

(2013) 01 AHC CK 0070

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 39674 of 2012, with 76355, 76595, 75392 of 2011, 1442, 2614, 2608, 6826 of 2012 and etc. etc.

Akhilesh Tripathi and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-01-2013

Acts Referred:

Right of Children to Free and Compulsory Education Act, 2009 — Section 2, 23

Citation : (2013) 4 ALJ 523 : (2013) 4 AWC 4004

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Ashok Khare, Siddharth Khare, Abhishek Srivastava, Yogesh Kumar Saxena, D.P. Rajbhar and Satya Prakash Pandey, for the Appellant; A.K. Yadav, for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Siddharth Khare, Sri Shashi Nandan, learned Senior Advocate, Sri P.N. Saxena learned Senior Advocate, Sri Shailendra Advocate, Sri Abhishek Srivastava Advocate and Sri Simant Singh Advocate on behalf of the petitioners. Sri C.B. Yadav, learned Additional Advocate General assisted by Sri Neeraj Upadhyaya Advocate on behalf of the State-respondents in this Bunch of writ petitions. The facts and the grounds enumerated in this Bunch of writ petitions are almost common and are therefore being decided together. The Writ Petition No. 39674 of 2012 is being treated as leading case.

2. The petitioners after passing their Graduation and B.Ed. Examination appeared in U.P. Teachers Eligibility Test (hereinafter referred to as "TET Examination") conducted by the State of U.P. in the year 2011. According to the petitioners, they have all passed the TET Examination. The State of U.P. published an advertisement dated 30.11.2011 inviting applications from the candidates, who were possessed of the prescribed minimum qualifications as per the provisions

made by the National Council for Teachers Education which included passing of the TET Examination, for appointment as Apprentice Teacher against the post of teachers in Parishadiya Vidyalayas. Under the advertisement, a candidate could apply in five districts only. However, this condition was interfered with by the High Court on writ petition being filed and an order was passed permitting the prospective candidates to submit their applications in respect to as many districts as they like.

3. The petitioners before this Court filed their applications in respect of various districts. It is their case that they fulfil and satisfy all the necessary qualifications as prescribed by the National Council for Teachers Education (hereinafter referred to as "NCTE") and now they have passed the TET Examination also. It is their case that on the relevant date, they were within the cut-off age prescribed for consideration.

4. The advertisement provided: (i) that the selection for appointment as Apprentice Teachers shall be made on the basis of the marks secured in the TET Examination, (ii) after selection, the concerned Apprentice Teacher shall be appointed in Parishadiya Vidyalaya of the district concerned in accordance with his merit on a fix pay of Rs. 7,300/- per month, (iii) he would be required to go training for six months. Three months of which shall be at the District Institution of Education and Training of the district concerned and second three months shall be practical training in the institution in which they are appointed, (iv) after successful completion of the training by the candidate concerned, his claim for appointment on the substantive post of teacher in Parishadiya Vidyalayas in accordance with the U.P. Basic Education Teachers Service Rules, 1981 (hereinafter shall be referred as "1981 Rules") shall be considered.

5. It would be appropriate, in the facts of the case, for this Court to reproduce the relevant part of the advertisement for deciding the present controversy. The same reads as under:--

(Vernacular matter omitted.... Ed)

6. In order to keep the record straight, it may be noticed that the advertisement itself was challenged before this Court by means of Civil Misc. Writ Petition No. 76039 of 2011. The High Court granted an interim order dated 14.01.2012, whereby all further proceedings in terms of the advertisement were kept in abeyance.

7. Certain positive information was received by the State Government in respect of large scale mal practices having been adopted in the TET Examination of 2011. The Court has been informed that the Director of Secondary Education U.P. at the relevant time was arrested and is confined to prison even as on date. A charge-sheet has already been filed against him.

8. The matter in aforesaid circumstances was considered by the cabinet of Ministers of the State of U.P. in its meeting held on 26th July, 2012. It was

resolved that the TET Examination may at best be treated to be a qualifying examination only and that the necessary amendments in "1981 Rules" be made for giving effect to the said decision of the Cabinet.

9. The Cabinet decision itself has been challenged in the present writ petition as well as in Civil Misc. Writ Petition No. 39664 of 2012.

10. In terms of the Cabinet decision, a Government Order was issued by the Principal Secretary, State of U.P. on 26.07.2012, wherein it was provided that TET Examination shall be treated to be a qualifying examination only. The Director of Basic Education was asked to take all appropriate action in terms of the said decision of the State Government.

