
(2016) 04 AHC CK 0031

In the Allahabad High Court

Case No : Civil Misc. Writ Petition Service Single No. 326 of 2016 and 7334 of 2015.

Mahendra Pratap Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 ADJ 165 : (2016) 4 AILLJ 40 : (2016) 4 AllWC 3320

Hon'ble Judges : Rajan Roy, J.

Bench : Single Bench

Advocate : Laltaprasad Misra and Abhishek Misra, Advocates and Dr. L.P. Misra and Abhishek Misra, Advocates, for the Appellant; C.S.C., Ajay Kumar, D.P. Shukla, Samir Kalia and V.P. Tewari, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Rajan Roy, J. - Heard learned counsel for the parties.

2. As both the writ petitions relate to the same selection and involve same facts and issues they are being decided by a common judgment. The facts of Writ Petition No. 326(SS) of 2016 have been considered for the sake of convenience.

3. The candidates who had applied for being considered for selection and appointment on the post of Assistant Teacher of Primary Schools in District Faizabad in pursuance to an advertisement issued on 12.12.2014 have filed this writ petition challenging the Government Order dated 18.12.2015 extending the last date for submission of forms for the remaining candidates to 15.01.2016.

4. The facts of the case in brief are as under:-

The State Government issued a Government Order dated 09.12.2014 determining the vacancies on the post in question as 15,000/- and ordering initiation of a process of selection for filling up the same. In pursuance thereof, an advertisement was issued on 12.12.2014 inviting applications from eligible

candidates possessing qualifications of two years B.T.C., two years Urdu B.T.C. and Special B.T.C. The last date for submission of forms was 05.03.2015. The petitioners herein along with about 34,000 candidates applied in pursuance thereof. Persons who possessed the qualification prescribed by the NCTE in its Regulations such as D. Ed. (Special Education), which was not mentioned in the advertisement, though it was mandatory, approached this Court at Allahabad by means of writ petition i.e. Writ-A No. 533 of 2015 which was decided on 02.02.2015. A direction was issued to the opposite parties to accept the online application forms of such petitioners, however, the advertisement which was under challenged was not quashed.

5. Some other persons filed Writ-A No. 7406 of 2015 challenging the notification and advertisement mentioned herein above on the ground that cut off date for determining age limit was wrongly mentioned as 01.07.2014 whereas in terms of Rule 6 of the Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 (For short "Rules, 1981") it should have been 01.07.2015. The said writ petition was decided on 25.02.2015 with a direction that the permissible age limit should be as on 01.07.2015 and all those who fall within the said cut off date should be allowed to submit their candidature.

6. Another writ petition bearing Writ-A No. 1205 of 2015 was filed by those who possessed the qualification of Bachelor Degree in Elementary Education (B. El. Ed.) challenging the same advertisement on the ground that this qualification had not been mentioned though it was mandatory as per the NCTE Regulations of 2011. The Court did not quash the advertisement but directed that a corrigendum be issued at the earliest preferably within a period of 15 days permitting the petitioners and those similarly situated to offer their candidature against the advertisement in question. This decision was rendered on 23.02.2015.

7. All the aforesaid judgments were passed prior to 05.03.2015 i.e. the last date for submission of forms but the relevant orders for compliance thereof were issued subsequently on 09.04.2015 extending the date for submission of such forms for candidates possessing D. Ed. (Special Education) from 16.04.2015 to 30.04.2015 and an advertisement was issued for this purpose on 15.04.2015. Another Government Order was issued on 02.06.2015 modifying the cut off date for fixation of age limit as 01.07.2015 and an advertisement was also issued in this regard inviting applications from eligible candidates and the date of submission of forms for them was fixed as 02.09.2015 to 11.09.2015. By a notification dated 31.08.2015 the same extension in date for submission of forms was granted to those who possesses the qualification of Special B.T.C. in the year 2004, 2007 and 2008. The judgment passed in Writ-A No. 1205 of 2015 was put to challenge in Special Appeal and thereafter before the Supreme Court by means of Special Leave Petition which was dismissed on 01.07.2015. Ultimately, on 04.12.2015 a notification was issued allowing such candidates to apply and extending the date for submission of forms by them from 14.12.2015 to 28.12.2015. The Government Orders were issued after initiation of contempt

proceeding.

