
(2013) 08 AHC CK 0069

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 26189 of 2012

Kumari Sandhya Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 45

Citation : (2013) 7 ADJ 1 : (2014) 1 ALJ 79 : (2013) 100 ALR 462 : (2014) 1 AWC 756 : (2014) LabIC 963 : (2013) 3 UPLBEC 2377

Hon'ble Judges : Vineet Saran, J; Sanjay Misra, J; Prakash Krishna, J

Bench : Full Bench

Advocate : Babu Nandan Singh, for the Appellant; C.S. Singh and K.S. Shukla, for the Respondent

Judgement

Prakash Krishna, J.—Finding two conflicting decisions given by two division benches of this Court, a learned Single Judge, by the order dated 25th of May, 2012 has referred the following two questions of law for consideration to a larger bench. That is how the matter has come up before us on the nomination made by Hon'ble the Chief Justice. Following two questions have been referred:

(A) Whether mere selection on a date prior to 2.6.2010 will confer a right upon the incumbent to claim appointment and for being sent for training as Shiksha Mitra even after the State Government has imposed p. ban on such appointment on 2.6.2010 and the scheme of Shiksha Mitra itself has been dropped by the State Government.

(B) Whether the law laid down by the Division Bench in the case of Sonika Verma v. State of U.P. and others (supra) or the law laid down by the Division Benches in the case of Km. Rekha Singh v. State of U.P. and others (supra) and in the case of Pankaj Kumar v. State of U.P. and others (supra) is the correct law.

The background facts, as set out in the writ petition, relevant to the above questions may be noticed in brief.

The present petition has been filed by five petitioners jointly by laying a claim to have been selected for the post of Shiksha Mitra in the year 2009. The grievance is that the petitioners were neither appointed as Shiksha Mitra nor were sent for training, notwithstanding the said selection. The State Government, in the meantime, by the Government order dated 2nd of June, 2010 (the validity of which is not in issue), imposed ban on further appointments of Shiksha Mitra. The petitioners' claim that they are entitled for appointment as Shiksha Mitra as the aforesaid Government order dated 2nd of June, 2010 is prospective in nature and does not prohibit the appointments of Shiksha Mitra who were selected anterior to the said Government order. In support thereof, reliance has been placed by them on a Division Bench decision of this Court delivered in Special Appeal No. 765 of 2011: Smt. Sheela Yadav and others v. State of U.P. and others on 9th of May, 2011 wherein the Division Bench held that

The selection had been made for academic session 2009-2010 and the Government order which was made on 2nd of June, 2010 was made for banning future appointments. The said Government order would, therefore, apply prospectively for the teachers' selection from 2nd of June, 2010 onwards and would not apply where appointments have been delayed on account of the reasons which were relatable to the inaction of the respondents.

2. Reliance has also been placed on another Division Bench decision of this Court in the case of Kumari Sonika verma Vs. State of U.P. and Others, , wherein it was held that the respondents therein could have only refused to make selection and appointment after the date of ban i.e. 2nd of June, 2010.

3. According to the petitioners, in view of the authoritative pronouncements by the aforesaid two Division Bench decisions, the petitioners are entitled to be appointed as Shiksha Mitras, having been selected prior to the date of ban.

4. The case of the respondents is as follows:

An advertisement with a view to select 355 Shiksha Mitras was published in Hindi Newspaper dated 19.2.2009. Due to enforcement of Model Code of Conduct, as the Lok Sabha Elections were notified, the process of selection for the time being was stopped. Subsequently, a notification dated 25th of September, 2009 was published which provided 7th and 8th October, 2009 as the dates fixed for finalisation of selection at Tehsil level. On October 5, 2009 the Director of Education (Basic) in the meeting decided to stop the process of selection and necessary directions were given to every District Basic Shiksha Adhikari of the State. In pursuance of the said directions the Basic Shiksha Adhikari, Azamgarh notified that till further orders, the selection process will be kept in abeyance. Ultimately, the State Government took a decision to completely stop the fresh engagements of Shiksha Mitras by the Government order dated 2nd of June, 2010.

5. The respondents' further case is that from April 1, 2010 the Right to Education Act, 2009 has been enforced. In the light of the said enactment, the

Government took a policy decision not to engage any fresh Shiksha Mitra, with the result the fresh engagement of Shiksha Mitra has been done away.

6. The learned Single Judge has referred in the referring order certain other decisions. They are (1) Special Appeal No. 305 of 2008: Sanjay Kumar Singh v. State of U.P., decided on 3rd of March, 2008; and (2) Special Appeal No. (276) of 2011: Kumari Rekha Singh v. State of U.P. and others, decided on 18th of July, 2011.

7. In the case of Sanjay Kumar Singh, the Court held that the appointment was to be made for academic year 2005-2006 in a village of District Basti. The said period having been expired without making appointment, there cannot be any appointment either of the petitioner or of the respondent No. 7 therein. It further directed the concerned District Magistrate to start the procedure to appoint Shiksha Mitra in that particular village forthwith for the academic year 2008-2009 and to see that the selection and appointment of Shiksha Mitra is done well before the academic year starts from July, 2008.