11. A decision was also taken to obtain further relaxation in respect of B.Ed. candidates by NCTE/Central Government. This order of the State Government is also under challenge in the present writ petition. It has been prayed that the respondents may be directed to make selections on the basis of marks obtained in the TET Examination and further to complete the process of selection in terms of the advertisement dated 30.11.2011.

12. While the writ petition was pending, the State Government came out with 15th amendment in "1981 Rules" vide notification dated 31.08.2012 and on the said date a Government Order was also issued, wherein it was mentioned that in view of the amendments made in "1981 Rules", the advertisement dated 30.11.2011 has become redundant and the same is being cancelled. The petitioners by means of amendment application have challenged this Government Order dated 31.08.2012 as well as the 15th amendment to "1981 Rules".

13. The State Government has made further amendments in the "1981 Rules" called the 16th amendment vide notification dated 05.12.2012. By means of the said 16th amendment, the State Government has for the first time introduced appointment of Trainee Teachers in Parishadiya Vidyalayas. The State Government has also published an advertisement dated 07.12.2012 inviting applications from the candidates, who are graduate, B.Ed. and have passed TET Examination, for appointment as Trainee Teachers against the duly created post of teachers in Parishadiya Vidyalayas. As per the advertisement, the criteria for selection shall be the quality points marks to be calculated, as per the percentage achieved in various examinations by the candidate concerned. TET Examination has only been treated to be an eligibility examination.

14. It is not necessary for this Court to examine the illegality or otherwise of the advertisement dated 07.12.2012 in the present writ petition, inasmuch as the said advertisement is under challenge in the subsequent writ petitions filed by most of the petitioners, which shall be dealt with at the appropriate time.

15. Learned counsel for the petitioners have raised following basic issues, (a) for challenging the Cabinet decision dated 23.07.2012, the Government Order dated

26.07.2012 and 15th amendment dated 31.08.2012 as well as the Government Order dated 31.08.2012, (whereby the advertisement dated 30.11.2011 has been cancelled) and (b) for a writ of mandamus directing the State Government to complete the process of selection, in terms of the advertisement dated 30.11.2011:

(a) The Mal practice as reported in respect of the TET Examination held in the year 2011 is related to a very few number of candidates. It cannot be the basis for declaring the TET Examination to be treated as an eligibility qualification only and for selection being not made on the post of Apprentice Teacher on the basis of marks obtained in TET Examination. According to the petitioners, the bad part should have been segregated from the remaining good part of the TET Examination. The petitioners cannot be made to suffer because of illegalities committed by officials of one particular district or some districts.

(b) The 15th amendment made in "1981 Rules" is prospective in nature and even otherwise did not affect the procedure, which was to be followed in the matter of selection and appointment of Apprentice Teachers under the advertisement dated 30.11.2011. According to the petitioners, any amendment under the Rules would not affect the proceedings, which had already been initiated in the matter of appointment of Apprentice Teachers.

(c) According to the one set of the petitioners lead by Sri Ashok Khare and Sri P.N. Saxena, learned senior Advocates and Sri Shailendra, the vacancies which were advertised on 30.11.2011 were not against the posts of Assistant Teachers covered by "1981 Rules". Therefore neither the "1981 Rules" had any application, nor any amendment made thereunder would affect the proceedings of selection. It is their case that in fact the petitioners, who were not possessed of the minimum qualification as per the NCTE Rules notified under notification dated 23.08.2010 were to be selected for undergoing the special training so as to become eligible for appointment as teachers against the post covered by "1981 Rules". Therefore reference to the "1981 Rules" and the amendments made thereunder by the State Government for cancelling the process of selection as initiated under the advertisement dated 30.11.2011 is illegal.

(d) The other set of petitioners lead by Sri Abhishek Srivastava contend that the "1981 Rules" have to be applied in the matter of appointment in terms of the advertisement dated 30.11.2011 as the appointments were to be made against the post of Parishadiya teachers covered by "1981 Rules". It is, however, his case that the XVth amendment in "1981 Rules" being prospective in nature will not affect the process of selection initiated under advertisement dated 30.11.2011.

