

State of U.P. and ors. Vs. Anant Kumar Tiwari and ors.

State of U.P. and ors. Vs. Anant Kumar Tiwari and ors.

SooperKanoon Citation : sooperkanoon.com/490113

Court : Allahabad

Decided On : Nov-23-2002

Reported in : 2003(3)AWC2060

Judge : S.K. Sen, C.J. and ;R.K. Agrawal, J.

Acts : [Constitution of India](#) - Articles 14, 15(1), 15(3), 16, 16(2) and 226; Uttar Pradesh Basic Education Act, 1972 - Sections 3, 4 and 13; Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 - Rule 8; National Council for Teachers Education Act, 1993 - Sections 15

Appeal No. : Special Appeal No. 404 of 2002

Appellant : State of U.P. and ors.

Respondent : Anant Kumar Tiwari and ors.

Advocate for Def. : Shailendra, Adv.

Advocate for Pet/Ap. : R.N. Singh, SC, ;A.P. Shahi, ;P.S. Baghel, ;M.D. Singh Shekhar, ;K.R. Singh, ;Ashok Mehta and ;U.N. Pandey, Adv.

Judgement :

R.K. Agrawal, J.

1. Special Appeal No. 404 of 2002, has been filed by the State of U.P. through Secretary, Education U.P. Government, Lucknow, Director, State Council of Educational Research and Training, Lucknow and the Director Basic Education, U.P., while the Special Appeal No. 365 of 2002, has been filed by District Basic Teachers Kalyan Samiti and three others after obtaining leave to appeal and the remaining special appeals have been filed by the selected candidates after obtaining leave to appeal against the judgment and order of the learned single Judge dated 21.3.2002 passed in Civil Misc. Writ Petition No. 37124 of 2001, Anant Kumar Tiwari and Ors. v. State of U.P. and Ors. and other connected writ petitions, whereby the learned single Judge had allowed all the writ petitions and had quashed the Government order dated 3.8.2001, the advertisement dated 14.8.2001. Government order dated 3.12.2001 and the process of selection, pursuant thereto at whatever stage it had reached before passing of the interim order dated 9.11.2001 and 3.12.2001. The learned single Judge has held that the Government order dated 3.8.2001 and the proportion of selection in pursuance thereto at whatever stage it has reached is per se, arbitrary, discriminatory and violative of Articles 14, 15, 16 and 21 of the [Constitution of India](#), apart from the same being contrary to the U.P. Basic Education Act, 1972 and U.P. Basic Education (Teachers) Service Rules, 1981 and cannot be upheld.

2. We have heard the learned Advocate General, Sri R.N. Singh, learned senior counsel assisted by Sri A.P. Shahi, Sri P. S. Baghel and Sri M. D. Singh Shekhar for the appellants and Sri Shailendra, learned counsel appearing for the respondent-writ petitioners.

3. Briefly stated the facts giving rise to the present special appeals are as follows :

'In the primary schools run by the U.P. Basic Education Board (hereinafter referred to as the Board) in the State of U.P. for the last several years there had been a shortage of teachers, as a result of which the State Government was finding it difficult to fulfil its obligations as mandated by Article 45 of the [Constitution of India](#) to provide free and compulsory education for all children until they complete the age of 14 years. It appears that in the State of U.P., the State Government runs a training college in each district, which is at present about 70 in number, where the

persons are given training in teaching and on successful completion thereof are awarded Basic Teacher's Certificate (hereinafter referred to as B.T.C.). As per the statement made by the learned Advocate General, in each of the training college, the intake is of only 100 persons in a year. Thus, only about 5,000 to 6,000 qualified B.T.C. teachers are available for being appointed as assistant teachers to teach students in primary schools run by the Board in the State of U.P. whereas the total requirement of teachers at present is more than 50,000. To fulfil its constitutional obligations, the State Government took a policy decision to impart two months' special training to those persons, who have done their B.Ed./L.T. The decision taken by the State Government, which was accorded permission by the Government manifested itself in the Government order dated 3.8.2001. It mentions that the Governor has been pleased to accord permission for the appointment of 20,000 B.Ed./L.T. qualified and selected candidates on the vacant posts of Assistant Teachers in the primary schools run by the Board after they complete two months special B.T.C. training and are found successful in the examination. The detailed procedure for making of application and selection was also prescribed by the aforementioned Government order. It provided for determination of vacancies district wise and the candidates concerned will be eligible to make an application only against the vacancies available in their home districts. A candidate shall apply only for the home district and if he makes an application for two and more districts, such application shall be rejected. No certificate was to be produced at the time of verification. No written examination was to be conducted for the selection. The criterion for the selection was the quality point marks obtained in the various examinations passed by the candidates to be determined in the manner given in the said Government order. It also provided that the selection will be made on the basis of the district wise merit list prepared on the basis of the total quality point marks. The reservation was provided in accordance with the reservation policy of the State Government. However, It was provided that care shall be taken that 50% candidates of the prescribed limit are selected from the Science group and 50% from the Arts group and besides it 50% males and 50% females will be selected in the respective categories against the prescribed number. The maximum and minimum age was fixed at 35 and 18 years as on 1st July of the year following the year of notification of vacancy with the relaxation of

five years in the case of Scheduled Caste, Scheduled Tribe, Backward classes and the dependant of freedom fighters and three years in the case of ex-serviceman in the upper age limit. The selected candidates were required to undergo a two months special B.T.C. training after which they have to appear in an examination. The selected candidates will be eligible for the appointment only after passing of the examination. The candidates, who have completed special B.T.C. training successfully, shall be treated at par with B.T.C. general trained and shall be treated as eligible for appointment to the vacant posts of assistant teachers in primary schools. The said Government order also provided for appointment of the trained applicants by making provision that, who had successfully completed the training course shall be given appointment in the concerned district and in the primary schools against the limit of sanctioned post, which are located in far flung areas and where they are actually needed. The aforesaid Government order was subsequently modified by another Government order dated 20.8.2001, whereby the candidates having C.P.Ed., D.P.Ed., and B.P.Ed. training as regular students from the universities, colleges and training colleges recognised and run by the State Government, were also made eligible to put up application for special B.T.C. training besides B.Ed./L.T. candidates and the maximum age limit for special B.T.C. training was substituted by 40 years retaining the relaxation of age of 5 years and 3 years. By the Government order dated 2.8.2001, the last date of receipt of application was also changed and instead of 15.9.2001, the last date was fixed as 29.9.2001. '

4. It appears that on reconsideration, the State Government decided to prepare a merit list at the State level. Accordingly, a Government order dated 14.9.2001, was issued by which it was provided that a merit list of all the applications received will be prepared on the basis of quality point of the educational and other qualifications in accordance with the provisions given in the Government order at the State level, which was to be prepared in proportion to the total vacancies for training. The list was to be arranged district wise in conformity with the vacancies available in the district and a provision of reservation as per the rules was to be ensured. The candidates on the merit list were to be allotted in order of merit the candidate of home district, another post of the division wherein home district is located and nearest district to the home district division to the candidates where the vacancy is

available. However, on 31.10.2001, the State Government issued another Government order by which the earlier Government order dated 14.9.2001, was amended and once again the merit list of all the applications received was to be prepared on the basis of quality point marks and other qualifications in accordance with the provisions given in the Government Orders at the District level. The advertisement inviting applications for special B.T.C. training was published in the daily newspaper. The relevant portion of the advertisement reads as follows :

'Pradesh mein sanchalit vishwavidyalayon, manayata prapt mahavidyalayon tatha Rajya Sarkar dwara sanchalit mahavidyalayon se sansthaगत prashikshit B.Ed./L.T. abhyarthion se Uttar Pradesh Basic Shiksha Parishad dwara sanchalit gamin kshetra ke prathamik vidyalayon mein Shayak adhyapako ke padon par niyukti ke liye vishisht B.T.C. prashikshan hetu abhyarthion se aawedan patra amantrit kiye jate hain.'

5. A corrigendum was also issued and published in the newspaper of 22.9.2001, regarding preparation of list State-wise and 'the extension of the last date of the application. According to the respondent writ petitioners, they had applied on the basis of the corrigendum, which provided for preparation of merit list State-wise. However, with the change in criteria of preparation of merit list from State-wise to district-wise pursuant to the Government order dated 31.1.2001, their names did not find place in the merit list of their home district and, therefore, being aggrieved have approached this Court by invoking the jurisdiction under Article 226 of the [Constitution of India](#).

6. Before the learned single Judge, the grounds of challenge was two-fold firstly, the preparation of merit list district-wise was arbitrary and violative of Articles 14, 15, 16 and 21 of the [Constitution of India](#). It was also contrary to the provisions of the U.P. Basic Education Act, 1972 (hereinafter referred to as the Act) and the U.P. Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as the Rules). Secondly, the reservation to the extent of making selection of 50% males and 50% females against the prescribed number and 50% candidates from the Science group and 50% from the Arts group is arbitrary and violative of Articles 14, 15, 16 and 21 of the [Constitution of India](#). The respondents writ petitioners also

raised the plea of arbitrariness in preparation of merit list giving specific instances wherein non-qualified persons have been included in the merit list and even though in some of the districts, there was no vacancy, some vacancies have been transferred from adjoining district to accommodate the favoured persons. The State respondents, on the other hand, vehemently opposed the plea of discrimination or violation of any of the provisions of the Constitution and submitted before the learned single Judge that the respondent-writ petitioners, who have participated and remained unsuccessful cannot challenge the impugned advertisement and the selection by filing the present writ petition, the Government has taken a policy decision of recruitment and appointment of such persons, who possessed the qualifications as mentioned in the advertisement, which cannot be open to challenge being the policy decision, the successful candidates have not been impleaded and the writ petitions are liable to be thrown away on this ground alone and lastly that the State Government has also taken policy decision by issuing the Government order dated 3.8.2001 and the advertisement is in discharge of the State obligation under Article 45 of the Constitution and cannot be challenged.

7. The learned single Judge has held that the argument that the petitioners have taken chance and thereafter, when they have failed in the written test, they challenged the selection and, therefore, they should not be allowed to challenge the selection, is not tenable in view of the specific circumstances of the fact that the petitioners have challenged the impugned advertisement, selection and the appointment pursuant thereto on the ground of violation of their rights including the rights conferred on them in Chapter III under Articles 14, 15, 16 and 21 of the [Constitution of India](#).