8. In the case of Kumari Rekha Singh (supra) the Division Bench held as follows

The question for our consideration is whether the judgment of the learned Single Judge suffers from any illegality. The post of Shiksha Mitra was a tenure post for a particular period. However, in the event, the services were found satisfactory, it could be continued.

In the instant case, even before the petitioner-appellant could be appointed and sent for training, on account of intervening circumstance, the State took a stand that they are no longer making appointment to the post of Shiksha Mitra in view of the promulgation of the Right to Education Act, 2009.

The selection only gives a right to the selected candidate to be considered. It is always open to the respondents to give satisfactory reasons for not making appointment. In the instant case, the respondents have given sufficient reason as to why the appointment could not be made. That reason cannot be faulted, namely that after promulgation of the Right to Education Act, 2009, they are no longer making any appointment to the post of Shiksha Mitra.

Accordingly, we find no merit in the appeal. Hence, the appeal is dismissed.

9. Having noticed the apparent two divergent views in the decisions referred to herein above, it will be apt to take a note of relevant Government orders relied upon and referred by the counsel for the parties, to find out the solution to the problem.

10. The first and the foremost Government order on the subject is of 1st of July, 2000. The said Government order was issued with an avowed object of making education available at the grass-root level, particularly to the children residing in villages. The State Government felt that the standard teacher-taught ratio 1:40 be achieved in the village schools. The idea was to develop a force and inspire

educated persons residing in villages to provide community service by providing education to such children. The preface of the said Government order is relevant to find out the aim and object behind the scheme known as "Shiksha Mitra Yojna". The said paragraph is reproduced below:

11. The other part of the scheme lays down the salient feature of the scheme such as the manner of identification of Shiksha Mitras, their tenure, qualification and procedure for their selection, payment of honorarium and the duties of Shiksha Mitras. It would show that in a college having regular teacher Shiksha Mitra will be appointed in the ratio of 3:2 in respect of full time teachers and Shiksha Mitras. Shiksha Mitras will be appointed only in such colleges where at least one regular teacher is working. Firstly, the colleges where Shiksha Mitras are to be appointed shall be identified by the District Level Committee. Thereafter, the applications from the candidates will be invited by public notice. The candidate should possess the minimum qualification as prescribed in clause-IV of the Government order. The academic period of a session will be July to May.

12. The tenure of Shiksha Mitras will come to an end automatically in every session on the last day of May. It further provides that the persons who have been selected by Gram Panchayat and approved by the District Samiti will be sent for one month's training and after completion of training the successful candidates shall be permitted to work as Shiksha Mitra. Its clause-VII which may have some relevancy is reproduced below:

13. On May 2, 2006, the State Government provided that in case of any complaint with regard to the proper selection of Shiksha Mitra, the District Magistrate will examine the complaint and will ensure its disposal in a transparent manner within a period of one month.

14. By the Government order dated 12th of July, 2006 the scheme of Shiksha Mitra, which was earlier confined to villages only, was extended to urban population. Substantially, except consequential changes such as with regard to the mode of the identification of Shiksha Mitra, on similar lines the scheme provides that the working period of Shiksha Mitra will come to an end automatically on the last day of May of every academic session.

15. Now, comes the Government order dated 2nd of June, 2010 not impugned in the writ petition, banning the fresh appointments of Shiksha Mitras with immediate effect. For the sake of convenience, the relevant portion of the said Government order is reproduced below:

A reading of the said Government order would show that the State Government, in view of the enforcement of Right to Education Act, 2009 w.e.f. 1st of April, 2010 decided to completely ban the fresh appointments of Shiksha Mitras.

16. Heard Sri Babu Nandan Singh, learned counsel for the petitioner, in support of the writ petition. Shri Ashok Khare, learned senior counsel appearing in the connected matters as well as Shri A.P. Tewari, learned counsel also advanced the

arguments. The learned counsel for the petitioners submitted that on a true and proper construction of the Government orders referred to herein above and in view of the decision of this Court in the case of Sheela Yadav (supra) which stands confirmed by the Apex Court in as much as the SLP filed by the State having been dismissed, the petitioners are entitled to be appointed as Shiksha Mitras. Elaborating the argument, it was submitted that the petitioners having been selected prior to 2nd of June, 2010, on which date the ban on fresh appointments of Shiksha Mitras was enforced, are entitled to be appointed as such. Elaborating the argument, it was submitted that the scheme of Shiksha Mitras was introduced from the academic session 1999-2000 in pursuance of the policy decision notified by the Government order dated 26th of May, 1999. The Government decided that for the academic year 1999-2000 around 10,000 Shiksha Mitras will be engaged on contract basis and for this purpose a Committee at District level was constituted which consisted of the District Magistrate as its Chairman. Zila Panchayat Raj Officer, Accounts Officer of Basic Shiksha Adhikari and Basic Shiksha Adhikari as members. Consequent upon approval by the said Committee intimation was required to be given to Gram Shiksha Samiti, the selected candidate was required to undergo one month's training and after successful completion of the training, could function as Shiksha Mitra. The appointment was an engagement on contract, limited for academic session ending on the next 31st of May. Subsequently, such appointments were made renewable on year to year basis.