16. It is insisted by Sri Abhishek Srivastava that his contention as per the written argument be noticed in the judgment. The written submission read as follows:--

That any effort by the State Government in amending the 1981 and creating a post of trainee teacher by including the B.Ed. qualification as a part of minimum

qualification in Rule-8 of 1981 Rules will be declared ultravires and will amount to add B.Ed. qualification, as the valid qualification for Classes-1 to 5 in contrary to paragraph No. 1 of the N.C.T.E. notification dated 23.8.2010 and 29.7.2011 and i.e. why the State Government at the time of making 12th amendment in 1981 Rules on 9.11.2011 had included the T.E.T. Qualification in the Rule-8 and Rule-14 in conformity with the N.C.T.E. notification dated 23.8.2010 and 29.7.2011 and had not included B.Ed. qualification as a valid qualification for appointment in Classes 1 to 5 in those rules as being conscious of the fact that after the expiry of the relaxation given by the N.C.T.E. in the paragraph No. 3 of the notification dated 23.8.2010 and 29.7.2011, the said qualification could not be considered for appointment as teacher in Classes 1 to 5 and therefore the State Government by virtue of advertisement dated 30.11.2011 had duly advertised the vacancy in many leading newspaper having vast circulation in the State and had also issued in the name of appointing authority, thereby satisfying the condition as provided under Rule 14 (1) of the 1981 Rules as amended by 12th amendment dated 9.11.2011 and further if the power to advertise the vacancy lies with the District Basic Education Officer, then in that case if the Secretary Basic Shiksha Parishad, Allahabad i.e. the Board has also got powers to advertise those vacancies in pursuance of the permission of the State Government to advertise the same in the leading newspaper having the circulation in the State for all the districts of the State Government and such publication could not be held to be contrary to Rule 14 (1) of the amended rule of 1981 Rules.

17. Sri. Simant Singh comes with an additional plea before this Court, namely that if the Cabinet of Ministers in its meeting held on 23.07.2012 had found that there were serious irregularities in holding the TET Examination of 2011, then the entire examination should have been declared null and void, inasmuch as if the marks obtained in the said examination are not good for the purposes of being made the basis for selection, then the same examination cannot be treated to be good for declaring a candidate to have qualified the TET Examination.

18. Lastly, it is contended that preparation of the merit list on the basis of the marks secured in the TET Examination is in conformity with the guidelines for conducting the Teachers Eligibility Test as framed by NCTE in exercise of powers as conferred by Central Government in exercise of powers u/s 23 of the Right of Children to Free and Compulsory Education Act, 2009. The guidelines provide for weightage being granted to the candidates on the basis of the marks secured in the TET Examinations.

19. Sri. C.B. Yadav, learned Additional Advocate General on behalf of the State disputes the correctness of the contentions so raised and in reply submits that the State Government had committed an error in publishing the advertisement dated 30.11.2011 for making appointment of Apprentice Teachers against the cadre post of Assistant Teachers covered by "1981 Rules". He submits that on the relevant date, there was no provision for appointment of Apprentice Teacher

in "1981 Rules". The "1981 Rules" then contemplated only one nature of appointment i.e. substantive after due advertisement and selection in accordance with the 1981 Rules". It is his case that the State Government has only corrected the error by deciding to quash the advertisement dated 30.11.2011, as it was perverse, illegal and arbitrary. According to Sri Yadav, the State Government has a right to stop the selection proceedings at any stage. It cannot be directed that once an advertisement has been made, the State Government must complete the process of selection and make appointment in all circumstances.

20. Sri. Yadav explains that the State Government realising the mistake which had occurred earlier, has now made necessary amendments in the "1981 Rules" by 16th amendment dated 06.12.2012. A provision for appointment of Trainee Teachers has been added and accordingly a fresh advertisement inviting applications from the persons like the petitioners for being considered for appointment as Apprentice Teachers has been issued on 07.12.2012.

21. Sri. Yadav points out that the right of the petitioners to apply against the same post has not been lost because of cancellation of the earlier advertisement dated 30.11.2011. They can make their applications against the fresh advertisement on satisfaction of the conditions mentioned. He further points out that under the NCTE guidelines itself it was provided that the TET Examination shall be treated to be an eligibility criteria and therefore also the marks obtained in the TET Examination could not have been made the sole criteria for selection as per the advertisement dated 30.11.2011.

