

(2015) 08 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 15964 of 2013

Mokim and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-08-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (2015) 08 PAT CK 0009

Hon'ble Judges : Mihir Kumar Jha, J

Bench : Single Bench

Advocate : Santosh Kumar, Fakhruddin Ali Ahmad and Pankaj Kumar Jha, for the Appellant; S. Arshad Alam, AAG14 and Kaushal Kumar Jha, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Mihir Kumar Jha, J—Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:

"(a) To direct the respondent to consider the case of the petitioners for the appointment on the post of Assistant Teacher in the elementary schools in the State of Bihar who have denied despite possession of prescribed education qualifications.

(b) To quash the order memo No. 7/M-1-58/12/519 dated 3.8.2012 issued under signature of Chief Secretary Government of Bihar whereby the claim of the petitioner have rejected."

2. Learned counsel for the petitioner in support of the aforementioned prayer has submitted that despite the fact that all the 26 petitioners had possessed the requisite qualification for the post of Urdu teacher as per Advertisement No. 210 of 2010 and Special Elementary Teachers Recruitment Rules, 2010 (hereinafter referred to as "the 2010 Rules") they have been illegally held to be disqualified for the aforesaid post. In this regard the main emphasis of the learned counsel

for the petitioners is that once the State Government had itself declared the qualification of Fokania to be equivalent to Matriculation by an order dated 1.9.2010 the petitioners being the Matriculate with Urdu as one of the subject of 100 marks cannot be held to be disqualified for the advertised post of Urdu teacher in Advertisement No. 210 of 2010.

3. Learned counsel for the petitioner in this regard had also referred to the judgment of the Apex Court in the case of Uma Shankar Sharma Vs. Union of India (UOI) and Others, AIR 1980 SC 1457 : (1981) 1 LLJ 483 : (1980) 3 SCC 202 : (1980) 3 SCR 730 : (1981) 1 SLJ 154 : (1980) 12 UJ 595 and in the case of Dr. B.L. Asawa Vs. State of Rajasthan and Others, AIR 1982 SC 933 : (1982) 44 FLR 308 : (1982) 1 SCALE 222 : (1982) 2 SCC 55 : (1982) 3 SCR 444 : (1982) 1 SLJ 416 .

4. Learned counsel for the State, on the other hand, has submitted that there would be no question of the petitioners being held to be eligible for the post of Urdu teacher, inasmuch as a bare reading of 2010 Rules would leave nothing for speculation that for the post of Urdu teacher only three qualifications were prescribed, namely:

(i) Fokania with two years teachers training

(ii) Maulvi with two years teachers training and

(iii) Intermediate Examination with Urdu of 200 marks with two years teachers training/B.Ed.

5. Explaining further Mr. Arshad Alam, learned counsel appearing on behalf of the State, has submitted that the appointment on the post of Urdu teacher in Primary Schools is as a language teacher for which there has to be experts in Urdu and that is how a simple Matriculate with 100 marks of Urdu cannot be held to be qualified, especially in view of the provisions made in the Rules. He has further explained that the petitioners also cannot equate their case with the teachers of general subject where under certain conditions Matriculates with teachers training qualification have been held to be qualified in terms of the Rule itself.

6. In the considered opinion of this Court the main issue for consideration would be as to whether the petitioners have fulfilled the qualification for the post of Urdu teacher in terms of the Rules and the advertisement.

7. Let it be noted that in terms of the direction of the Apex Court in Contempt Petition (Civil) No. 297/2007 (N.K. Ojha v. Anjani Kumar Singh) the State Government through the Director of Primary Education had framed Bihar Special Elementary Teachers Appointment Rules, 2010 (hereinafter referred to as "the 2010 Rules"). The object/preface of the aforementioned 2010 Rules itself would be sufficient to indicate that such Special Rules were framed by the State of Bihar only in the light of the observation and direction of the Apex Court in the case of N.K. Ojha (supra) to exercise the power of one time appointment on the

post of teachers in the Government Primary Schools in the State of Bihar. In this regard it has also to be kept in mind that the Rules for appointment of regular teachers in all the Primary Schools otherwise had already been repealed with effect from 1.7.2006 in terms of Rule 20(i) of the Bihar Panchayat Teacher Appointment Rules, 2006 which had already come into force with effect from 1.7.2006 and therefore, 2010 Rules were framed only to make appointment on 34540 posts of teachers in Government Primary Schools with a cut off date of 23.1.2006. This would become more clear from 2010 Rules as was notified by the State Government vide its notification No. 7/NI 1-61/09/730 dated 8.6.2010, which reads as follows:

8. In terms of the aforementioned Rules the Commission in view of the requisition of the State Government contained in the letter dated 8.6.2010 had issued advertisement No. 210 of 2010 wherein the last date for filling of the application was 19.7.2010. The aforesaid advertisement being relevant for the purposes of this writ application is quoted hereinbelow:

9. This Court would not like to go into the detailed action taken by the State of Bihar as with regard to preparation of panel in terms of the aforementioned advertisement as they have already been incorporated in the main judgment relating to appointment on the post of 34540 post of teachers in its judgment dated 15.1.2014 in C.W.J.C. No. 17899/2012 (Kanti Kumri v. the State of Bihar & ors.). Suffice it to say that the panel which was prepared in terms of advertisement No. 210 of 2010 was finalized under the supervision of the Apex Court, inasmuch as it was the report of Hon"ble Justice S.K. Chattopadhyaya, a retired Judge of Patna High Court, which was approved by the Apex Court in its order dated 13.10.2011 wherein the final merit list/panel prepared by Justice Chattopadhyaya, the Special Officer appointed by the Apex Court, was accepted without any change or modification as would be evident from the order of the Apex Court dated 13.10.2011 quoted hereinbelow:

"Contempt Petition (C) No. 297 of 2007, filed in S.L.P. (C) No. 22882 of 2004, arose out of an alleged breach of undertaking said to have been given on 18th January, 2006, by the State of Bihar and the order passed on the basis thereof on 23rd January, 2006, by this Court in S.L.P. (C) No. 22882-22888 of 2004. As we have indicated in our order dated 9th January, 2009, a number of writ petitions had been filed against the State of Bihar, raising issues relating to recruitment of teachers in primary schools. At one stage, it was brought to our notice that on account of changes in the policy, trained teachers who were in place at the time when the undertakings were given, could not be accommodated. Accordingly, we had passed orders directing that the trained teachers who at one time were less than the number of vacant posts, should be given appointment in the vacancies that were available. Subsequently, however, there was some discrepancy as to the number of vacancies available as against the number of teachers to be accommodated. Accordingly, we adopted a figure from an advertisement which had been published for recruitment of primary

school teachers and took the number of available vacancies to be 34,540.

