

Niranjan Singh and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Dec-07-2004

Reported in : 2005(1)ESC354

Judge : Sunil Ambwani, J.

Acts : Uttar Pradesh Basic Education Act, 1972 - Sections 19(1); ;National Council of Teachers' Education Act, 1993 - Sections 12, 16 and 17(1); National Council of Teachers' Education Rules - Rule 8; Uttar Pradesh Basic Education (Teachers) Services Rules, 1981 - Rules 5, 8, 8(1), 9, 9(2), 9(4), 14, 14(4), 14(6), 15, 16, 17, 18 and 19; Uttar Pradesh Public Services (Reservation for Scheduled Caste, Scheduled Tribe and Other Backward Classes) Act, 1994 - Sections 3(6); Uttar Pradesh Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1994; [Disabilities \(Equal Opportunities, Protection of Right and Full Participation\) Act, 1995](#); National Council of Teachers' Education (Determination of Qualifications for Recruitment of Teachers) Regu

Appeal No. : C.M.W.P. No. 22141 of 2004

Appellant : Niranjan Singh and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : S.M.A. Kazmi, Adv. and ;K.S. Kushwaha, S.C.

Advocate for Pet/Ap. : Ashok Khare, Sr. Adv., ;Kripa Shanker, ;Shailendra, ;Prakash Padia, ;V.K. Singh, ;Anoop Barnwal, ;A.S. Rai, ;O.P. Shukla and ;A.K. Pandey, Advs.

Judgement :

Sunil Ambwani, J.

1. Heard Sri Ashok Khare, Senior Advocate, Sri Kripa Shanker, Sri Shailendra, Sri Prakash Padia, Sri V.K. Singh, Sri Anoop Barnwal, Shri A.S. Rai and Sri O.P. Shukla, learned Counsels for petitioners and Sri S.M.A. Kazmi, Chief Standing Counsel, assisted by Sri K.S. Kushwaha, Standing Counsel for the State respondents.

2. This second batch of writ petitions have been filed by unsuccessful applicants to the Special Basic Training Certificate 2004 (in short Special B.T.C. 2004). The petitioners have challenged the Select List declared on 27.5.2004 and have prayed for a writ of mandamus directing the respondents to send them for training for appointment as Assistant Teachers in Basic Schools run by U.P. Basic Education Board.

3. The U.P. Basic Education Act, 1972, provides for establishment of Board of Basic Education to organise, co-ordinate and control basic education in U.P. to establish and control schools for basic education and teachers training, to raise standards and co-relate it with primary education in the State. All the basic schools in the State up to VIIIth standard, except those which are being run by private institutions are under direct supervision and control of the U.P. Basic Education Board.

4. There is acute shortage of teachers in basic schools run by the Board. The Central and State Governments have accepted the responsibility to provide free and compulsory education to all the children up to age of 14 years, to fulfil the objectives under Article 45 of Constitution of India, and the directions of the Apex Court in Unni Krishnan's case. The State Government, however, does not have infrastructure and facility to train sufficient number of teachers to fill up more than

10,000 vacancies every year. The fifty six District Institutes of Education and Training run by the State Government, have a total capacity to train only to 5600 persons in the two year regular, course of Basic Teacher's Training. Faced with this situation in the year 1998, the State Government provided for a special condensed bridge course for basic teacher's training for B.Ed./L.T. qualified graduates. About 8000 candidates were selected, trained and were given appointments. The vacancies increased gradually and that by Government Order dated 3.8.2001 it was decided to select about 20,000 graduates with higher teaching qualifications like B.Ed./L.T. The Government Order dated 3.8.2001 proposed a condensed course for Basic Teachers' Training. By a subsequent Government Order dated 20.8.2001 the candidates with Bachelor of Physical Education Degrees, Diplomas and Certificates with under graduate degrees were also made eligible increasing the maximum age to 40 years. These selections, however, fell into rough weather and that this Court set aside the entire selections on 21.3.2002 on the ground that the course was not recognised by the National Council of Teachers' Education established under the National Council of Teachers' Education Act, 1993, and was not the qualification provided under the U.P. Basic Education (Teachers) Services Rules, 1981, made under Section 19 (1) of the U.P. Basic Education Act. The Court found that the reservations of 50% for female candidates were violative of Articles 15 and 16 of Constitution of India and that the selections should have been made at the State level and not at the district level causing discrimination with similarly situate candidates. In Special Appeal No. 404 of 2002 between State of U.P. v. Anant Kumar Tiwari and Ors., decided on 23.11.2002 reported in 2002 AWC 2060, a Division Bench of this Court upheld the judgment and all the grounds except that the reservations for female candidates was violative of Articles 14 and 16 of Constitution of India.

5. In paragraph 37 of the judgment in Anant Kumar Tiwari's case, the Court accepted the statement of learned Chief Standing Counsel that no one was declared selected in the selections of 2001, and that no appointment was made in pursuance of the process of selection. The entire selections were consequently cancelled.

6. In the meantime the vacancies increased, and that in the year 2003 the State Government worked out these vacancies at 46189. The State Government applied to National Council of Teachers' Education for permission to conduct the special bridge course, The Council vide its letter dated 29.3.2002 gave its approval to organise the special B.T.C. Programme of six months duration including three months' practical training. On a request made by the Regional Director of the Northern Regional Committee of the Council, Jaipur on 6.3.2003, the National Council, Committee considered the matter and approved the programme subject to conditions given in its letter dated 24.7.2003. These conditions are quoted as below :

- '(i) The programme shall be run on full time basis and be of six months' duration;
- (ii) The programme shall be conducted in recognised DIETs under the academic supervision and monitoring of SCERTs ;
- (iii) The intake of candidates in this programme shall not exceed 100 in one batch in a DIET ;
- (iv) The Curriculum shall include educational theory and internship, each being of three months' duration;
- (v) The SCERT shall develop a detailed curriculum for the programme including scheme of examination. For this purpose, they may adopt or adapt the curriculum framework developed by the NCTE;
- (vi) The SCERT shall be responsible for the conduct of final examination and issue of certificates to the successful candidates;

With regard to the second proposal of the State Government for increase in the intake capacity in DIETs as a long term plan, the State Government is hereby advised to direct the DIETs to apply to the Northern Regional Committee of NCTE, Jaipur along with essential documents.'