22. According to the State there being no post of Apprentice Teacher and there being no provision under the "1981 Rules" for appointment as Apprentice Teacher against the regular cadre post of teachers in Parishadiya Vidyalayas, the advertisement dated 30.11.2011 itself was bad and this Court may not insist upon the State to complete the process of selection in terms of the said bad advertisement.

23. He points out that serious infirmities had been noticed in holding of the TET Examination. It was always open to the State Government to have declared the entire examination bad, however having regard to the larger interest of the students such decision has not been taken. It is also contended that if the contrary plea of the petitioners is accepted, then they would be illegible for any appointment as passing of the TET Examination is as an essential qualification for appointment as Assistant Teachers as per the notification of the NCTE issued in exercise of power conferred by the Central Government u/s 23 of The Right of Children to Free and Compulsory Education Act, 2009. Therefore, the arguments advanced by Sri Simant Singh, Advocate are self defeating.

24. In rejoinder affidavit, learned counsel for the petitioners points out that no such plea has been raised in the counter-affidavit filed by the State Government and whatever has been argued by Sri Yadav is only an afterthought. The advertisement dated 30.11.2011 is not with reference to any posts created by

the State Government. It is only for the purposes of making the petitioners eligible for ultimately being appointed as teachers against the cadre post covered by "1981 Rules".

25. Sri. Rizwan Ali, learned counsel has appeared on behalf of the NCTE and it is his categorical case that the NCTE under the Right of Children to Free and Compulsory Education Act, 2009 can only laid down the minimum qualification for appointment of teachers in the institutions, which fall within the four corners of the Right of Children to Free and Compulsory Education Act, 2009. It has no power to regulate the appointment or to create the post. The TET Examination under the guidelines of the NCTE specifically clause 9 is specified to be only one of the eligibility criteria for appointment.

26. I have heard learned counsel for the parties and examined the records.

27. The appointment on the post of Assistant Teachers in Parishadiya Vidyalayas, which are run/managed by the Basic Shiksha Parishad constituted under the U.P. Basic Education Act, 1972 are regulated by the statutory Rules framed in exercise of powers u/s 19 of the Basic Education Act known as U.P. Basic Education Teachers Service Rules, 1981. The Rules contemplate appointment on the post of Assistant Teachers in three category of institutions; (i) Nursery School; (ii) Junior Basic School; and (iii) Senior Basic School. Under Rule 8 of the "1981 Rules" appointment by direct recruitment can only be made of teachers in nursery school and junior basic school while the appointment on the post of teachers in senior basic school and head master are required to be made by way of promotion only. The cadre strength of the service has been provided for under Rule 4.

28. The Rules contemplate advertisement of vacancies, preparation of the select list on the basis of the quality points marks as per the academic qualifications as per Rules 17-A and Rule 19. Appointment is to be made by an order in writing under Rule 20. This Court may record that the "1981 Rules" did not contemplate any appointment as Apprentice Teacher or Trainee Teacher on the relevant date with reference to the advertisement dated 30.11.2011.

29. u/s 23 of The Right of Children to Free and Compulsory Education Act, 2009, a power has been conferred upon the Central Government to appoint an academic authority for laying down the minimum qualifications in respect of the teachers to be appointed in the institution covered by the said Act of 2009. The Ministry of Human Resources under notification published on 05.04.2010 has authorised the National Council for Teachers Education as the academic authority for laying down the minimum qualifications for a person to be eligible for appointment as teacher. It is with regard to such notification that the National Council of Teachers Education has published a notification dated 23.08.2010 laying down the minimum qualification for appointment of teachers for various category of institutions. A copy of the said notification is at pages 54 to 56 of the present writ petition. The relevant portion of the notification is being reproduced

below:--

NATIONAL COUNCIL FOR TEACHER EDUCATION NOTIFICATION

New Delhi, the 23rd August, 2010.

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

1. Minimum Qualifications.--

(I) Classes I-V

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

OR

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

OR

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

OR

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

AND

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

(ii) Classes VI-VIII

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

OR

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

OR

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

OR

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

OR

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

OR

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

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

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

3. Training to be undergone.--A person--

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

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

30. At the very outset, this Court may record that the power conferred upon the NCTE is only in respect of laying down of the minimum qualification and not beyond it. The National Council for Teachers Education cannot prescribe the mode or manner of selection or for creation of post in any category of the institutions run by the Basic Shiksha Parishad. Accordingly, the notification issued by the National Council for Teachers Education dated 23.08.2010 is to be read in the background of the power vested in it.