We had directed that the said vacancies be filled up with the said number of trained teachers as a one-time measure to give effect to the undertakings which had been given on 18th January, 2006 and 23rd January, 2006. Accordingly, without issuing a Rule of Contempt, we had directed that the said vacancies be filled up from amongst the trained teachers, who are available in order of seniority.

Subsequently, however, it came to light that the number of candidates available were much more than the number of vacancies and there were also serious doubts raised about the eligibility of some of the candidates and some of the institutions from which they alleged to have received their training. In our order of 19th January, 2011, we had indicated that certain incongruities had been pointed out on behalf of the petitioners with regard to the list of eligible candidates furnished by the State of Bihar.

As a result, the State of Bihar, was directed to bring out a fresh list in terms of the orders which we had passed on 9th December, 2009 and 12th May, 2010, in order of seniority, incorporating the names of each and every candidate and the category to which they belonged. As the lists prepared were disputed, we thought it fit that in order to resolve the anomalies, a neutral person should be entrusted with the work of settling the list over which the dispute had arisen and, accordingly, by the said order we appointed Justice V.A. Mohta, a retired Judge of the Bombay High Court, who retired as Chief Justice of the Orissa High Court, as Special Officer in whose presence the list could be settled. However, since Justice Mohta expressed his desire to be relieved of the responsibility, by our order dated 24th February, 2011, while relieving Justice V.A. Mohta of the responsibility of acting as the Special Officer, we appointed Mr. Justice S.K. Chattopadhyay, a retired Judge of the Patna High Court in his place, to take up and complete the finalization of the seniority list.

Subsequently, several sessions were held by the learned Special Officer, at which the parties and the institutions were duly represented by counsel and His Lordship, thereafter, submitted a finalized list of the eligible candidates in order of seniority, taking into consideration the various institutions and the certificates produced by the candidates concerned. On the basis of the said list, we had requested the State of Bihar to prepare a Roster for the purpose of reservation of seats according to the different reserved categories. Such exercise has also been undertaken and completed and the list prepared in terms of the Roster has also been produced in the Court in a sealed cover.

Today, when the matter is taken up, Mr. Kailash Vasdev, learned senior counsel appearing for the State of Bihar, has raised some issues, which need to be clarified.

The first issue relates to the claim of one Shri Abhinesh Kumar, s/o Shri Babua Nand Pandey, that his case has not been considered by the learned Special

Officer on account of the fact that he was not a party to the proceedings. On 13th July, 2011, Mr. Rama Murti, learned senior Advocate, submitted that Shri Abhinesh Kumar had, in fact, been impleaded as a party and, accordingly, we had directed the State of Bihar to consider his place in the seniority list as well. Today, we are informed by Mr. Kailash Vasdev that his position stands at serial number 62,551, which is far beyond the number of vacancies to be filled up. Accordingly, nothing further is required to be said at the present, as far as his claim is concerned.

The second issue which has been raised by Mr. Kailash Vasdev is with regard to the examination of the certificates and other documents that may be produced by the candidate concerned at the time of counselling and appointment. In the event, during scrutiny it is found that any of the documents do not conform to the requirements, the concerned authorities will be at liberty to take appropriate steps regarding the said candidate.

The third issue raised was with regard to the candidates, who are to retire at the age of 60 by 31st January, 2012, within which period they would have attained the age of 60 years. It is no doubt true that this matter has been pending for a long time and there is possibility of some candidates being adversely affected on account of such delay, but at the same time we cannot also overlook the fact that a person cannot be allowed the benefits of appointment without serving the institution for at least some length of time. Accordingly, the cases of the candidates who will be retiring on or before 31st January, 2012, need not be considered for appointment.

Fourthly, the Special Recruitments Rules, which have been framed by the State for the purpose of appointment of primary teachers in these vacancies, shall be deemed to have been modified to the extent of the directions which have been issued by this Court from time to time and also by this order.

There is yet another group of candidates, who claim to be adversely affected by the deliberations and the findings of the learned Special Officer while preparing the list of eligible candidates. It has been claimed by some of the candidates that their institutions have been shown to be unrecognized/fake, whereas from the very same institution other candidates have been found eligible, although, this has not been admitted by Mr. Kailash Vasdev, learned senior counsel appearing for the State of Bihar, we feel if that is the case, such candidates should not be deprived of an opportunity in future. Accordingly, we direct that such candidates will be at liberty to apply to the Bihar Staff Selection Commission for reconsideration of their status and the status of their institutions in respect of which objections have not been considered by the Special Officer. If such representations are made, the same should be considered and disposed of by the Commission, after giving the candidates an opportunity of hearing and placing their cases before the Commission and if it is found that their cases are genuine, the said candidates should be considered in future vacancies, when other vacancies are available, in order of seniority.

There is one more issue, which has been raised by Mr. Kailash Vasdev, and that will be evident from the chart which has been submitted by him showing the distribution of posts. According to the requirement of the posts for Physical Education Teachers, the number shown is 1084, whereas in terms of the distribution of the number of vacancies amongst 34,540 candidates, the figure shown is 4,972, which means that there is an excess number of posts vis-à-vis the number of candidates actually required. On the other hand, as far as Urdu as a subject is concerned, while the requirement is 12,862 in terms of the distribution of posts, the figure has been shown as 1,509, which falls far short of the required number of candidates. Accordingly, Mr. Vasdev has submitted that the excess number of posts in the Physical Education Subject category may be allowed to be shifted to the Urdu Subject category, which would compensate the Urdu Subject category to some extent. We feel that there is substance in such a submission and, accordingly, we allow such prayer as well. The State Government will be at liberty to transfer the excess vacancies in the Physical Education Group to the Urdu Subject category.

This brings us to the end of a long and arduous journey regarding the appointment of trained teachers in terms of the undertaking given in this Court by the State Government. We would like to express our deep sense of appreciation to Justice S.K. Chattopadhyay for having undertaken the tedious and painstaking exercise of finalising the list of eligible candidates to be considered for filling up the 34,540 vacancies identified during these proceedings.

