**IN THE HIGH COURT OF ALLAHABAD**

Special Appeal Nos. 2366, 2359, 2316, 2347, 2367, 2393, 2391, 1214, 1215, 1216, 1217, 2405, 2406, 2407, 2409, 2410, 2404, 2412, 2420, 2371, 2373, 2411, 1218, 1228, 2403, 2374, 2418, 2421, 2422, 2419, 2417, 1255, 2470, 1256, 1273 of 2011, 367, 123, 506, 473 of 2012, 1274, 2513, 1270, 2500, 1263, 1251, 2501, 2448, 2483, 2484, 2485, 2487 of 2011, 1, 27, 50, 13, 143 of 2012 and 1176 of 2011

Decided On: 16.01.2013

Appellants: **Prabhakar Singh and Others**
**Vs.**
Respondent: **State of U.P. and Others**

**Hon'ble Judges/Coram:**Ashok Bhushan and Abhinava Upadhya, JJ.

**JUDGMENT**

**Ashok Bhushan, J.**

1. These appeals raising common question of law have been heard together and are being decided by this common judgment. Special appeals under Chapter VIII Rule 5 of the Rules of the Court have been filed against the judgment and order of learned Single Judges dismissing the writ petitions filed by the appellants. In majority of the writ petitions, the challenge is to the judgment and order of Hon'ble Single Judge dated 11.11.2011, passed in writ petition No. 59542 of 2011, Ravi Prakash and others v. State of U.P. and others. Following the aforesaid judgment in Ravi Prakash's case majority of the appeals have been dismissed. All the special appeals can be divided in three broad categories. One group of special appeals have been filed by the candidates, who have passed regular two years Basic Training Course from the different District Institute of Education and Training in the State of U.P. The second category of special appeals have been field by those candidates, who have passed special BTC Course of six months conducted with the approval of National Council For Teacher Education to train the candidates so that they may become eligible for appointment on the post of Assistant Teacher in primary schools run by U.P. Basic Education Board. The third category of appeal relates to the candidates who have passed two years BTC Urdu special training course. Special appeal No. 2359 of 2011, Kirti Singh and others v. State of U.P. and others, belongs to this third category. Facts in detail of the aforesaid three categories of appeals have to be noted for deciding the issues raised in these appeals. Apart from the above, there are certain appeals which have been filed against the judgment and order of other Hon'ble Single Judges apart from the Hon'ble Single Judge who decided the case of Ravi Prakash v. State of U.P. and others. Facts in detail of the aforesaid appeals are also to be noted. Special Appeal No. 2366 of 2011, Prabhakar Singh and others v. State of U.P. and others, filed by the candidates who have passed regular two years BTC 2004 is being treated as leading special appeal. Now facts giving rise to Special Appeal No. 2366 of 2011 be noted in brief.

2. State of U.P. issued a Government order dated 20.2.2004 for imparting teachers training to the candidates by District Education and Training Institutes (hereinafter referred to as 'DIET'). The procedure for selecting the candidates was modified by the Government Order dated 20.3.2004. Notifications were issued in September, 2004 inviting applications for selection for imparting Two Years Regular BTC training. Selection could be notified only in January, 2009 and first batch of candidates were admitted in January, 2009. The appellants were also admitted for imparting training in second batch in June, 2009. The Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009, which was published in Gazette of India on 27.8.2009. By a notification dated 31.3.2010, issued under Section 23(1) of 2009 Act, National Council For Teacher Education was notified as academic authority. National Council For Teacher Education vide its notification dated 23.8.2010 laid down the minimum qualifications for a person to be eligible to be appointed as an assistant teacher for teaching class 1 to class 8 in a school. By subsequent notification dated 29.7.2011, amendments were made in earlier notifications dated 23.8.2010. The appellants were granted BTC certificate on 21.9.2011. The appellants made a request to the District Basic Education Officer for being given appointment as Assistant Teacher in primary institutions. Basic Shiksha Adhikari sent a communication dated 15.10.2011 informing them that in view of the notifications dated 23.8.2010 issued by the National Council For Teacher Education, the minimum qualifications required passing of Teachers Eligibility Test (TET) hence, the appointment can be given only after the said test is cleared. The said communication was sent to Basic Shiksha Adhikari to all candidates who have passed BTC Course 2004. The appellants had come up in the writ petition praying for the following reliefs:

1. a writ, order or direction in the nature of certiorari quashing the order dated 15.10.2010 issued by the Basic Shiksha Adhikari, Chitrakoot (Annexure No. 4 to this writ petition).

2. a writ, order or direction of suitable nature commanding the respondents to forthwith grant appointment to the petitioners as assistant teacher in Prathmik Vidyalaya run by Board of Basic Education, U.P., Allahabad for district Chitrakoot within a period to be specified by this Hon'ble Court.

3. a writ, order or direction of suitable nature commanding the respondents to permit the petitioners to function as assistant teacher in Prathmik Vidyalaya run by Board of Basic Education, U.P., in district Chitrakoot and to pay the petitioners their regular monthly salary on such basis regularly every month.

4. a writ, order or direction of suitable nature commanding the respondents not to insist upon the petitioners to pass the U.P. Teacher Eligibility Test as a pre condition for grant of appointment to the petitioners as assistant teachers.

Apart from the candidates who have obtained regular BTC course there are large number of appellants before us who have obtained special BTC training Course. Special Appeal No. 2347 of 2011, Smt. Anjana Singh v. State of U.P., is one of such appeals. The back ground facts necessitating the State to take steps for imparting special BTC training needs also to be noted.