7. In the aforesaid background the State Government issued Government Order dated 14.1.2004 providing for Special B.T.C. 2004 and issued an advertisement

inviting applications for selections. The U.P. Basic Education (Teachers) Services (Xth Amendment) Rules, 2004 issued by Notification dated 14.1.2004 amended Rule 8 (1) (ii), including the 'Special Basic Teachers Certificate (B.T.C.)', alongwith other prescribed training qualifications for appointment as Assistant Teachers in Basic Schools.

8. The Government Order dated 14.1.2004 was challenged in a batch of writ petitions in this Court. During the pendency of the writ petitions, the State Government issued a Government Order dated 20.2.2004 amending the Government Order dated 14.1.2004 by which maximum age was increased to 40 years as on 1st July, 2004, and that the B.P.Ed./C.P.Ed./ D.P.Ed. qualifications alongwith graduation was also included for the purpose of eligibility to apply for Special B.T.C. 2004. The entire batch of writ petitions were dismissed by this Court in its judgment dated 5.3.2004 in Writ Petition No. 5452/2004 between Promod Kumar and Ors. v. State of U.P. and Ors.. The judgment was upheld in Special Appeal No. 461 of 2004 decided on 19.5.2004.

9. By these judgments, the maximum age of 40 years for admission to the course was upheld. The Court repelled the arguments that the selections should be made in order to give precedence to the candidates, who have passed the qualifications examinations named B.Ed./L.T./ B.P.Ed./C.P.Ed./D.P.Ed. examination, in earlier academic years.

10. Sri S.M.A. Kazmi, learned Chief Standing Counsel informs the Court that in all about 2,38,000 applications were received for the course. These applications were processed and that the State Government finalised the list of 31461 eligible applicants in order of merit in different categories of reserved classes, for admission to the course in District Institute of Education, and that the first batch has been sent for training from July, 2004.

11. The select list was divided into several categories, in which 50% seats each are reserved for male and female candidates each. A further division provides for 50% seats for Science stream and remaining 50% for Arts stream. The reservations have also been provided for other backward classes, Scheduled Castes and Scheduled Tribes on vertical basis, and for Dependents of Freedom

Fighters, Physically Handicapped and Ex-Servicemen on horizontal basis, under the U.P. Public Services (Reservation for Scheduled Caste, Scheduled Tribe and Other Backward Classes) Act, 1994, and U.P. Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1994, applicable to the selections. The selections have been made strictly on the basis of merit in which the percentage of marks of the candidates in High Schools, Intermediate, Graduation and Teacher's Training qualifications have been added. The percentage of marks obtained in training qualifications has been subdivided into written and practical examinations. The total of the percentage of marks in these five categories of qualifying examinations were added together for determining the total number and the percentage of marks obtained for selections in each category.

12. Counter and rejoinder affidavits have been exchanged between the parties and that with the consent of the Counsels including the Chief Standing Counsel, these petitions were heard at length on 8.7.2004 and 9.7.2004. On 12.7.2004, during the course of argument, it was pointed out by Sri S.M.A. Kazmi that the State Government had prepared and declared a list of 41,450 candidates in order of merit in different categories on 27.5.2004. After counselling, a large number of applications were screened out as they could not substantiate their academic qualifications. Accordingly, a list of 31,461 candidates was finalised and that these categories will be sent for training in batches. The first batch was sent for training in the District Institutes of Education Training, on 20.7.2004. The Court found that the selection process is still pending and that about 10,000 more candidates have to be drawn from the master list and that the candidature of all the petitioners was not rejected till then. The hearing was adjourned on 16.8.2004 to enable learned Chief Standing Counsel to give a positive statement of fact and to file an affidavit giving status of the selections. The hearing was again adjourned on 20.8.2004 for a final statement to be given by the Chief Standing Counsel.

13. On 3.9.2004, Sri K.S. Kushwaha, learned Standing Counsel informed the Court that 7000 more candidates have been drawn from the master list and that 1100 candidates have been kept in waiting for the equal number of representations pending with the Director of Basic Education. The writ petitions

were thereafter heard at length on 8.10.2004 and 15.10.2004.

14. Sri Kripa Shanker Singh appearing in Writ Petition No. 2792/2004 submitted that the inclusion of Bachelor of Physical Education, Diploma in Physical Education and Certificate Courses in Physical Education, qualifications to teach physical education were illegally clubbed with B.Ed./L.T. qualifications. According to him the State Government in its representation to National Council of Teacher's Education did not make it clear and had not decided by that time to include these teaching qualifications for admission to Special B.T.C. Course 2004. The application for permission to the Special B.T.C. Course 2004 as a bridge course was confined to only to B.Ed./L.T. qualified candidates. According to him Section 12(e) of the National Council of Teachers' Education Act, 1993 authorises the Council to lay down the conditions of eligibility. The letter of the Council dated 21.7.2003 did not authorise the State to admit persons having any other qualifications, and thus the inclusion candidates having B.P.Ed., D.P.Ed., and C.P.Ed. qualifications, has discriminated the petitioners holding B.Ed./L.T. degrees. He further submits that Section 17(1) of National Council of Teachers' Education Act, 1993, provides for consequences of violation of terms and conditions of the course and that the Court must direct exclusion of teaching qualifications other than B.Ed./L.T. for the purpose of admission to the course. He has relied upon judgment of this Court in *Upendra Rai v. State of U.P. and Ors.*, 2000 (1) ESC 543 (All) ; *Anant Kumar Tiwari v. State of U.P. and Ors.*, 2003 (3) AWC 2060 ; *Union of India v. Shai Goverdhan*, JT 2002 (8) SC 269 ; *Yogesh Kumar v. NCT of Delhi*, 2003 (3) SCC 548 and *State of Himachal Pradesh v. Padam Dev*, (2002) 4 SCC 510, in support of his submissions. Sri Kripa Shanker Singh further submits that the B.Sc. (Agriculture) qualification has been wrongly clubbed with the arts group, discriminating the arts candidates. The cut off marks for selection for arts group is higher than the science group and that in case the B.Sc. (Agriculture) candidates are adjusted in science group, more seats will be available for arts group. He has relied upon the various Statutes and Curriculum of the universities in which the agriculture has been clubbed with the science group. According to him the very high percentage of marks are given to the B.P.Ed./C.P.Ed./D.P.Ed. candidates in practical examinations, increasing the chances for their success.