8. It so happened that when the date was extended for D. Ed. (Special Education) candidates to 16.04.2015 to 30.04.2015, certain others who did not fall in the said category also applied, taking advantage of absence of any preventive mechanism in the Software/ Website of the opposite parties, and their names also got included in the mother list prepared by NIC. However, when this error was detected and they were excluded from the list vide Circular dated 10.10.2015, being aggrieved, some of these persons, namely, Anil Kumar Maurya and others filed writ petition before this Court at Allahabad bearing Writ-A No. 59443 of 2015 wherein an interim order was passed allowing the petitioners therein and those similarly situated to appear in the selection provisionally and if found fit to appoint them provisionally subject to result of the writ petition. The Special Appeal filed against the said interim order was dismissed by a Division Bench of this Court.

9. In the meantime, a writ petition bearing Writ-A No. 29047 of 2015 was filed by a person similarly situated to the petitioners herein alleging that certain other persons who had not applied by 05.03.2015 had been allowed to participate in the selection in pursuance to the advertisement dated 12.12.2014 though the said benefit had to be confined to those in whose case orders had been passed by the Court and who possessed the qualification of D. Ed. (Special Education) and not to all and sundry, but, in the garb of extension of date several B.T.C. Candidates whose results were declared up to 29.04.2015 i.e. after 05.03.2015 had been allowed to participate and therefore, the field of consideration had been enlarged to an extent prejudicial to the interest of the petitioners. The said writ petition was dismissed on 19.05.2015 with the observation "mere inclusion of other candidates for selection would not in any manner be a cause of injury to the petitioners. The petitioner has to participate in the selection according to its own merit and, therefore inclusion of other candidates can not be resisted by the petitioners."

10. The counselling for the aforesaid post was held all over the State of U.P. on 26.10.2015 and 06.11.2015 in pursuance to the Circular of the Board dated 10.10.2015. In the first counselling only those who had undergone the training in the district concerned were allowed to appear while in the second counselling outsiders were also allowed. The counselling for the candidates possessing the qualification of B. El. Ed. has not been held as yet.

11. In District of Faizabad where the petitioners had appeared, a select list of 167 persons against 200 seats was prepared and was duly signed by the four members of the Selection Committee referred in the Rules of 1981. For the remaining 37 seats, counselling was held on 06.11.2015 and based on the aforesaid exercise a composite list of 200 selected candidates was prepared, including the 167 referred herein above, but, the said composite list, which is on record including the original record, does not bear the signature of the members of the Selection Committee but there is no doubt that the list was prepared and

obviously it was prepared by the Selection Committee as none else could have prepared it.

12. In District of Sultanpur, based on such exercise, appointment orders were issued thought according to the opposite parties erroneously were subsequently cancelled within a reasonable time, but, on writ petitions being filed the said cancellation orders were stayed. The said writ petitions are still pending before this Court at Allahabad and Lucknow.

13. At this stage the State Government realised that consequent to the extension of last for submission of forms frequently and several times a situation had arisen where different dates of eligibility had come into existence for different categories, as, in the absence of any such specific date having been stipulated in the Rules, the Government Order dated 09.12.2014 or the advertisement it was the last date for submission of forms which had to be treated as the date for determining eligibility. Thus, initially the date of determining eligibility (other than age eligibility) was 05.03.2015 but for the D. Ed. (Special Education) candidates it was extended to 16.04.2015-30.04.2015, for Special B.T.C. of the year 2007, 2007 and 2008 it was extended to 02.09.2015 to 11.09.2015 and for B. El. Ed. it was extended to 14.12.2015 to 28.12.2015, the cut of date for age limit was extended from 01.07.2014 to 01.07.2015. Therefore, the State Government in its wisdom opined that there has to be uniformity in the date of determination of eligibility otherwise there would be allegation of discrimination and arbitrariness in the selection as others who were eligible but did not apply by 05.03.2015 or those who acquired the eligibility after 05.03.2015 and were covered by the judgment and order of the Courts but could not apply or not having approached the Courts could not apply could feel aggrieved, therefore, in these circumstances, specially, as, in Anil Kumar Maurya case those who had acquired the qualifications after 05.03.2015 had been allowed to participate provisionally and even be appointed provisionally, therefore, the State Government felt that it would be unfair to deprive others who were similarly situated from participating, consequently, it issued the Government Order dated 18.12.2015 extending the last date for submission of forms for all to 15.01.2016 fixing the time schedule for their counselling as also subsequent issuance of appointment orders of all selected candidates through out the State of U.P.