3. In State of U.P., basic education is regulated by U.P. Basic Education Act, 1972. The rules have been framed under the U.P. Basic Education Act namely; U.P. Basic Education (Teachers) Service Rules, 1981. The qualifications for appointment of Assistant Teachers in basic schools for class I to VIII are prescribed under the 1981 Rules. Rule 8 of the 1981 Rules provides for qualification for teachers of nursery schools, junior basic schools and head master of junior basic schools and senior basic schools. The qualifications for appointment of Assistant Teachers in basic schools required possessing of teachers training which initially included Basic Teacher's Certificate, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other training course recognized by the Government as equivalent thereto. Articles39(f) and 45 Part IV of the Constitution of India enjoined on the state to provide for opportunity to Children to develop in healthy manner. Article 21A was inserted in Part III of the Constitution of India by 86th Amendment Act, 2002 directing that State shall provide free and compulsory education to all children of 6 to 14 years age. Central Government for fulfilling this Constitutional obligation have framed various schemes for providing education to children between 6 to 14 years and the State Governments were also involved and entrusted with several obligations in that regard. The scheme namely; 'Sarv Shiksha Abhiyan' was launched by the Central Government in the year 2000 in addition to certain earlier schemes launched by the Central Government. In the State of U.P. for imparting teachers training in every district District there are Institute of Education and Training which have capacity of 200 or 100 seats only. C.T. Training is imparted only at two places namely; Allahabad and Agra, total seats of which are only 61. Every year about 10,000-12,000 teachers of primary institutions retire. Under the various schemes launched by the Central Government and the State Government about 1,25,000/-posts of assistant teacher in primary institutions were created. There being acute shortage of trained teachers, to man the various primary institutions in the State, the State initiated special BTC Course from time to time. The first Special BTC Course was launched in the year 1998 for imparting Special BTC Course to the candidates so as to fill up 27,000 posts of Assistant Teachers. Special BTC Course-2001 was again initiated which could not be however, completed. The State issued a Government Order dated 14.1.2004 for imparting Special BTC Course to those candidates who were B.Ed./L.T./B.P.Ed/ C.P.Ed. to fill up 46179 posts of Assistant Teachers. The candidates were to be imparted six months Special BTC course after obtaining approval of National Council For Teacher Education. About 33,000 teachers could be appointed from the candidates who passed special BTC Course 2004. By Government Order dated 22.8.2005, the State took a policy decision for appointment of candidates who had passed Special BTC Course 2004. The State Government allocated posts to different districts for being filled up by the candidates who have obtained special BTC Training Course 2004. A procedure for appointment of Assistant Teachers was also laid down. The Government Order contemplated that the candidates who passed special BTC training Course shall be appointed in their home district subject to number of vacancies available and if the numbers are more they shall be adjusted in their division or thereafter at other places. The Principals DIETS were asked to obtain option from the candidates for three district and such option be forwarded to Director State Education Research and Training Institute and the Director of the State Education Research and Training shall forward it to Director Basic and the Director shall thereafter allocate the place of posting and ensure appointment and posting. The appellant Smt. Anjana Singh having been informed that her claim can be considered only after she passes TET, filed writ petition in this Court being writ petition No. 63322 of 2011 praying for following reliefs:

I. issue a writ, order or direction in the nature of mandamus directing the respondent No. 2, 4 and 5 to appoint the petitioners on the post of Assistant Teacher as per the earlier norms of the N.C.T.E. granting exemption from N.C.T.E. notification dated 23.8.2010 and also exempting the petitioners from the requirement of passing the U.P.T.E.T. Examination 2011.

4. Special Appeal No. 2359 of 2011, Kirti Singh v. State of U.P., has been filed by the candidates who have obtained two years Urdu BTC special Training 2006 (II). The State Government issued a Government Order dated 5.9.2006 providing for imparting special basic teachers course to the graduate candidates having qualification in Urdu. The Principal Diets issued advertisement inviting applications for admission in two years BTC Urdu Special Training Course 2006 in which the appellants were selected whose training could be completed in 2011. Five persons who had passed the two years Special BTC Urdu 2006 were appointed on 27.6.2011. However, the petitioners having not been given appointment had come up by filing writ petition No. 61638 of 2011 Kirti Singh and others v. State of U.P. and others, praying for a direction commanding the respondents not to insist upon the petitioners to pass the TET and grant appointment to the petitioners as Assistant Teachers in the schools run by the District Education Board.

5. Special Appeal No. 2316 of 2011, Santosh Kumar and others v. State of U.P. and others, has been filed by the appellants challenging the judgment and order of Hon'ble Single Judge in Shailendra Kumar Yadav v. State of U.P. and others,  : 2012(2) ADJ 154. The writ petition was filed by the candidates who have completed Special Basic Teachers certificate course 2007 and 2008 on 27.9.2011 praying for a direction upon the respondents to forthwith grant appointment as assistant teachers without requiring the petitioners to pass the TET. Writ petition was dismissed by Hon'ble Single Judge.

6. Special Appeal No. 2367 of 2011 has been filed against the judgment and order dated 15.11.2011 passed in writ petition No. 60817 of 2011, Ajit Kumar Singh v. State of U.P. and others, by which order Hon'ble Single Judge following the judgment of Hon'ble Single Judge in Ravi Prakash v. State of U.P. and others,  : 2011 (10) ADJ 396has dismissed the writ petition. The writ petition was filed by the candidates who have passed regular BTC Course 2004.

7. Special Appeal No. 2420 of 2011 has been filed against the judgment and order of Hon'ble Single Judge dated 28.11.2011 passed in writ petition No. 68086 of 2011 dismissing the writ petition. The petitioners had passed the regular two years BTC Course-2004 and had come up in writ petition praying for direction to the respondents to give appointment to the petitioners as assistant teachers in basic school. Hon'ble Single Judge following the judgment in the case of Ravi Prakash v. State of U.P. and others, dismissed the writ petition.

8. Special Appeal No. 506 of 2011 has been filed against the judgment and order of Hon'ble Single Judge dated 14.2.2012 dismissing the writ petition No. 8371 of 2012. The petitioner had passed regular BTC Course 2004 and had prayed for mandamus directing the respondents to grant appointment to him as Assistant Teacher in primary school run by Basic Education Board. Hon'ble Single Judge following the judgment in the case of Ravi Prakash v. State of U.P. (supra) dismissed the writ petition.

9. Special Appeal No. 2513 of 2011 has been filed against the judgment of Hon'ble Single Judge dated 13.12.2011 dismissing the writ petition No. 71798 of 2011 Bhuwaneshwar Singh v. State of U.P. and others. The writ petition was filed by the candidates who were granted special BTC Course 2008 certificate on 27.9.2011 and were not given appointment. Hon'ble Single Judge held that since the process of recruitment under 1981 Rules have not been undergone, no direction can be issued to appoint the petitioners as assistant teacher.

10. Special Appeal No. 2500 of 2011 has been filed against the judgment and order of Hon'ble Single Judge dated 24.11.2011 passed in writ petition No. 65464 of 2011 by which order Hon'ble Single Judge following the judgment in the case of Ram Prakash (supra), has dismissed the writ petition. The petitioners had applied for two years BTC 2004 and were declared passed in September, 2011.

11. Special Appeal No. 2501 of 2011 has been filed against the judgment and order of Hon'ble Single Judge dated 12.12.2011 passed in writ petition No. 71409 of 2011 by which order, the writ petition was dismissed holding that process of recruitment under 1981 Rules having not been undergone and the petitioners case not being that they have been selected for appointment in accordance with 1981 Rules, no mandamus can be issued. The petitioners were the candidates who were declared passed in regular BTC Course in September, 2011.

12. Special Appeal No. 2448 of 2011 has been filed against the judgment and order passed by Hon'ble Single Judge in writ petition No. 61064 of 2011 dismissing the writ petition on 15.11.2011. Hon'ble Single Judge dismissed the writ petition following the judgment in Ravi Prakash v. State of U.P. and others (supra). The petitioners were the candidates who were declared passed in regular BTC Course 2004.

13. Special Appeal No. 143 of 2012 has been filed against the judgment and order of Hon'ble Single Judge passed in writ petition No. 72606 of 2011 which writ petition was dismissed on 15.12.2011. The petitioners had passed special BTC 2008 and were claiming direction to the. respondents to appoint them as assistant teachers in primary schools.