8. So far as the plea of the policy decision taken by the State Government is concerned, the learned single Judge had found that for appointment of assistant teachers in primary schools, the State Legislature has already enacted the U.P. Basic Education Act, 1972 and has also framed U.P. Basic Education (Teachers) Service Rules 1981 and all appointments are to be governed under the aforesaid two statutory enactments and the Government orders is contrary to the provisions of the Act as well as the Rules. So far as the plea regarding successful candidates

having not been impleaded and the writ petitions are liable to be thrown away on this ground alone is concerned, the learned single Judge has found that before the Court, the Chief Standing Counsel on behalf of the State Government had made a categorical statement that no one has been declared selected and no single person has been appointed in pursuance of the impugned process of selection and only the result has been declared and even the list has not been supplied to the district concerned, the selectees need not be impleaded as no appointment letters have been issued. The learned single Judge has further found that the reservation of 50% to Arts and 50% to Science group or 50% males and 50% females cannot be said to belong to backward classes of citizen so as to entitle them for reservation under Articles 14, 15, 16 and 21 of the [Constitution of India](#). This reservation available in accordance with provisions of U.P. Public Services (Reservation for S.C./S.T. and Other Backward Classes) Act, 1994, and is also contrary to the provisions of the [Constitution of India](#).

9. The learned single Judge further held that changing the preparation of merit list from State-wise to district-wise is arbitrary and illegal and contrary to the constitutional provisions and law declared by this Court.

Rival submissions

10. The learned Advocate General challenged the judgment and order of the learned single Judge on the following grounds :

(1) The writ petitions as filed by the petitioners was not maintainable as the selected candidates had not been impleaded.

(2) All the writ petitioners participated in the selection proceedings and only after being unsuccessful, they have approached this Court by filing the present writ petitions. They are estopped from challenging the advertisement and the selection process held pursuant thereto.

(3) Special B.T.C. training has been recognised as a training course by the State Government as equivalent qualification to B.T.C. under Rule 8(2) of the Rules.

(4) The reservation provided for females to the extent of 50% does not violate any constitutional provision—likewise, providing reservation 50% for Arts group and 50% for Science group candidates also does not violate any of the constitutional provision as the overall limit of reservation does not exceed the permissible limit of 50% and the aforesaid reservations are only in their respective categories.

(5) The plea of promissory estoppel is not available to the writ petitioners.

(6) The State Government is well within its right to prepare merit list at the district level for the special reasons that teaching in Basic Primary Schools has to be made in the local dialect and the persons belonging to that district alone are well versed in the local dialect.

(7) The State is making selection of the candidates to whom special B.T.C. training is to be imparted and is not making any appointment on the post of assistant teachers. Only those candidates, who are selected for special B.T.C. training and after successful completion of the training and clearing the examinations, would be eligible for being considered for appointment on the post of assistant teachers. Thus, the provisions of the Act or the Rules do not come into play at this stage.

11. Sri R. N. Singh, learned senior counsel appearing for the appellants in Special Appeal No. 365 of 2002, adopted the submissions made by the learned Advocate General. He, however, submitted that the reservation provided to the females and for Arts and Science groups are horizontal reservations, which is permissible. Sri P. S. Baghel, learned counsel appearing for the appellants in Special Appeal No. 381 of 2002 in addition to the submission already made by the learned Advocate General and Sri R. N. Singh, submitted that under Article 350A of the [Constitution of India](#), State and every local authority within the State is under legal obligation to provide adequate facility for instruction in the mother tongue at the primary stage of education to the children belonging to linguistic minority groups.

12. Sri M.D. Singh Shekhar, learned counsel appearing for the appellants in Special Appeal No. 420 of 2002, while adopting the arguments already advanced before us, submitted that the appellants had already been selected for training and in fact, had also gone for training. Thus, they were necessary parties to be

impleaded in the writ petition in the absence of which no writ could have been issued affecting their interest.

13. Sri Shailendra, learned counsel appearing for the respondents, however, submitted as follows :

(1) The writ petition filed by the petitioners was maintainable, as there was no necessity of impleading the selected candidates in view of the statement given by the learned Chief Standing Counsel before the learned single Judge, that no one is declared selected and appointment of any single person has not been made in pursuance of the impugned process of selection and further that only the result has been declared and even the list has not been supplied to the district concerned.

(2) The writ petitioners had approached this Court only when the criteria for preparation of the merit list was changed from State level to district level. The petitioners' name would have found place in the merit list if it was prepared in accordance with the Government order dated 14.9.2001 and only when the said Government order was amended vide Government order dated 31.10.2001, directing preparation of merit list at the district level that the cause of action arose to the petitioners. Thus, the plea that the petitioners had participated in the selection and only after being unsuccessful they have challenged and are thus, estopped from challenging the advertisement and the selection process is misconceived.

(3) The recognition granted by the State Government to the special B.T.C. course as equivalent to B.T.C. is in violation of the provisions of National Council of Teachers Education Act, 1993, as power to recognise a training course solely vests with the National Council of Teachers Education. Since special B.T.C. course has not been recognised by the National Council of Teachers Education, the said course cannot be treated as equivalent to B.T.C. course by the State Government.

(4) The entire process of selection is contrary to the provisions of the Basic Education Act, 1972 and the U.P, Basic Education (Teachers) Service Rules,

1981.

(5) The reservation of 50% for females, 50% for males as also 50% for Arts group and 50% for Science group are arbitrary and violative of Articles 15 and 16 of the [Constitution of India](#).

(6) The preparation of merit list district-wise is arbitrary and violative of Articles 15 and 16 of the [Constitution of India](#).

14. On the basis of the rival submissions made before us, the following issues arise for determination :

(i) Whether in the absence of the selected candidates having been impleaded by the writ petitioners, the writ petitions are maintainable?

(ii) Whether the writ petitioners having applied for special B.T.C. training course and having failed to get their names in the merit list are estopped from challenging the advertisement and the selection made pursuant thereto?

(iii) Whether the plea of promissory estoppel is available to the writ petitioners?

(iv) Whether the reservation of 50% females and 50% males and 50% for Arts group and 50% for Science group in addition to the reservation policy of the State Government already in force is contrary to the provisions of Articles 14, 15 and 16 of the [Constitution of India](#)?

(v) Whether the State Government can prepare merit list at the district level instead of State level and the same is violative of Articles 15 and 16 of the [Constitution of India](#)?

(vi) Whether the provisions of Article 350A of the [Constitution of India](#) are attracted in the present case?

(vii) Whether the selection of candidates for special B.T.C. training is contrary to the provisions of the Basic Education Act, 1972 and U.P. Basic Education (Teachers) Service Rules, 1981?

Point No. 1

15. For determination of this point it is necessary to mention that the State Government for the first time took a decision on 3.8.2001 to appoint 20,000 B.Ed./L.T. qualified and selected candidates on the vacant posts of assistant teachers in the primary schools run by the State Government after they complete two month's special-B.T.C. training and are found successful in the examination. The selection was to be made on the basis of district-wise merit list. On 20.8.2001, the field for selecting candidates was extended to graduates having G.P. Ed., D.P.Ed, and B.P. Ed. training besides B.Ed./L.T. candidates. On 14.9.2001, the State Government decided to prepare a merit list at the State level Instead of district-wise merit list. The advertisement was published in the daily newspaper (Dainik Jagran) on 14.8.2001 and the corrigendum was published on 22.9.2001. The State Government changed its decision regarding preparation of merit list at the State level and reverted to the earlier position of preparing the merit list at the district level on 31.10.2001. In the leading writ petition being Civil Misc. Writ Petition No. 37124 of 2001, Anant Kumar Tiwari and Ors. v. State of U.P. and Ors., it has come on record that Sri Ashok Mehta, the learned chief standing counsel on behalf of the State-respondents had made a statement at the Bar that only the result has been declared and even the list has not been supplied to the district concerned as there is already interim orders of this Court passed on 9.11.2001.

16. The result of the selected candidates was published on 3.11.2001. The counselling was to take place from 19.11.2001 to 22.11.2001. It may be mentioned here that the list of selected candidates was published on the basis of the applications made by them and the verification of the documents/ certificates were to be made in the counselling scheduled for 19.11.2001 to 22.11.2001 and only thereafter, the final select list would have been drawn. In these circumstances, particularly, in view of the statement made by the learned chief standing counsel at the Bar referred to above, there was no question of impleading any of the alleged selected candidates. It is well-settled by the Hon'ble Supreme Court that mere selection or placement of the name in the select list does not confer any right of appointment, (see : L.J. Diwakar v. Government of Andhra Pradesh, AIR 1982 SC

1555 and Shankarasan Dash v. Union of India, AIR 1991 SC 1612).

17. The learned Advocate General has relied upon the following decisions in support of his submission that the selected candidates had to be made party in the writ petition and in their absence, no writ can be issued, which adversely affects them.

(1) Prabodh Verma and Ors. v. Dal Chand and Ors., AIR 1985 SC 167.

(2) Sukhpal Singh and Ors. v. Punjab State Agriculture Marketing Board and Ors., 1994 (6) SCC 320.

(3) Aliji Mononji and company v. Lalji Mauji and Ors., 1995 (5) SCC 379.

(4) Arun Tewari and Ors. v. Zila Mansavi Shikshak Sangh and Ors., 1998 (2) SCC 332.

(5) All India S.C. and S.T. Employees Association and Anr. v. Arthur Jeen and Ors., JT 2001 (5) SC 42.

18. In the case of Prabodh Verma, the Hon'ble Supreme Court was considering the question of absorption of reserve pool teachers pursuant to the Ordinance promulgated by the Government of U.P., namely, U.P. High School and Intermediate Colleges (Reserve Pool Teachers) Ordinance, 1978, which provided for filling up of substantive vacancy in the post of a teacher for an institution recognised by the Board of High School and Intermediate Education U.P. by offering the same to a teacher whose name is entered in the register of reserve pool teachers maintained by the District Inspector of Schools. Pursuant to the Ordinance some of the reserve pool teachers were appointed in the substantive vacancy. The validity of the Ordinance was challenged by some of the applicants for the vacant posts and also the association. In this background the Hon'ble Supreme Court has held as follows :

"The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. Those, who were vitally concerned, namely, the reserve pool

teachers, were not made parties-not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons, who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.'

19. Here in the present case, the selection list, which was published on 3.11.2001, was to be given effect to only after the counselling scheduled to be held between 19/21.11.2001 after verification of the testimonials/ certificates/documents mentioned in the application. Thus, till such time the counselling was not done, no right had accrued to the candidates whose names found place in the select list.

20. In the case of Sukhpal Singh and others (supra), the Hon'ble Supreme Court has held that subsequent to the cancellation of the appointments of the appellants, on a regular advertisement, candidates were selected, appointments were made and the posts have been filled up and have been functioning. They were not before the Court nor they were sought to be impleaded in the High Court. Therefore, any order that may be passed would have adverse effect of unsettling their appointment without they being impleaded and without opportunity of hearing being given to them. In the present case, admittedly, in view of the categorical statement made by the learned chief standing counsel, the persons whose name appeared in the select list have neither been intimated nor they have been Issued letter for counselling, when the writ petitions were filed. Thus, the question of impleading the selected candidates does not arise at this stage.