17. The learned Senior Counsel Shri Ashok Khare also referred to other Government orders to show that the contract of existing Shiksha Mitras is made renewable automatically, except where there is some complaint and the Government is in process to accord them status of assistant teachers. He has relied upon certain decisions to buttress his arguments that change in norms of recruitment during the pendency of selection process is not permissible under law. The submission is that the Government order dated 2nd of June, 2010 banning the fresh appointments amounts to change in the norms of recruitment and as such will not be applicable to the already selected candidates.

18. Refuting the above submission, Sri C.S. Singh, learned Additional Chief Standing Counsel submits that the relied upon decision in the case of Sheela Yadav though SLP has been dismissed, is not correctly decided and the dismissal of the SLP will not come in the way of the State Government as the order dismissing the SLP does not contain any reason. The other limb of the argument is that the petitioners have no enforceable rights as (1) Mere Selection does not confer any right on the selected candidate to claim appointment as a matter of right, (2) The Government orders are executive instructions and if the State Government took a policy decision, in view of the changed circumstances, has decided to stop fresh selection/recruitment of Shiksha Mitras en-block, is not justiciable issue, specially when the legality and validity of the said Government order dated 2nd of June, 2010 has not been questioned by any petitioner.

19. The Court was taken through the Government orders referred to hereinabove with a view to establish that the purpose of Shiksha Mitra scheme is not to provide employment. The Government orders do not create civil posts with a view to spread opportunity for education in the first stage in the rural and in the second stage in urban areas also. A policy decision was taken to select Shiksha Mitras. The idea was to maintain teacher-taught relation in the ratio of 1:40 by engaging educated youths already residing in the villages. The said object is now being achieved through the enforcement of Right to Education Act, 2009, which is a better way of spreading education. The State Government has done no wrong by completely blocking the fresh appointments of new Shiksha Mitras.

20. Shri K.S. Shukla, learned counsel appearing for the Basic Shiksha Parishad adopted the arguments of Sri C.S. Singh.

21. Considered the respective submissions of the learned counsel for the parties and perused the record.

22. Right to Education has been held to be a fundamental right. In *Miss. Mohini Jain Vs. State of Karnataka and others*, , the Apex Court observed that the right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the Right to Education. The State Government is under obligation to make an endeavour to provide education facilities at all levels to its citizens.

23. Article 45 of the Constitution fixes a time limit during which a State shall provide free compulsory education for children until they complete the age of fourteen years. In the case of *Election Commission of India Vs. St. Mary's School and Others*, the Apex Court observed that 60 years of Independence, however, have not brought about the desired result of imparting compulsory education to all the children. Education is one of the most important functions of the State. The State has basic responsibility in regard thereto.

24. Presumably, in view of the various judicial pronouncements of the Apex Court pointing out the need of education for the good governance of the country and upliftment of the poor and down trodden public mostly residing in villages, the State Government took a step in this direction by deciding to evolve a scheme which came to be known as a scheme of Shiksha Mitra Yojna. Its aim and object is self speaking and has already been reproduced in the opening part of the judgment.

25. Upon hearing all the counsel for the parties, we are of the opinion that the controversy on hand requires consideration of the following points:

1. When selection process of Shiksha Mitra is complete?
2. Whether such selected candidates can claim appointment as a matter of right?
3. Indisputably, under executive instructions selected candidates were permitted to work as Shiksha Mitra on payment of fixed monthly amount called

honorarium. In this view of the matter, still selected candidates, to whom the appointment is not offered, can claim as a right for appointment notwithstanding the ban order dated 2nd of June, 2010, the latter being not under scrutiny?

4. The effect of commencement of Right to Education Act, 2009?

5. Whether the apparent divergent views expressed by the different Division Benches are reconcilable?

POINT NO. 1.

26. The reference order presupposes that the petitioners are duly selected candidates for Shiksha Mitra posts. Although when the selection of Shiksha Mitras is complete, strictly speaking, is not within the scope of the present reference but after hearing the counsel for the parties, they were called upon to address us thereon. Alongwith the writ petition, the petitioners could not enclose any document except the copies of the proceedings of the Gaon Shiksha Samiti (Annexure-2) (which is being disputed) that the petitioners are duly selected candidates. The argument of the petitioners proceeded on the footing that the petitioners' names were recommended by the Gram Shiksha Samiti and as such, they stand selected, there being no disapproval to the said resolution by the District Level Committee presided over by the District Magistrate. The recommendations were made to the District Level Committee which remained pending for a considerable period of time and in the meantime, the Government order dated 2nd of June, 2010 came to be in existence. The learned Additional Chief Standing Counsel submitted that till the successful completion of training, the recommendees of the Gram Shiksha Samiti cannot be treated as duly selected candidate.