15. Sri Ashok Khare, Senior Advocate appearing for Writ Petition Nos. 32393/2004, 35889/2004, 38227/2004, 33707/2004, 42464/ 2004, 38226/2004, 42465/2004, 39782/2004, 39570/2004 and 38222/2004 made submissions on behalf of the petitioners having training qualifications in physical education including B.P.Ed., D.P.Ed. and C.P.Ed. From Hanuman Vyayam Prasarak Mandal Amrawati, Sri Narhegi Mahavidyalaya Narhegi, Ballia, Gramodaya Ashram Post Graduate College Ambedkar Nagar and other colleges associated with Dr. Ram Manohar Lal Lohia Avad University, Faizabad, Kisan Post Graduate College Bagaon, District Faizabad affiliated to Veer Bahadur Singh Purvanchal University, Jaunpur with these teaching qualifications in physical education including marks allocated under the heads of theory, teachers' training and physical skills. He submits that in determining the grade of percentage for preparation of the select list, the marks as also the percentage awarded under the head of 'physical skill' was ignored. Under the Government Orders dated 14.1.2004 and 20.2.2004 and the advertisements issued on 22.1.2004 and 22.2.2004, inviting applications for selections, there was a stipulation that the selection will be based upon the grade of the percentage of marks secured by the candidate in High School, Intermediate, Graduation and B.Ed./L.T. A format was also prescribed for submission of the application form giving each of the aforesaid qualifications, specifying the total marks awardable, marks secured and percentage of such marks. The Government Order dated 20.2.2004 extended the zone of eligibility to candidates possessing teaching qualifications in physical education. The respondents, however, prepared the select list without consideration and calculating the marks secured under the head of physical skills. He has placed reliance on the judgment in *Krushna Chandra Sahu v. State of Orissa*, (1995) 6 SCC 1, in submitting that where basis of the selection is specified, the body authorised to conduct the selections does not have power or authority to interfere with the basis of selection. The terms of the selection could not have been departed violating Article 14 of the Constitution of India and thus the petitioners were subjected to discrimination.

16. Sri Ashok Khare further submits that the candidates belonging to reserved category of Other Backward Classes category are aggrieved inasmuch as the Other Backward Classes candidates securing more marks than the last candidates selected, were not treated as selected under the general category, but still they

have been shown as selected under reserved category of Other Backward Classes. The first select list specified cut off marks of 316.24 for Male (General/Arts) and 302.6 for Male (OBC/Arts). The O.B.C. and other reserved categories securing more marks than 316.24 were included in general category. The second list, however, published on 25.8.2004 specified 309.9 marks for Male (General/Arts) and 300.19 for Male (OBC/Arts). Sri Khare submits that all the OBC candidates, who have secured marks between 309.9 and 316.24 are candidates who have secured more marks than the last candidate selected under the general category and are liable to be included in the select list of general category. He has relied upon Section 3 (6) of U.P. Act No. 4 of 1994 and the judgments in R.K. Sabbarwal v. State of Rajasthan, 1995 (2) SCC 745 and Narendra Pratap Singh v. Director General, 2002 (3) ESC 339 (All).

17. Appearing for the third category of petitioners in Writ Petition Nos. 28804/2004 and 32726/2004, Sri Khare submits that Bachelor of Science and Agriculture, Bachelor of Science and Physical Education, Health Education and Sports awarded by Banaras Hindu University are graduation degree in Science and are included by the University in the Science faculty. There does not exist any basis for not considering the petitioners of these two writ petitions in Science category. He has relied upon judgment of Hon'ble Mr. Justice V.K. Shukla in Writ Petition No. 32309/2003 between Kripa Shanker Dube v. State of U.P. decided on 13.4.2004.

18. Sri Shailendra appeared in Writ Petition No. 22141/2004 submits that the selections are not based upon the merit and have caused hostile discrimination by including unequal in the selections. In the Government Order dated 14.1.2004 the State Government adopted a criteria to consider percentage of marks only in the four examinations. Subsequently the percentage of marks of practical examination were added separately, which drastically affected the selections. The candidates who have secured very high percentage in the practical examinations scored a lead and thus discriminated the bonafide and meritorious students. He submits that recently in the State of U.P. a number of commercial institutions awarding B.Ed./L.T. qualifications have been established. These institutions are awarding very high percentage of marks to their students in practical examinations,

increasing their chances of selections in B.T.C. and Special Course 2004 and consequent appointments. According to him in case the percentage of marks only in qualifying teaching examination is counted including the practical examination the chances of discrimination will be reduced.

19. Sri Shailendra submits that in U.P. Basic Teachers Service Rules, 1981, Appendix IV, referable to Rule 14 (4) provides for a reasonable method of calculation of marks for selections for appointment as Assistant Teachers. According to him the criteria provided in the Appendix was adopted in 1998 and 2001 selections and that the change of criteria has no objective sought to be achieved. He submits that the change of criteria is grossly arbitrary and was made subsequently to favour those candidates who have passed B.Ed. examinations from the newly established educational institutions and B.P.Ed./C.P.Ed./ D.P.Ed. examinations. There is absolutely no rational to calculate the marks of practical examination separately and that adding the percentage of theory and practical separately causes invidious discrimination. According to him some criteria of scaling of marks should have been adopted to ensure fairness between candidates coming from institutions with different sets of examination systems. He has relied upon judgment of Apex Court in Yogesh Kumar v. Government of NCT Delhi, 2003 (3) SCC 548, in which it was held that it is open to the recruiting authorities to evolve a policy of recruitment and to decide the sources from which the recruitment is to be made. He also submits that the respondents wrongly included the candidates with B.Sc. (Agriculture) qualifications in 'Arts' group and has relied upon the prospectus of several universities in U.P. where agriculture has been treated in science group.

20. Sri Shailendra has further pointed out that the minimum number of marks for the qualifying examinations taken together to a minimum marks of 171 for any candidate in the selections, whereas for Ex-Servicemen category the persons with 168 marks has been selected. According to him a person securing 168 marks could not have passed all the examinations and thus a gross error was made in calculating the marks for the purpose of selections. Sri Shailendra also submits that no benefits have been given to the NCC certificate holders.