We are informed that nothing remains to be paid to the learned Special Officer on account of his remuneration.

We also express our appreciation to all the counsel who appeared and helped us to resolve this matter for the benefit of the large number of trained teachers in Bihar who were waiting for appointment all these years.

Let the original Roster, as well as the seniority list, which have been produced before us in a sealed cover and is at present lying in the custody of Mr. Gopal Singh, learned Standing Counsel for the State of Bihar, be sent to the Human Resource Department, Government of Bihar, for implementing this order. We make it clear that since the Roster, as well as the seniority list, have been prepared in terms of the order of this Court, no Court shall entertain any other objections or applications with regard to the same.

The contempt petition, as well as the pending interlocutory applications are also disposed of by this order."

10. It is not in doubt that in the panel of Justice Chattopadhyaya, the Special Officer, approved by the Apex Court the names of the petitioners did not figure in among the eligible candidates. Let it be noted that the list of justice Chattopadhyaya contains 94205 candidates for all the three categories of the post of teachers, namely, general subject teacher, Urdu subject teacher and physical trained teacher. As a matter of fact the same list had also contained the names

of the candidates from 94206 to 123149, who were not found to be eligible either on account of not having qualification or some other allied reason. All the petitioners fall in this category of the list of Justice Chattopadhyaya as approved by the Apex Court from serial No. 94206 to 123149.

11. Let it be noted that after approval of the panel/merit list prepared by Justice Chattopadhyaya and its approval by the Apex Court on 13.10.2011 no Court other than the Apex Court had power and jurisdiction to touch the list. As a matter of fact even appointment being also monitored by the Apex Court this Court will have to read the ultimate order which was passed on 18.7.2013 in a very careful manner because while disposing of the pending special leave petitions and/or other intervention applications the Apex Court had made it clear that neither the panel will be disturbed nor any appointment of 32127 persons already made shall be interfered on the ground of filling of the permanent 2413 vacancies. To that extent it would be relevant to quote the order of the Apex Court dated 18.7.2013 which reads as follows:

"1. Special Leave Petition (Civil) Nos. 22882-22888 of 2004 were filed by several trained teachers for a direction upon the State of Bihar to appoint them in the vacancies in the post of primary teachers in the State of Bihar. The same was withdrawn on an undertaking given on behalf of the State of Bihar on 18th January, 2006, whereby the State of Bihar committed itself to recruiting and filling up the vacant posts of teachers in primary schools with trained teachers. The undertaking given by the State of Bihar reads as follows:--

"That in the meantime, it has been decided that trained teachers be recruited on the vacant posts available in the State of Bihar. The Bihar Elementary Teachers Appointment Rules, 2003 having been quashed by the Patna High Court, new recruitment rules are contemplated to facilitate recruitment of trained teachers in a decentralized manner, by giving them age relaxation as ordered by the High Court.

That Chapters 6 and 7 of the Bihar Education Code relating to oriental education and hostels and messes will be kept in mind, as directed by the Patna High Court, while making recruitment of teachers.

That it is respectfully submitted that since the number of available trained teachers in the State is expected to be less than the available vacancies, no test for selection is required to that extent, a reference to this Bihar Public Service Commission for initiating the process of recruitment of trained teachers may not be necessary, and the order of this Hon"ble Court and of the Patna High Court in this regard may be modified"

2. The application made for withdrawal of the Special Leave Petition was disposed of by this Court on 23rd January, 2006. Subsequently, when the State of Bihar failed to abide by its commitments and assurances, the petitioner, Nand Kishore Ojha, filed Contempt Petition (Civil) No. 207 of 2006, and the same was disposed of with a direction upon the State of Bihar to implement the

undertaking given earlier, upon a categorical statement being made that priority would be given to the trained teachers in matters of appointment in the said posts.

3. Thereafter, on account of further default on the part of the State of Bihar to honour its commitments, another Contempt Petition, being Contempt Petition (Civil) No. 297 of 2007, was filed and several applications were made in the Contempt Petition by trained teachers similarly situated, for being impleaded as parties to the proceedings. Ultimately, the learned Attorney General appeared before us on 25th August, 2009, and assured us that it was not the intention of the State of Bihar to resile from the undertaking given on its behalf. Since there had been a change in the administrative set up in the State of Bihar, the situation had become more complex and it had become difficult to work out a solution to the problem posed in filling up the vacancies in the post of primary school teachers throughout the State of Bihar. When Contempt Petition (Civil) No. 297 was taken up for consideration, we heard the same along with several interlocutory applications filed by several teaches having individual grievances and reserved judgment.

4. By our order dated 13th October, 2011, on the Contempt Petition filed in SLP(C) No. 22882 of 2004, arising out of the breach of undertaking given on 18th January, 2006, by the State of Bihar (illegible) passed on the basis thereof on 23 January, 2006 in the aforesaid SLP, we had passed orders directing that the trained teachers who at one time were less than the number of vacant posts should be given appointment in the vacancies that were available. Subsequently, however, there was some discrepancy as to the number of vacancies available as against the number of teachers to be accommodated. Accordingly, we adopted a figure from an advertisement, which had been published for recruitment of primacy school teachers and took the number of available vacancies to be 34,540. We had further directed that the said vacancies be filled up with the said number of trained teachers as a one time measure to give effect to the undertakings given on 18th January, 2006 and 23rd January, 2006.

5. Subsequently, it came to light that the number of candidates available were much more than the number of vacancies and there were also serious doubts raised about the eligibility of some of the candidates and the genuineness of some of the institutions from which they alleged to have received their training. In our order of 19th January, 2011, we had indicated that certain incongruities had been pointed out on behalf of the petitioners with regard to the list of eligible candidates furnished by the State of Bihar.

6. When the said dispute could not be resolved in terms of the list produced by the State of Bihar, we thought it fit to entrust a neutral person with the work and, accordingly, we had appointed Justice V.A. Mohta, a retired Judge of the Bombay High Court, we retired as Chief Justice of the Orissa High Court, as Special Officer in whose presence the list could be settled. However, since Justice Mohta expressed his desire to be relieved of the responsibility, by our order

dated 24th February, 2011, while relieving Justice V.A. Mohta, we appointed Mr. Justice S.K. Chattopadhyay, a retired Judge of the Patna High Court in his place, to take up and complete the finalization of the seniority list. After much debate, the list submitted by Justice Chattopadhyay was accepted and in terms of the recommendations made, 34,540 candidates were appointed in different primary schools in the State of Bihar.