27. We have given careful consideration to the respective submissions of the learned counsel for the parties.

28. In pursuance of orders passed by us requiring the parties to file counter and rejoinder-affidavits, counter-affidavit has been filed by Smt. Pushpa Joshi posted as Professional Education For All Board on behalf of Ministry of Basic Education, U.P. Lucknow-respondent No. 1 wherein the background of Shiksha Mitra Scheme has been given in some details. The history relates to the year 1986 under National Educational Policy 1986. It was decided for universalization of elementary education i.e. education upto class VIIIth. It was resolved, as para-5.12 of the policy, to provide free and compulsory education of satisfactory quality to all the children upto 14 years of age before start of 21st century. In furtherance thereto in the year 1993, a project duly financed by the World Bank was mooted for expansion of quality basic education in the State. A society for smooth running of this project, namely, Uttar Pradesh Sabhee Ke Liye Shiksha Pariyojna Parishad (U.P. Education for all Project Board) was established on 17th May, 1993. Initially when basic project was started in the year 1993, it had covered only 17 districts and the project was completed in 2000. The District Primary Programme II was started in the year 1997 in 22 districts of the State of

U.P. which ended in the year 2003. Thereafter, programme IIIrd was started in rest of 32 districts in the year 2000 and has ended on 31st March, 2006. The popularly known programme Sarva Shiksha was started in the State in the year 2001-02 and now it covers all the districts of the State. Sarva Shiksha Abhiyan intend to achieve the goal of universal elementary education by creating a sustainable and de-centralised educational management system and bringing the community participation in all process of the programme. The scheme of Shiksha Mitra came into existence in pursuance of Sarva Shiksha Abhiyan. The State Government issued various Government orders from time to time. First Government order is dated 26th May, 1999.

Government Order dated 26th May, 1999

Annexure-2 to the Government order dated 26th May, 1999 contains the Shiksha Mitra Yojna. Its relevant clauses are reproduced below:

Government Order dated 1st July, 2000

Besides the other things, it contains format of application to be filled up by the candidates who are desirous to work as Shiksha Mitra. The relevant portion is reproduced below:

29. One of the stands taken in the counter-affidavit of the respondents is that names of the petitioners were never recommended by the Village Level Committee. Further stand is that admittedly no appointment letter has been issued to any of them nor any information or communication was sent by any of the respondents informing any of them that names have been recommended to District Level Committee for Shiksha Mitra. It was submitted that unless any communication has been sent to the petitioners (even if any recommendation was made by Village Level Committee), it will not confer any right on the petitioners to claim appointment in view of decision of the Apex Court in the case of Bachhittar Singh Vs. The State of Punjab, . We need not address upon the above issues being beyond scope of reference. The matter if occasion so arises may be examined by the writ Court.

30. The modus operandi for identification of Shiksha Mitra as mentioned in the Government order is --

1. Gaon Shiksha Samiti invites applications from residents of village for an academic session.
2. The Gaon Shiksha Samiti prepares a graded list according to quality point marks mentioned in the guideline.
3. The name of person who stands at top is sent through the Assistant Basic Shiksha Adhikari to the District Basic Shiksha Adhikari who happens to be the ex-officio secretary of the District Shiksha Samiti under Sarva Shiksha Abhiyan.
4. Thereafter, all the matters are placed before the District Shiksha Samiti headed by the District Magistrate as President/Chairman.

5. In the case of any objection to the recommendations, the District Magistrate decides the objections and then prepares a list of Shiksha Mitras at District Level and sends the same to the Principal District Institute of Education Training (DIET).

6. The training is imparted to such candidates and after successful completion of training, contractual appointment is offered to them in the prescribed format.

31. True, the District Level Committee headed by the District Magistrate cannot on its own accord, add any name in the list of the candidates recommended by the Gram Shiksha Samiti, but it requires approval in the sense that if there is any complaint with regard to any irregularity committed by the Village Level Committee to look into it and address it by passing an appropriate order. The argument of the petitioners that there is no disapproval to the recommendations made by the Village Committee is far stretched as admittedly, there is no material before us to show that the recommendations made by the Village Level Committee was ever forwarded or considered by the District Level Committee. Had there been any consideration by the District Level Committee favourably about the recommendations made by the Gram Shiksha Samiti, the position might have been different. In absence of any material to show the consideration of the recommendations by the District Level Committee, the case of the petitioners is on a wrong footing that they are selected candidates for Shiksha Mitras.

32. In addition to above, one of the conditions is the successful completion of the training. This is also indicative of the fact that the selection process will last up to the successful completion of the training and not before.

33. The upshot of the above discussion is that it is a misnomer to call the petitioners as selected candidates. The selection process will come to an end only when a person is asked to give his consent on the prescribed proforma to enter into a contract to serve as Shiksha Mitra and not earlier to it.

POINT NO. 2.

34. Assuming for the sake of argument that the petitioners were selected, the contention of the respondents is that in view of the leading judgment of the Apex Court in the case of Shankarsan Dash Vs. Union of India, , the petitioners have no right to claim appointment/to work as Shiksha Mitra, even if a vacancy exists. The relevant paragraph is paragraph No. 7 which is reproduced below:

7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner.

The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in *The State of Haryana Vs. Subash Chander Marwaha and Others*, ; *Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others*, and *Jitendra Kumar and others v. State of Punjab and others*, (1985) 1 SCR 899.