21. In the case of Aliji Mononji & Company (supra), the Hon'ble Supreme Court had held that in the event of building being demolished, the right, title and Interest of the landlord would directly be effected and the landlord would be a proper party, though, no relief has been sought for against the landlord. As already held earlier, the selected candidates had not yet perfected any right so as to be impleaded as a necessary party.

22. In the case of Arun Tewari and others (supra), the Hon'ble Supreme Court has found that the appointment letters were issued to the selected candidates in most districts before these were challenged before the Tribunal and these assistant teachers have been appointed initially for the period of probation of two years. All the applicants, who have challenged the provisions of recruitment of assistant teachers under the Operation Blackboard Scheme before the Tribunal did not possess the requisite qualification for being selected under the said scheme as assistant teachers and their names did not figure amongst the list forwarded by the District Employment Exchanges. They did not make the selected/appointed candidates, who were directly effected by the outcome of their applications before the Tribunal as party respondents. The Hon'ble Supreme Court had held that the High Court ought not to have decided the writ petitions under Article 226 of the [Constitution of India](#) without the persons, who would be widely affected by the Judgment being before it as respondents or at least some of them before it as respondent in a representative capacity.

23. In the case of All India S.C./S.T. Employees Association and another (supra), the Hon'ble Supreme Court has held as follows :

'Although the candidates included in the panel showing their provisional selection do not have vested right to appointment, they will be surely interested in protecting and defending the select list. It is the admitted position that before the Tribunal the successful candidates whose names were included in the panel of selection were not made parties. The argument of the learned counsel that since the names and particulars of the successful candidates included in the panel were not given, they could not be made parties has no force. The applicants before the Tribunal could have made efforts to get the particulars ; at least they ought to have impleaded

some of the successful candidates, may be in a representative capacity, if the large number of candidates were there and if there was any difficulty in service of notices on them, they could have taken appropriate steps to serve them by any one of the modes permissible in law with the leave of the Tribunal. This Court in *Prabodh Verma and Ors. v. State of Uttar Pradesh and Ors.*, 1984 (4) SCC 251, has held that in writ petitions filed against the State questioning the validity of recruitment of a large number of persons in service could not be proceeded with to hear and take decision adverse to those affected persons without getting them or their representatives impleaded as parties. In para 50 of the said judgment, summarizing the conclusions this Court in regard to impleading of respondents has stated that: 'A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refused to so join them, the High Court ought to dismiss the petition for nonjoinder of necessary parties.'

24. Sri Shailendra, learned counsel for the respondent-writ petitioners has relied upon a decision of the Hon'ble Supreme Court in the case of *Union of India and Ors. v. O. Chakradhar*, 2002 (2) AWC 1264 (SC) : JT 2002 (2) SC 191, wherein Hon'ble Supreme Court had held that if the mischief played is so widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons, who have been unlawfully benefited or wrongfully deprived of their selection, in such cases it will neither be possible nor necessary to issue individual show cause notices to each selectee and the only way out would be to cancel the whole selection. In the present case there is no serious challenge to the selection on the ground of any mischief having been played. The only grievance is that instead of preparing the merit list at the State level it is being prepared at the District level. Thus, no assistance can be derived from the decision of the Hon'ble Supreme Court in the case of *Union of India v. O. Chakradhar*, (supra).

25. In the present case, we find that the learned chief standing counsel on behalf of the State-respondents had made a statement at the Bar that no person has

been selected or appointed and only the result has been declared. At best we can treat it to be a case of provisional selection and thus, all such persons whose names appear in the selection list ought to have been made party or at least some of them in a representative capacity should have been made party in view of the principles laid down by the Apex Court in the case of All India S.C. and S.T. Employees Association (supra). However, we are of the view that though they were not made party in the writ petitions, but we have given some of the selected candidates leave to appeal against the order passed by the learned single Judge and we have heard them at length. Thus, we are not inclined to non-suit the writ petitioners-respondents and instead looking to the importance of the matter proceeded to decide on merits.

Point No. 2

26. It is not in dispute that the respondent-writ petitioners have applied for being selected for imparting special B.T.C. training from their home districts. In view of the Government order dated 14.9.2001, directing for preparation of merit list at the State level and the corrigendum published in the daily newspaper on 21.9.2001, the petitioners' name would have figured in the merit list prepared at the State level and on this belief they have applied. The subsequent change in the criteria for preparation of the list from State level to district level by the Government order dated 31.10.2001 gave the writ petitioners a cause of action to be aggrieved. It is not the case, that if the criteria would not have been changed, the respondents-writ petitioners would have been unsuccessful. The change in the criteria for preparing the merit list from State level to District level much after the last date of submitting the applications, which was 29.9.2001, has resulted in making the respondent-writ petitioners unsuccessful. Thus, the principle that after taking a chance in the interview/selection and being unsuccessful, a person is estopped from challenging the advertisement/ selection is not applicable to the facts of the present case.

27. The writ petitioners-respondents are primarily aggrieved by the Government order dated 31.10.2001 issued by the State Government by which the merit list was to be prepared at the district level by amending the Government order dated

14.9.2001, in which merit list was to be prepared at the State level, even though, in the writ petitions, the petitioners have challenged the advertisement dated 14.8.2001 and the Government order dated 3.8.2001 also. The two decisions relied upon by the Advocate General in the case of Union of India and Ors. v. N. Chandra Shekharan and ors. 1998 (3) SCC 594 and Inder Sen Mittal v. Housing Board Haryana and Ors., 2002 (3) SCC 175, are not applicable to the facts of the present case.

28. In the case of Union of India and Ors. v. Chandra Shekharan and Ors., (supra), the Hon'ble Supreme Court has held as follows :

'It is not in dispute that all the candidates were made aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found they were not selected by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and that the authorities cannot fix a minimum to be secured either at interview or in the assessment or confidential report.'

29. In the present case, as already mentioned hereinbefore, the criteria for preparation of merit list was earlier fixed at State level, which was subsequently, changed to the District level much after the last date of submitting the application forms. The respondent-writ petitioners are aggrieved by the change of preparation of the merit list from State level to District level. Thus, it cannot be said that the respondent-writ petitioners were made aware about the preparation of merit list at District level upto the last date of submitting their application forms.

30. In the case of Inder Sen Mittal v. Housing Board, Haryana and Ors. (supra), the Hon'ble Supreme Court has held as follows :

'In case the ground of attack flows from agreement between the parties which would undoubtedly be a lawful agreement, and the same is raised at the initial stage, the Court may set it right at the initial stage or even subsequently in case the party objecting has not participated in the proceedings or participated under protest. But if a party acquiesced to the invalidity by his conduct by participating in

the proceedings and taking a chance therein cannot be allowed to turn round after the award goes against him and is estopped from challenging validity or otherwise of reference, arbitration proceedings and/or award inasmuch as right of such a party to take objection is defeated.

Where ground is based upon breach of mandatory provision of law, a party cannot be estopped from raising the same in his objection to the award even after he participated in the arbitration proceedings in view of the well-settled maxim that there is no estoppel against statute.

If, however, basis for ground of attack is violation of such a provision of law which is not mandatory but directory and raised at the initial stage, the illegality, in appropriate case, may be set right, but in such an eventuality if a party participated in the proceedings without any protest, he would be precluded from raising the point in the objection after making of the award.'

31. Applying the principles laid down by the Hon'ble Supreme Court In the aforesaid case, we find that the respondent-writ petitioners had only to make an application before the concerned authorities for selection of special B.T.C. training course. At the time of making the application, the provision was for preparation of merit list at the State level and not at the District level. The criteria for preparation of merit list was changed only on 31.10.2001. The petitioners had no occasion to protest, since the criteria was changed by the State Government unilaterally. If the fundamental right as guaranteed in Chapter III of the Constitution is being violated, the respondent-writ petitioners can approach this Court under Article 226 of the [Constitution of India](#). It is well-settled that there cannot be any estoppel against or waiver of fundamental right. Thus, the case would be covered under Clause 3 of the Judgment of the Hon'ble Supreme Court in the case of Inder Sen (supra). In the case of P. B. Reddy v. State of Mysore, AIR 1969 SC 655, the Hon'ble Supreme Court has held that a person can challenge the validity of a Rule under which a licence has been granted to him and there is no question of estoppel. Thus, we are of the considered view that the respondent-writ petitioners are not estopped from challenging the advertisement and selection made pursuant thereto.

Point No. 3

32. The respondents-writ petitioners have raised a plea of promissory estoppel in support of their case that they have applied for the special B.T.C. training for appointment of assistant teachers in primary schools run by the Board on the basis of the Government order dated 14.9.2001 and the corrigendum issued on 22.9.2001, which provided for preparation of merit list at State level and the State Government is estopped from changing the criteria for preparation of merit list from State level to District level.

33. Sri Shallendra, learned counsel for the respondents-writ petitioners relied upon the famous decision of the Hon'ble Supreme Court in the case of Moti Lal Padampat Mills Co. Ltd. v. State of U.P. and Ors.. AIR 1979 SC 621, and other cases. The learned Advocate General, on the other hand, submitted that there is no question of there being any promissory estoppel, as the respondents-writ petitioners have not altered their position on any assurance given by the State. They have applied pursuant to the advertisement and it is always open to the State to change or modify any of the conditions mentioned in the advertisement. The plea of promissory estoppel can be Invoked only where the State gives out a promise to do certain things or to provide any concession on the basis of which a persons acts and alters his position to his detriment. In the present case, the respondents-writ petitioners have failed to establish that they have altered their position to their detriment by applying pursuant to the advertisement. Thus, the plea of promissory estoppel cannot be invoked.