7. The matter did not end there. On account of the fact that some of the candidates, who had not appeared before Justice Chattopadhyay, came up with fresh applications in support of their cases and urged that there were various omissions from the final select list, we decided to entertain the said applications, particularly, on account of the directions, which we had given, in our judgment and order dated 13th October, 2011, that no court would entertain any objection or applications with regard to the list of candidates, who had already been appointed, in terms of our earlier order.

8. During the hearing of these applications, special leave petitions and writ petitions, what emerged is that most of the applicants were aggrieved by some defect or the other in the preparation of the select list, which occurred on account of the failure of the candidates to give their relevant particulars to Justice Chattopadhyay.

9. Be that as it may, in the event, some discrepancies had crept in the final select list, the individual grievances contained various anomalies, which it is difficult for us to unravel. Accordingly, we modify our order dated 13th October, 2011, and allow the applicants to approach the High Court for redressal of their grievances. We also direct that the applications, special leave petitions and writ petitions filed before us be treated as withdrawn, with liberty to the parties to approach the High Court individually or otherwise, for relief, if any, but without, in any way, affecting the appointments of those teachers who have already been appointed against the vacant 34,540 posts and are working. We have been informed during the hearing that about 2413 posts out of the 34,540 posts were still left to be filled up. All the applications, Special Leave Petitions and Writ Petitions are, therefore, disposed of in the light of the aforesaid observations. We make it clear that none of the persons appointed out of the 34,540 vacancies should be disturbed in any way, but the question of filling up the balance vacancies may be taken into consideration, while disposing of the applications in question."

12. In the backdrop of the aforementioned order of the Apex Court dated 18.7.2013 this Court has already considered a large number of cases which has been disposed of in the case of Kanti Kumari (supra), operative portion whereof reads as follows:

"(i) For filling up 2413 posts, a Committee consisting of Director, Primary Education and Secretary to the Bihar Staff Selection Commission shall take any decision with the approval of Principal Secretary of Education Department. In

case of difference of opinion between the two functionaries, namely, Director, Primary Education and Secretary to the Bihar Staff Selection Commission, the decision taken by the Principal Secretary of the Education Department shall be final.

(ii) The Committee shall first issue notice in the newspaper for appearance of the 1929 candidates for counseling as per paragraph No. 7(a) of the counter affidavit filed in this case as has also been extracted earlier in paragraph No. 28 of this judgment. Such counseling of 1929 candidates must be completed within a maximum period of three months and letter of appointment to the eligible candidates having prescribed qualification and fulfilling other eligibility conditions must be issued within one month of the date of completing the counselling.

(iii) The cases of 366 candidates again reflected in paragraph No. 7(c) of the counter affidavit shown to be pending also must be decided one way or the other within the same period of three months and those found eligible should also be given letter of appointment in next one month.

(iv) In the likewise manner, the Committee also must re-consider the case of 118 candidates not earlier found fit for appointment as again explained in paragraph No. 7(b) of the counter affidavit and take a final decision in respect of them within the same period of three months and those found eligible among them should also be given letter of their appointment in next one month.

(v) Depending on the result of such exercise of fresh consideration of the cases of aforesaid 2413 candidates who were either absent during counseling or whose cases for appointment was kept pending or whose cases earlier was not found fit for appointment as explained in paragraph No. 7 of the counter affidavit and upon issuance of appointment letters to those found eligible, they shall be given one month's time for joining their post from their date of issuance of their appointment letter inserting a clause that if they do not join their post within the prescribed period, they shall forfeit their claim for appointment against 2413 posts for once and ever.

(vi) The Committee on expiry of the period of one month for joining of the eligible appointment from amongst aforesaid 2413 candidates shall obtain a district wise report of their joining in next one month and reascertain the position of left over vacancy on 2413 posts.

(vii) The Committee having taken the aforesaid steps and completed the exercise for considering the 2413 posts and on being reported the number of actual number candidates who had ultimately submitted their joining will re-ascertain the number of vacant posts in the respective subject category and would publish them in the newspaper as also on its official website inviting claims in a prescribed format from the left over candidates whose applications were received in time by the Commission and had formed part of 123149 of the total applications received as shown in the report of Hon"ble Justice S.K. Chattopadhyay the Special Officer submitted to Apex Court.

(viii) This inviting of claim must be done by the Committee within three months of issuance of last appointment letter to the category of 2413 candidates giving a clear one month time to remaining candidates to submit their respective claim in writing in a prescribed format only by registered/speed post. In no case any claim shall be entertained by receipt through hand in the department/commission.

(ix) The Committee only in exceptional cases and that too for reasons recorded in writing shall make any change in the seniority position in final panel of 94205 candidates as approved by the Apex Court on 13.10.2011 confining itself to make such correction in cases of clear clerical error or error of record or any other allied compelling reason. It is made clear that for such appointment only on the remaining vacancy after considering the cases of pending 2413 candidates, the revised merit list will be prepared not only in accordance with the terms and conditions set out in 2010 Rules and the advertisement but also in keeping with the statement made by the Respondents in paragraph No. 9(a) and 9(b) of the counter affidavit as also in the light of findings recorded in paragraphs 35 to 81 of this judgment.

(x) Such tentative revised merit list for the left over vacancies for each of the three subject teacher of general/Urdu/Physical Training after considering the claims shall be published in newspaper and official website of the Education inviting objection and thereafter on considering such objection the revised merit list shall be finalized and made public both in newspaper and official website. This entire exercise however must be completed by the Committee within six months of publication of notice inviting the initial claim from the candidates.

(xi) It is from this revised panel for the limited number of vacancy left out after consideration of 2413 pending cases in the manner indicated above, that steps for appointment for left over vacancy will be completed within two months of publication of the final panel. In no event, such appointments however shall be made beyond the number of post for each subject category which is 2007 for the general subject, 372 for Urdu teacher and 34 for Physical Trained Teacher as clearly stated before the Apex Court and this Court in the status report dated 30.08.2012 and the counter affidavit respectively."