35. The aforesaid decision of the Apex Court has been followed and referred in the following cases:

1. AIR 2007 SCW 6899 (15, 24).
2. AIR 2007 SCW 6967 (15, 17).
3. AIR 2008 SCW 322 (30).
4. *Union Territory of Chandigarh Vs. Dilbagh Singh and others*, .
5. *State of Bihar and Others Vs. Secretariat Assistant Successful Examinees Union 1986 and Others*, .
6. *State of Bihar and others Vs. Md. Kalimuddin and others*, .
7. *Union of India Vs. S.S. Uppal and another*, .
8. *Union of India and others Vs. K.V. Vijesh*, .
9. *Dr. Ramulu and another, etc. Vs. Dr. S. Suryaprakash Rao and others*, .
10. *N. Mohanan Vs. State of Kerala and Others*, .
11. *Union of India and others Vs. N.R. Banerjee and others*, .
12. *Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others*, .
13. *Dr. J. Shashidhara Prasad Vs. Governor of Karnataka and Another*, .
14. *Tamil Nadu Administrative Service Officers Association and Another Vs. Union of India and Others*, .
15. *All India SC and ST Employees Assn. and Another etc. Vs. A. Arthur Jeen and Others etc.*, .
16. *Vinodan T. and Others Vs. University of Calicut and Others*, .
17. *State of Uttaranchal and Others Vs. Sidharth Srivastava and Others*, .
18. *Baitarani Gramiya Bank Vs. Pallab Kumar and Others*, .
19. *State of Orissa and Others Vs. Bhikari Charan Khuntia and Others etc.*, .
20. *Bihar State Electricity Board Vs. Suresh Prasad and Others*, .

21. Punjab State Electricity Board and Others Vs. Malkiat Singh, .
22. Rajesh Kumar Gupta and Others Vs. State of U.P. and Others, .
23. Food Corporation of India and Others Vs. Bhanu Lodh and Others, .
24. Union of India (UOI) and Others Vs. Kali Dass Batish and Another, .
25. State of U.P. and Another Vs. Om Prakash and Others, .
26. AIR 2007 SC (Supp.) 830 (8).
27. Union of India (UOI) and Others Vs. S. Vinodh Kumar and Others, .
28. Dir. S.C.T.I. for Med. Sci. and Tech. and Another Vs. M. Pushkaran, .
29. Subha B. Nair and Others Vs. State of Kerala and Others, .

36. In State of U.P. and others v. Raj Kumar Sharma and others (Appeal (Civil) 1433 of 2006) decided on 3rd of March, 2006 the Apex Court has laid down that the selectees cannot claim appointment as a matter of right. Mere inclusion of candidate's name in the list does not confer any right to be selected, even if some of the vacancies remain unfilled, the concerned candidates cannot claim that they have been given hostile discrimination. In the case on hand, the theory of discrimination has not been put forward as it has not been set out anywhere in the writ petition.

37. We, therefore, find that even if it is assumed what the petitioners say that their names were recommended by the village level committee, is correct, it does not confer upon them any enforceable right to ask for a writ of mandamus. POINT Nos. 3, 4 and 5

38. It could not be disputed by the petitioners that the scheme for appointment of Shiksha Mitra came into being through the Government orders i.e. executive instructions. To put it differently, the petitioners' appointment/selection is contractual appointment as Shiksha Mitra. Meaning thereby, there is no statutory backing to the petitioners' claim. The petitioners' argument proceeds on the footing that the post of Shiksha Mitra is a civil post and is governed by the Principle of statutory service rules. The scheme itself provides that a person shall be allowed to function as Shiksha Mitra under a contract for a fixed period which will come to an end on 31st of May of the next year. No honorarium shall be payable for the month of June. The scheme shows that it will commence in the month of July of each year and will end on 31st of May i.e. for eleven months. By modification it has been provided that if nothing is there against a person he may continue as Shiksha Mitra for the next academic session, subject to receiving a short refresher training. All this cumulatively shows that the tenure of Shiksha Mitra is a fixed term tenure, maximum up to the period of eleven months which, of course, in view of the subsequent amendments by the Government Order can be renewed for subsequent academic sessions.

39. Having noticed the nature of working of Shiksha Mitra as envisaged in the

Government orders, to which there appears to be no quarrel by the petitioners, if the Government has decided to discontinue the scheme any further by the Government order dated 2nd of June, 2010, the petitioners have hardly any right for the enforcement of which a writ under Article 226 of the Constitution of India can be issued.

40. Right of Children to Free and Compulsory Education Act, 2009 was enacted in the year 2009 and it received the assent of the President on 26th of August, 2009. The said Act has been enacted by the Parliament to provide for free and compulsory education to all the children of the age of six years to fourteen years. The National Council for Teachers Training (NCTE) vide notification dated 23rd of August, 2010 has notified that apart from minimum qualification prescribed, every candidate is supposed to clear the TET examination. In pursuance thereof on 22nd of April, 2010, the Additional State Project Director circulated a letter that if any selection process has started for engagement of Shiksha Mitra, the same may be stopped immediately. The Secretary of Education has also issued a communication under the aforesaid Act, 2009 to all the District Magistrates which is dated 2nd of June, 2010. In view of the change scenario, the Government order dated 2nd of June, 2010 is a policy decision of the State Government. Time and again, it has been laid down that in policy decision matters, interference by the Court should be minimal, moreso, in the present case when the Government order dated 2nd of June, 2010 is not questioned by any of the petitioners. At this stage, we cannot resist our temptation to reproduce the observation of the Division bench headed by Hon"ble Justice H.L. Gokhale, C.J. (as He then was), and one of us (Justice Vineet Saran) was a member.