Point No. 4

34. According to the learned Advocate General, the State is under constitutional obligation to provide free education to the children up to the age of 14 years. In the State of U.P. there are large number of girls, who require education. It has been found that the girls, who are below 10 years of age or are in their early teens, feel more comfortable and are responding to guidance by females. The population ratio of girls and boys is about 50% each. Taking into consideration the psychological aspect it was thought proper that 50% males and 50% females be selected against the prescribed number. It was further found that in Senior Basic

Schools, there is great scarcity of the science teachers and there is no direct recruitment of Assistant Teachers therein. All the posts of assistant teachers in Senior Basic Schools are filled up by promotion from the assistant teachers' of Junior Basic Schools (primary schools). As there is a scarcity of the science teachers, it was thought necessary that there must be sufficient number of trained science teachers available to be appointed and for that very purpose a reasonable number of Science and Arts qualified teachers are sought to be trained. Accordingly, 50% for Science group and 50% for Arts group was provided for special B.T.C. training course so that the arts group and science group is equally placed by the Government and infact, it is not a reservation. The learned Advocate General relied upon the decision of the Hon'ble Supreme Court in the case of Government of Andhra Pradesh v. P. B. Vijay, AIR 1995 SC 1948. In the aforesaid case, the Hon'ble Supreme Court was considering the provisions of Rules 22A of the Andhra Pradesh State and Subordinate Service Rules framed under the provisions of Article 309 of the [Constitution of India](#). Rule 22A, which was under consideration before the Hon'ble Supreme Court is reproduced below :

'22A. Notwithstanding anything contained in these Rules or Special or ad hoc Rules :

(1) In the matter of direct recruitment to posts for which women are better suited than men, preference shall be given to women ; (G.O. Ms. No. 472, G.A. dated 11-10-1985) :

Provided that such absolute preference to women shall not result in total exclusion of men in any category of posts. (2) In the matter of direct recruitment to posts for which women and men are equally suited, other things being equal, preference shall be given to women and they shall be selected to an extent of at least 50% of the posts in each category of O.B.C., S.C. and S.T. quota.

(3) In the matter of direct recruitment to posts which are reserved exclusively for being filled by women they shall be filled by women only.'

35. The validity of Sub-rule (2) of Rule 22A was challenged on the ground of violation of Article 14 or 16(4) of the [Constitution of India](#). The Hon'ble Supreme

Court held that by virtue of Article 15(3) of the [Constitution of India](#), the State, is permitted to make special provision for women, but the same should be within reasonable limits, which have been broadly fixed at 50% at the maximum. The Hon'ble Supreme Court held as follows :

'Article 16(2) provides that no citizen shall, on ground only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. The ambit of Article 16(2) is more limited in scope than Article 15(1) because it is confined to employment or office under the State. Article 15(1), on the other hand covers the entire range of State activities. At the same time, the prohibited ground of discrimination under Article 16(2) are somewhat wider than those under Article 15(1) because Article 16(2) prohibits discrimination on the additional grounds of descent and residence apart from religion, race, caste, sex and place of birth. For our purposes, however, both Articles 15(1) and 16(2) contain prohibition of discrimination on the ground of sex.

The respondent before us has submitted that if Article 15(1) is read with Article 16(2), it is clear that reservation of appointments on posts in favour of any backward class of citizen which, in the opinion of the State, is not adequately represented in the services under the State is expressly permitted. But there is no such express provision in relation to reservation of appointments or posts in favour of women under Article 16. Therefore, the respondent contends that the State cannot make any reservation in favour of women in relation to appointments on posts under the State. According to the respondent this would amount to discrimination on the ground of sex in public employment or appointment to posts under the State and would violate Article 16(2).

This argument ignores Article 15(3). The inter-relation between Articles 14, 15 and 16 has been considered in a number of cases by this Court. Article 15 deals with every kind of State action in relation to the citizens of this country. Every sphere of activity of the State is controlled by Article 15(1). There is, therefore, no reason to exclude from the ambit of Article 15(1). employment under the State. At the same time Article 15(3) permits special provisions for women. Both Articles 15(1) and

15(3) go together. In addition to Article 15(1), Article 16(1), however, places certain additional prohibitions in respect of a specific area of State activity viz., employment under the State. There are in addition to the ground, of prohibition enumerated under Article 15(1), which are also included under Article 16(2). There are, however, certain specific provisions in connection with employment under the State under Article 16. Article 16(3) permits the State to prescribe a requirement of residence within the State or Union Territory by Parliamentary legislation ; while Article 16(4) permits reservation of posts in favour of Backward Classes. Article 16(5) permits a law which may require a person to profess a particular religion or may require him to belong to a particular religion or may require him to belong to a particular religious denomination, if he is the incumbent of an office in connection with the affairs of the religious or denominational institution. Therefore, the prohibition against discrimination on the grounds set out in Article 16(2) in respect of any employment or office under the State is qualified by Clauses 3, 4 and 5 of Article 16. Therefore, in dealing with employment under the State, it has to bear in mind both Articles 15 and 16-the former being a more general provision and the latter, a more specific provision. Since Article 16 does not touch upon any special provision for women being made by the State, it cannot in any manner derogate from the power conferred upon the State in this connection under Article 15(3). This power conferred by Article 15(3) is wide enough to cover the entire range of State activity including employment under the State.

The insertion of Clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) is placed in Article 15. Its object is to strengthen and improve the status of women. An Important limb of this concept of gender equality is creating job opportunities for women. To say that under Article 15(3), job opportunities for women cannot be created would be to cut at the very root of the underlying inspiration behind this Article. Making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3). This power conferred under

Article 15(3), is not whittled down in any manner by Article 16.'

36. The Hon'ble Supreme Court in the case of Government of Andhra Pradesh v. P.B. Vijay Kumar and Anr. (supra) had also held that efficiency, competence and merit are not synonymous and that it is undeniable that the nature has endowed merit upon members of Backward Classes as much as it has endowed upon members of other classes. What is required is an opportunity, which has led to social backwardness, not merely amongst what are commonly considered as the Backward Classes, but also amongst women. Reservation, therefore, is one of the constitutionally recognised methods of overcoming this type of backwardness. Such reservation is permissible under Article 15(3).

37. Sri R.N. Singh, learned senior counsel submitted that the reservation provided for female candidates and male candidates as also for arts and science groups are horizontal reservations to meet the special situation as is prevailing in the State. He submitted that these persons are to be accommodated within their respective category and the overall reservation would not exceed the permissible maximum limit of 50% relying upon the decision of Hon'ble Supreme Court in the case of Anil Kumar Gupta and Ors. v. State of U.P. and Ors., 1995(3) AWC 1653 : 1995(5) SCC 173 and S. Sathyapriya and Ors. v. State of Andhra Pradesh and Ors., 1996(9) SCC 466, wherein the Hon'ble Supreme Court has held that the reservation for special categories under Article 15(1) must be adjusted against their respective vertical social reservation quota under Article 15(4).

38. Sri Shailendra, learned counsel for the respondents-writ petitioners, however, relied upon the decision of the Hon'ble Supreme Court in the case of Indra Sawhney and Ors. v. Union of India and Ors., 1992 Supp. (3) SCC 217 and submitted that 50% reservation for women and 50% to science and arts groups cannot be said by any stretch of imagination belonging to socially and/or educationally backward classes of citizens so as to entitle them for reservation under Article 15 or 16 of the [Constitution of India](#). According to him this reservation is over and above the reservation available in accordance with provisions of U.P. Public Service (Reservation in S.C./S.T. and others Backward Classes) Act, 1994. Article 15(1) of the [Constitution of India](#) provides that the State shall not

discriminate against any citizen on the grounds only of religion, race, caste, sex, place of birth, or any of them. Similar provision has been made under Article 16(2) of the [Constitution of India](#), which prohibits discrimination in respect of any employment or office under the State on additional two grounds also, namely, descent and residence. However, Article 15(3) of the Constitution permits the State to make any special provision for women and children notwithstanding the prohibition contained in the said Article. Looking into the need of female teachers to teach and the number of girls, who are below the age of ten years or are in their early teens in the primary schools, i.e., from Class I to Vth, we are of the view that the reservation made by the State Government for 50% female candidates for imparting special B.T.C. training cannot be said to be illegal or arbitrary. These female candidates are to be selected against their respective categories and thus, the reservation is only horizontal and not vertical. The provisions for selecting 50% candidates against their respective categories is permissible in view of the provisions made under Article 15(3) of the [Constitution of India](#). Taking Into consideration the need of Arts and Science subject, the provisions made for 50% Art candidates and 50% Science candidates cannot be said to be arbitrary.

Point No. 5

39. The learned Advocate General submitted that the cadre of assistant teachers in primary schools run by the Board, as mentioned in 1981 Service Rules, is a local cadre. The training in District Institute of Educational Training is a district-based training of teachers education at district level. It is to feed and provide teachers duly trained for primary education in its localities. The very purpose of District Institute is to establish an institute at District level so that sufficient number of local teachers are available to provide primary education in the vicinity. The very purpose is to localise the primary education and the area is also localised. After training, in case any candidate applies for appointment in any junior basic school, the application is to be moved to the District Basic Education Officer of the district and the selection committee is also comprised of the District level education officers. The very purpose of the present special training is to have primary teachers of the District available to teach in primary schools in far remote areas of the district. Moreover, all the educational experts are uniformly of the opinion that

pupils should begin their schooling through the medium of their mother tongue and there is a great reason of thinking behind this. Where the tender minds of the children are subjected to an alien medium, the learning process becomes unnatural and inflicts a cruel strain on the children, which makes the entire transaction mechanical. Besides, the educational process becomes artificial and torturous. The basic knowledge can easily be garnered through the mother tongue. It should be endeavour of every State to promote the regional language of that State and that is why the Government order dated 2.8.2001 provided for a district level selection of the candidates for being given training in special B.T.C. training course of 2001. In the advertisement issued on 14.8,2001, the last date of submission of the application forms was 15.9.2001 and when it was found that in some districts the number of forms received were less than the vacancies in existence in the particular districts, it was decided that instead of preparing a district-wise merit list it would be prepared State-wise and an order amending the earlier Government Order was issued on 14.9.2001, to that effect. The last date for submission of applications was extended to 29.9.2001. Thereafter, it was found that there was sufficient number of applications received from different districts and thus, it was again decided to prepare the merit list district-wise and accordingly, an order was issued on 31.10.2001 restoring the earlier policy decision of preparing the merit list district-wise. The learned Advocate General submitted that in view of the aforesaid facts and the prevailing situation the decision to make selection on the basis of merit list prepared at the district level is justified. He also relied upon a decision of Hon'ble Supreme Court in the case of English Medium Students Parents Association v. State of Karnataka and Ors., 1994 (1) SCC 550 and Arun Tiwari v. Zila Mansavi Shikshak Sangh and Ors., 1998 (2) SCC 332.