13. It has to be also kept in the mind that aforesaid finding of direction given in the case of Kanti Kumari (supra) has been also approved by the Division Bench in its judgment dated 24.03.2015 in L.P.A. No. 1491 of 2014 (Bijendra Kumar Singh and others v. The State of Bihar and others) and its analogous cases wherein it has been held as follows:--

" Therefore, the appeals are dismissed, upholding the judgment rendered by the learned Single Judge in CWJC No. 17899 of 2012 and batch. It is, however, left open to the individual candidates to agitate their grievance before the Committee which, in turn, shall take the same into account, but shall stick to the same procedure that was followed in the selection of 32,127 teachers on the previous

occasion."

14. As a matter of fact this case was being heard together with the case of Kanti Kumari (supra) but on a prayer made by the learned counsel for the petitioners it was segregated for its being disposed of separately. The only over emphasised submission that even a Matriculate with 100 marks of Urdu subject will qualify for the post of Urdu teacher has also been examined and decided by this Court in the aforesaid case of Kanti Kumari (supra) wherein it has held as follows:--

"55. In C.W.J.C No. 25145 of 2013, the sole petitioner has sought a direction for his appointment against 2413 post of teachers on the ground that in the final select list the name of the petitioner was placed in the category of ineligible candidates at serial No. 114342 with a remark that he did not fulfill the requirement of the post of Urdu teacher as his full marks of Urdu was less than 200. Learned counsel for the petitioner has submitted that the petitioner had passed his matriculation examination in the year 1998 with Urdu as one of the compulsory subject of 100 marks, whereafter he was also admitted in the teacher's training course for the session 1990-92 and had also completed his teacher's training course and yet he was disqualified by wrongly interpreting the clause of qualification.

56. This Court would find that the petitioner did not possess the requisite qualification for the post of Urdu teacher which under 2010 Rules clearly laid down that for the post of Urdu teacher, a candidate must have passed Maulvi examination from Bihar Madarsa Education Board or any examination equivalent to intermediate standard or any equivalent examination with Urdu subject of 200 marks. The moment the petitioner admits that he had passed any matriculation examination with Urdu of 100 marks, he cannot be said to be qualified in terms of the qualification laid down in the 2010 Rules which has been already quoted above. For teaching of Urdu subject if the 2010 Rules had required passing of Maulvi examination of the intermediate standard to be a compulsory qualification and its equivalence was also well defined by inserting the provision of passing intermediate examination with Urdu subject of 200 marks, the petitioner in no view of the matter may be said to be qualified for the post of Urdu teacher.

57. Thus, this Court would find it difficult to interfere with the approved merit list where under the orders of the Apex Court the name of the petitioner has been included at serial No. 114342 in the category of ineligible candidates.

15. Having however regard to detailed submissions it has to be noticed that Rule 3(iv) specifically lays down the qualification for the post of Urdu teacher in the following terms:

16. This very qualification for the post of Urdu teacher was also produced in verbatim in the advertisement in Clause 5(iii) which again for the sake of clarity and convenience is reproduced hereinbelow:

17. A bare reading of the Rule and the terms of the advertisement, as quoted

above, would leave nothing for speculation that in order to be qualified for the post of Urdu teacher one had to be either the qualification of Maulvi or Intermediate level or its equivalent qualification which would be Fokania or Intermediate examination with Urdu as a principal subject of 200 marks apart from completion of two years teachers training course. A Matriculate with Urdu as one of the subject of 100 marks essentially does not fit in the aforementioned qualification and in fact the learned counsel for the petitioners also does not intend to say so. He has in fact proceeded to advance his submission on the basis of Rule 3(vi) which in order to be understood needs to be quoted hereinbelow:

18. Let it be noted that this was a special provision meant for the Intermediate and none else, not even Maulvi of Intermediate level. In fact this qualification by way of relaxation was only meant for the post of general teacher as prescribed in Rule 3(ii) and (v) where for the post of either general teacher or physical trained teacher the qualification of Intermediate was prescribed. This would become more clear from reading of Rule 3(ii) and (v) quoted hereinbelow:

19. Thus, on a bare reading of Rule 3 as a whole which has been also made part of the qualification laid down in the advertisement nothing remains for speculation that for the post of general teacher or physical teacher the basic qualification was to be of Intermediate but for such candidates who were resident of Bihar and had passed their teachers training course prior to 1995 i.e. before coming into force of NCTE Act a special provision was made that even Matriculates with two years teachers training course could qualify either for the post of general teacher or physical trained teacher. Any other interpretation of the Rule much less the way learned counsel for the petitioners wants to read it for the post of Urdu teacher would itself nullify the qualification laid down for the post of Urdu teacher under Rule 3(iv).

20. Let it be noted that it was this interpretation which led Hon"ble Justice Chattopadhyaya while preparing his merit list to exclude the petitioners and similarly situated persons who were bind for the post of Urdu teacher on the basis of their being Matriculates with 100 marks and such panel had received approval of the Apex Court by an order dated 13.10.2011.

21. Once this aspect becomes clear the petitioners cannot get any benefit of the order of the Government dated 1.9.2010 on which a very strong reliance was placed by the learned counsel for the petitioners. In order to appreciate this aspect it would be relevant to quote here the order dated 1.9.2010 which was issued by the Principal Secretary to the Education Department by way of clarification which reads as follows:

22. From the aforementioned letter it would be very clear that the Principal Secretary of the Department by way of clarification had informed the Commission as with regard to the qualification for the post of Urdu teacher. In this letter the Principal Secretary had pointed out that in the State of Bihar there

was no qualification equivalent to Maulvi and in this regard he had explained that Fokania qualification was equivalent to only Matriculation, whereas Maulvi was equivalent to Intermediate. Thus, when he had informed the Commission that only three categories of qualification would qualify for the post of Urdu Teacher, namely, Fokania with two years teachers training completed prior to 1995 or Maulvi with two years teachers training course or Intermediate with 200 marks of Urdu he had definitely sought to explain the terms of the advertisement. The difficulty, however, the qualification for making this clarification of the Principal Secretary of the Education Department dated 1.9.2010 applicable in the case of the petitioners would be that the petitioners are not having the qualification of Fokania. The qualification of Fokania is being only given after passing of the said examination by the Bihar Madarsa Education Board. For attaining the qualification of Fokania one has to study under Urdu curriculum which is not essential for passing Matriculation Examination with one subject of Urdu marks.