41. "Everybody is forgetting that the scheme of Shiksha Mitra is to spread education and it is not a scheme for employment. What is being given is an honorarium to the concerned teacher. The appointment comes to an end at the end of the academic year, with right to continue if the performance is good."

42. We have borrowed the above observations from the case of Sanjay Kumar Singh (supra) which contains the philosophy with regard to the Shiksha Mitra's scheme, in condensed form.

43. The main plank of the petitioners' argument that the G.O. dated 2nd of June, 2010 is prospective as held in the case of Sheela Yadav (supra) by Division Bench and the ban will not apply to such candidates who were selected successfully prior to the date of the ban, needs consideration. It is a short judgment. The following two paragraphs were relied upon by the members at Bar":

However, the admitted position is that the selection had been made for the academic session 2009-10 and the Government Order which was made on 2.6.2010 was made for banning future appointments. The said G.O. would therefore apply prospectively for the teachers selection from 2.6.2010 onwards and would not apply where the appointment had been delayed on account of

reasons which were relatable to the inaction of the respondents.

44. Learned counsel for the appellant has also referred to a Division Bench decision of this Court in the case of Kumari Sonika verma Vs. State of U.P. and Others, , wherein this Court has considered a case of similar facts and circumstances and has come to the conclusion that the respondents could have only refused to make selection and appointment after the date of ban i.e. 2.6.2010 and since the case in hand is relatable to the selection made prior to the enforcement of ban by the G.O. dated 2.6.2010, the case of the appellant would not be covered by the said G.O."

45. Indisputably, the SLP filed against the aforesaid judgment has been dismissed summarily by the Apex Court. The Bench in the case of Sheela Yadav has relied upon a Division Bench judgment in the case of Kumari Sonika Verma (supra).

46. Therefore, the factual matrix of the case of Sonika Verma and the precise controversy involved therein needs consideration. In the case of Sonika Verma the appellants therein alongwith twenty two candidates who had applied against the advertised vacancies in respect of urban area, were selected. The appointment letters were offered to the twenty two selected candidates and other joined their duties on 17th of April, 2010. The candidature of the appellant (Sonika Verma) was placed in the category of "disputed" by the Assistant Basic Shikshadhikari. It was found that Sonika Verma was placed under the said category for no fault on her part. Later on, she was informed that in view of the Government order dated 2nd of June, 2010 no appointment can be offered to her. In this factual scenario the High Court considered the case of Sonika Verma and held that it is a case of discrimination vis a vis Sonika Verma. The word "disputed" was subsequently found by the respondents themselves as noticed in the judgment as incorrect. In such situation, the Court ruled that

to non suit the appellant would be to deny the opportunity of employment to her on an erroneous assumption. The appellant was entitled to be offered appointment alongwith other selected candidates and there was no occasion to treat her selection to be disputed. This being the factual position in the present case, in our opinion, the respondents have erroneously applied the Government order dated 2nd of June, 2010, which cannot be pressed into service on the facts of the present case. The respondents can refuse to make selection and appointment after 2nd of June, 2010 if the policy can be held to be justiciable with which we are not presently concerned. The present case is in relation to a selection and appointment prior to the enforcement of the said Government order and therefore, as indicated above, the same would not be governed by the same.

47. A meaningful reading of the above quoted paragraph would lead us to the conclusion that the case was decided principally on the ground that the name of the petitioner was wrongly placed in the case of "disputed" for no fault of the

appellant therein, which is not the case here. The question of prospective application of the Government order dated 2nd of June, 2010 was not involved even remotely. This aspect of the case was not brought to the notice of the Division Bench deciding the case of Sheela Yadav.

48. A bare perusal of the judgment in the case of Sheela Yadav would reveal that attention of the Court was not invited towards the fact that in the Shiksha Mitra Scheme itself it is mentioned that it is not a job oriented scheme. The facts that the appointment of Shiksha Mitra is only for eleven months in a year and it comes to an end automatically on 31st of May of the next year and that Shiksha Mitra Scheme is to serve the society through local youths and in lieu of the same honorarium is provided escaped the attention of the Court while deciding the aforesaid case. All these factors were considered by the other Division Benches taking a different view of the matter. In our considered view, the judgments in the cases of Sheela Yadav and Km. Sonika Verma having rendered de hors the Shiksha Mitra Scheme, do not lay down correct law, there is no analysis of the Shiksha Mitra Scheme.

49. Even otherwise also, there is no question of prospectivity or retrospectivity of the Government order dated 2nd of June, 2010. Every Government order, unless it provides otherwise, talks prospectively. The same view has been taken in the case of Sheela Yadav (supra). Ban is being imposed so far as it relates to fresh appointments of Shiksha Mitras. The day on which the G.O. dated 2nd of June, 2010 came into, no status of Shiksha Mitras was conferred on the petitioners as admittedly none of them had undergone successful training to become a Shiksha Mitra. Thus, from any angle, we fail to understand as to how the judgment in the case of Sheela Yadav (supra) supports the petitioners' case, the dismissal of SLP notwithstanding.