14. It is this Government order and the consequential advertisement which is under challenge.

15. It is not out of place to mention that it is not very clear as to what was the stage of selection in the districts other than those referred herein above when the impugned decision was taken, but, during the course of argument in response to a query of the Court, Mohd. Mansoor, learned Chief Standing Counsel made an oral statement at the bar that selections were at a similar stage in other districts as in District- Faizabad, as, the counselling had taken place all over the State of U.P. on the same dates.

16. The challenge by the petitioners to the impugned decision is on the ground that in District- Faizabad as against 200 seats counselling and selection had already taken place. A list of 167 candidates duly signed by the members of the Selection Committee had also been prepared and even for the remaining 37 seats the counselling took place and based thereon a composite select list was prepared and as far as the absence of signatures of selection committee members on the said composite list is concerned, it was submitted that there appears to be some manipulation to defeat the rights of the petitioners herein, but in any case, the selection was almost completed in all respect and the contention of the opposite parties that the said lists were eligibility lists or tentative selection list is absolutely misconceived as they had been prepared after counselling and there was no concept of a tentative list in the rules.

17. The contention was that extension of the last date for submission of forms at this stage of the selection process was patently unreasonable and arbitrarily. The judgments of the Courts had been rendered prior to the last date for submission of forms i.e. 05.03.2015, but, the opposite parties delayed compliance thereof and issued the consequential orders belatedly, moreover, while extending the last date of submission of forms the date of eligibility did not get extended automatically, as, in all the Government Orders and advertisements issued subsequently there was a clear stipulation that all other conditions would be the same as mentioned in the Government Order dated 09.12.2014. Even otherwise the date of eligibility would not get extended automatically, as, this was not the intention of the Courts in any of the judgment and order passed by it.

18. It was submitted that the opposite parties have unnecessarily created confusion and complicated the process to the detriment of the petitioners. The private opposite parties are not similarly situated to those for whom the date had been extended earlier, therefore, the impugned extension is not reasonable, firstly for the reason they do not possess the qualification those candidates possessed; secondly as far as parity with Anil Kumar Maurya and others is concerned, these persons had approached the Court and their rights are still sub-judice in the writ petition filed by them which is pending. According to the State itself, these persons had illegally submitted their online application forms, therefore, there was no question of extending the benefits granted to them to others as it would amount to perpetuating the illegality already committed and also granting of parity in illegality. The alleged absence of uniformity as regards the date of eligibility is a misconception and the attempt to bring about uniformity is without any rational basis. The judgment rendered on 19.05.2015 was rendered at a time when the counselling and selection had not taken place, moreover, the Court did not consider the relevant aspects of law and the provisions of the rules, therefore, it is no judgment in the eyes of law.

19. It was further submitted that the earlier extension of dates was only on account of the wrongs committed by the opposite parties, who could not take advantage of the same nor make the petitioners herein suffer on this count.

None of the private opposite parties possessed the requisite qualification as on 05.03.2015, therefore, they could not have applied in terms of the initial advertisement and the impugned decision gives undue benefit to them to the detriment of the petitioners and those who had applied within time.

20. The private opposite parties are not even similarly placed to Anil Kumar Maurya and others as their names did not find place in the mother list and they had not applied, even illegally, as had been done by Shri Maurya and others. He also submitted that subsequent orders/ advertisement were in continuation of the initial advertisement dated 12.12.2014 and Government Order dated 09.12.2014, therefore, mere extension of date for submission of forms would not ipso-facto imply extension of date for determination of eligibility. He contended that even a participant in selection specially one whose name figured in the list, could not be ousted or treated unfairly in the selection process even as per the dictum of the Constitution Bench in *Shankarsan Dass v. Union of India* reported in AIR 1991, 1612 which had been relied upon by the opposite parties. The rules of the game can not be changed in midst of the game.