23. There is also nothing in Rule 3(vi) on the basis of which it could be read that even a Matriculate with 100 marks of Urdu could be considered for appointment on the post of Urdu teacher. In Rule 3(vi) there is a categorical provision that only such candidates who have completed teachers training course prior to 1995 and are not Intermediate would be qualified. The question, however, would be if for the post of Urdu teacher Matriculation with 100 marks was not the prescribed qualification and even if the State Government has held Fokania to be equivalent to Matriculation, such equivalence for the specialized post of Urdu teacher cannot be made applicable in view of the provisions made in Rule. In any event the clarification dated 1.9.2010 being only by way of executive instruction it cannot override the statutory provision made in 2010 Rules, as quoted above. The qualification, therefore, for the post of Urdu teacher would remain unaffected as prescribed under Rule 3(iv) and since the petitioners are not holding the qualification of Fokania they cannot ask for equivalence of their Matriculation with 100 marks of Urdu to be at par with Fokania.

24. This Court in exercise of its power under Article 226 of the Constitution of India is also not required to indulge into the exercise of equivalence of qualification, a job which has to be done by the experts. As a matter of fact the Division Bench of this Court in the case of Satyendra Singh and Others Vs. Sanjay Kumar and Others, (2000) 3 BLJR 2125 : (2001) 1 PLJR 104 , in respect of this very question of equivalence of qualification has held as follows:

"12. Prescribing qualification for a particular post by the competent authority is a policy decision. The Government frames a policy after taking into consideration the number of facts and circumstances, expert opinion and other relevant considerations. The power of judicial review in such matters is limited. The Court can interfere only when the authorities have acted arbitrarily or in violation of the statutory or constitutional provisions. The Court does not sit as an appellate forum in disguise over the policy matter. It has no power to re-frame the policy matter and in case the policy matter is found suffering from any legal infirmities

as indicted above, then the same is to be struck down and the matter is sent to the authority to consider the policy matter in accordance with law laid down. If the rules have been framed prescribing the qualification for a particular post, the Court has no power to re-frame the rules or supplement the rule by adding additional qualification for the simple reason that this is a function of the appointing and in the case of any legal lacuna the Court can only direct the appointing authority to consider the matter on the basis of the expert opinion and other relevant consideration. The Court cannot on the basis of the documents appended with the affidavit determine the equivalence or addition of qualification in the recruitment rules.

15. Thus, the law is settled that when the recruitment rules provide for a requisite qualification and the question arises as to whether any other qualification is equivalent to the qualification prescribed in the recruitment rules or not, then that question has to be decided by the competent authority and the Court cannot amend the rule or reframe it and the Court can only direct the concerned authority to re-examine the matter specially in a technical matter, like this, after obtaining the expert's opinion. The Court cannot take a final decision on the basis of affidavit and the opinion of the expert and decide such matter. The power of judicial review in such a matter is very limited and in case if the State Government decides the matter and the same is found to be arbitrary, mala fide then the Court will consider the same keeping in view the scope of judicial review in such matter.

18. The question involved in the case relates to filling up technical posts and as such it cannot be decided on the basis of certain documents appended with the affidavit by the Court in view of the settled law regarding the power of judicial review by the Apex Court in such matter. In that view of the matter, the learned Single Judge was not justified in deciding the question that qualification possessed by respondent No. 1 was equivalent to the qualification prescribed in the Recruitment Rules inasmuch as that amounts to amending the rules and re-framing the rules which is not permissible in law..."

25. Judged in this background when the author of the aforesaid clarification dated 1.9.2010 has himself passed the subsequent reasoned order on 4.5.2012 while rejecting the representation of petitioner No. 2, this Court would not find any reason to interfere with the same. Let it be noted that the Principal Secretary of the Education Department in the aforesaid order dated 3.9.2012 had held as follows:

26. From a bare reading of the aforementioned order it would be clear that petitioner No. 2 had tried to equate his case with one Rizwan Ahmad Azad, who despite having only passed Matriculation with 100 marks of Urdu was somehow appointed on the post of teacher. Petitioner No. 2 wanted parity with the case of Rizwan Ahmad Azad and therefore, when he had filed a representation and the same was sought to be considered in the light of the order of the Apex Court dated 4.5.2012 in S.L.P.(C) No. 11507 of 2012 it had been found that only three

qualifications were valid for the post of Urdu teacher and neither petitioner No. 2 nor even Rizwan Ahmad Azad had possessed the aforesaid qualification. The Principal Secretary of the Department, therefore, had not only rejected the claim of the petitioner No. 2 on account of his not having qualification but had also passed an order for cancellation of appointment of Rizwan Ahmad Azad. In fact the appointment of Rizwan Ahmad Azad has also been cancelled which is the subject matter of C.W.J.C. No. 2519/2013 and has been disposed of today itself by a separate judgment by way of its being also dismissed.

27. Learned counsel for the petitioner had then tried to make out a case of discrimination in the matter of laying down qualification for the post of 34540 teachers and accordingly to him if the trained teachers with matriculation could be appointed there was no reason for denying the same benefit of Urdu teachers. To that extent, he has referred to Sub-clause (v) of Clause 5 of the advertisement in respect of general teachers.

28. This Court must reject such submission of the learned counsel for the petitioner because the qualification was not only laid down under the Rules but also in the advertisement in clear terms separately for the post of general teachers, for Urdu teachers and for physical trained teachers. Thus, whatever was said in respect of educational qualification for general teachers cannot be made applicable for two reasons. Firstly, the provision for general teachers was itself clarified in educational qualification under Clause 5(i) read with 5(v). That cannot be made applicable for Urdu teachers because of the specific requirement under the Rules and/or advertisement that for the post of Urdu teachers the candidates must have a degree of Moulvi from the Bihar Madarsa Education Board or its equivalent qualification or even Intermediate examination with Urdu subject of 200 marks. Thus, for the post of Urdu teacher as per the Rules and advertisement either Moulvi or Intermediate examination with Urdu of 200 marks was the prescribed qualification. To that extent, the third qualification by way of Fokania (not matriculation) was added. Thus, the whole purpose of the framers of the rules while selecting the candidates of the post of Urdu teachers was to ensure that they have the proper qualification of the subject of Urdu.

29. The submission that Fokania is equivalent to matriculation and, therefore, matriculates also will be qualified for the post of Urdu teacher would be stretching the matter to far because in that case every matriculate even though he might have not studied Urdu and also passed matriculation examination without Urdu subject in terms of Rule 3(vi) of the Rules or Clause 5(v) of the advertisement would become entitled for appointment of the post of Urdu teacher defeating the very purpose of specialized qualification for the post of Urdu teacher as prescribed in Rule 3(iv) or Clause 5(iii) of the advertisement. That would be simply impermissible in view of the judgment of this Court in the case of Satendra Singh (*supra*) wherein the aspect relating to equivalence of qualification for the specialized post has been kept out of ambit of exercise of power under Article 226 of the Constitution of India.