50. We may now consider the precedents relied upon by Sri Ashok Khare, learned Senior Counsel for the petitioners. Reference was made to A.A. Calton Vs. Director of Education and Another, wherein it has been laid down that the legislature may pass laws with retrospective effect subject to the recognised constitutional limitations, but no retrospective effect should be given to any statutory provisions so as to impair or take away an existing right, unless that statute either expressly or by necessary implication directs that it should have such retrospective effect.

51. In the case of Dr. Ramji Dwivedi Vs. State of Uttar Pradesh and Others, the power to appointment Principal was taken away by the State Government by issuing the order dated 1st April, 1981. The appellant was appointed thereafter by Committee of Management as Principal of the college. The dispute arose with regard to validity of appointment of Principal appointed on 1st May, 1981 i.e. after the State Government order dated 1st April, 1981 stopping all fresh selections and appointments. The matter travelled to the Apex Court, which found that the appointment of the appellant (Principal) by the Committee of Management was not valid. This case, therefore, if at all applicable to the facts of

present case, runs to the counter of the petitioners' case and supports the stand of the respondents.

52. Next, reliance was placed on *P. Mahendran and others Vs. State of Karnataka and others*, wherein it was held that if the qualification for appointment has been changed subsequently, the select list prepared on the basis of the then existing qualification is valid. The case has been decided on the ground that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. This case also does not support the case of the petitioners. The observations made therein were made in different statutory set up. It is distinguishable and has no application for the simple reason that here is not a case where there is change in the qualification of a post. To the same effect is *N.T. Bevin Katti, etc., Vs. Karnataka public Service Commission and others*, .

53. Lastly, *State of Bihar and Others Vs. Mithilesh Kumar*, , was pressed into service. A meaningful reading of the same would show that it is distinguishable on facts and has no application to the case on hands even remotely. In the case of *Mithilesh Kumar (supra)*, Mithilesh Kumar was declared successful in the interview which was held on 9th November, 2002. Before that, by the letter dated 14th November, 2002, a request was made to Bihar Public Service Commission not to send any further recommendation as scheme for appointment of disabled person for vocational training is not valid. In this case, reference of Constitution Bench decision of Apex Court in *Shankarsan Dash Vs. Union of India*, , has been made. Without making any comment on the said judgment, the Apex Court has distinguished the judgment given in *Chairman, All India Railway Rec. Board and Another Vs. K. Shyam Kumar and Others*, , on the ground that there, the candidate was not considered as there was a change in policy regarding recruitment in the meantime. For the sake of convenience, paras 22 and 23 are reproduced below:

22. There is no reason for us to have any disagreement with the decision of this Court in *All India Railway Recruitment Board case (supra)* regarding the right to appointment even of selected candidates, but this is not a case of the Respondent having acquired any indefeasible right which has to be cancelled on account of certain exigencies. On the other hand, this is a case where although selected for the purpose of appointment by the B.P.S.C., Patna, the case of the Respondent was not even considered as there was a change in policy regarding recruitment in the meantime.

23. While a person may not acquire an indefeasible right to appointment merely on the basis of selection, in the instant case the fact situation is different since the claim of the Respondent to be appointed had been negated by a change in policy after the selection process had begun.

54. The above quoted paragraphs would show that if the change in policy regarding recruitment takes place before consideration of the candidature on

merit, then the case would be covered by the judgment of the Apex Court in All India Railway Recruitment Board (supra) but if the change in policy takes place after the selection process has begun, fate of the selected candidates would be different. The facts of the case on hands are more close to the facts of the case in All India Railway Recruitment Board (supra) than in the case of Mithilesh Kumar (supra). We are saying so as in the case of Mithilesh Kumar, it is apparent from para-4 of the report that Mithilesh Kumar was declared successful. It has been pointed out in earlier part of the judgment that the petitioners have not placed any material before us to show that they have been declared successful by any authority or respondent so far.

55. Sri C.S. Singh, learned Additional Chief Standing Counsel has placed strong reliance on State of Gujarat Vs. Mirzapur Moti Kureshi Kassab Jamat and Others, , for the proposition that principle of stare decisis does not prohibit a fresh look in changed facts and circumstances. Relevant paras 114, 120 and 176, for the sake of convenience, are reproduced below:

114. The trend of judicial opinion, in our view, is that stare decisis is not a dogmatic rule allergic to logic and reason; it is a flexible principle of law operating in the province of precedents providing room to collaborate with the demands of changing times dictated by social needs, State policy and judicial conscience.

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120. The doctrine of stare decisis is generally to be adhered to, because well-settled principles of law founded on a series of authoritative pronouncements ought to be followed. Yet, the demands of the changed facts and circumstances dictated by forceful factors supported by logic, amply justify the need for a fresh look.