21. Sri Prakash Padia appearing in Writ Petition No. 22275 of 2004 has adopted the arguments of Sri Shailendra. He has laid emphasis upon the inclusion of B.Sc. (Agriculture) and B.Sc. (Home Science) candidates in 'Arts' group. According to him the status of Allahabad University and the Ordinances for Degrees of B.Sc. (Agriculture) is four years' course, treats these course in Science group. Similarly, B.Sc. (Home Science) could not have been included in Arts group. He submits that for both the courses Intermediate Science is the minimum qualification for admission and thus these degrees cannot be treated to entitle the candidates for selection in Arts group.

22. Sri V.K. Singh appearing in Writ Petition Nos. 23028 of 2004, 36218 of 2004 and 44006 of 2004 submits that the B.T.C. Course 2004 was contemplated and designed only for B.Ed./L.T. qualified candidates and that inclusion of B.P.Ed./C.P.Ed./ D.P.Ed. candidates has discriminated the B.Ed./L.T. qualified graduates. He has relied upon judgment of Supreme Court in P.N. Lakha v. State of Kerala, (2003) 3 SCC 541; Yogesh Kumar v. Government of NCT Delhi, (2003) 3 SCC 548, in support of his submissions. According to him the unqualified candidates have been clubbed together with B.Ed./L.T. candidates for selections. Sri V.K. Singh is also appearing in Writ Petition No. 23028/2004 and submits that the Physically Handicapped candidates have not been given a fair deal in the selections. According to him the 1995 Act provides for a State Co-ordination Committee and that the committee alone could determine the dispute with regard to Physically Handicapped candidates. He submits that as against 46,189 seats, a total number of 1385 seats should have been filled by candidates belonging to physically handicapped category but only 456 candidates have been selected. He has relied upon the Persons with [Disabilities \(Equal Opportunities, Protection of Right and Full Participation\) Act, 1995](#), which enables the State Government to give three per cent reservation to physically handicapped candidates. Sri V.K. Singh also made submissions in Writ Petition No. 35597/2004 for Scheduled Caste candidates, who have secured more marks than general category candidates to be treated in general category appearing in Writ Petition Nos. 28987/2004, 23273/2004, 34756/2004 and 27896/2004. He has relied upon a judgment of Hon'ble Mr. Justice V.K. Shukla in Writ Petition No. 32309/2003 between Kripa Shanker Dube v. State of U.P. decided on 13.4.2004 and by which

he held that Bachelor of Science and Agriculture should be treated in science category and similarly he submits that Bachelor of Home Science should also be treated under the science category.

23. Sri Anoop Barnwal appearing in Writ Petition No. 24875 of 2004 submits that where the candidates are coming from different institutions, having different methods for awarding marks, and different academic environment, the only fair and reasonable method of selection was to hold written examination. According to him the selections on the basis of marks is not a fair criteria. He submits that candidates receiving very high percentage of marks in practical examinations have succeeded, thereby discriminating students with higher merits in the selections.

24. Sri O.P. Shukla appearing in Writ Petition No. 22877 of 2004 submits that B.Sc. (Agriculture) could not have been included in the Arts group. According to him the Chemistry is included in the curriculum of B.Sc. (Agriculture) and that 'Agriculture' is science. He has pointed out to certain discrepancies in the merit list where some of the names have been shown twice and submits that a reasonable waiting list should have been prepared.

25. Sri S.M.A. Kazmi, Chief Standing Counsel has raised preliminary objections to the maintainability of the writ petitions. Firstly he submits that none of the petitioners have laid down full and detailed facts with regard to their candidatures. Almost all the writ petitions lack foundations of fact. The allegations in all the writ petitions are general in nature. In a writ petition under Article 226 of Constitution of India the Court is not required to decide abstract questions in academic interest. The selections of such a magnitude cannot be challenged on general grounds. Secondly, he submits that all the petitioners participated in the selections by making applications in pursuant to the advertisement. They had opportunity to challenge the inclusion of B.P.Ed./C.P.Ed./D.P.Ed. qualified candidates in the selections and the criteria adopted by the State for selecting the candidates. These grounds were not taken in the batch of the writ petitions in Promod Kumar Singh's case and that having participated in the selections it is not open to the petitioners to challenge the select list. He has relied upon judgment in Om Prakash Shukla v. Akhilesh Shukla, 1987 Supp. SCC 285; Arun Kumar Shukla, 1984

UPLBEC 477 ; Utkal University v. Dr. Rangacharya, JT 1991 (2) SC 101 and Union of India v. N. Chandra Shekhar, (1998) 8 SCC 964, to non suit the petitioners.

26. Sri Kazmi further submits that the petitioners have not impleaded the successful candidates, who according to them, have been wrongly selected. According to him once the select list is declared, the selections cannot be challenged by any person participating in the selections, without impleading the selected candidates or at least some of the candidates who may represent the selected candidates, and has relied upon V. Ram v. State of A.P., 2002 (5) SCC 533.

27. On merits, Sri Kazmi submits that the State Government learnt from the mistakes committed in the 2001 selections and amended the Rules of 1981 by 10th Amendment to the Rules in 2004, adding 'Special B.T.C.' as one of the essential qualifications for appointment as Assistant Teachers in Basic Schools in Rule 8. Section 16 of the National Council of Teachers' Education Act, 1993 provides for recognition of new course and training. In the present case, the State is imparting the training to only such the B.Ed./L.T./B.P.Ed./C.P.Ed./D.P.Ed. courses which are recognised by the National Council of Teachers' Education. The Special B.T.C. 2004 is basic teachers training course for making the persons having B.Ed./L.T. and other teaching qualifications recognised by the universities and National Council of Teachers' Education for the purpose of appointments in large number of vacancies in basic schools. In the present case, the National Council of Teachers' Education, was approached with full and detailed disclosure, the National Council did not lay down any criteria for eligibility for admission and that where the qualifying course for admission to Special B.T.C. course 2004, is recognised by the National Council of Teachers' Education, no further condition of eligibility for admission is to be laid down and inferred from the provisions of the Act of 1993.