21. He also invited the attention of the Court to the Rule known as U.P. Basic Education (Teachers) (Posting) Rules, 2008 (For short "Rules, 2008) to contend that not only the selection had taken place, but, as is evident from certain lists which are on record the required exercise had also been done under the aforesaid rules for appointment and posting, therefore, extension of the last date for submission of application forms at this stage was clearly unreasonable and arbitrarily. He also submitted that there were no B. El. Ed. candidates in District-Faizabad, therefore, the fact that their counselling had not yet taken place and on its being held the merit would be reshuffled accordingly, is of no consequence in District- Faizabad. The petitioners would be gravely prejudiced by the impugned decision as their candidature has already been considered and they have been included in the select list and there was nothing left to be done in the selection except issuance of appointment letters. Equality could only be brought about amongst likes and not unlike.

22. Learned counsel for the petitioner relied upon judgments reported in 1993 (2) SCC 429; *Dr. M. V. Nair, v. Union of India and others*, 1994 (2) SCC 723; *U.P. Public Service Commission, U.P. v. Alpana*, 2000 (5) SCC 262; *Bhupender Pal Singh and others V. State of Punjab and others*, 2013 (4) SCC 540; *Tej Prakash Pathak and others v. Rajasthan High Court and others*, 2009 (14) SCC 517; *Tamil Nadu Computer Science v. Higher Secondary School Computer Teachers Association*, 1994 (6) SCC 349; *Gauri Shanker and others v. Union of India and others*, 1969 (1) SCC 817; *U.P. Electric Power v. State of U.P.*; AIR 1955 SC 191; *Buddhan Chaudhari v. State of Bihar*, AIR 1958 SC 538; *Ram Krishna Dalmia v. Justric S.R. Tendulkar*, 2009(12) SCC 231; *Haryana State Electricity Board v. Gulshan*, 2012 (3) SCC 522; *State of Gujarat and others v. S.R. Oil Ltd. and another*, 2003 (8) SCC 648; *Sought Eastern Coal Field Ltd. v. State of M.P. and others*, AIR 1953 SC 136; *Lal Bhagwant Singh v. Kishan Das*, 1988 (2) SCC 602;

A.R. Antulay v. R.S. Nalaya, 2007 (10) SCC 385; Noida Entrepreneurs Association v. Noida and others, 2007 (2) SCC 130; Teri Oat Estate v. Union Territory Chandigarh, 1994 (6) SCC 651; Tata Cellular v. Union of India, 2008 (7) SCC 11; Minami Malhotra v. High Court of Delhi, 2008 (3) SCC 512; K. Manju Shree v. State of Andhra Pradesh and others, 2013 (12) SCC 171; Manoj Manu and another v. Union of India, 1994 (Supp 1) SCC 250; Dr. H. Mukherjee v. Union of India, 2010 (7) SCC 678; East Coast Railway and another v. Mahadev Appa Rao, 2010 (11) SCC 674; Union of India v. Pritilata Nanda and 2011 (14) SCC 739; Chairman, B.S.N.L. v. Mishri Lal and others.

23. Mohd. Mansoor, learned Chief Standing Counsel appearing for the State and its authority on the other hand submitted that on account of the frequent extension of dates for submission of forms, the date of eligibility also got automatically extended, consequently, a situation arose where there was no uniformity in the said date. Considering the facts which appeared before the State Government it was clearly a case resulting in discrimination to the candidates who could not apply earlier. The petitioners herein had no locus standi to maintain this writ petition in view of the law laid down in Shankarsan Dass (supra) that a selected candidate does not have any right of appointment. None of their rights much less fundamental rights have been violated. They are still participants in the selection, mere enlargement of the zone of consideration can not be a ground for interference in the matter. The impugned decision is a policy decision taken by the Government on the basis of material available and the opinion formed is not such which could be said to be perverse or irrational, therefore, there is no scope for interference with such a bona fide decision which is in the interest of selection process being completed and sustained. The Rules of 2008 relied upon by the petitioner have no application at this stage of selection and the contentions based thereon are misconceived.