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176. In this connection, it will be relevant to refer the principle of stare decisis. The expression of " stare decisis" is a Latin phrase which means "to stand by decided cases; to uphold precedents; to maintain former adjudications". It is true that law is a dynamic concept and it should change with the time. But at the same time it shall not be so fickle that it changes with change of guard. If the ground realities have not changed and it has not become irrelevant with the time then it should not be reviewed lightly. I have discussed above the reasons which have been given by the State of Gujarat for reconsideration of the earlier decisions on the subject, in my humble opinion the justification so pleaded is not sufficient to change or review the decision of the Constitution Bench by the present Bench of seven Judges.

56. Reference was made to Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another, , with regard to per incuriam doctrine. Relevant paras 65, 66 and 67 are reproduced below:

Per incuriam doctrine

65. "Incuria" literally means "carelessness". In practice per incuriam is taken to mean per ignorantiam. The Courts have developed this principle in relaxation of the rule of stare decisis. Thus, the "quotable in law" is avoided and ignored if it is rendered, in ignorance of a statute or other binding authority.

66. While dealing with observations made by a seven-Judge Bench in India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others, , the five-Judge Bench in The State of West Bengal Vs. Kesoram Industries Ltd. and Others, , observed as under:

57. ...A doubtful expression occurring in a judgment, apparently by mistake or inadvertence, ought to be read by assuming that the Court had intended to say only that which is correct according to the settled position of law, and the apparent error should be ignored, far from making any capital out of it, giving way to the correct expression which ought to be implied

or necessarily read in the context,...

71. ...A statement caused by an apparent typographical or inadvertent error in a judgment of the Court should not be misunderstood as declaration of such law by the Court.

(emphasis added)

(See also Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead) through L. Rs., , A.R. Antulay Vs. R.S. Nayak and Another, . State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another, ; and Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others, .)

67. Thus, "per incuriam" are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the Court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceeded without any reason so that in such a case some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong.

57. Submission is that the judgment given in the case of Sheela Yadav (supra) should be ignored as the attention of the Court was not invited towards various clauses of Shiksha Mitra Policy and towards binding precedent of the earlier decision of this Court. We find sufficient force in the above submission.

58. The Additional Chief Standing Counsel also referred a Full Bench Judgment of this Court in Shiv Kumar Sharma and Others Vs. State of U.P. and Others, ,

delivered on 31st of May, 2013 to buttress his argument. In this Full Bench judgment the High Court has held that it is essential to a teacher to possess Teacher Eligibility Test qualification which was introduced subsequently after the selection. Elaborating the argument, the learned Additional Chief Standing Counsel submitted that it does not amount to changing the rules of game by making variation in the qualification.

59. The learned counsel also placed reliance upon another Full Bench judgment in the case of Arun Kumar Singh and Others Vs. State of U.P. and Others, , wherein doctrine of per incuriam has been elaborately dealt with.

60. Reliance was also placed by him on Black's Law Dictionary on the meaning of word "approve", reproduced below:

approve, vb. 1. To give formal sanction to; to confirm authoritatively. 2. Parliamentary law. To adopt. See ADOPTION (5). -- approval, n.

61. The consistent view of this Court appears to be, as held by this Court in the case of Sanjay Kumar Singh (supra) and Km. Rekha Singh (supra), that the selection only gives right to the selected candidates to be considered. It is always open to the respondents to give satisfactory reason for not making appointment. The reasons given by the respondents for not making appointment to the post of Shiksha Mitra in view of the promulgation of Right to Education Act, 2009 has been found to be justified, with which we also express our acceptance. More or less, similar view has been taken by another Division bench in Special Appeal No. (373) of 2011: Pankaj Kumar v. State of U.P., decided on 13th of May, 2011.

62. Viewed as above, we do not find any divergence in the views of Division Benches referred to herein above. The decision in the case of Kumari Sonika Verma was rendered on its peculiar fact i.e. discrimination vis a vis other duly selected candidates to whom appointments were offered but it was denied to Sonika Verma for no fault of her. In the case of Smt. Sheela Yadav (supra) the decision given in the case of Sonika Verma was followed. It appears that peculiar facts of the case of Sonika Verma were not brought to the knowledge of the Bench. In addition to the above, the observation made in the case of Sheela Yadav that the ban imposed by the G.O. dated 2nd of June, 2010 is prospective should be read in the context of the facts of that case.

The following order was passed by the Apex Court in the SLP:

Delay condoned.

The SLP is dismissed on merits.

63. We do not want to burden this judgment with the various citations referred by the learned counsel for the parties on the point that the judgment of this Court in the case of Sheela Yadav stands confirmed by the Apex Court or not.

64. With regard to question (A), in view of the above discussion, we are of the opinion that the petitioners were not duly selected and even if they were

selected, the selection will not confer a right upon them to claim appointment and for being sent for training as Shiksha Mitras in view of the ban imposed by the State Government by the GO dated 2nd of June, 2010. In other words, persons whose names even if recommended prior to 2.6.2010, will not acquire any right to claim a direction for appointment as Shiksha Mitra.

65. The question (B) is answered by holding that the case of Sonika Verma was decided on its peculiar facts and therefore, it will have no general application. The law laid down in the cases of Km. Rekha Singh and Pankaj Kumar are correct enunciation of law and we express our concurrence with them. Let the matter be placed before learned Single Judge with our above opinion.