28. Sri Kazmi points out that the State has adopted fair and reasonable criteria for calculating the marks for the purpose of selection. According to him the training in teaching is the essential qualification for the condensed bridge course of Special

B.T.C. course 2004. The practical examination of B.Ed./L.T. and B.P.Ed./C.P.Ed./D.P.Ed. are significant and are of equal importance as the theory papers. The State Government therefore adopted a criteria of considering and adding the percentage of marks for practical examinations separately. With the object to eliminate arbitrariness, a uniform criteria was adopted for all the candidates, which has not caused any discrimination. He submits that where the institutions are recognised by the University Grants Commission and National Council of Teachers' Education, the award of high percentage of marks in practical examinations of teaching qualifications by some of the institutions cannot be a ground to challenge the selections, until and unless any factual foundation has laid down. He submits that the petitioners have not complained to either the National Council of Teachers' Education or to the State Government and no representation has been received from any of the petitioners, either with regard to manner and method of calculation of marks, or the award of very high percentage of marks by some of the institutions awarding degrees in teachers' training. Sri Kazmi has further pointed out that the curriculum of B.Sc. (Agriculture) includes soil conservation, fertilizers, which is not relevant for teaching natural science namely physics, chemistry, biology and mathematics to the primary students. The candidates having B.Sc. (Agriculture) qualifications were, therefore, not considered qualified, for teaching science subjects, to primary classes and thus the B.Sc. (Agriculture) was included in the arts group. Same is the case of B.Sc. Home Science. However, no incident is given nor there is any pleading as to how any petitioner has been discriminated by such marking and inclusion of B.Sc. (Agriculture) and B.Sc. Home Science in the arts group.

29. Closing the arguments Sri Kazmi submits that entire argument and agitation are hypothetical. He submits that in the counselling the original certificates and the calculation of marks was examined. Wherever any error was detected and any false certificates are found, immediate action was taken. In the counselling, errors were corrected and the persons, who could not produce original certificates were eliminated. He has candidly stated that if any error is pointed out by any candidate in the matter of selections, the State Government is more than willing to rectify such errors and to decide the representation.

30. I find substance in the preliminary objections raised by Chief Standing Counsel that material particulars with regard to discrimination as pointed out by the Counsels in their arguments, have not been given in the writ petitions. Almost all the writ petitions are general in nature. In the present batch of writ petitions, the Court is concerned with selections of about 41,000 candidates, for Special B.T.C. Course 2004 designed as teacher's training course approved by National Council of Teachers' Education, for appointment as Assistant Teachers in basic schools. In the absence of particulars with regard to the candidates, who have applied and the candidates who have been selected, it is not possible to appreciate the grounds of discrimination. The petitioners have not even cared to give the details of their qualifications and number of marks which they would have secured if their contentions were accepted, and the discrimination which may have been caused to them. All the arguments were made as if the Court was hearing a debate and not a writ petition to be decided on merits. The illustrations of discrimination were given not with reference to any particular case. Sri Shailendra, in his submission, appears to have argued not for his clients but to the gallery. Most of the candidates raised arguments on grounds which were not relevant for the petitioners in their case. All the writ petitions can be dismissed on these grounds, however, since this is one of the largest selections of training of Basic School Teachers in the State, and there were lot of apprehensions raised by the petitioners, I find it appropriate to answer these arguments, rather than disqualifying the petitioners from challenging the selections.

31. In Special Appeal No. 461 of 2004 between Devendra Singh and Ors. v. State of U.P. and Ors., decided on 19.5.2004, a Division Bench of this Court has upheld the judgment dated 5.3.2004 and has upheld the Government Order dated 14.1.2004 and 20.2.2004, inviting applications for selections to Special B.T.C. Course 2004. The submission with regard to maximum age, the preference given to selectees of Special B.T.C. Course 2001, and the reservation have been repelled by the Court. The Court is now concerned only with the validity of the selection. So far as the inclusion of B.Sc. (Agriculture) to be included in the Science group for selection is concerned, the matter was decided by this Court in its judgment dated 13.4.2004 in Writ Petition No. 32309/2003 between Kripa Shanker Dubey v. State of U.P. and Ors.. It was held that the B.Sc. (Agriculture)

falls in Science group and that the candidates with B.Sc. (Agriculture) degrees were wrongly included in the Arts category. A direction was given to the State respondents to consider the petitioners' candidature in Science category and to reconsider the merit. Learned Standing Counsel has pointed out that the State has filed a Special Appeal against the judgment which is pending, but. there is no stay order in the appeal.

32. I have gone through the judgment and respectfully disagree with the opinion expressed by learned Single Judge. It was held in that case that the Standing Counsel did not place any material before the Court, to justify the policy decision, to club B.Sc. (Agriculture) in Arts category.

The Court finds that the petitioners had filled up the forms clearly stating that they should be treated in science group. Their forms were accepted and admit card was issued to them treating them to be in science group in accordance with the admission procedure.

33. In the counter-affidavit of Dr. Himanshu Mohan, Research Scholar, State Council of Educational Research and Training, U.P. it is stated in paragraph 12 that the clubbing of B.Sc. (Agriculture) in the Arts group is legal and justified and is in accordance with the terms and conditions of the advertisement as well as subjects mentioned in syllabus of B.Sc. (Agriculture). The B.Sc. (Agriculture) Course includes subjects to develop the knowledge of agriculture, economy of agriculture, soil fertilizer, manure, conservation of soil, animal husbandry and dairy. On the other hand the B.Sc. Degree includes subjects such as physics, chemistry, botany, zoology and mathematics, which are relevant for basic education. Therefore, it was not though proper to amalgamate B.Sc. (Agriculture) with B.Sc.

34. The science for the purpose of teaching in basic schools is natural science, which include zoology, botany, chemistry, physics and mathematics. The syllabus of B.Sc. (Agriculture) does not include these subjects. The fact that in some of the Universities the subject agriculture is treated in science group, cannot be a ground to include B.Sc. (Agriculture) candidates in science group. The rules of 1981 provides for graduation as the minimum qualification alongwith teaching

qualification for appointment as Assistant Teachers in a basic school. The science is one of the subject taught in basic schools. A graduate in agriculture without studying physics, chemistry, mathematics and biology as subjects, is not equipped to teach natural sciences in basic schools. Such a candidate cannot be therefore clubbed in the science group and was, therefore, rightly treated in the arts group. On the same ground, the B.Sc. (Home Science) has also been rightly clubbed in the arts group. Since I respectfully disagree with the opinion expressed by the learned Single Judge in Kripa Shanker Dubey's case, with regard to his opinion to treat B.Sc. (Agriculture) in Science group, I refer the. issue with the request to Hon'ble the Chief Justice to constitute a larger Bench to decide the question.