14. Special appeal No. 1176 of 2011 has been filed against the judgment and order dated 22.11.2011 dismissing the writ petition No. 66943 of 2011. The petitioners were the candidates who had passed special BTC 2007. Hon'ble Single Judge following the judgment in Ravi Prakash v. State of U.P. and others, has dismissed the writ petition.

15. There being more than 75,000 posts of Assistant Teachers vacant, the State Government sent a proposal to the National Council For Teacher Education for training of 50,000 more candidates of six months Special BTC Course. Proposal dated 26.6.2006 was sent to the State Government seeking approval of National Council For Teacher Education to give permission for imparting six months' training course to the B.Ed/L.T. candidates and other graduates having B.P.Ed/ C.P.Ed/D.P.Ed. National Council For Teacher Education granted permission on 7.7.2007. The State Government issued a Government Order dated 10.7.2007 for imparting Special BTC Course to the candidates who have passed B.Ed. The Government Order also specifically contemplated that after completion of six months Special BTC Course, the candidates will be subjected to written examination and after passing the said examination they will be treated to be eligible to be appointed as Assistant Teachers. After the Government Order dated 10.7.2007, advertisements were issued by various DIETS inviting applications for selection in the Special BTC training Course. The appellants in Special Appeal No. 2347 of 2011, Smt. Anjana Singh also applied for Special BTC Course in pursuance of the Government Order dated 10.7.2007. Although she was selected for training but was not sent on account of stand taken by the authorities that B.Ed. Certificate obtained by the candidate on 21.5.1997 from Sampurnanand Sanskrit Vishwa Vidyalaya did not make her eligible since at that time National Council For Teacher Education had not granted recognition. The question as to whether B.Ed. certificate granted to Smt. Anjana Singh could be recognised as valid was subject-matter of consideration by Full Bench of this Court in Bhupendra Kumar Tripathiv. State of U.P. and others,  : 2009 (1) ADJ 232(FB) against which judgment State of U.P. filed Special leave to Appeal which was dismissed affirming the judgment of the Full Bench of this Court holding that during the period application of institution was pending for consideration before the National Council For Teacher Education, the certificate granted shall be valid. The judgment of the apex Court is in State of U.P. v. Bhupendra Kumar Tripathi,  : 2010 (5) ESC 630 (SC) : (2010) 13 SCC 203. The appellant Smt. Anjana Singh thus could be sent for Special BTC Course on 20.1.2011 and completed her training and was granted certificate on 27.9.2011.

16. Special BTC Training Course 2007 was imparted in two batches. The training of first batch was completed in April, 2011 and of the second batch in September, 2011. Those candidates who have passed in first batch in April 2011 were given appointment as Assistant Teacher by different Basic Shiksha Adhikari. However, with regard to Smt. Anjana Singh and others several similarly situated candidates, a letter was sent by the Basic Shiksha Adhikari Chitrakoot on 22.10.2011 addressed to all selected candidates of Special BTC Course 2007 that by notification dated 23.8.2010, minimum qualifications have been prescribed under Right of Children to Free and Compulsory Education Act, 2009 which require passing of Teachers Eligibility Test hence, the claim of appellant Smt. Anjana Singh and others similarly situated candidates could be considered only they pass TET.

17. Special BTC Course 2008 (Special Recruitment) was held for 10,084 posts for reserved category candidates and another BTC 2008 was held for 18,301 posts of General category candidates. In 2010 again by Government Order dated 14.5.2010 selection was initiated for imparting training and thereafter making appointment as Assistant Teacher. 5,000 posts of Assistant teachers were converted for B.T.C. Urdu graduates. A Government Order dated 5.9.2006 was issued for imparting training of Special B.T.C. Urdu for filling of the aforesaid 5,000 posts.

18. Right of Education having been recognised fundamental right by insertion of Article 21-A of the Constitution of India, the Parliament enacted the Right of Children to Free and Compulsory Education Act, 2009 to provide free and compulsory education to all children of 6 to 14 years age. Section 23 of the Act provides for qualifications for appointment and terms and conditions of service of teachers. Central Government by notification authorised National Council For Teacher Education as the academic authority for laying down minimum qualifications. Notification dated 23.8.2010 published on 25.8.2010 was issued exercising power under Section 23(1) of 2009 Act providing for minimum qualifications for appointment as teachers in class I to VIII. The notification dated 23.8.2010 was subsequently amended by notification dated 29.7.2011 (published on 2.8.2011). The claim of the appellants for appointment as Assistant Teacher in Primary School was considered and they were communicated by respective Basic Shiksha Adhikari that in view of the notification dated 23.8.2010 passing TET is a must and their claim can be considered only after they pass the TET. The writ petitions were filed by the candidates whose claim for appointment as assistant teacher were not considered, which writ petitions came for consideration before the Hon'ble Single Judge. Hon'ble Single Judge vide its judgment and order dated 11.11.2011 dismissed all the writ petitions leading writ petition being writ petition No. 59542 of 2011, Ravi Prakash v. State of U.P. and others, holding that after issuance of the notification dated 23.8.2010 laying down minimum qualification for appointment of Assistant Teacher for class I to VIII, no teacher can be appointed unless he has passed TET and claim of appellants that they be considered for appointment as per qualifications prescribed by National Council For Teacher Education (Determination of Minimum Qualification for Recruitment of Teachers in Schools) Regulations, 2001 since their cases were covered by paragraph 5 of the notification dated 23.8.2010 was not accepted. Against the judgment and order dated 11.11.2011, and some other similar judgments of learned single Judges all these appeals have been field, which have been heard together and are being decided by this common judgment.

19. We have heard Sri Ashok Khare, Sri Shashi Nandan, learned Senior Advocates, Shri Shailendra, Sri H.N. Shukla, Sri Abhisek Srivastava for the appellants. Sri C.B. Yadav, learned Additional Advocate General has appeared for the State. Sri Rizwan Akhtar and Sri Rajiv Joshi have appeared for National Council For Teacher Education.