40. Sri Shailendra, learned counsel for the respondents-writ petitioners, however, submitted that the advertisement published on 14.8.2001 invited applications for selecting candidates for special B.T.C. training for appointment as assistant teachers in primary schools in rural areas run by the U.P. Public Shiksha Parishad (Board). According to him, only those persons, who have been selected for special B.T.C. training, would be eligible for being appointed as assistant teachers in the primary schools in rural areas run by the Board. Thus, in effect acquiring a special

B.T.C. training certificate or undergoing the special B.T.C. training is the sole criteria for consideration of appointment as assistant teachers in the primary schools. It is a step in aid or a pre-qualification for getting appointment as assistant teachers in primary schools. He further submitted that under Section 4 of the U.P. Basic Education Act, 1972, it is the function of the Board to organize, co-ordinate and control the imparting of basic education and teachers training in the State and to conduct the basic training certificate examination and such other examination as the State Government may from time to time by general or special order assign to it. According to him, even though under Rule 4 of 1981 Service Rules a separate cadre of service of each local area has been provided, but it does not restrict the cadre to consist of persons belonging to that local area, as a candidate. Any person, who is a citizen of India can apply for being recruited as assistant teacher of Junior Basic School under Rule 5 read with Rule 7 of the said Rules. Thus, he submitted that restricting the selection of candidates for special B.T.C. training course, a pre-qualification for appointment of assistant teachers, by preparation of merit list at the District level is contrary to the provisions of the 1981 Service Rules. It is also violative of Articles 15(1) and 16(2) of the [Constitution of India](#), as the discrimination is being practiced by the State on the basis of place of birth/residence. He further submitted that the switch over to the policy of preparing merit list at District level from the State level vide Government order dated 31.10.2001 is wholly arbitrary and unconstitutional.

41. Sri Shailendra, learned counsel for the respondents-writ petitioners relied upon a decision of the Hon'ble Supreme Court in the case of Govind A. Mane and Ors. v. State of Maharashtra and Ors., 2000 (2) AWC 2.18 (SC) (NOC) : 2000 (2) UPLBEC 1608. wherein the Hon'ble Supreme Court had held that district-wise distribution of seats in the absence of nexus between such distribution and the objects sought to be achieved would be violative of Article 14 of the [Constitution of India](#).

42. In the case of B.Ed. Berojgar Sangh District Sonbhadra and Ors. v. State of U. P. and Ors., 1997 (Suppl.) AWC 45 : 1997 (3) UPLBEC 1774, this Court has held that there is no justification for consideration of district-wise in respect of appointments of teachers in Junior Basic Schools in the State.

43. It is not in dispute that in the advertisement, which was published in the newspapers, applications were invited for selection of candidates for giving special B.T.C. training for appointment on the post of assistant teachers in primary schools run by the Board in rural areas. Thus, having the special B.T.C. training is a pre-qualification for getting appointment as assistant teacher. Under 1981 Service Rules, Rule 4 provides separate cadre of service for each local area. The recruitment of assistant teachers under Rule 5 is not confined to the residence of that local area only. Infact, under Rule 7 of 1981 Rules, any citizen of India can be a candidate for recruitment to the said post. Thus, the procedure, which has to be followed by the State Government for making selection of candidates for imparting special B.T.C. training for appointment on the post of assistant masters in the primary schools should be in conformity with the provisions of 1981 Service Rules, which does not confine its limit to the candidates of the home district or of a local area alone. If all the vacancies of assistant teachers in the primary schools of various local areas have been clubbed together and advertised on account of expediency and convenience, it was appropriate that the merit list at the State level be prepared and the allocation be done according to the criteria set out in the Government order dated 14.9.2001. In the Government order dated 14.9.2001, the Government has fixed the following criteria for allotment of seat to the candidates.

'A merit list of all the applications received will be prepared on the basis of quality points of the educational and other qualifications in accordance with the provisions given in the Government orders mentioned above at the State level, which will be prepared in proportion to the total vacancies for training. The above list will be arranged district-wise, in conformity with the vacancies available in the district and a provision of reservation as per the rules will be ensured. The candidates on the merit list shall be allotted as per the following, in order of merit :

(a) Home district of the candidate ;

(b) Another district of the Division, wherein home district is located ;

(c) Nearest Division to the home district Division of the candidate where the vacancy is available.

44. The plea taken by learned Advocate General that the students ought to be taught in the local dialect which differs from region to region in the State of U.P. is misconceived, inasmuch as, by restricting the prospective applicants of the home district to apply in that district only presumably by virtue of birth alone in that district does not serve the purpose, as that person may have studied elsewhere and may have forgotten the dialect of the home district. Further, Article 15(1) and Article 16(2) of the Constitution put a complete prohibition upon the State from discriminating persons on the basis of birth and place of residence in the matter of employment within the State. In the case of English Medium Students Parents Association (supra), the Hon'ble Supreme Court had held that:

'All educational experts are uniformly of the opinion that pupils should begin their schooling through the medium of their mother tongue. There is great reason and justice behind this. Where the tender minds of the children are subject to an alien medium the learning process becomes unnatural, It inflicts a cruel strain on the children which makes the entire transaction mechanical. Besides, the educational process becomes artificial and torturous. The basic knowledge can easily be garnered through the mother tongue. The introduction of a foreign language tends to threaten to atrophy the development of mother tongue. When the pupil comes of age and reaches the Vth standard level, the second language is required to take it as a second language. At the secondary stage the three-language formula is introduced. However, in cases of non-Kannada speaking students grace marks up to 15 are awarded. Certainly, it cannot be contended that a student studying in a school from Karnataka need not know the regional language. It should be the endeavour of every State to promote the regional language of the State. In fact, the Government of Karnataka has done commendably well in passing this Government order. Therefore, to contend that the Imposition of study of Kannada throws an undue burden on the students is untenable. Again to quote Mahatma Gandhi :

'The medium of instruction should be altered at once and at any cost, the provincial languages being given their rightful place. I would prefer temporary chaos in higher education to the criminal waste that is daily accumulating.' As rightly contended by the learned Advocate General where the State by means of

the Impugned Government order desires to bring about academic discipline as a regulatory measure it is a matter of policy. The State knows how best to implement the language policy. It is not for the Court to interfere.'

45. Here, it is not the case that a different regional language is to be taught to the students in different local areas. The subject in the course is same throughout the State. The medium of teaching is also the same. Only the dialect differs which too has been taken care of by providing allocation of seats in the home district to the candidates under the Government order dated 14.9.2001 out of the merit list prepared at the State level. In the case of Arun Tiwari (*supra*), the facts were that the assistant teachers in Madhya Pradesh are governed by the Madhya Pradesh Non-Gazetted Class III Education Service (Non-Collegiate Service) Recruitment and Promotion Rules, 1973, which provided for direct recruitment by competitive examination followed by an interview. During the Eighth Plan period, i.e., from 1992 to 1997 the Central Government sponsored a scheme known as Operation Blackboard Scheme. Under this scheme the Government of India gave financial clearance to the State of Madhya Pradesh to implement this scheme by appointing additional teachers in all primary middle schools which had only one teacher in order to improve the standards of education. In order to implement the scheme the State of Madhya Pradesh decided to fill in about 7,000 to 11,000 posts of Assistant Teachers in such schools. The recruitment Rules of 1973 were amended on 10.5.1993 by adding a proviso, which empowers the State Government to prescribe the criteria and procedure for selection of candidates in any circumstances. The State Government provided that selection of Arts teachers in 1993 will be made by committee instead of Junior Service Selection Board by inviting applications from employment exchange and making selection district-wise. Certain persons, who did not even possess the prescribed qualifications, challenged the selection process. The Hon'ble Supreme Court held as follows :

'The next contention relates to inviting applications from employment exchanges instead of by advertisement. This procedure has been resorted to looking to the requirements of a time bound scheme. The original applicants contended that if the posts had been advertised, many others like them could have applied. The original applicants, who so complain, however, do not possess the requisite

qualifications for the post. As far as we can see from the record, nobody, who had the requisite qualifications has complained that he was prevented from applying because advertisement was not issued. What is ; more important, in the special circumstances requiring a speedier process of selection and appointment, applications were invited through employment exchanges for 1993 only. In this context, the special procedure adopted is not unfair. The State has relied upon the case of Union of India v. N. Hargopal, where Government institution enjoining that the field of choice should, in the first instance, be restricted to candidates sponsored by the employment exchanges, was upheld as not offending Articles 14 and 16 of the Constitution. In the case of Delhi Development Horticulture Employees' Union v. Delhi Admn., SCC at p 111, this Court approved of recruitment through employment exchanges as a method of preventing malpractices. But in the subsequent and more recent case of Excise Supdt. v. K.B.N. Visweshara Rao this Court has distinguished Union of India v. Hargopal, on the basis of special facts of that case. It has observed that the better course for the State would be to Invite applications from employment exchanges as well as to advertise and also give wide publicity through T.V., Radio, etc. The Court had to consider whether persons, who had applied directly and not through employment exchanges should be considered. This Court upheld their claim for consideration.

There are different methods of inviting applications. The method adopted in the exigencies of the situation in the present case cannot be labelled as unfair, particularly when, at the relevant time, the two earlier decisions of this Court were in vogue.'

46. The Apex Court in the case of Kailash Chand Sharma v. State of Rajasthan and Ors., JT 2002 (5) SC 591, had held that the award of bonus marks to the residents of the district and the residents of the rural areas of the district amounts to Impermissible discrimination and there is no rational basis for such preferential treatment. In paragraphs 14 and 15 of the reports, the Apex Court has held as follows :

'Before proceeding further we should steer clear of a misconception that surfaced in the course of arguments advanced on behalf of the State and some of the

parties. Based on the decisions which countenanced geographical classification for certain weighty reasons such as socio-economic backwardness' of the area for the purpose of admission to professional colleges, it has been suggested that residence within a district or rural area of that district could be a valid basis for classification for the purpose of public employment as well. We have no doubt that such a sweeping argument which has the overtones of parochialism is liable to be rejected on the plain terms of Article 16(2) and in the light of Article 16(3). An argument of this nature flies in the face of the peremptory language of Article 16(2) and runs counter to our constitutional ethos founded on unity and integrity of the nation. Attempts to prefer candidates of a local area in the State were nipped in the bud by this Court since long past. We would like to reiterate that residence by itself-be it be within a State, region, district or less area within a district cannot be a ground to accord preferential treatment or reservation, save as provided in Article 16(3). It is not possible to compartmentalize the State into district with a view to offer employment to the residents of that district on a preferential basis. At this juncture it is appropriate to undertake a brief analysis of Article 16.'

Article 16, which under Clause

(1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State reinforces that guarantee by prohibiting under Clause

(2) discrimination on the ground only of religion, race, caste, sex, descent, place of birth, residence or any of them. Bee it noted that in the allied Article 15, the word 'residence' is omitted from the opening clause prohibiting discrimination on specified grounds. Clauses

(3) and

(4) of Article 16 dilute the rigour of Clause

(2) by (i) conferring an enabling power on the Parliament to make a law prescribing the residential requirement within the State in regard to a class or classes of employment or appointment to an office under the State and (ii) by

enabling the State to make a provision for the reservation of appointments or posts in favour of any backward class of citizens which is not adequately represented in the services under the State. The newly introduced Clauses (4A) and (4B), apart from Clause

(5) of Article 16 are the other provisions by which the embargo laid down in Article 16(2) in somewhat absolute terms is lifted to meet certain specific situations with a view to promote the overall objective underlying the Article. Here, we should make note of two things, firstly, discrimination only on the ground of residence (for place of birth) in so far as public employment is concerned is prohibited ; secondly, Parliament is empowered to make the law prescribing residential requirement within a State or Union Territory as the case may be, in relation to a class or classes of employment. That means, in the absence of Parliamentary law, even the prescription of requirement as to residence within the State is a taboo. Coming to the first aspect, it must be noticed that the prohibitory mandate under Article 16(2) is not attracted if the alleged discrimination is on grounds not merely related to residence, but the factum of residence is only taken into account in addition to other relevant factors. This effect, is the import of the expression 'only'.