35. The Government Order dated 14.1.2004 provided for a training arrangement for Special B.T.C. course 2004. Para 3 (b) of this Government Order made only B.Ed./L.T. trained candidates from the Universities and Colleges run by the State Government/Central Government, where the courses were recognised by National Council of Teachers' Education. Para 9 of the Government Order provided that the merit list shall be prepared after taking into account the percentage of marks obtained in High School, Intermediate, Graduation or equivalent degree and B.Ed./L.T. in accordance with the reservation on the date of selections. Para 12 provided that every special candidate selected for Special B.T.C. Course 2004 shall be paid a stipend of Rs. 2500/- per month, which shall be payable to him until he completes the training course, in accordance with merit prepared by the department and succeeds in the written and practical examination conducted by the Registrar, Departmental Examinations, U.P. in supervision of the State Council of Educational Research and Training and is awarded the certificate, and is regularly appointed as Assistant Teachers in the primary schools run by the Board.

36. The persons holding the teaching qualification in physical education were included, by a Government Order dated 20.2.2004 modifying the Government Order dated 14.1.2004. It is contended that initially State Government did not include these qualifications for eligibility for Special B.T.C. Course 2004 and that the State Government did not make any representation in this regard to the Council. The inclusion of the teaching qualifications in physical education was without any object and purpose to be achieved inasmuch as the Physical

Education is not a part of curriculum with primary education and that these candidates, who are not eligible for the course increased the qualifying marks and thus discriminated the petitioners having B.Ed./L.T. teaching qualifications.

37. I find that in the year 1998 and in the year 2001, candidates having teaching qualifications in physical education were made eligible to apply Special B.T.C. course. The physical education is an integral part of the curriculum of primary education in Uttar Pradesh. The State Government has taken adequate care to include only those teaching qualifications in physical education which have been awarded by the Universities, Colleges recognised by the Central Government/State Government and the courses are approved by the National Council of Teachers' Education. So long such teaching qualifications and physical education have been recognised and the students have pursued studies as education as institutional students, they cannot be excluded from consideration for Special B.T.C. Course 2004.

38. Section 12 of the National Council of Teachers' Education Act, 1993 provides for the functions of the National Council of Teachers' Education. One of the functions in Section 12(e) is to lay down norms for any specified 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. Section 14 provides for recognition of the institution offering the course and training in teachers' education and Section 15 provides for permission for a new course or training by a recognised institution. It is admitted by the State Government that its representation to the Council provided for including only B.Ed./L.T. trained teachers for Special B.T.C. Course 2004 designed as a bridge course for appointment in Basic schools in U.P. This representation, however, cannot be treated to restrict the admission to only B.Ed./L.T. qualified candidates. The physical education is one of the subjects included in the curriculum of the educational institutions. The IInd Schedule to the National Council of Teachers' Education (Determination of Qualifications for Recruitment of Teachers) Regulations, 2001, provide that for elementary level the minimum academic and professional qualification is (i) Senior Secondary or Intermediate or its equivalent ;

(ii) Certificate of Physical Education (C.P.Ed.) of a duration of not less than two years or its equivalent. The petitioners could not place before the Court any other Regulations which may have been framed by the Council under Section 12(e) of the Act. The recruitment of the Assistant Teachers in Basic Schools in U.P. is regulated by U.P. Basic Education (Teachers) Services Rules, 1981. These Rules were amended by Xth Amendment to the Rules in the year 2004 including Special Basic Teachers' Certificate (B.T.C.), equivalent other prescribed training qualifications. The B.P.Ed./D.P.Ed./C.P.Ed. qualifications, from Universities/Colleges recognised by the Central/State Government, of which the course is recognised by the National Council of Teachers' Education, are as such valid qualifications for appointment in basic schools in other States. In the State of U.P., however, these appointments cannot be given. Rules of 1981 provide for Basic Teacher's Course as essential teaching qualification. Now after its amendment the Special B.T.C. has also been added as a training qualification for appointment. In the circumstances, I do not find any illegality in the Government Order dated 20.2.2004, providing for the B.P.Ed./D.P.Ed./C.P.Ed. qualified candidates to be eligible to apply provided these courses are conducted by the Universities/State Government as institutional courses, and is recognised by National Council of Teacher's Education.

39. The Government Order dated 14.1.2004 and 20.2.2004 held out to all the applicants that for the purpose of preparation of merit list, the percentage of marks secured in the High School, Intermediate, Graduation and teaching qualifications will be considered. It is not denied by the State Government in their counter-affidavit that while calculating the marks, they added the marks obtained in the practical of teaching qualifications separately in the 5th column for preparing the merit list. This deviation has been explained by the State in para 17 of the counter-affidavit, which is quoted as below :

'17. That it is submitted that as per G.O. dated 20.2.2002 the merit list for the Special B.T.C. 2004 has been prepared on the basis of marks of High School/ Inter/Graduation and teacher training examination and for this purpose blocks were made to write the marks and percentage under para 8 in the application format in advertisement and at its Serial No. (4) against B.Ed./L.T./B.P.Ed. column

arrays of blocks wise were made available specially illustrating one for theory and one for practical. For the B.P.Ed./ C.P.Ed/D.P.Ed. candidates having two practical viz. 1. Teaching practice and 2. Behavioural practice only one practical marks of teaching practice is being considered at par with B.Ed./L.T. candidates having one practical practice of teaching to prepare the merit list because the Special B.T.C. 2004 training is instituted as pre-service teacher's training to provide qualified Assistant Teachers for posting in primary schools.'