30. At this stage, it would be also relevant to examine the so called plea of the petitioner that matriculation and Fokania are equivalent.

31. As noted above, when the petitioner had passed matriculation his subjects were MIL (Urdu), National Language (Hindi) with other subjects like English, Mathematics, Social Science and Natural Science whereas in Fokania the compulsory subjects form Dinyat of two papers of 200 marks, Arabic again of two papers of 200 marks and apart from English, Hindi, Urdu, Persian, History, Mathematics, Social Science each of 100 marks. In fact, whereas the matriculation total marks is of 900 marks whereas Fokania is of 1200 marks and, therefore, it cannot be said that Fokania and matriculation are same thing.

32. The question as to whether the petitioners could have got their appointment on the basis of illustrative case of Rizwan Ahmad Azad, who also had not the prescribed qualification of either having Fokania with two years teachers training course prior to 1995 or Maulvi with two years teachers training course or Intermediate with Urdu of 200 marks on the ground of right to equality in the matter of public appointment as per Articles 14 and 16 of the Constitution of India is also only required to be noted for its being rejected. The right to equality under the Constitution of India is a positive concept and cannot be enforced in a negative manner. Simply because Rizwan Ahmad Azad was wrongly appointed on the basis of his qualification of Matriculation with 100 marks of Urdu contrary to the provisions made in the Rule and the Advertisement will not mean that the others also should be given such illegal appointment. This aspect of the matter has already been settled by the Apex Court in a number of judgments and reference in this connection may be usefully made to the following passage in the case of State of Bihar Vs. Upendra Narayan Singh and Others, (2009) 4 JT 577 : (2009) 4 SCALE 282 : (2009) 5 SCC 65 : (2009) 1 SCC(L&S) 1019 : (2009) 4 SCR 866 : (2009) 2 SLJ 392 : (2009) 4 UJ 1651 :

"67. By now it is settled that the guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing wrong order - Chandigarh Administration and another Vs. Jagjit Singh and another, AIR 1995 SC 705 : (1995) 2 BC 191 : (1995) 1 JT 445 : (1995) 110 PLR 176 : (1995) 1 SCALE 131 : (1995) 1 SCC 745 : (1995) 1 SCR 126 , Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, (1996) 7 AD 550 : (1996) 8 JT 387 : (1996) 7 SCALE 135 : (1997) 1 SCC 35 : (1996) 6 SCR 584 Supp , Union of India (Railway Board) and others Vs. J.V. Subhaiah and others etc. etc., AIR 1996 SC 2890 : (1995) 9 JT 488 : (1996) 1 SCALE 193 : (1996) 2 SCC 258 : (1995) 6 SCR 812 Supp , Gursharan Singh and others etc. Vs. New Delhi Municipal Committee and others, (1996) 2 AD 48 : AIR 1996 SC 1175 : (1996) 1 JT 647 : (1996) 1 SCALE 615 : (1996) 2 SCC 459 : (1996) 1

SCR 1154 : (1996) 1 UJ 628 , State of Haryana and Others Vs. Ram Kumar Mann, (1997) 3 JT 450 : (1997) 2 LLJ 1039 : (1997) 2 SCALE 541 : (1997) 3 SCC 321 : (1997) SCC(L&S) 801 : (1997) 2 SCR 329 : (1997) 1 UJ 776 , M/s. Faridabad Ct. Scan center Vs. D.G. Health Services and others, AIR 1997 SC 3801 : (2003) 89 ECC 468 : (1997) 72 ECR 801 : (1997) 95 ELT 161 : (1997) 8 JT 171 : (1997) 6 SCALE 148 : (1997) 7 SCC 752 : (1997) 4 SCR 122 Supp : (1997) AIRSCW 3716 : (1998) 5 Supreme 287 , M/s. Style (Dress Land) Vs. Union Territory Chandigarh and Another, AIR 1999 SC 3678 : (1999) 6 JT 67 : (1999) 123 PLR 504 : (1999) 5 SCALE 74 : (1999) 7 SCC 89 : (1999) 1 SCR 591 Supp : (1999) AIRSCW 3706 : (1999) 7 Supreme 311 , State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, AIR 2000 SC 2306 : (2000) 5 JT 389 : (2000) 4 SCALE 417 : (2000) 9 SCC 94 : (2000) SCC(L&S) 845 : (2000) AIRSCW 2389 : (2000) 4 Supreme 197 , Union of India (UOI) and Another Vs. International Trading Co. and Another, AIR 2003 SC 3983 : (2003) 4 JT 549 : (2003) 4 SCALE 581 : (2003) 5 SCC 437 : (2003) 1 SCR 55 Supp : (2003) AIRSCW 2828 : (2003) 4 Supreme 114 and Directorate of Film Festivals and Others Vs. Gaurav Ashwin Jain and Others, AIR 2007 SC 1640 : (2007) 5 JT 394 : (2007) 5 SCALE 565 : (2007) 4 SCC 737 : (2007) 5 SCR 7 : (2007) AIRSCW 2497 : (2007) 3 Supreme 855 ."

33. The reliance placed by the learned counsel for the petitioners on the judgment of the Apex Court in the case of Uma Shankar Sharma (supra) is wholly misplaced. That was a case of appointment of a Sportsman and it was held that he on account of being selected for representing the University in Inter University Tournament even though not participating in the Inter University Tournament was held to be illegal. The issue, therefore, in that case was on participation in the Inter University Games for which Uma Shankar Sharma had already been selected but could not participate it on account of his illness. The Apex Court in that context had held that the employer should not have adopted a "technical view of the matter". Here the case is converse because the intention of the Rule framer is to appoint a person of sound knowledge of Urdu for the specialized post of Urdu subject, that is how the qualification of 200 marks in the Intermediate examination has been provided to emphasize the aspect of importance of Urdu for the post of Urdu teacher. As a matter of fact even in Intermediate examination a candidate can appear in only 100 marks of Urdu by way of Modern Indian Languages (MIL) but that was not treated to be the valid qualification in terms of Rule 3(iv). A Matriculate, therefore, having just studied Urdu for 100 marks in no view of the matter can be said to be equivalent to be either a Fokania in which course entire curriculum is taught in Urdu for emphasis on Urdu subject or Maulvi. Thus, whatever has been laid down by the Apex Court in the case of Uma Shankar Sharma (supra) cannot be made application to the facts of the case of the petitioners.