24. Learned counsel for the Basic Education Officer and Board adopted the same stand as the State Counsel and supported the impugned decision. He contended that the selection process was still underway. The alleged select list was in fact an eligibility list referable to Rule 14 (2) (3) of the Rules, 1981. It is referred as a tentative select list, therefore, it has not attained finality even at the level of the Selection Committee. It has not been approved by the Selection Committee. Therefore, the State Government can very well extend the last date for submission of forms to avoid arbitrariness, discrimination and to bring about uniformity and equality amongst all. He referred to the Circular Dated 10.10.2015 to show that the requirement of preparing a first tentative select list based on first counselling followed by a second select list based on the second counselling was prescribed in the Circular of the Board dated 10.10.2015 and the process of selection had been undertaken accordingly, which was in no way violative of the scheme and spirit of Rules and provisions contained therein. The petitioners do not have an indefeasible right to appointment nor any enforceable right to maintain this Writ Petition.

25. The learned Senior Counsel appearing for the private opposite parties contended that the impugned decision was a bona fide decision taken by the State Government based on the material available before it considering the peculiar facts of the case wherein the date for submission of forms had to be extended time and again, for whatever reason, and others who were similarly situated and who had also acquired the qualification after 05.03.2015 including Anil Kumar Maurya and others had been allowed to participate in the selection and the State Government itself had allowed others who had acquired such eligibility after 05.03.2015 to participate vide notification dated 31.08.2015, which was never challenged by the petitioners, Writ-A No. 29407 of 2015 filed by a person similarly situated to the petitioners herein said action was dismissed on 19.05.2015, therefore, if the State Government had taken a bona fide decision for justifiable reasons mentioned therein to avoid discrimination and bring about equal opportunity to all, such decision is not liable to be interfered in the exercise of extraordinary discretionary jurisdiction in the absence of any allegation of mala fide by the petitioners and in the absence of any such mala fide from the records, as, such action is in conformity with the letter and spirit of Article 14 and 16 of the Constitution of India. No prejudice is being caused to the petitioners, they have not been ousted from consideration rather they have already been considered. The impugned decision only allows others to be considered along with them and nothing more.

26. The selection contemplated in the rules, does not involve any written examination or interview. This selection is based on marks already obtained by them in the earlier examinations. The select list has to be prepared as per the Rules of 1981 and the appendix annexed therewith. No large exercise was required to be undertaken as a consequence of the impugned decision. The counselling for the B. El. Ed. has not yet taken place and as it was bound to take place under the orders of the Court, it would require a reshuffling of the merit list prepared in the districts, if any. The fact that this may not be necessary in District- Faizabad, is not relevant, as, the Court is considering a policy decision which has an impact all over the State of U.P. and not merely in District-Faizabad, therefore, the Court while taking a decision in the matter should keep in mind the principles and rationale involved and not peculiar facts here and there, therefore, on principle the decision is absolutely justified. Causing of mere inconvenience to the petitioners without violation of any right, can not be a ground for interference. It is not a case of whimsical exercise of power. A considered and reasoned decision has been taken by the State for which there was sufficient material before it.

27. Shri Ramesh Pnadey, Advocate appearing for the interveners advanced his argument on the same lines as the other opposite parties, therefore, the same need not be narrated in detail.

28. As far as the contention of the opposite parties that the petitioners do not have any enforceable right to seek appointment and being mere participants in

the selection they can not maintain this writ petition for the relief claimed is concerned the same can not be accepted. The relief no. 2 seeking appointment is merely consequential to relief no. 1. Though a selected candidate or a mere participant in selection, does not have an indefeasible right to appointment, they are entitled to maintain a petition challenging an action relating to such selection on grounds of it being arbitrary unreasonable or amounting to changing the Rules of the game in its midst etc. The petitioners have come to Court alleging arbitrariness in selection process by extension of the last date for submission of form at such a stage when the selection is either over or almost concluded which according to them is apparently unreasonable. The opposite parties are under obligation to hold the selection process in a reasonable, fair and transparent manner, therefore, considering the allegations, it can not be said that this writ petition filed by the petitioner is not maintainable or they do not have any enforceable right. Even in matters where selections are cancelled, such action of cancellation can be challenged on the ground that it is arbitrary and whimsical or capricious, therefore, this objection is rejected. Whether any interference is to be made on merits or to what extent, is a separate issue which is to be considered hereinafter. If relief no. 1 is not granted then relief no. 2 can not be considered at this stage as further selection etc. will have to take place.