20. Sri Ashok Khare, learned Senior Advocate, appearing for the appellants in leading Special Appeal No. 2366 of 2011 and in some other cases has submitted that appellants cannot be denied appointment as Assistant Teacher in basic schools on the ground that they do not possess the minimum qualifications as laid down by notification dated 23.8.2010 under 2009 Act since their cases are fully covered by paragraph 5 of the notification which is an exception to the minimum qualifications prescribed by the notification. Paragraph 5 of the notification provides that where an appropriate Government or local authority of a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of notification such appointment may be made in accordance with National Council For Teacher Education (Determination of Minimum Qualification for Recruitment of Teachers in Schools) Regulations, 2001. He submits that when the appellants were selected for imparting BTC Course they were assured of appointment as assistant teacher since there being shortage of assistant teachers all candidates who obtained basic teachers training course automatically become entitled for appointment as assistant teacher and in practice as and when a candidate passes basic teachers training course he was appointed as assistant teacher without subjecting to any selection process. Sri Khare submits that only selection process for appointment as assistant teacher is the selection process for selecting a candidate for BTC training Course. Neither any selection takes place after selecting a candidate for basic training course nor any candidates who has obtained BTC certificate is eliminated. The State for last more than a decade has never issued any advertisement as contemplated by Rule 14 of the U.P. Basic Education (Teachers) Service Rules, 1981 inviting applications or holding any selection process and has straight way appointed the candidates who passed the BTC Training Course. The name of those candidates who have passed the training course is forwarded by Principal of DIETS to the Basic Shiksha Adhikari/Director SCERT and thereafter Basic Shiksha Adhikari gives appointment to the candidates as assistant teacher. At the time of selection of a candidate for imparting BTC training the selection committee which is substantially the same as contemplated under the 1981 Rules select a candidate and thereafter no selection process having been adopted all the candidates have to be appointed. It is further submitted that even after issuance of the notification dated 23.8.2010 under Section 23 of the 2009 Act, prescribing minimum qualification, the candidates who have passed BTC Training have been appointed without passing the TET. It is submitted that the State rightly understood that for those candidates who have passed BTC training Course, the process for appointment of teachers have already begun when they were selected for imparting training hence, their cases being covered by clause 5, there is no necessity for them to pass the TET hence, they were entitled for appointment and actually appointed. Learned Counsel for the appellant referred to several appointment orders issued by the Basic Shiksha Adhikari in different districts subsequent to notification dated 23.8.2010. Sri Khare further submits that action of the State in denying the appointment of appellants on the ground that they have not passed TET as per notification dated 23.8.2010 is discriminatory and arbitrary since similarly situated candidates have been given appointment even after 23.8.2010 without insisting having requirement of TET certificate. He submits that process of appointment includes BTC training and as and when the process of selection for imparting BTC training begins, the process of appointment has started. Even in December, 2011 appointment has been granted to candidates who have passed BTC course without insisting for passing TET. It is submitted that Government of Uttarakhand has rightly understood the scope of notification dated 23.8.2010 and has given appointment to the BTC trained candidates without insisting on passing of TET. Reference to the Government Order dated 14.6.2011 have been made, which has been brought on record of special appeal No. 2366 of 2011. He further submits that use of word 'an' in clause 5 of notification dated 23.8.2010 visualise more than one advertisements and the advertisements to select for imparting training is part of the entire process culminating into appointment. Hon'ble Single Judge committed error in holding that process of appointment had not begun since no advertisement under Rule 14 has been issued.

21. Sri Shashi Nandan, learned Senior Counsel appearing for the candidates who have passed Special BTC training submits that those candidates who have passed special BTC training course are entitled for appointment since their selection for Special BTC training course was with object of filling number of posts which were already determined before initiating the process of selection. He submits that the very proposal submitted by the State Government to the National Council For Teacher Education for approval of Special BTC course was for filling up fixed number of posts and the selection of appellants for special BTC course was a step towards appointment and initiation of process for selection in the Special BTC training course is an step for appointment of teacher and the case is fully covered by exception created in paragraph 5 of the notification dated 23.8.2010. He submits that word 'process' has to be widely interpreted. Special BTC being a qualification now recognised by 1981 Rules as amended by 10th Amendment Rules those who have been selected for training are actually recruited for appointment as teacher. Reliance has also been placed on the letter of Director of Basic dated 31.10.2005 by which letter Director of Education Basic wrote to District Basic Shiksha Adhikari of the State of U.P. to give appointment to the candidates who have passed Special BTC course. He submits that paragraph 14 of the said letter clearly contemplated that since the candidates have been selected on the basis of the advertisement issued by SCERT no advertisement as contemplated in 1981 Rules is necessary.

22. The appointment letter dated 9.8.2011 has been referred to by which teachers have been appointed in primary institutions subsequent to notification dated 23.8.2010. Sri Asbhishek Srivastava learned counsel appearing in special appeal No. 2347 of 2011 further submits that the appellants who have been imparted special BTC training Course are B.A./B.Sc. and B.Ed and hence by virtue of clause 3 of the notification dated 23.8.2010 they are eligible for appointment as primary teachers. He submits that this aspects of the matter has not been adverted to by Hon'ble Single Judge and those appellants who are even B.Ed. with B.A. and B.Sc. have been treated to ineligible which is erroneous. Sri H.N. Shukla, learned counsel for the appellant have pleaded that similarly situated candidates having been appointed even after notification dated 23.8.2010, denying the said appointment to the appellants is arbitrary, discriminatory and violative of Article 14 of the Constitution of India. Sri Shailendra, learned counsel for the appellant submitted that National Council For Teacher Education has no jurisdiction to lay down the minimum qualifications for appointment of teachers in primary institutions. He submits that National Council For Teacher Education as per provisions of National Council For Teacher Education Act, 1993 has jurisdiction only to lay down qualification for teachers training institutions. He has referred to Section 2(e) and 12 of the National Council For Teacher Education Act, 1993 and judgment of the apex Court in Basic Education Board v. Upendra Rai,  : 2008 (2) ADJ 515 (SC). He further submits that notification dated 23.8.2010 has not been laid as required under Section 28 (3) of 2009 Act. The training of the appellants having been completed, they are entitled for appointment as assistant teachers and they have legitimate expectations also. It is submitted that no advertisement under Rule 14 having not been issued for the last ten years, it is not open for the State to submit that process of recruitment shall not be treated to have been initiated as contemplated by clause 5 of the notification dated 23.8.2010.

23. Sri C.B. Yadav, learned Additional Advocate General submits that qualifications are required to be laid down under Section 23 of 2009 Act and power of relaxation in the qualification is vested only in the Central Government. He submits that process of appointment of teachers shall begin only when advertisement is issued under Rule 14 of 1981 Rules by the appointing authority and the appointing authority under Rule 2(b) being District Basic Shiksha Adhikari any advertisement by Director SCERT is not an advertisement within meaning of Rule 14. Reliance has also been placed on the judgment of Hon'ble Single Judge in Govind Kumar Dixit and others v. State Of U.P. and others,  : 2012 (4) ADJ 195; State of U.P. v. Raghubir Singh Yadav,  : (1994) 6 SCC 15. Sri C.B. Yadav has also relied on the Rules framed by the State Government under Section 38 of the 2009 Act.