47. In paragraphs 24, 25 and 32 the Apex Court further held as follows :

'24. Before examining the further pleas in support of the impugned action taken by the State it would be apposite to refer to the decision in *State of Maharashtra v. Raj Kumar*, on which reliance has been placed by the High Court and reference has been made in the course of arguments before us. In that case a rule was made by the State of Maharashtra that a candidate in order to be treated as a rural candidate must have passed S.C.C. examination which is held from a village or a town having only 'C' type municipality: The object of the rule, as pointed out by this Court, was to appoint candidates having full knowledge of rural life and its problems so that they would be more suitable for working as officers in rural areas. The rule was struck down on the ground that there was no nexus between classification made and the object sought to be achieved because 'as the rule stands any person, who may not have lived in a village at all can appear for S.C.C. examination from a village and yet become eligible for selection,'The rule was held

to be violative of Articles 14 and 16. Another point discussed by the Court about the propriety of giving bonus marks for the rural candidates and the Court held thus :

'The rules also provide that viva-voce board would put relevant questions to judge the suitability of candidate for rural areas and to test whether or not they have sufficient knowledge of rural problems, and this no doubt amounts to a sufficient safeguard to ascertain the ability of the candidate regarding his knowledge about the affairs of the village. In such a situation there was absolutely no occasion for making an express provision for giving weightage, which would virtually convert merit into demerit and demerit into merit and would be per se violative of Article 14 of the Constitution as being an impermissible classification. The rule of weightage as applied in this case is mainly unreasonable and wholly arbitrary and cannot be sustained.' 25. This decision is not a direct authority for the proposition that a citizen cannot be preferred for employment under the State on the ground that he or she hails from rural area. However, what has been laid down in regard to the first point assumes some relevance in the cases on hand. The criterion for Identifying a rural candidate was held to be irrelevant, as it had no nexus with the object sought to be achieved. In the present case, the position is much worse as the impugned circular does not spell out any criteria or indicia to determine whether an applicant is a rural candidate.'

32. The justifiability of the plea stemming from the premise that uplifting the rural people is an affirmative action to improve their lot can be tested from the concrete situation which confronts us in the present cases. We are here concerned with the selections to the posts of teachers of primary schools, the minimum qualification being S.C.C. coupled with basic training course in teaching. Can the Court proceed on the assumption that the candidates residing in the town areas with their education in the schools or colleges located in the towns or its peripheral areas stand on a higher pedestal than the candidates, who had studied in the rural area schools or colleges? Is the latter comparatively a disadvantaged and economically weaker segment when compared to the former? We do not think so. The aspirants for the teachers jobs in primary schools be they from rural area or town area do not generally belong to affluent class. Apparently they come from

lower middle class or poor background. By and large, in the pursuit of education, they suffer and share the same handicaps as their fellow citizens in rural areas. It cannot be said that the applicants from non-rural areas have access to best of the schools and colleges which the well-to-do class may have. Further, without any data, it is not possible to presume that the schools and colleges located in the town-small or big and their peripheral areas are much better qualitatively, that is to say, from the point of view of teaching standards or infrastructure facilities so as to give an edge to the town candidates over the rural candidates.'

48. The Apex Court also repelled the plea regarding local dialect and residence of rural area with the following observations :

'Shri Rajeev Dhawan appearing for the selected candidates, who have filed S.L.P. (C) No. 10780 of 2001, did his best to support the impugned circular mainly on the second ground, namely, better familiarity with the local dialect. The learned counsel contends that when the teachers are being recruited to serve in gram panchayat areas falling within the concerned panchayat samiti, those hailing from the particular district and the rural areas of that district are better suited to teach the students within that district and the panchayat areas comprised therein. He submits that the local candidates can get themselves better assimilated into the local environment and will be in a better position to interact with the students at primary level. Stress is laid on the fact that though the language/mother tongue is the same, the dialect varies from district to district and even within the district. By facilitating selection of local candidates to serve the panchayat run schools, the State has not introduced any discrimination on the ground of residence but acted in furtherance of the goal to impart education. Such candidates will be more effective as primary school teachers and more suitable for the Job. It is therefore, contended that the classification is grounded on considerations having nexus with the object sought to be achieved and is not merely related to residence. We find it difficult to accept this contention, though plausible it is. We feel that undue accent is being laid on the dialect theory without factual foundation. The assertion that dialect and nuances of the spoken language varies from district to district is not based upon empirical study or survey conducted by the State. Not even specific particulars are given in this regard. The stand in the counter-affidavit (extracted

supra) is that each zone has its distinct language. 'If that is correct the Zila Parishad should have mentioned in the notification that the candidates should know particular language to become eligible for consideration. We are inclined to think that reference has been made in the counter to 'language' ; instead of dialect rather inadvertently. As seen from the previous sentence, the words dialect and language are used as Inter-changeable expressions, without perhaps understanding the distinction between the two. We therefore, take it that what is meant to be conveyed in the counter is that each zone has a distinct dialect or vernacular and therefore local candidates of the district would be in a better position to teach and interact with the students. In such a case, the State Government should have identified the zones in which vernacular dissimilarities exist and the speech and dialect vary. That could only be done on the basis of scientific study and collection of relevant data. It is nobody's case that such an exercise was done. In any case, if these differences exist zone-wise or region-wise, there could possibly be no justification for giving weightage to the candidates on the basis of residence in a district. The candidates belonging to that zone, irrespective of the fact whether they belong to X, Y or Z district of the zone could very well be familiar with the allegedly different dialect peculiar to that zone. The argument further breaks down, if tested from the standpoint of award of bonus marks to the rural candidates. Can it be said reasonably that candidates, who have settled down in the town will not be familiar with the dialect of that district? Can we reasonably proceed on the assumption that rural area candidates are more familiar with the dialect of the district rather than the town area candidates of the same district? The answer to both the questions in our view cannot be in the negative. To prefer the educated people residing in villages over those residing in towns-big or small of the district, on the mere supposition that the former (rural) candidates will be able to teach the rural students better would only amount to creating an artificial distinction having no legitimate connection to the object sought to be achieved. It would then be a case of discrimination based primarily on residence which is prescribed by Article 16(2).'

'38. One more serious infirmity in the impugned circular is that it does not spell out any criteria or indicia for determining whether the applicant is a resident of rural area. Everything is left held with the potential of giving rise to varying

interpretations thereby defeating the apparent objective of the rule. On matters such as duration of residence, place of schooling etc. there are bound to be controversies. The authorities, who are competent to issue residential certificates are left to apply the criteria according to their thinking which can by no means be uniform. The decision in *State of Maharashtra v. Raj Kumar*, is illustrative of the problem created by vague or irrelevant criteria. In that case a rule was made by the State of Maharashtra that a candidate will be considered a rural candidate if he had passed S.S.C. examination held from a village or a town having only 'C' type municipality. The object of the rule, as noticed by this Court, was to appoint candidates having full knowledge of rural life so that they would be more suitable for working as officers in rural areas. The rule was struck down on the ground that there was no nexus between classification made and the object sought to be achieved because 'as the rule stands, any person, who may not have lived in a village at all can appear for S.S.C. examination from village and yet become eligible for selection.' The rule was held to be violative of Articles 14 and 16. When no guidance at all is discernible from the Impugned circular as to the identification of the residence of the applicants especially having regard to the Indefinite nature of the concept of residence, the provision giving the benefit of bonus marks to the rural residents will fall foul of Article 14.

49. The aforementioned decision has been subsequently followed by the Apex Court in the case of *Harshendra Choubissa and Ors. v. State of Rajasthan and Ors.*, 2002 (4) AWC 3286(SC) : JT 2002 (6) SC 553. In paragraph 12 of the report, the Apex Court has held as follows :

'12. The second ground urged by the State is equally Irrelevant and untenable. Most of the reasons given by us in the judgment just delivered in teachers' cases will hold good to reject this plea. No factual details nor material has been placed before us to substantiate that the spoken language and dialect varies from district to district. It will not be reasonable to assume that an educated person belonging to a contiguous district or districts will not be able to effectively communicate with the people of the district in which he is appointed or that he would be unfamiliar with the living conditions and culture of that district. He cannot be regarded as an alien in a district other than his native district. If any classification has to be done in

this regard, it should be based on a scientific study but not on some broad generalization. If any particular region or area has some peculiar socio-cultural or linguistic features warranting a differential treatment for the purpose of deploying personnel therein, that could only be done after conducting a survey and identifying such regions or districts. That is the minimum, which needs to be done. There is no factual nor rational basis to treat each district as a separate unit for the purpose of offering public employment. Above all, it is wrong to assume that the candidates belonging to rural areas than the candidates living in nearby towns. The criteria of merit cannot be allowed to be diluted by taking resort to such artificial differentiation and irrelevant assumptions. On the material placed before us, we have no hesitation in holding that the addition of bonus marks to the applicants belonging to the same district and the rural areas of that district would amount to discrimination, which falls foul of Articles 14 and 16.'

50. Applying the principles laid down by the Apex Court in the aforementioned cases to the present case, we find that restricting the selection and preparation of merit list at the District level are not all justified and it amounts to discrimination. In the present case taking into consideration the exigencies the State Government had decided to prepare the merit list at the State level and for restoring it to District level the reasons advanced by the State Government are irrelevant. Thus, the action of the State in restoring the preparation of merit list from State level to District level is arbitrary and is violative of Articles 15(1) and 16(2) of the [Constitution of India](#).

Point No. 6

51. Article 350A of the [Constitution of India](#) provides as follows :

'It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to linguistic minority groups and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.'

52. Thus, from a reading of Article 350A of the [Constitution of India](#), it is clear that it enjoins the State and every local authority within the State to make efforts to provide adequate facilities for instruction in the mothertongue at the primary stage of education to children belonging to linguistic minorities. This provision is applicable only for education to children belonging to linguistic minorities. It is not the case of appellants nor it has been suggested by Mr. P.S. Baghel, learned counsel, who pressed into aid the provisions of Article 350A of the Constitution that by the impugned advertisement, facilities for education is being provided to the linguistic minorities. The local dialect of some of the children cannot be said to be the mother tongue of a linguistic minority. In the State of U.P. the mother tongue is Hindi language and of linguistic minorities either it could be Urdu (for Muslims), English (for Christians) and Gurmukhi (for Sikhs). Thus, no advantage or benefit can be derived from Article 350A of the [Constitution of India](#).