29. Article 21-A of the Constitution confers a fundamental right of free and compulsory education to all children of the age of 6 to 14 years in such manner as State may by law determine. The Central Legislature has promulgated the Right to Education Act, 2010. Such right can not be realised unless adequate number of duly selected and qualified teachers are made available in Primary Schools. The State is under an obligation to provide such teachers and to undertake a process of their selection and appointment in fair, transparent and reasonable manner in accordance with rules, expeditiously.

30. In the present case the vacancies were determined on 09.12.2014, more than one year has lapsed but recruitment process has not been taken to its logical end by issuance of appointment letters. The advertisement was issued on 12.12.2014 fixing the last date for submission of forms as 05.03.2015 but the opposite parties committed an apparent error in not including the mandatory qualifications prescribed by the NCTE for such selection thereby excluding such candidates from the zone of consideration, depriving them of their right of equal opportunity in public employment as per the relevant rules. Consequently this constitutional Court intervened and passed necessary orders which have already been referred herein above. The opposite parties did not even bother to look into the relevant rules in this regard specially Rule 6 under which the cut off date for determining the age limit was to be the 1st date of the recruitment year following the year in which the advertisement was made, instead, they fixed the cut off date as 01.07.2014, whereas, it should have be as 01.07.2015 thereby compelling this Court once again to interfere in the matter. The other omission by the State was in the matter of fixing a specific date for determination of eligibility as opined by the Supreme Court in the case of Bhupender Pal Singh and others

v. State of Punjab and others reported in 2000 (5) SCC 262 (paragraph 13 and 14) which has led to the confusion and alleged absence of uniformity in this regard ultimately leading to the impugned decision. The negligent and casual manner in which the selection process has been undertaken by the authorities hardly needs to be emphasised and is evident from the facts narrated herein above. When the Courts passed the judgments prior to 05.03.2015 it was not the intention that date for determining the eligibility of the candidates be also extended, in any case all the judgments were rendered prior to 05.03.2015 but the compliance was made belatedly, may be, because of further litigation in some of the matters. Much of the uncertainty and differential treatment resulting there from would have been avoided by the State Authorities by specifically providing that the date for determining the eligibility conditions would continue to be 05.03.2015 irrespective of the extension in the date for submission of forms, as, this was permissible and in fact the factual situation enjoined upon the State to do so and there is nothing in law which prohibited it from doing so.

31. From the conspectus of judgments cited before the Court which are 1993 (2) SCC 429; Dr. M. V. Nair, v. Union of India and others, 1994 (2) SCC 723; U.P. Public Service Commission, U.P. v. Alpana, 2000 (5) SCC 262; Bhupender Pal Singh and others v. State of Punjab and others, 2013 (4) SCC 540; Tej Prakash Pathak and others v. Rajasthan High Court and others and 2009 (14) SCC 517; Tamil Nadu Computer Science v. Higher Secondary School Computer Teachers Association the law on the subject is that if the date for determining the eligibility is not prescribed in the rules or in the advertisement then it shall be the last date for submission of form. In Bhupender Pal Singh's case (supra) the Supreme Court enjoined upon the authorities to clearly lay down a specific cut off date by reference to which the applicants were required to satisfy their eligibility. By fixing the last date for submission of form as 05.03.2015 obviously the intention of the State was that the eligibility would be determined on the said date, therefore, while extending the same subsequently in the compelling circumstances with which it was faced, though it was of its own making consequent to its own wrongs, the least that the State Government could have done was so to specify the aforesaid as 05.03.2015 as this would have brought about uniformity/ equality amongst the candidates which is now being pressed by the State and would have avoided unnecessary litigation as also delay in the selection process but obviously the State Authorities did not at apply their mind to this aspect of the matter and woke up only in December, 2015 when in many districts the counselling had already been held in October/ November, 2015 and in at least two districts, if not more, a select list had also been prepared which is being termed as tentative select list though in the Rules there is no such requirement and the same has been brought into existence by a Circular of the Board dated 10.10.2015 may be to facilitate the holding of selection through out the State considering the huge exercise involved. Contention of the opposite parties that these lists were in fact eligibility lists referable to the Rule 14 (2) or (3) is absolutely misconceived as such an eligibility list would not be prepared

after counselling and it would not have been referred as a select list and would not have been prepared by the Members of the Selection Committee.