24. We have considered the submissions of learned counsel for the parties and have perused the record.

25. Before we proceed to examine the respective submissions, it is useful to refer to certain statutory provisions which are relevant in the present case. The U.P. Basic Education (Teachers Service) Rules, 1981 have been framed for recruitment and conditions of service of teachers in junior basic schools and senior basic schools. Rule 8 of the Rules provide for qualification of Assistant teachers in junior basic school and senior basic school. After amendments made in Rule 2004 special basic teacher certificate is also included in qualification. Rule 8 as amended is as follows:

8. The essential qualifications of candidates for appointment to a post referred to in clause (a) of Rule 5 shall be as shown below against each:



(2) The essential qualification of candidates for appointment to a post referred to in sub-clause (iii) and (iv) of clause (h) of Rule 5 for teaching Science, Mathematics, Craft or any language other than Hindi and Urdu shall be as follows:

(i) A Bachelor's Degree from a University established by law in India or a Degree recognized by the Government as equivalent thereto with Science, Mathematics, Craft or particular language, as the case may be, as one of the subjects, and

(ii) Training qualification consisting of a Basic Teacher's Certificate, Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other training course recognized by the Government as equivalent thereto.

(3) The minimum experience of candidates for appointment to a post referred to in clause (b) of Rule 5 shall be as shown below against each:



(4) The essential qualifications of candidates for appointment to the posts referred to in clause (a) and sub-clauses (iii) and (iv) of clause (b) of Rule 5 for teaching Urdu language shall be as follows-

(i) A Bachelor's Degree from a University established by law in India or a Degree recognized by the Government as equivalent thereto with Urdu as one of the subjects.

Note: A candidate who does not possess the aforesaid qualification in Urdu, shall be eligible for appointment, if he possesses a Master's Degree in Urdu.

(ii) Basic Teacher's Certificate from any of the training centres in Lucknow, Agra, Mawana in district Meerut and Sakaldiha in district Chandauli established by the Government for imparting training for teaching Urdu or any other training qualification recognized by the Government as equivalent thereto.

(5) The essential qualifications of candidates having proficiency in Urdu for appointment to the posts referred to in sub-clause (ii) of clause (a) of Rule 5 for teaching in urdu medium shall be as follows-

(i) A Bachelor's Degree from a University established by law in India or a Degree recognized by the Government as equivalent thereto. The qualifications for proficiency in Urdu will be such as may be prescribed from time to time by the Government.

(ii) Training qualification of two years B.T.C. Urdu special training course.

Rule 14 of the aforesaid Rules provides for determination of vacancies and preparation of list. Rule 14 is quoted as below:

14. Determination of vacancies and preparation of list.--(1) In respect of appointment, by direct recruitment to the post of Mistress of Nursery Schools and Assistant Master or Assistant Mistress of Junior Basic Schools under clause (a) of Rule 5, the appointing authority shall determine the number of vacancies as also the number of vacancies to be reserved for candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, dependants of freedom fighters and other categories under Rule 9 and notify the vacancies to the Employment Exchange and in at least two newspapers having adequate circulation in the State as well as in the concerned district inviting applications from candidates possessing prescribed training qualification from the district concerned.

(2) The appointing authority shall scrutinize the applications received in pursuance of the advertisement and the names of candidates received from the Employment Exchange and prepare a list of such persons as appear to possess the prescribed academic qualifications and be eligible for appointment.

26. National Council For Teacher Education Act, 1993 was enacted by Parliament with object to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and coordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system and for matters connected therewith. Regulations were framed by the National Council For Teacher Education namely National Council For Teacher Education (Determination of Minimum Qualification for Recruitment of Teachers in Schools) Regulations, 2001 providing for minimum qualifications for recruitment of teachers. All institutions imparting training were required to obtain permission from National Council For Teacher Education for running any teachers' training course. The Parliament enacted Right of Children to Free and Compulsory Education Act, 2009 to provide free and compulsory education to children of 6 to 14 years. Section 2(n) defines 'school'. Section 23 provided for qualifications for appointment and terms and conditions of service of teachers. Section 23 of the Act is quoted below:

23. Qualifications for appointment and terms and conditions of service of teachers.--(1) Any person possessing such minimum qualifications, as laid down by an academic authority authorized by the Central Government by notification shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses for training in teacher education or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification.

Provided that a teacher who at the commencement of this Act, does not possess minimum qualification as laid down under sub-section (1), shall acquire such minimum qualification within a period of five years.

(3) The salary and allowances payable to, and the terms and conditions of service of teachers shall be such as may be prescribed

27. The Central Government authorised National Council For Teacher Education as an academic authority within the meaning of 2009 Act. National Council For Teacher Education as the academic authority laid down the minimum qualifications for a person to be eligible for appointment as a teacher for teaching classes I to VIII. The entire notification dated 23.8.2010 being relevant for the present case is quoted below:

NATIONAL COUNCIL FOR TEACHER EDUCATION NOTIFICATION

New Delhi, the 23rd August, 2010

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

1. Minimum Qualifications:

(i) CLASSES I-V

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

OR

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

OR

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

OR

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

AND

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

(ii) Classes VI-VIII

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

OR

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

OR

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

OR

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

OR

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

OR

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

AND

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

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

3. Training to be undergone: A person--

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

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

4. Teacher appointed before the date of this Notification.--The following categories of teachers appointed for classes I to VIII prior to date of this Notification need not acquire the minimum qualifications specified in Para (1) above,

(a) A teacher appointed on or after the 3rd September, 2001 i.e. the date on which the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time) came into force, in accordance with that Regulation. Provided that a teacher class I to V possessing B.Ed. qualification, or a teacher possessing B.Ed. (Special Education) or D.Ed. (Special Education) qualification shall undergo an NCTE recognized 6 month special programme on elementary education.

(b) A teacher of class I to V with B.Ed. qualification who has completed a 6 month Special Basic Teacher Course (Special BTC) approved by the NCTE;

(c) A teacher appointed before the 3rd September, 2001, in accordance with the prevalent Recruitment Rules.

5. Teacher appointed after the date of this Notification in certain cases.-- Where an appropriate Government, or local authority or a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of this Notification, such appointments may be made in accordance with the NCTE (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (as amended from time to time).

28. The appellants before us are basically in two categories (i) those who have passed regular BTC training Course; and (ii) those who have passed special BTC Training Course of six months. All the appellants were admitted in respective training courses after being selected according to the procedure prescribed under different Government Orders issued from time to time and have passed BTC/Special BTC training course. The appellants after having passed the BTC/Special BTC, they are fully entitled for appointment as Assistant Teacher in a primary school as per U.P. Basic Education (Teachers) Service Rules, 1981 as well as National Council For Teacher Education (Determination of Minimum Qualification for Recruitment of Teachers in Schools) Regulations, 2001. From the materials which have been brought on record, following are some of the important facts which emerged:

(a) The selection to regular BTC Course i.e. two years course is regulated by Government Orders issued from time to time. The candidates are selected and imparted two years training by DIETS of respective district.

(b) The candidates are selected for imparting Special BTC Training according to procedure as prescribed by different Government Orders for selecting them and after selection they are imparted Special BTC training of six months in DIETS and thereafter subjected to written examination and are granted certificate thereafter.

