing a notification on 10 September 2012 for the purpose of relaxing the qualifications Shiksha Mitras to whom the benefit of regularization has been granted neither fulfilled the prescribed minimum qualifications nor were they appointed against sanctioned posts. The fact that Shiksha Mitras did not fulfill the qualifications prescribed by NCTE which has the unquestioned jurisdiction under the NCTE Act of 1993 and RTE Act of 2009 is evident from the fact that the State Government, by inserting Rule 16-A into the Rules of 2011 has assumed to itself a power to relax the minimum qualifications required to be observed, in the case of Shiksha Mitras. In other words, by Rule 16-A, the State Government has created an island of exclusion for the benefit of Shiksha Mitras who, in the exercise of the rule-making power of the State under Rule 16-A, would not have to fulfill the minimum qualifications prescribed by NCTE. The State Government has sought to get over the inseparable obstacle that the Shiksha Mitras do not fulfill the TET requirement by unlawfully conferring power on itself to relax the requirement. Having committed that illegality, the State has proceeded to do away with the TET qualification in its application to Shiksha Mitras, by unlawfully amending the service rules. These amendments have been held to be ultra vires and an impermissible encroachment on the exclusive domain of NCTE. Having done this the State Government has compounded its illegality by regularizing/absorbing the Shiksha Mitras as Assistant Teachers. As a consequence, qualified candidates fulfilling the NCTE norms are denied the equality of opportunity to seek appointment as Assistant Teachers. We have earlier held Rule 16-A to be ultra vires the rule-making authority of the State Government since the power to grant a relaxation from the minimum qualifications is vested exclusively in the Central Government. In assuming to itself a power to relax the minimum qualification and thereafter by diluting the minimum qualifications in the case of Shiksha Mitras, the State Government has patently acted in a manner which is arbitrary, ultra vires the governing central legislation and in breach of the restraint on the limits of its own statutory powers. By this exercise, the

State Government has sought to grant regularization to persons who failed to fulfill the minimum qualifications and who were never appointed against sanctioned posts. In these circumstances, the grant of largesse by the State Government to Shiksha Mitras cannot be upheld and the amendment to the Rules is ultra vires and unconstitutional.

... ...

103. *In the present case, it is evident that the Shiksha Mitras do not fulfill any of the norms laid down by the Supreme Court for regular absorption into the service of the State. They were at all material times appointed as and continued to be engaged as contractual appointees. Their appointments were not against sanctioned posts. They did not fulfill the minimum qualifications required for appointment as Assistant Teachers."*

21. We are in agreement with the above findings. In view of clear mandate of law statutorily requiring minimum qualification for appointment of teachers to be appointed after the date of Notification dated 23rd August, 2010, there is no doubt that no appointment was permissible without such qualifications. Appointments in the present case are clearly after the said date. Relaxation provision could be invoked for a limited period or in respect of persons already appointed in terms of applicable rules relating to qualifications. The *Shiksha Mitras* in the present case

do not fall in the category of pre 23rd August, 2010 Notification whose appointment could be regularized.

22. Further difficulty which stares one in the face is the law laid down by this Court on regularization of contractually appointed persons in public employment. Appointment of *Shiksha* Mitras was not only contractual, it was not as per qualification prescribed for a teacher nor on designation of teacher nor in pay scale of teachers. Thus, they could not be regularized as teachers. Regularization could only be of mere irregularity. The exceptions carved out by this Court do not apply to the case of the present nature.

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

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

25. On the one hand, we have the claim of 1.78 Lakhs persons to be regularized in violation of law, on the other hand is the duty to uphold the rule of law and also to have regard to the right of children in the age of 6 to 14 years to receive quality education from duly qualified teachers. Thus, even if for a stop gap arrangement teaching may be by unqualified teachers, qualified teachers have to be ultimately appointed. It may be permissible to give some weightage to the experience of *Shiksha Mitras* or some age relaxation may be possible, mandatory qualifications cannot be dispensed with. Regularization of *Shiksha Mitras* as teachers was not permissible. In view of this legal position, our answers are obvious. We do not find any error in the view taken by the High Court.

26. Question now is whether in absence of any right in favour of Shiksha Mitras, they are entitled to any other relief or preference. In the peculiar fact situation, they ought to be given opportunity to be considered for recruitment if they have acquired or they now acquire the requisite qualification in terms of advertisements for recruitment for next two consecutive recruitments. They may also be given suitable age relaxation and some weightage for their experience as may be decided by the concerned authority. Till they avail of this opportunity, the State is at liberty to continue them as Shiksha Mitras on same terms on which they were working prior to their absorption, if the State so decides.

27. Accordingly, we uphold the view of the High Court subject to above observations. All the matters will stand disposed of accordingly.

.....J.
(Adarsh Kumar Goel)

.....J.
(Uday Umesh Lalit)

New Delhi;
25th July, 2017.