32. On a bare perusal thereof, it is apparent that these are select lists prepared in terms of the Rules based on the parameters prescribed therein. The attempt to pass them off as eligibility lists is nothing but a desperate attempt on the part of the opposite parties to justify their action impugned herein. However, without dwelling on this issue any further, as, irrespective of the rival contentions on this issue, the fact of the matter is that selection had reached a stage where it was before the Selection Committee and at this stage the State Government decided to extend the last date for submission of forms to 15.01.2016 for the reasons already mentioned herein above. It is also trite that at such a stage the concerned authorities could have cancelled the selection itself though they did not do so. It is also trite that a selectee or a mere participant in selection, does not have any enforceable right to appointment and would not be able to challenge such cancellation unless of course it was proved that it was whimsical or without any rational basis. The State in its wisdom instead of cancelling the selection has merely extended the last date for submission of forms so as to bring about uniformity/ equality of opportunity in the matter of determination of eligibility as due to the facts already stated above the eligibility of different categories of candidates had to be determined on different dates though this Court has no hesitation in saying that this situation has come about only on account of failure of the authorities to take appropriate decision at the appropriate stage. Nevertheless, it is a fact that eligibility of different categories of candidates has been considered on different dates. As a consequence of non specification of a particular date for determination of eligibility once the date for submission of forms was extended the said date also got extended automatically by operation of law already referred herein above. Taking advantage of this extension, some of the persons, as per the stand of the opposite parties themselves, submitted their online application forms though they were not covered by the judgments and orders of this Court and in the case of these persons this Court passed an interim order on 15.10.2015 not only permitting them to participate in the selection but also to be appointed if found fit even though provisionally and subject to the result of the writ petition. All these persons, namely, Anil Kumar Maurya and others and also those similarly situated to them were not eligible on 05.03.2015 but have acquired eligibility based on their qualification acquired after the said date.

33. In addition to the aforesaid, the State on its own extended the date for submission of forms for Special B.T.C. candidates of the year 2004, 2007 and 2008. These persons also acquired eligibility after 05.03.2015.

34. Therefore, the fact of the matter is that several persons who have acquired eligibility after 05.03.2015 have been allowed to participate in the selection. The private opposite parties herein have also acquired eligibility after 05.03.2015 though they did not approach the Court nor submit their application forms as Anil

Kumar Maurya and Others, consequently, their name did not figure in the mother list, but, the fact of the matter is that they were otherwise similarly situated to those who have acquired eligibility after 05.03.2015 and have been allowed to participate in the selection whether under the orders of this Court or otherwise. It is this factual situation which has prevailed upon the State Government in taking the policy decision so as to avoid discrimination and ensure equality of opportunity and uniformity in the selection process by extending the date of submission of forms and consequentially the date of determination of eligibility for all others irrespective of the qualification and category to which they belong, so that they may also apply and participate in the selection and appointment as against the 15,000 vacancies. The decision of the State Government, considering the facts of the case and taking an overall view of the matter, as, the selection is to take place all over the State of U.P. and not merely in Faizabad and the policy decision is also to be applied all over the State, can not be said to be such an unreasonable or arbitrary action so as to warrant interference in the exercise of discretionary extraordinary jurisdiction under Article 226 of the Constitution, as, the reasons mentioned in the impugned Government Order based on the factual situation referred therein, do form a reasonable basis for taking such a view of the matter so as to avoid violation of the Article 14 and 16 of the Constitution of India.

35. No doubt the petitioners herein are entitled to rely on Article 14 and 16 in their support but equally the said plea is available to the private opposite parties also and in the peculiar facts of the case, the extension of the date as aforesaid, can not be said to be wholly unjustified or perverse. It is a policy decision which has been taken for reasons which are germane though the Court would like to add a caveat that this should not be made a precedent as it unnecessarily puts a cloud on the sanctity and certainty of the selection process. As there is no allegation of mala fide nor that the impugned decision has been taken with oblique intent and none is apparent from the records also, therefore, irrespective of the faults committed by the State Authorities, the Court is not inclined to interfere in the matter.