(c) The candidates who pass BTC Training Course or Special BTC training Course their names are forwarded to Director SCERT by Principal of DIETS who in turns forward the same to the Director Basic Education who according to the option of the candidates allocate them to different districts for appointment and thereafter appointing authority issues appointment letter to the candidates.

(d) The candidates who had passed BTC Training Course and special BTC training Course were appointed following the aforesaid procedure till 2011. The appellants although were admitted in special BTC Course 2004, Special BTC Courses- 2004, 2007, 2008 but due to different reasons could be declared passed after 23.8.2010.

(e) Although the Principal DIET sent the name of the candidates who passed the BTC/Special BTC to the respective district Basic Education Officer but the respective Basic Shiksha Adhikari did not issue appointment letter to the appellants and communicated them in writing that in view of the notification dated 23.8.2010 now passing the TET is necessary. Their claim can be considered only after they pass the TET.

29. Hon'ble Single Judge vide its judgment and order dated 11.11.2011 dismissed the writ petitions holding that the appointment of the petitioners as assistant teachers in elementary schools will have to be considered on the basis of the minimum qualifications prescribed in the notification dated 23.8.2010 and not by the National Council For Teacher Education Regulations 2001 and such being the position, the petitioners have necessarily to pass U.P.-TET before they are appointed as it is an essential requirement. Hon'ble Single Judge rejected the argument of the petitioners appellants that for them the process of appointment having already initiated prior to 23.8.2010 they should be appointed as per National Council For Teacher Education Regulations 2001. Hon'ble Single Judge held that the advertisement as contemplated in paragraph 5 of the notification dated 23.8.2010 is not referable to the advertisement issued for the admission in BTC/Special BTC Course and the advertisement is clearly referable to the advertisement to be issued under the 1981 Rules for making appointment of teachers. Hon'ble Single Judge further held that the petitioners are not entitled for the benefit of paragraphs 5 of the notifications and any deviation made in the past shall also not confer any right upon the petitioners to claim that it should be continued by the State of U.P. The plea of discrimination in appointing certain similarly situated persons and denying to the petitioners have also not been accepted. Hon'ble Single Judge placed reliance on the two judgment of the apex Court Devendra Singh and others v. State of U.P. and others,  : 2007 (4) ESC 520 (SC) and Yogesh Kumar v. Government of NTC Delhi,  : (2003) 3 SCC 548.

30. Learned counsel for the appellants have heavily relied on the stand of the State Government as taken in a supplementary counter-affidavit filed by I.P. Sharma, Secretary U.P. Board of Basic Education in Writ Petition No. 57595 of 2005 (Ramesh Kumar Singh and others v. State of U.P. and others) which petition had challenged the appointments made by State Government of the Assistant Teachers who had obtained Special B.T.C. Courses 2004 and 2007. The State by filing supplementary counter-affidavit in the aforesaid writ petition had defended its procedure adopted and selection made by it of the Assistant Teachers of Special B.T.C. passed candidates.

31. Learned counsel for the parties have placed reliance on various judgments of the Apex Court and other High Courts which shall be referred to while considering their respective submissions.

32. Two main issues which have to be considered in this bunch of special appeals are:

(i) Whether for the candidates who have passed BTC/special B.T.C. after the notification dated 23rd August, 2010 issued under Section 23 of the 2009 Act, the selection process shall be treated to have commenced from the date of issuance of advertisement by DIET/Director, SCERT inviting applications for selection to BTC/Special BTC so as to make them eligible for appointment under Paragraph 5 of the notification dated 23rd August, 2010?

(ii) Whether the candidates who are BA/BSc with at least 50% marks and possesses B.Ed. qualification are eligible for appointment as Assistant Teacher to teach Class I to V as per clause 3 of the notification dated 23rd August, 2010 without they having passed Teacher Eligibility Test (TET)?

33. The recruitment of teachers in basic schools run by Uttar Pradesh Board of Basic Education is governed by statutory rules, namely, Uttar Pradesh Basic Education Teachers Service Rules, 1981 which provides recruitment, qualification and other conditions of service. Rule 8, as quoted above, provides for qualification to be possessed for appointment as Assistant Teacher in basic schools, Rule 14 provides for determination of vacancy and preparation of list for the post of Mistress of Nursery Schools and Assistant Master or Assistant Mistress of Junior Basic Schools and Rule 15 provides for notification of vacancies and preparation of list for certain posts of Assistant Masters of Senior Basic School and Mistress of Senior Basic Schools. Rule 16 provides for constitution of Selection Committee, Rule 17 provides for procedure for direct recruitment to post of teaching a language and Rule 17A provides procedure for direct recruitment to a post other than languages. As noticed above, there has been shortage of teachers in primary schools due to non availability of candidates possessing teachers training qualification as prescribed under Rule 8. The total number of candidates who are trained by 17 DIETS situate in State of U.P. at the ratio 200 or 100 per institution is much less than the number of Assistant Teachers who retires every year. Apart from above, thousands of vacancies are laying vacant in different institutions and under the scheme implemented by the Central Government and the State Government about 1.26 lacs news posts were sanctioned. The State of U.P. issued various Government orders from time to time, as noted above, initiating process for imparting special basic teachers training to large number of candidates and also imparted the same. In this context references are made to Special B.T.C. 1998, 2004, 2007-08 and 2010. The reference of the Government order dated 14th January, 2004 is also made by which Special BTC was initiated for training 46, 179 B.Ed./LT/B.P.Ed./C.P.Ed. passed candidates. Relevant paragraphs of the said Government order dated 14th January, 2004 are as follows:

In exercise of the powers under Section 19 of the Uttar Pradesh Basic Education Act, 1972 (U.P. Act No. 34 of 1972), the Governor is pleased to make the following rules with a view to amending the Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 (1981-LLT-V-147[117]):

1. Short title and commencement.-

(1) These Rules may be called the Uttar Pradesh Basic Education (Teachers) Service (Tenth Amendment) Rules, 2004.

2. Amendment of Rule 8. In the Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 for clause (I) of sub-rule (II) of Rule 8 the following clause shall be substituted, namely:

Academic qualification

(ii). Assistant Master and Assistant Mistress of Junior Basic Schools A Bachelor's Degree from a University established by law in India or a Degree recognised by the Government as equivalent thereto together with the training qualification consisting of a Basic Teacher's Certificate, Vishisht Basic Teacher's Certificate (BTC), Hindustani Teacher's Certificate, Junior Teacher's Certificate, Certificate of Teaching or any other Training Course recognised by the Government as equivalent thereto.