40. The petitioners with their qualifications are not eligible to be appointed as Assistant Teachers as they do not hold the essential teaching qualifications prescribed in Rule 8 of the U.P. Basic Education (Teachers) Service Rules, 1981. The Government Orders dated 14.1.2004 and 20.2.2004 do not provide for appointment of Assistant Teachers. These Government Orders only provide for a training course of a shorter duration which has been condensed, for the purpose of filling up large number of vacancies of Assistant Teachers in the State. After training the selected persons will be required to take an examination for appointment. This examination shall be conducted by the Registrar, Departmental Examination, U.P. It will be open to them not to accept the appointment and take up jobs in private schools. I am not in agreement with the arguments of the Counsels for the petitioners that the admission to Special B.T.C. Course 2004 is nothing but a process of recruitment and for ultimate appointment as Assistant Teachers in Basic Schools. There may be large number of candidates, who may succeed in completing the course but may not accept the appointment. The provision of Special B.T.C. course and the selection for admission to such course is not a process of appointment and thus the provisions of Rule 14 of the U.P. Basic Education (Teachers) Services Rule, 1981 are not applicable and for the same reason the method of calculation of marks given in the Appendix for appointment of Assistant Teacher is not to be applied at this stage. It is only after the candidates successfully complete the course and pass the examination that the method of appointment provided in Rule 14 will be applicable and the appointments shall be made in accordance with method of calculation of marks, given in the Appendix for preparation of a merit list for appointment.

41. I find substance in the submission of Sri S.M.A. Kazmi that for the purpose of selection for admission to Special B.T.C. Course 2004, the provision for calculation of marks obtained in the practical examination of the teaching qualification, was applied uniformly to all the candidates. He submits that the decision of the State Government to provide for including the marks in practical examination of the teaching qualification was based on the consideration that the practical examination is equally important, as the theory in teaching. I find that even if such method departed from Clause 12 of the Government Order, it was applied uniformly and cannot be taken as an arbitrary and unreasonable decision, and not informed by any reason. The petitioners have not pleaded any malafides or exclusion of any particular class of candidates, in adopting this method.

42. In *State of H.P. and Ors. v. Padam Dev*, (2002) 4 SCC 510, the Supreme Court while considering the policy of training of persons as veterinary pharmacists to persons in Gopal Sahayak Yojna and not to those trained under Dairy Scheme held that where the classification between the candidates is distinct and clearly defined as regards the eligibility criteria, the distinction made between the candidates of two schemes was permissible as the classification was founded on an intelligible differentia and where it is shown that the differentia has a rationale relation to the object sought to be achieved by the policy decision, the Courts should not interfere. The Supreme Court relied upon the judgments in *Budhan Chaudhary v. State of Bihar*, AIR 1955 SC 191 and *Krishna Kakanth v. Government of Karnataka*, (1997) 9 SCC 495. The same view was taken by Supreme Court in *Union of India v. R. Riddapa*, (1993) 4 SCC 296 (para 6).

43. The U.P. Basic Education (Teachers) Service Rules, 1981 were framed under Section 19 (1) of the U.P. Basic Education Act, 1972. These Rules provide for cadre strength in Part II, recruitment in Part III, qualification in Part IV, procedure for recruitment by promotion in Part V and other provisions in Part VI of the rules. For direct recruitment of Assistant Master and Assistant Mistress of Junior Basic Schools, the qualification provided under Rule 8 are Intermediate examination of Board of High School and Intermediate Education, U.P. or any other qualification recognised by the State Government as equivalent thereto together with the training qualification consisting of Basic Teachers' Certificate, Hindustani

Teacher's Certificate, Junior Teachers' Certificate, Certificate of Teaching or any other Training Course recognised by the State Government as equivalent thereto, provided that the essential qualification for candidate who has passed the required training course shall be the same, which was prescribed for admission to the said training course. Rule 14 provides for determination of vacancies and preparation of list. After the determination of number of vacancies, as also the number of vacancies to be reserved for SC, ST, OBC, Dependents of Freedom Fighters and other categories. Rule 9 provides that the competent authority shall notify the same to the employment exchange and at least one newspaper having adequate circulation in the locality. Sub-rule (2) provides that the appointing authority shall scrutinise the applications received and the names of the candidates received from the employment exchange and prepare a list of such person who possessed the prescribed academic qualification and are eligible for appointment. Sub-rule (4) provides that the name of candidates in the list prepared under Sub-rule (2) shall be arranged in such manner with the candidates who have passed the required training course earlier in point of time shall be placed higher than those who has 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 quality point specified in the appendix.

44. Rule 16 provides for Constitution of a selection committee. Under Rule 17 the selection committee is required to consider the candidates for selection on the basis of the list referred to in Sub-rule (6) of Rule 14 and to prepare a list of selected candidates in the year in which their names appear in the said list.

45. Rule 19 provides that the appointing authority shall make appointment to any post referred to in Rule 5, by taking the names of the candidates in the year in which they stand in the list prepared under Rules 17 and 18 as the case may be. Sub-rule (3) mandates that no appointment shall be made except on the recommendation of the selection committee, and in the case of direct recruitment, except on production of residence certificate issued by the Tehsildar. The appendix to the Rules provides for quality point for selection of candidates under Rule 14 (4). This Appendix provides for calculation of percentage of marks obtained by a candidate in the qualifying examinations namely High School,

Intermediate, Graduation and training. The appendix is quoted as below :

'APPENDIX

(See Rule 14 (4))

Quality points for selection of candidates	Name of Examination/Degree	Quality points
Percentage of marks	101. High School	Percentage of marks x 2
102. Intermediate	Percentage of marks x 4	103. Graduation degree
First	Second	Third
Division	Division	Division
4. Training	(a) Theory	12 6 3 (b) Practical 12 6 3

46. The substance of the submission of Sri Shailendra is that the Special B.T.C. Course 2004 is a bridge course, to equip a candidate with Basic Teachers' Course, and to make him eligible under Rule 8 (1)(ii) with academic qualifications. The petitioners are otherwise qualified and were only lacking in Basic Teachers' Training, which is being provided by this Special B.T.C. Course 2004. The Government Order dated 12.1.2004 and 20.2.2004 in fact provides for appointment through training. The object and purpose of selection is to train the candidates for appointment and for that purpose a stipend is also provided. Every candidate successfully completing the training has to be given appointment and thus the provisions of Rules 14, 15, 16, 17 and 19 is required to be followed. It was further submitted that Rule 14 (4) provides for arrangement of list in accordance with quality point specified in the appendix and thus the same should have been followed for selection.