Point No. 7

53. All the primary schools in the State of U.P. are governed by the provisions of U.P. Basic Education Act, 1972. Section 3 of the Act provides for Constitution of a Board, i.e., the U.P. Board of Basic Education, Section 4 of the Act, prescribes the function of the Board. It provides that it should be the function of the Board to organise, co-ordinate and control the imparting of basic education and teachers training in the State to raise its standard and to co-relate with system of education as a whole in the State. Section 13 of the Act gives the power of control to the State Government. Sub-section (1) of Section 13 provides that the Board shall carrying out such directions as may be issued to It from time to time by the State Government for the efficient administration of the Act. Section 19 of the Act, empowers the State Government to make rules for carrying out the purposes of the Act. The State Government has been empowered to make rules for the recruitment and the conditions of service of persons appointed to the post of officers, teachers and other employees. The State Government has framed U.P. Basic Education (Teachers) Service Rues, 1981 (hereinafter referred to as the 1981 Service Rules). Rule 4 of the 1981 Services Rules provides for the strength of the service. It reads as follows :

'4. Strength of the service.--(1) There shall be separate cadres of service under these rules for each local area.

(2) The strength of the cadre of the teaching staff pertaining to a local area and the number of the posts in the cadre shall be such as may be determined by the Board from time to time with the previous approval of the State Government :

Provided that the appointing authority may leave unfilled or the Board may hold in abeyance any post or class of posts without thereby entitling any person to compensation :

Provided further that the Board may, with the previous approval of the State Government, create from time to time such number of temporary posts as it may deem fit.

54. Rule 5 provides for the source of recruitment. It reads as follows :

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

(a)

(i)

Mistresses of Nursery Schools.

By direct recruitment as provided in Rules 14 and 15.

(ii)

Assistant Masters and Assistant Mistresses of Junior Basic Schools

(b)

(i)

Headmistresses of Nursery Schools

By promotion as provided in Rule 18 ;

(ii)

Headmasters and Headmistresses of Junior Basic Schools

By promotion as provided in Rule 18 ;

(iii)

Assistant Masters of Senior Basic Schools

By promotion as provided in Rule 18 ;

(iv)

Assistant Mistresses of Senior Basic Schools.

By promotion as provided in Rule 18 ;

(v)

Headmasters of Senior Basic Schools

By promotion as provided In Rule 18 ;

(iv)

Head Mistresses of Senior Basic Schools.

By promotion as provided in Rule 18 ;

55. Rule 7 deals with nationality. It reads as follows :

'7. Nationality.--A candidate for recruitment to a post mentioned in Rule 5 must be :

(a) a citizen of India, or

(b) a Tibetan refugee, who came over to India before January 1, 1962 with the intention of permanently settling in India, or

(c) a person of Indian origin, who has migrated from Pakistan, Burma, Ceylon and East African countries of Kenya, Uganda and the United Republic of Tanzania (formerly Tanganyika and Zanzibar) with the intention of permanently settling in India :

Provided that a candidate belonging to category (b) or (c) above must be a person in whose favour a certificate of eligibility has been issued by the State Government.

56. Rule 8 deals with academic qualifications. The relevant portion of Rule 8, which relates to assistant master and assistant mistress of Junior Basic Schools is reproduced below :

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

Post

Academic Qualifications

(i)

Mistress of Nursery Schools

Certificate of Teaching (Nursery) from a recognised 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 Schools.

(1) 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, 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 a sub-clauses (iii) and (iv) of clause (b) of rule 5 for teaching science.

Mathematics, craft or any other 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.

57. Rule 14 provides for determination of vacancies and preparation of list. It reads as follows :

'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 reserved for candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, dependants of freedom-fighters and other categories under Rule 8 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.'

58. Rule 16 deals with constitution of Selection Committee, It reads as follows :

'16. Constitution of Selection Committee.--For selection of candidates for appointment to any post under these rules, there shall be constituted a selection committee comprising :

(a)

Principal, District Institute and Training

.

Chairman

(b)

District Basic Education Officer

.

Member Secretary

(c)

Principal, Government Girls Intermediate College in the District Headquarters

.

Member

(d)

District Non-Formal Education Officer

.

Member

(e)

One Specialist in Hindi, Urdu or other languages,. as the case maybe nominated by District Magistrate.

.

Member

59. Rule 17A provides for the procedure for direct recruitment to a post for teaching subjects other than language. It reads as follows :

'17A. Procedure for direct recruitment to a post for teaching subjects other than language.--(1) The Selection Committee shall consider the candidates for selection on the basis of the list referred to in Sub-rule (6) of Rule 14 or Sub-rule (2) of Rule 15, as the case may be, and prepare a list of selected candidates in the order in which their names appear in the said list. If two or more candidates have

equal quality points, the name of the candidate, who is senior in age shall be placed higher in the list. The Selection Committee shall forward the list to the appointing authority.

(2) The list prepared under Sub-rule (1) shall remain valid for one year from the date of its preparation.

(3) Where the number of selected candidates is more than the number of vacancies and all the selected candidates do not get appointments under Sub-rule (1) or Rule 19, the District Basic Education Officer shall forward the list of such selected candidates as have not been able to get appointment due to nonavailability of vacancies, along with their applications and other particulars, to the Regional Assistant Director of Education (Basic), for the purposes of utilizing the list in a district within his region where sufficient number of selected candidates are not available to fill the vacancies in such district.

(4) On receiving the list referred in Sub-rule (3), the Regional Assistant Director of Education (Basic), shall forward the list along with the applications and other particulars of the selected candidates, to a District Basic Education Officer within his region, where sufficient number of candidates are not available to fill the vacancies. In so forwarding the list, the Regional Assistant Director of Education (Basic) shall take into account the options given by selected candidates in regard to his posting in districts.

(5) On receiving the list referred to In Sub-rule (4), the District Basic Education Officer shall place the list along with applications and other particulars of the candidates, before the Selection Committee constituted under Rule 16.

(6) The Selection Committee shall consider the candidates mentioned in the list referred to in Sub-rule (4) and prepare a list of selected candidates in accordance with Sub-rule (1) and include their names at the bottom in the list prepared under Sub-rule (1) and forward the entire list to the appointing authority.

(7) Where the list forwarded to the Regional Assistant Director of Education (Basic) under Sub-rule (3) cannot be utilized in his region due to non-availability of

vacancies, the Regional Assistant Director of Education (Basic) shall forward the list to the Secretary of the Board, who shall thereafter forward the list to a District Basic Education Officer in whose district sufficient number of candidates are not available to fill the vacancies. In so forwarding the list, the Secretary of the Board shall take into account the options given by selected candidates in regard to their postings in districts.

(8) On receiving the list referred to in Sub-rule (7), the District Basic Education Officer shall place the list along with applications and other particulars of the candidates, before the Selection Committee constituted under Rule 16.

(9) The Selection Committee shall consider the candidates mentioned in the list referred to in Sub-rule (7) and prepare list of selected candidates in accordance with Sub-rule (1) and include their names at the bottom in the list prepared under Sub-rule (1) and forward the entire list to the appointing authority.'

60. Rule 19 deals with appointment. It reads as under :

'19. Appointment.--(1) The appointing authority shall make appointment to any post referred to in Rule 5 by taking the names of the candidates in the order in which they stand in the list prepared under Rule 17 or 17A or 18, as the case may be.

(2) The appointing authority may make appointments in the temporary and officiating vacancies also from the lists referred to in Sub-rule (1).

(3) No appointment shall be made except with the recommendation of the Selection Committee, and, in the case of direct recruitment except on production of residence certificate issued by the Tehsildar.'

61. From a reading of the provisions of the Act and 1981 Services Rules reproduced above, it is clear that it is the Board, which has to control the imparting of basic education and teachers training in the State. Further, under 1981 Service Rules, the separate cadre of assistant teachers for each local area has been provided. The academic qualifications prescribed for appointment of assistant masters and assistant mistresses of Junior Basic Schools is a Bachelor degree

from University established by law in India or a degree recognised by the Government as equivalent thereto together with the training qualification consisting of 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. There is no restriction for a person, who is an Indian citizen from applying to the post of assistant teacher provided, he possesses the academic qualifications prescribed under Rule 8. The selection committee constituted under Rule 16 of the rules primarily consists of persons from the district in respect of which the selection is to be made, but does not restrict the making of an application from a person, who is not ordinarily resident of that district. It is open to all persons, who are citizens of India. It is not in dispute that the present advertisement has been made for inviting applications from eligible candidates for undergoing special B.T.C. training for appointment on the post of Assistant Teachers in Junior Basic Schools run by the Board. It is a step in aid for making persons eligible for appointment on the post of Assistant Teachers in accordance with the Act and the rules. However, the appointment of Assistant Teachers is being restricted to only those persons, who have successfully completed special B.T.C. training. The special B.T.C. training has been recognised by the State Government as equivalent training course for the purposes of academic qualification for appointment on the post of assistant teachers and assistant mistresses in Junior Basic Schools. It may be mentioned here that the Parliament has enacted the National Council for Teachers Education Act, 1993 (hereinafter referred to as the 1993 Act) which provides for recognition of teachers education institutions. Section 14 of the 1993 Act, provides for recognition of Institution offering course or training in education. Section 15 provides for permission for a new course or training by recognised institution. It reads as follows :

'15, Permission for a new course or training by recognised institution.--(1) Where any recognised institution intends to start any new course or training in teachers education, it may make an application to seek permission therefor to the Regional Committee concerned in such form and in such manner as may be determined by regulations.

(2) The fees to be paid along with the application under Sub-section (1) shall be such as may be prescribed.

(3) On receipt of an application from an institution under Sub-section (1), and after obtaining from the recognised institution such other particulars as may be considered necessary, the Regional Committee shall :

(a) If it is satisfied that such recognised institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper conduct of the new course or training in teachers education, as may be determined by regulations, pass an order granting permission, subject to such conditions as may be determined by regulation ; or

(b) it is of the opinion that such institution does not fulfil the requirements laid down in Sub-clause (a), pass an order refusing permission to such institution, for reasons to be recorded in writing :

Provided that before passing an order refusing permission under Sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the institution concerned for making a written representation. (4) Every order granting or refusing permission to a recognised institution for a new course or training in teacher education under Sub-section (3), shall be published in the Official Gazette and communicated in writing for appropriate action to such recognised institution and to the concerned examining body, the local authority the State Government and the Central Government.