34. After issuance of the said Government order advertisement dated 17th July, 2004 was issued inviting applications for Special BTC. The candidates were selected and were imparted Special BTC course. Large number of teachers were appointed on the basis of Special BTC 2004. Similarly, the State Government looking to the further requirement of teachers in the institutions, submitted a proposal on 22nd June, 2006 to the NCTE for approving its proposal for training 50,000 B.Ed., L.T., B.P.Ed., C.P.Ed. The NCTE approved the proposal vide letter dated 17th July, 2007 and thereafter Government order dated 10th July, 2007 was issued. The Government order dated 10th July, 2007 also provided in paragraph 15 that after completion of six months training they shall be treated eligible for appointment as Assistant Teachers in Primary Schools. In this context Government order dated 22nd August, 2005 as well as letter of Director of Education (Basic) dated 31st October, 2005 also need to be referred to. The State of U.P. vide Government order dated 22nd August, 2005 decided to allocate the posts according to vacancies in different districts. A chart showing allocation of different vacancies in different districts was enclosed along with the Government order. The Government order contemplated that Principals of DIET shall obtain three options from the candidates who have completed training and forward the same to Director, SCERT who in turn forward the same to the Director (Basic) and the Director (Basic) shall thereafter proceed to allocate their place of posting. The said Government order further provided that appropriate directions be issued to concerned authorities to take necessary action. Although the object of imparting Special BTC was clearly to train candidates to impart training to the candidates so as to make them eligible for appointment as Assistant Teacher to fill up the vacant posts but can the advertisement inviting applications for admission in BTC be treated as initiation of process of appointment. As noted above, Clause 5 of the notification dated 23rd August, 2010 provides as follows:

5. Teacher appointed after the date of this Notification in certain cases: Where an appropriate Government or local authority or a school has issued an advertisement to initiate the process of appointment of teachers prior to the date of this Notification, such appointments may be made. in accordance with the NCTE (Determination of Minimum Qualification for Recruitment of Teachers in Schools) Regulation, 2001 (as amended from time to time).

35. The key words which are used in Clause 5 are "issued an advertisement to initiate the process of appointment of teachers". Much emphasis has been laid by Sri Khare, learned Senior Advocate, on the word "an" and he submits that use of word "an" clearly indicates that there can be more than one advertisement and the advertisement for admitting candidates in the Special BTC should be treated as an advertisement to initiate the process of appointment. Referring to meaning of "an" he has referred to extract from Word and Phrases (Permanent Edition) which is to the following effect:

"An" is the indefinite article meaning any State ex rel. Hurd v. Blomstrom, 37 N.W. 2d 247, 249, 72 S.D. 526.

"An" is synonymous with "any". People v. One 1940 Buick Sedan, Engine No. 53795291, 162 P. 2d 31S, 320, 71 Cal. App. 2d 160.

36. As noted above, process of recruitment and appointment is governed by 1981 Rules since 2009 Act and the notification issued therein does not regulate procedure of appointment. A learned Single Judge of this Court had occasion to consider 1981 Rules, the 1993 Act, the 2009 Act and also the notification dated 23rd August, 2010 and has held that manner of recruitment for appointment is to be governed by the 1981 Rules. Following has been laid down in paragraph 34 of the judgment in Govind Kumar Dixit and others v. State of U.P. and others, : 2012 (4) ADJ 195:

34. The above discussion makes it beyond doubt that the above notifications issued by NCTE lays down minimum qualification, which would make a person eligible for appointment as a teacher in Primary Schools but the manner in which recruitments for appointment for the post of teacher in Primary School shall be made, and, their terms and conditions of service, for the same, aforesaid notification does not provide anything at all and hence in this regard 1981 Rules shall hold the field and would continue to apply.

37. The learned Single Judge of this Court while considering the case of candidates who have completed the Special Basic Teacher Certificate Course 2007 and 2008 for their appointment as Assistant Teachers in Elementary Schools in Writ Petition No. 64709 of 2011 (Shailendra Kumar Yadav and others v. State of U.P. and others), has placed reliance on the judgment of the Apex Court in the case of Devendra Singh and others v. State of U.P. and others,  : 2007 (4) ESC 520 (SC), in which case the Government order dated 14th January, 2004 by which Special B.T.C. course 2004 was initiated came for consideration. The candidates who could not be selected in B.T.C. Course 2004 challenged selection claiming that they were entitled for being given preference and further the selection in the Special Basic Training Certificate Course ought to have been made on the basis of yardstick as laid down in 1981 Rules since the selection to B.T.C. Course is nothing but selection process for appointment as Assistant Teacher. The said argument was specifically made before the High Court and thereafter before the Apex Court by unsuccessful candidates. Noticing the Government order dated 14th January, 2002, Apex Court observed following in paragraph 6:

6. In order to resolve the controversy it is just and necessary to notice the salient features of the policy decision of the Government of Uttar Pradesh dated 14.1.2004. It is clear from a bare reading of the policy that the Government had resolved to arrange the Special BTC Training Course spread over a period of six months to all those 46, 189 B.Ed./L.T. qualified candidates. The selection is for the purposes of imparting training and not recruitment into any service as such. Only such candidates who completed their training of B.Ed./L.T. as regular students in universities recognized by the National Teachers Education Board, recognized colleges and training institutes conducted by the State Government/Central Government alone were eligible for the selection into the course. The policy provides the age of the applicant must be minimum of 16 years and not more than 35 years as on 1st July, 2004. However, some relaxation has been made in favour of scheduled caste, scheduled tribe, backward class candidates and others with which we are not concerned in this case. The most important feature of the policy is that a State level merit list is required to be prepared on the basis of percentage of marks obtained in High School considering the rules regarding reservation. The policy directs the payment of stipend of Rs. 2500/- per month to the selected candidates for the special BTC training until "he is duly appointed on the post of Assistant Teacher in the basic school after passing the written and practical examinations conducted by the Registrar, Departmental Examinations, Uttar Pradesh and obtaining the required certificate, under the control of State Council for Education Research and Training, on completing the required training in the merit process.

Repelling the above argument, following was laid down by the Apex Court in paragraph 10 of the said judgment:

10. The learned counsel for the appellants relying upon the statement made in the counter-affidavit filed in these appeals wherein it is conceded that sub-rules (3) to (6) of Rule 14 are not deleted submitted that the matter should be sent back for re-consideration of the High Court by duly applying the effect of sub-rules (3) to 6 of Rule 14 of the Rules. The submission was that the merit list is required to be prepared in accordance with sub-rules (3) to (6) of Rule 14 of the Rules. The submission in our considered opinion is totally misconceived. We have already noticed that the U.P. Basic Education (Teachers) Service Rules, 1981 deal with the post training scenario. The Rules deal with the selection and appointment of teachers from amongst the candidates already possessing the training qualifications. The Rules do not deal with the selection of the candidates into Basic Training Course. The reliance placed upon the said Rules by the appellants in support of their contention is totally untenable and unsustainable. These Rules do not have any bearing in the matter of selection of candidates into Basic Training Course, 2004. The policy decision of the Government dated 14.1.2004 deals with the arrangement of the Special BTC Training Course for the period of six months for those 46,189 B.Ed./L.T. qualified candidates. The process of selection of the candidates for the said training and the arrangement of the training is required to be conducted in accordance with the guidelines, directions, conditions and restrictions incorporated thereunder. None of the appellants qualified themselves for undergoing the said training course inasmuch as they were not selected as they were not found meritorious or over aged as the case may be. It is not demonstrated as to how the appellants were entitled for selection to undergo Special BTC Training Course, 2004. The validity of the policy decision dated 14.1.2004 is not impugned in these appeals.