47. In the present case, the respondents have adopted a policy of selections by adding the percentage of marks obtained in High School. Intermediate, Graduation and Teachers' Training including B.Ed., L.T., B.P.Ed., D.P.Ed. and C.P.Ed. as the case may be. The percentage of marks in Theory and Practical, in teaching qualifications, have been added separately and that the average of these five has been taken for preparation of the Select List.

48. A perusal of the Government Order, dated 12.1.2004 and 20.2.2004, shows that the selection is for training and not for appointment. There is no assurance given, nor there is any compulsion for appointment after completing the training.

Every candidate completing the training is to appear in an examination to be conducted by the Registrar, Departmental Examination to be eligible for appointment under the Rules of 1981. The preparation of the list and procedure for direct recruitment will be applied subsequent to and amongst the candidates who are successful in the examination conducted by the Registrar, Departmental Examination. It is only after the candidate succeeds in the examination that he shall be enlisted in accordance with Rule 14 and a list shall be prepared for the purpose of appointment. I, therefore, do not find any force in the contention that the procedure for appointment should have been followed at the time of enlistment for the training course, namely, Special B.T.C. Course 2004.

49. The submission that the candidates with different teaching qualifications have been clubbed together in a common method of selection causes discrimination to those, who could not secure higher percentage in practical examination also does not merit consideration. Sri Anoop Barnwal has relied upon judgments of Supreme Court in *Dr. Preeti Srivastava and Anr. v. State of Madhya Pradesh and Ors.*, AIR 1999 SC 2894 ; *Saurabh Chaudhari and Ors. v. Union of India and Ors.*, AIR 2004 SC 361 and *State of Madhya Pradesh v. Gopal D. Tirthani and Ors.*, AIR 2003 SC 2952. In *Dr. Preeti Srivastava's* case, the Supreme Court while considering the admissions to MBBS course observed in para 28 that the need of common entrance examination was felt on account of difference courses of studies as qualifying examination for admission. The courses of study may not be uniformed and the quality of teaching may also not be uniform and thus a common entrance examination provides a uniform criteria for judging the merit of all candidates, coming from different Universities. In the interest of selecting suitable candidates for specialised education, it is necessary that the common entrance examination of a certain standard and qualifying marks is prescribed for passing the examination. In *Saurabh Chaudhari's* case, the Supreme Court observed in para 73 that for the purpose of selecting the candidates for admission to MBBS course, it is necessary to hold all India examination by an impartial and reputed body. The Supreme Court relied upon the observations in *Pradeep Jain v. Union of India*, (1984) 3 SCC 654, where it was observed that the merit for the purpose of admission in a professional college should be judged as far as possible on the basis of same or similar examination. In *Gopal D. Tirthani's* case, the Supreme Court upheld the eligibility

test, entrance test or the PPG test for assessing the knowledge and intelligence question of a candidate whether he will be able to pursue Post Graduate studies. In para-36 the Supreme Court concluded that there can be only one common entrance test for determining the eligibility for post graduation; available in service candidates and those not in service. The requirement of minimum qualifying marks cannot be lowered or relaxed, contrary to Medical Council of India Regulations. Same view was taken in other decisions.

50. In the present case, the Court is not concerned with a professional course or to test the suitability of a candidate for higher studies. We have in hand a situation where a large number of persons with teaching qualifications other than Basic Teachers' course are available. Almost half the Basic Schools in the State are being run by single teacher termed as 'Ekal Vidyalaya' and that there are large number of schools without teachers. In such an emergent situation, it was felt necessary to provide a bridge course for Basic Teachers' Training and to appoint those who are successful in such training and examination to be appointed as Assistant Teachers. In these circumstances, if the State Government did not find it fit and expedient to hold a common entrance test and proceeded to select on the basis of percentage of marks obtained by the candidates, in High School, Intermediate, Graduation and teaching qualifications, subject to reservations, the petitioners were not discriminated as against the selected candidates. It was open to the State Government to choose a method of selection provided that method is not arbitrary, capricious, malafide and is not likely to result any discrimination to similarly situate persons, or group of persons.

51. The petitioners have given some illustration where a few colleges in the State of U.P. have awarded very high percentage of marks to some candidates in practical examinations in B.Ed. examination. This action cannot be a basis for pleading discrimination inasmuch as the colleges are affiliated to the Universities and that these courses are recognised by National Council of Teachers' Education. In case some colleges are awarding very high percentage of marks in practical examinations, it is for the University and the National Council of Teachers' Education to take suitable action in the matter. The Court cannot take this hypothetical situation to cancel the merit list and suggest some other method

of selection.

52. The U.P. Public Services (Reservation for Physically Handicapped, Dependents of Freedom Fighters and Ex-Servicemen) Act, 1994 provides for three per cent reservation for physically handicapped persons in different categories. The petitioners have not given the details of their disabilities and number of candidates selected for the reserved category of physically handicapped in each category of handicapped, which have to be placed horizontally in the respective reserved categories, namely, General, Other Backward Classes, Scheduled Caste/Scheduled Tribe. In the absence of these details it cannot be said that the physically handicapped candidates with a particular percentage of reservation, were discriminated.

53. Coming to the last submission with regard to adjustment of O.B.C. candidates, who secured more marks than general category candidates to be placed in general category, under Section 3 (6) of U.P. Act No. 4 of 1994, I do not find that there are sufficient pleadings in Writ Petition No. 38228/2004 in this regard. The respondents have denied any such discrimination. There is nothing on record to show that any OBC class candidate securing marks between 309.9 to 316.24 marks was not selected and was not placed in the category of general candidates. The submission is not substantiated on record.

54. For the aforesaid reasons, all the writ petitions are dismissed, except writ petitions of candidates with B.Sc. (Agriculture) and B.Sc. (Home Science), who were treated in the Arts Category. These writ petitions are referred to the Larger Bench for determination of the question as to whether the B.Sc. (Agriculture) and B.Sc. (Home Science) Degrees, for the purposes of selection in Special B.T.C. 2004, are Degrees in Science, for the appointments as Assistant Teachers in Basic Schools as held in Kripa Shanker Dube's case (Writ Petition No. 32309/2003 decided on 13.4.2004).