62. Under Section 12 of the 1993 Act, functions of the council has been provided. Clause (e) of Section 12 provides for laying down norms for specific category of courses or training in teacher education including the minimum eligibility criteria for admission thereof and the method of selection of candidates, duration of the course, course contents and mode of curriculum.

63. Section 14 provides for affiliating body to grant affiliation after recognition or permission by the council. It reads as follows :

'16. Affiliating body to grant affiliation after recognition or permission by the Council.--Notwithstanding anything contained In any other law for the time being in force, no examining body shall, on or after the appointed day.

(a) grant affiliation whether provisional or otherwise, to any institution ; or

(b) hold examination, whether provisional or otherwise, for a course on training conducted by a recognised institution,

unless the institution concerned has obtained recognition from the Regional Committee concerned, under Section 14 or permission for a course training under Section 15.'

64. Section 32 empowers the council to make regulations. Clause (d) (ii) of Sub-section (2) of Section 32 empowers the council to make regulation for laying down the norms, guidelines and standard in respect of the specified category of courses or training in teacher education under Clause (e) of Section 12, The special B.T.C. training has been recognised by the State Government as an equivalent training course for the purposes of academic qualification for assistant masters and assistant mistresses of Junior Basic Schools. However, no material has been placed before the Court that, the special B.T.C. training course has also been recognised by the National Council of Teachers Education established under Section 3(1) of 1993 Act, as a teachers training course. Section 16 of the 1993 Act, prohibits the examining body for holding any examination whether provisional or otherwise for a course of training conducted by a recognised institution concerned which has not obtained permission for the said course or training under Section 15 of the 1993 Act. A Division Bench of this Court in the case of Upendra Rai v. State of U.P. and Ors., 2000 (2) UPLBEC 1430, has held that the National Council for Teachers Education Act, 1993, overrides the law enacted by the Slate Legislature to the extent that the law is repugnant to that Act. This Court has held as follows :

'We have bestowed our thoughtful consideration to the submissions made across the bar. So far as the National Council for Teachers Education Act, 1993, is concerned, it was enacted as stated supra, to provide for the establishment of a

National Council of Teachers Education with a view to accomplishing planned and co-ordinated development for teachers education system throughout the country and regulation and proper maintenance of norms and standards in the teachers education system and therefore, in case, any provision in the U.P. Basic Education Act, 1972 or Rule made thereunder is found to be in conflict with any provision embodied in the aforesaid Central Act, the same will have to be discounted to the extent of inconsistency in view of the provisions contained in Article 254 of the [Constitution of India](#), Clause (1) of which provides that if any provision of law made by the Legislature of State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact or to any provision in an existing law with respect to one of the matters enumerated in the concurrent list, then, subject to the provisions of Sub-clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall to the extent of the repugnancy, be void. Clause (2) of Article 254 visualises that where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent list contains any provisions repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State ; provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or deleting the law so made by the Legislature of the State.

The question that begs a consideration is whether any provision contained in the U.P. Basic Education Act, 1972, or the U.P. Basic Education (Teachers) Service Rules, 1981, is repugnant to any provision contained in the Central Act. The 'teacher education' as defined in Section 2(1) of the Central Act means programmes of education, research or training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools and includes non-formal education, part-time education, adult education and correspondence education. Section 12 of the Central Act enumerates the functions of the National Council for teacher education as established under Sub-

section (1) of Section 3 of the Act. The functions enumerated in Section 12 inter alia include : (a) laying down guidelines in respect of minimum qualification for a person employed as a teacher in schools or in recognised institutions, (b) laying down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum ; and (c) formulation of schemes for various levels of teacher education and identify recognised institutions and set up new institutions for teacher development programmes. Section 14 of the Act enjoins upon every institution offering or intending to offer course or training in teacher education to make an application to the Regional Committee concerned for grant of recognition. Section 15 requires prior permission of the regional committee as a condition precedent to starting any new course or training in teacher education by any recognised institution and according to Section 16 which has an overriding effect, as the expression 'notwithstanding' anything contained in any other law for the time being in force suggests no examining body shall, on or after the appointed day, grant affiliation, whether provisional or otherwise, to any institution or hold examination, whether provisional or otherwise, for a course or training conducted by a recognised institution unless the institution concerned has obtained recognition from the Regional Committee concerned under Section 14 of the permission for a course or training under Section 15. Section 17 provides for withdrawal of recognition in the event of contravention of the provisions of the Act. Clause (4) of Section 17 visualises that if an institution offers any course or training in teacher education after the coming into force of the order withdrawing recognition or where an institution offering course or training in teacher education immediately before the appointed day fails or neglects to obtain recognition or permission under this Act, the qualification in teacher education obtained pursuant to such course of training or after undertaking a course or training in such institution, shall not be treated as a valid qualification for purposes of employment under the Central Government or any 'State Government'. This necessarily implies that qualification in teacher education obtained from an institution duly recognised under the provision of the Act, would be treated as a valid qualification for purposes of appointment in schools, and colleges or other educational body aided by the

Central Government or any other State Government, regard being had to the purpose and object sought to be achieved by the Act as also the provisions thereunder as discussed above, we are persuaded to take the view that the person having obtained the qualification in teacher education from a recognised institution would be qualified for being considered in any school, college or other educational body aided by the Central Government or any State Government. The appellant in the instant case has obtained diploma in education from Zila Shiksha and Prakashikshan Sansthan (DIET), Jabalpur an institution recognised under the provisions of the Act as would be evident from the certificate filed as Annexure-4 to the said petition. The impugned circular and the advertisement in so far as it has the effect of excluding the candidates having teacher qualification obtained from an institution recognised under the provisions of N.C.T.E. Act are void in view of Article 254 of the Constitution. The appellant, in our opinion, was equipped with the requisite qualification for being considered for appointment as assistant teacher in Junior Basic School.'

65. In the case of Union of India and Ors. v. Shah Goverdhan L. Kabra Teachers College, JT 2002 (8) SC 269, the Hon'ble Supreme Court has held that the National Council of Teachers Education is an expert body created under the provisions of the National Council of Teachers Education Act, 1993 and the Parliament has cast upon such expert body the duty to maintain the standards of education particularly in relation to the teachers education. Education is the backbone of every democracy and any deterioration in the standard of teaching in B.Ed. course would ultimately provide substandard prospective teachers, who would be teaching in schools and colleges throughout the country and on whose efficiency the future of the country depends. Inasmuch as the teacher himself has received a substandard education it is difficult to expect from him a higher standard of teaching to the students of the schools or other Institutions.

66. It may be mentioned here that the State Government had been recognising other teachers training courses as equivalent teachers training course for the purposes of academic qualification prescribed under Rule 8 of 1981 Service Rules for appointment of assistant masters and assistant mistresses in Junior Basic Schools. It had earlier issued a Government order dated 7,9.1994 by which it had

declared the qualification of B.Ed. or L.T. as equivalent qualification within the meaning of Rule 8 when sufficient candidates with B.T.C. qualifications were not available for appointment in Junior Basic Schools in Uttarakhand run by the Board. The special B.T.C. training course whose duration is two months has not been recognised/approved by the National Council of Teachers Education under the 1993 Act. Thus, it cannot be said to be a recognised teachers training course. The State Government, therefore, could not have declared or treated it as an equivalent qualification for the purposes of appointment of assistant masters and assistant mistresses for Junior Basic Schools. The idea for filling up the 20,000 vacant posts of assistant masters in the State for providing education up to Class V is laudable object, but at the same time, it has to be ensured that the appointment should be made of the persons, who hold valid and recognised teacher training course certificate. The special B.T.C. training course has not been recognised by the National Council of Teachers Education under the 1993 Act. However, the course of B.Ed., L.T. and other degrees such as B.Ed., B.P.Ed. and D.P.Ed. are recognised courses by the National Council of Teacher Education under the 1993 Act, but the same has not been declared by the State Government as equivalent for the purposes of making appointment on the post of assistant masters/assistant mistresses in Junior Basic Schools run by the Board, as it had been done in the year 1993. It is always open to the State Government, to declare only such courses, which have been recognised by the National Council of Teacher Education as equivalent qualification for appointment on the post of assistant teachers/assistant mistresses in Junior Basic Schools and to provide two months special practical training for teaching in primary schools. Thus, the recognition of Special B.T.C. training course as equivalent qualification the course having been not recognised/approved by the National Council of Teacher Education could not have been done by the State Government. Thus, the Government order recognising special B.T.C. training course as equivalent qualification is contrary to the provisions of the Act, the 1981 Rules and also the 1993 Act.

67. An application has been filed by the learned Advocate General on behalf of the State of U.P. and other State-respondents along with a supplementary affidavit of Km. Bhawna Shiksharhi, affirmed on 25.9.2002 in which it has been stated that

when the selection for training for special B.T.C. course was finalized, the Uttar Pradesh Public Services (Reservation of Scheduled Castes, Scheduled Tribes and Other Backward Candidates) (Amendment) Act, 2001, was in force. The validity of this Act, was challenged before the Hon'ble Supreme Court in Writ Petition No. 488 of 2001, Akhil Bhartiya Yuva Berojgar Sangh v. State of U.P. and Ors., wherein the Hon'ble Supreme Court had passed an interim order on 21.1.2002, restraining the State Government from issuing any further executive orders in pursuance of the Amendment Act of 2001. The consequence of the above order of the Hon'ble Supreme Court was that the State Government was prohibited from issuing any orders on the basis of the selection held in pursuance of the Amendment Act, 2001. During the pendency of these appeals, an Ordinance was issued namely, Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Candidates) (Amendment) Ordinance, 2002, which had been subsequently, replaced by an Act being U.P. Act No. 1 of 2002 by which the provisions of U.P. Act No. 4 of 1994 as it previously stood before the Amendment Act of 2001, had been restored.

68. The contention of the learned Advocate General is that since the Amendment Act of 2001 has been repealed by Act No. 1 of 2002 and the position of reservation as it stood prior to the Amendment Act of 2001 has been restored a fresh select list has to be prepared for the reserved category candidates.

69. It is not necessary for us to go into the aforesaid question, as we have already held that the preparation of merit list district-wise is not justified.

70. In view of the foregoing discussions, we do not find any infirmity in the judgment and order passed by the learned single Judge except that the reservation of 50% provided for females and 50% for Art and Science groups respectively has been validly made. Thus, all the special appeals are partly allowed. The Government order dated 3.8.2001, in so far as it declares the special B.T.C. training course to be equivalent qualification is quashed. The Government order dated 31.10.2001, in so far as it provides preparation of merit list at the district level is also quashed.