31. From a simple reading of the Notification dated 23.08.2010, it is apparently clear that for teachers to be appointed for teaching in Class I to V which, as admitted to the parties, would be a junior basic school covered by "1981 Rules" have been provided as quoted above. However, having regard to the fact that there may be a shortage of such qualified teachers, under clause 3 of the Notification dated 23.08.2010 a relaxation has been provided in the matter of appointment of candidates who is Graduate and B.Ed. with the condition that after appointment, he/she would necessarily be required to undergo the training of six months in elementary education as per the programme recognised by NCTE.

32. In the aforesaid background, it is apparently clear that neither the Right to Education Act, nor "1981 Rules" contemplate any appointment as Trainee Teacher at least up to the last date of making of the application under the advertisement dated 30.11.2011. As a matter of fact, there was no concept of appointment of Apprentice Teacher under the "1981 Rules".

33. What has been stated above is also supported from clause 3 of the NCTE Notification dated 23.08.2010, which provides that after the appointments are made of the candidates who are Graduate, B.Ed. and TET, then they shall be required to undergo a special training of six months. Appointment as Assistant Master or Mistress in junior basic school run by the Basic Shiksha Parishad could be made only within the four corners of the U.P. Basic Education Teachers Service Rules, 1981 and not de hors the same.

34. It is not in dispute that the State Government did not create any post of Apprentice Teachers by any other notification. The appointments under the advertisement dated 30.11.2011 were to be made against the cadre posts covered by "1981 Rules" is well supported from the first line of the advertisement, which is being reproduced again here under:--

(Vernacular Matter omitted.... Ed)

35. The clause 9 of the advertisement dated 30.11.2011 specifies that selected candidate shall be appointed in an Parishadiya institution of the District concerned and he shall then undergo training of three months at District Institution of Education and Training of the district concerned (DIET) and three months training at the institution.

36. The stipulation in clause 10 of the advertisement dated 30.11.2011 is that the selected candidate on successful completion of the training would become entitled to be considered for appointment on the substantive post as a teacher in accordance with the "1981 Rules" is in itself sufficient to establish that the advertisement was with regard to the posts covered under the "1981 Rules".

37. This Court has no hesitation to record that the advertisement as was published by the State Government on 30.11.2011 itself was misconceived. The State Government without creating a cadre of Apprentice Teachers or by making

amendment in the "1981 Rules" for appointment of Apprentice Teachers could not have published any advertisement inviting applications for appointment as Apprentice Teachers as have been done under the advertisement dated 30.11.2011. What follows from the aforesaid is that the State Government is justified in not proceeding any further with the advertisement dated 30.11.2011 and to quash the same after declaring it to be redundant. Such act of the State Government is held to be in accordance with law and an attempt on the part of the State Government to correct its earlier mistake.

38. It is settled law that the appointing authority can withdraw the process of selection at any stage and there cannot be any mandamus asking the authority to complete the process of selection, except when the action is found to be arbitrary. The decision of the State Government to quash the advertisement and to drop the proceedings in terms of the advertisement dated 30.11.2011 can neither be said to be arbitrary, nor needs to be interfered with by this Court. The advertisement dated 30.11.2011 itself has been found to be illegal and any direction by this Court to proceed with the same would only perpetuate an illegality. Hon'ble Supreme Court of India has held that no mandamus can be issued by a writ Court asking the authorities to perpetuate the illegality (Ref: Ghulam Rasool Lone Vs. State of Jammu & Kashmir and Another,

39. This Court may now deal with the contentions which have been raised on behalf of the petitioners.

40. The first issue which needs determination is as to which of the arguments on behalf of the petitioners qua the applicability of the "1981 Rules" in respect of the post advertised i.e. Apprentice Teacher is correct, whether the posts advertised are covered by the "1981 Rules" or not?

41. From a reading of the first paragraph of the advertisement, it is apparently clear that the selections were to be made against the post of Assistant Teacher in Parishadiya Vidyalayas. From clause 9 of the advertisement, it is further apparent that after selection, the candidate would be appointed in a Parishadiya Vidyalaya of the District concerned. Out of the six months training prescribed, three months of training had to be undergone by actual working in the institution concerned. These three clauses of the advertisement make it abundantly clear that the advertisement dated 30.11.2011 intended appointments against the cadre posts covered by "1981 Rules" in Parishadiya Vidyalayas. Therefore the contention raised by the petitioners lead by Sri Ashok Khare, Sri P.N. Saxena, learned senior Advocates and Sri Shailendra Advocate to the effect the "1981 Rules" will not apply, cannot be accepted.