34. For the same reason the judgment of the Apex Court in the case of Dr. B.L. Asawa (supra) cannot be made applicable to the facts of the present case. In the aforesaid case of Dr. B.L. Asawa (supra) the issue was with regard to a Post-

graduate medical degree granted by Rajasthan University which has already been recognized by the Indian Medical Council by its inclusion in the Schedule to the Medical Council Act and therefore, it was held that such a Post-graduation medical degree was not even required to be recognized specifically by the other Universities in any State in India in view of the provisions made in the Medical Council Act. In the present case one has not to seek equivalence of the qualification of Fokania rather one has to find out the scope of appointment of Non-Intermediate who had acquired qualification of teachers training prior to 1995. This special qualification in Rule 3(vi) in no view of the matter could have covered an Urdu teacher much less a Matriculate with 100 marks of Urdu. Thus, whatever was said in paragraphs No. 10 and 11 in the case of B.L. Asawa (supra) cannot be made applicable in the facts of the present case in view of the statutory Rules prescribing a qualification for the post of Urdu teacher.

35. In any event when the Apex Court in the order dated 18.7.2013 has made it clear that the remaining 2413 post of teachers in the lot of 34540 total post of teachers have to be filled up as per approved panel prepared by Justice Chattopadhyaya, when the name of the petitioners have not been included in the list of eligible candidates in serial No. 1 to 19205 they cannot be held to be eligible for the post of Urdu teacher.

36. Let it be made clear that if any of the petitioners has applied for general post of teachers, and not for the post of Urdu teachers, he still remains eligible for being considered against those post of general teachers. This aspect of the matter in fact has been also clarified in the counter affidavit filed by the respondents wherein in paragraphs No. 5 to 9 it has been stated as follows;

"5. That the proper appreciation of the issue in question which appertains to the educational eligibility for appointment against the post of Urdu Teacher, it would be firstly appropriate to refer to the specific provision laid down on the said point in Bihar Special Primary Teacher Appointment Rule 2010 which is as follows:

6. That in the true copy of the Rule 2010 which has been appended as Annexure 4, Rule 3(vi) has not exactly reproduced, hence photo copy of the aforesaid Rule is being enclosed as Annexure A.

7. That in the aforesaid background, the interpretation being made by the petitioner that the relaxation provided under Rule 3(vi) i.e. if a candidate had obtained training qualification prior to 1995, in such situation, even if he does not possess intermediate qualification he would be eligible for being considered for appointment, the same will also be applicable in matter of appointment of Urdu teacher, it is respectfully submitted that such interpretation is not acceptable. It is respectfully submitted that it was in connection with the aforesaid provision Rule 3(vi) that subsequent clarification had also been issued by the Principal Secretary Education Department vide letter No. 1097 dated 1.9.2010 stating therein that for appointment against the post of Urdu teacher the following educational qualification is required.

1. Fokaniya - Two years training (prior to 1995)
2. Maulvi - Two years training.
3. Intermediate with 200 marks in Urdu subject with two year training.

And it was accordingly that even such candidates who possess Fokaniya qualification prior to 1995 were considered for appointment on the post of Urdu teacher and had also been appointed.

8. That on the said premise, that the petitioners are also claiming for being considered for appointment against the post of Urdu teacher on the basis of Matric qualification and teachers training qualification which they claim to have obtained prior to 1995, which is not acceptable for the simple reason that appointment on the post of Urdu teacher is as a language teacher for which specific qualification/certificate in the said language is an essential requirement, whereas the petitioners are said to be Matric pass which admittedly cannot be considered to be a qualification in Urdu language and hence on the basis of Matric qualification one cannot be considered for appointment against the post of Urdu teacher.

9. That in this connection it would be equally pertinent to submit that on the same very qualification i.e. Matric pass and teachers training qualification prior to 1995, the candidature of the petitioner could have very well been considered for the purpose of appointment on the post of teacher of general category subject to the condition that he would have applied against general category subject and would have come within the zone of consideration, but in the instant case the claim of the petitioner asserting his appointment to be genuine made on the post of Urdu teacher on the basis of Matric qualification taking aid of Rule 3(vi), is not sustainable as the petitioner does not possess the specific educational qualification/certificate of Fokaniya which is necessarily required as the petitioner is neither Maulvi nor possession Intermediate qualification with Urdu subject of 200 marks."

37. Thus, this Court must hold that though the petitioners would not be entitled or eligible for being appointed on the post of Urdu teacher but then if they can establish that they had applied for the post of general teachers and had passed their two years teachers training examination prior to 1995, their matriculation qualification with even 100 marks of Urdu subject will make them eligible for being considered for appointment against general post in terms of general direction issued by this Court in the order dated 15.1.2014 in the case of Kanti Kumari (supra).

38. As none of the petitioners have even remotely placed any material on record that their applications were not exclusively for Urdu teacher and in fact they had sought their appointment on the post of general teacher, this Court would only give liberty to establish their case that they had applied actually for the post of general teacher and not Urdu teacher and that they had passed their teachers

training examination prior to 1995 with Matriculation of 100 marks and were resident of the State of Bihar in terms of Rule 3(vi) and if they do so their cases will also be considered in the light of the directions given in the case of Kanti Kumari (supra).

39. This Court further must make it clear that if the candidature of the petitioners in their original application filed before the Commission was confined only to the post of Urdu teacher they being only Matriculate with 100 marks of Urdu subject will not be entitled for their consideration of appointment on the post of Urdu teacher for 372 post of Urdu teacher which alone now has to be filled up from the remaining 2413 post as per order of the Apex Court. In other words, though the petitioners will not qualify for being considered against any of 372 post of Urdu teachers in the manner prescribed in the judgment of Kanti Kumari (supra) but then if any of the petitioners can establish their claim that they had applied for the post of general teacher in terms of Rule 3(vi), their cases in view of paragraph No. 9 of the counter affidavit shall be considered for the post of Urdu teacher but again only in the manner prescribed in the judgment of Kanti Kumari (supra).

40. With the aforementioned observations and directions, this writ application is disposed of.