36. The recital contained in the subsequent Government Orders and Advertisement that the other conditions would continue to be the same as mentioned in the Government Order dated 09.12.2014 does not help the case of the petitioners as neither the Government Order dated 09.12.2014 nor the Advertisement dated 12.12.2014 specifically mentions any date for determination of eligibility conditions (other than age eligibility) consequently it was to be determined by operation of law on the basis of the last date for submission of forms which got extended several times for different category of candidates based on their qualification etc.

37. All other issues raised by the petitioners regarding the select list etc. pale into insignificance for the reason that even if it is assumed for a moment that the selection had reached such a stage where the select list was to be finalised, the

fact of the matter is that even at this stage the authorities could have cancelled the selections for justifiable reasons and the factual situation which arose in the present case and the reason mentioned in the impugned order could have also been made a basis for doing so, but, instead, they have continued the selection in the manner already referred herein above which does not prejudice the petitioners nor cause any grave miscarriage of justice or such a flagrant violation of law as to warrant interfere under Section 266 of the Constitution, as, they continue to be participants in the selection and consequent to the impugned decision all that happens is some more persons will also be considered along with them. The selection does not involve any written test or interview but merely ascertainment of merit on the basis of marks already obtained by the participants in their educational examination and this has to be determined in accordance with the relevant rules and appendix annexed therewith, therefore, the petitioners do not have to appear in the selection afresh.

38. The counselling for B. El. Ed. has not yet taken place in Faizabad but it is to take place as there are orders of this Court in this regard. Based thereon a reshuffling of merit in various districts, even if not in Faizabad will take place, therefore, if such reshuffling takes place based on account of the proposed counselling consequent to the impugned decision, it can not be said that any grave prejudice would be caused to the petitioners. Mere inconvenience to them can not be a ground by itself for quashing the impugned decision.

39. It is not out of place to reiterate that in one of the matters when a similarly situated person approached this Court, the Court vide judgment and order dated 19.05.2015 declined to interfere in the matter. This is only one of the reasons for declining to interfere in the present case coupled with the reasons already mentioned herein above.

40. It is in the interest of all that the selection process be completed at the earliest and selected teachers be appointed for imparting teaching to students so as to realise the goal fixed by the Constitution vide Article 21-A read with Chapter IV thereof.

41. The opposite parties shall proceed to finalise the recruitment process by issuance of appointment orders within a period of six weeks from the date a certified copy of this order is received by them. For this purpose they shall issue a revised schedule within one week from date of issuance of a certified copy of this order.

42. Having said so, in the end, it is necessary to provide that the Principal Secretary, Education shall ensure that in future the selection process is initiated after a proper study of the relevant rules and law on the subject and situation such as the one which has arisen in this case shall not be allowed to occur and if it does, then, personal liability of the concerned officials shall be fixed in the matter so as to preserve the sanctity and certainty attached to such recruitment process. After the present selection process is over and appointments have been

made he shall look into the entire exercise and ascertain the faults on the part of the authorities so as to issue relevant guidelines and if necessary to make necessary amendments in the relevant rules to incorporate a fair and reasonable procedure therein to ensure a proper and fair selection. It shall be ensured that in future selections the date on which the eligibility is to be determined is specifically fixed and not left to unforeseen circumstances such as have arisen in this case.

43. This Court had initially passed an interim order in this case on 25.01.2016 staying the extension of last date for submission of forms vide Government Order dated 18.12.2015 with liberty to opposite parties to proceed with the selection subject to result of this writ petition but the selection did not proceed and as per the order passed in Special Appeal the opposite parties were asked to await decision in the writ petition. While considering the interim relief matter this Court did not consider the plea regarding determination of eligibility of candidates on different dates in pursuance to earlier extensions in the last date for submission of forms and its impact on the selection process and certain other aspects, which have been considered now.

44. The original record which has been retained by this Court are returned back to the learned Chief Standing Counsel Mohd. Mansoor and Shri Ajay Kumar, learned Standing Counsel for being handed over to the concerned authorities.

45. For the reasons aforesaid, both the writ petitions are dismissed but without prejudice to the rights of the petitioners to be considered for selection and appointment on the post in question as per law.