42. It is held that the advertisement as published by the State Government on 30.11.2011 necessarily referred to the cadre post covered by the "1981 Rules". There being no stipulation of appointment of Trainee Teacher under the said "1981 Rules, the advertisement itself was bad.

43. Once the applicability of the "1981 Rules" to the posts advertised is

answered in affirmative, the second question to be determined is as to whether the 15th amendment in the "1981 Rules" should have adversely affected the proceedings of the selections initiated under the advertisement dated 30.11.2011? The issue may not detain the Court for long. The Apex Court has repeatedly held that any amendment in the Rules laying down the manner for selection/appointment would be prospective in nature.

44. Once the vacancies have been advertised and the process of selection has commenced, then any subsequent amendment will not affect the proceedings of selection already initiated (Ref: P. Mahendran and others Vs. State of Karnataka and others, This Court, therefore, holds that irrespective of the amendments made in "1981 Rules", the process of selection initiated under the advertisement dated 30.11.2011 could not have been adversely affected because of the 15th amendment in "1981 Rules". Similarly, this Court also finds force in the contention of the petitioners that merely because some mal-practices had been noticed in holding of the TET Examination, the State Government could have taken a decision to cancel the proceedings of selection in terms of the advertisement dated 30.11.2011, inasmuch as per the records made available to this Court, the mal-practice is confined to very few districts of the State. If necessary, an attempt could have been made to segregate the bad part from the good part. This Court therefore holds that both the grounds mentioned in the resolution of the State Government as notified under the Government Order dated 26.07.2012 are not in conformity in law. However, no relief can be granted to the petitioners, inasmuch as this Court has come to the conclusion that the advertisement dated 30.11.2011 itself was bad and therefore no direction can be issued by this Court to complete the process of selection in terms of the advertisement dated 30.11.2011, as it would only amount to perpetuating the illegalities, which can never be purpose of the order of a writ Court.

45. In such circumstances, although this Court has come to the conclusion that the reasons mentioned in the order of the State Government for cancelling the advertisement are not in accordance with law, yet no relief can be granted to the petitioners for the reasons recorded.

46. So far as the plea raised by Sri Simant Singh is concerned, Sri C.B. Yadav appears to be correct in contending that the arguments advanced on behalf of Sri Simant Singh are self defeating. The TET Examination as a whole has not been declared as bad by the State Government. Where ever mal-practices have been noticed qua holding of TET Examination, the State Government must take a decision for segregating the bad part from the good part and all those students, who are found to be involved in mal-practice in respect of TET Examination, may not be permitted to apply for the posts which have now been advertised.

47. While the judgment was being delivered, Sri Shailendra Advocate has referred to two judgments of this Court passed in writ petition No. 72433 of 2011 Govind Kumar Dixit v. State of U.P. and others, decided on 14.12.2011 (reported in Govind Kumar Dixit and Others Vs. State of U.P. and Others, and writ petition

No. 71558 of 2011 Sita Ram v. State of U.P. and others, decided on 12.12.2011. In the first judgment, the High Court has considered the issue raised qua the validity of Rule 14 of "1981 Rules" as amended vide notification dated 09.11.2011 as well as the validity of the advertisement dated 30.11.2011. The Court has gone on to hold that with the enforcement of NCTE Act, 1993, the training qualification can be prescribed by the NCTE, but the rest of the matter of selection is governed by the Rules framed by the competent authority under the Basic Education Act, 1972 and that the notification issued by the NCTE under the power conferred by the Central Government vide Section 23 of The Right of Children to Free and Compulsory Education Act, 2009 would only be applicable in respect of minimum qualifications and for remaining part, the "1981 Rules" would continue to apply. The Court has thereafter proceeded to hold that the challenge made to Rule 14 has no substance.

48. In the second judgment, the High Court had examined and has held that the rule framing authority has to determine the criteria for selection, which may be the marks obtained in TET Examination.

49. In my opinion, both the judgments are clearly distinguishable and do not in any way decide as to whether the advertisement dated 30.11.2011 itself was in accordance with law or not. In view of what has been stated above, all these writ petitions fail and are accordingly dismissed.