38. The Apex Court in the said judgment laid down that 1981 Rules deals with post-training scenario. The Apex Court thus clearly distinguished in the said judgment the two different process and held that appointment is to be regulated by the 1981 Rules.

39. According to Rule 26 of the 1981 Rules, the appointing authority in relation to teachers is the District Basic Education Officer. The advertisements for inviting applications for selection for Special B.T.C. Course were issued by Principals of DIET/Director of State Council of Education, Research and Training (SCERT). Clause 5 of the notification dated 23rd August, 2010 contemplates issuance of advertisement by an appropriate Government, or local authority or School. The advertisement thus issued by DIET or SCERT cannot fall within the advertisement as contemplated by Clause 5.

40. Learned counsel for the appellants laid much emphasis on the submission that 1981 Rules does not contemplate any kind of selection and every candidate who obtains Basic Training Certificate has to be given appointment and selection process is undertaken only at the time of admission in B.T.C. Course. The rule making authority which had issued notification dated 23rd August, 2010 was well aware of teachers training course and the process of admission to Special Basic Training Certificate Course since it is the NCTE who has issued the notification and which regulate teachers training course throughout the country and is also well aware of the process for initiating admission in teachers training course and process of appointment of teachers. The use of specific words "issued an advertisement to initiate the process of appointment" have to be given its plain meaning. The object of Clause 5 of the notification dated 23rd August, 2010 was to cover those candidates for whom process of appointment by issuance of advertisement has already begun and on the date when notification was issued i.e. 23rd August, 2010 the said process was in progress so that they may not be subjected to qualification which has been introduced from 23rd August, 2010. The contemplation in the notification that for ongoing process the change of recruitment rules shall not effect the qualification is clearly in accordance with the well-settled law as has been laid down by the Apex Court in the case of N.T. Devin Kanti and others v. Karnataka Public Service Commission and others,  : 1990(3) UPLBEC 1955. But the important factor, which is to be taken note of is that process of appointment has began. When a person is still acquiring qualification for a post, it cannot be countenanced that process for acquiring qualification for becoming eligible for appointment is process for appointment to the post.

41. Learned counsel for the appellant has also submitted that no advertisement was issued by the District Basic Education Officers for appointment and as and when the names of trained candidates were forwarded to the District Basic Education Officers by Principals of DIET, appointments were made. In this context much reliance has been placed on the supplementary counter-affidavit of Mr. I.P. Sharma, Secretary, U.P. Board of Basic Education, Allahabad filed in Writ Petition No. 57595 of 2007 which has been brought on the record as Annexure-17 to the Special Appeal No. 2366 of 2011. In the said supplementary counter-affidavit following has been stated in paragraph 16:

That so far as the compliance of Rule 14(4) of Rules, 1981 in the process of selection of Assistant Teachers is concerned, as stated above, the trained eligible candidates is not available in any of the district in the State of U.P., therefore a policy decision was taken by the State Government by Government order dated 22.8.2005 for appointment of Assistant Teachers in conformity with the list of successful candidates of Special BTC Training Program sponsored by the SCERT to the District Level Selection Committee as provided under the Rules, 1981. The said selection committee scrutinized the candidates for the post of Assistant teachers and after verification of the records, the recommendations were made by the selection committee and thereafter the appointment was made by the competent authority as per Rules, 1981.

The said supplementary counter-affidavit of Secretary, U.P. Board of Basic Education, Allahabad was dated 17th December, 2009 and can at best be treated to a statement of prevalent practice for issuing appointment to the Assistant Teachers. The said affidavit cannot be read to be an affidavit in context of Clause 5 of the notification dated 23rd August, 2010 nor it can be treated to be an admission on the part of the State that advertisement for selecting the candidates for Special BTC Course should be treated as initiation of process of appointment.

42. Another limb of argument advanced by learned counsel for the appellants to support the claim of the appellants for appointment as Assistant Teachers without they having clearing TET is that even after 29th August, 2010 the State proceeded to make appointment of candidates who have obtained B.T.C. subsequent to 29th August, 2010. It is submitted that State issued those appointment letters since it correctly understood the legal position that by Clause 5 of the notification dated 23rd August, 2010 the minimum qualification as laid down by notification are not applicable for those candidates for whom process of recruitment has already begun. It is submitted that denying the appointment to the appellants and appointing similarly situated candidates is nothing but hostile discrimination by the State. Copies of the appointment letter of several candidates, who were appointed subsequent to 29th August, 2010, has been brought on the record in the supplementary affidavit filed in Special Appeal No. 2347 of 2011 (Smt. Anjana Singh v. State of U.P. and others). The appointment letter dated 9th August, 2011 of 131 candidates by District Basic Education Officer, Behraich and appointment letter dated 24th September, 2011 issued by District Basic Education Officer, Saharanpur of one candidate have been brought on the record. There cannot be any dispute to the appointments which have been made by the State of the candidates having Basic Teacher Certificate even after 29th August, 2010 but issuance of appointment letter even after 29th August, 2010 cannot be treated as establishment of fact that process of their appointment has begun prior to 29th August, 2010 and secondly when the case of appellants are not covered by Clause 5 of the notification dated 29th August, 2010 no direction can be issued to the State to give appointment to the candidates who claimed their appointment on the basis of Paragraph 5. The learned Single Judge in this context has rightly relied on the judgment of the Apex Court in the case of Yogesh Kumar and others v. Government of NCT, Delhi and others,  : (2003) 3 SCC 548.

43. Thus the fact that certain candidates who have obtained their Basic Teachers Certificate after 29th August, 2010 have been given appointment, cannot be a ground to issue any mandamus to the State specially when notification dated 23rd August, 2010 issued under Section 23 of the 2009 Act creates a prohibition. Thus this Court cannot issue any mandamus to the State Government to violate statutory provisions. We are of the view that the appellants are not entitled for the benefit of Clause 5 of the notification dated 23rd August, 2010 and for them it cannot be held that process of appointment has begun before the date of notification dated 23rd August, 2010.

44. Sri Ashok Khare, learned Senior Advocate, appearing for the appellants, in support of his submissions, has placed reliance on the judgment of the Apex Court in the case of N. Suresh Nathan v. Union of India,  : 1992 Suppl.(1) SCC 584, Division Bench judgment of this Court dated 4th May, 2009 in Special Appeal No. 377 of 2008 (Prem Chandra and others v. State of U.P. and others), judgment of the Apex Court in the case of State of U.P. v. Satish Kumar Mishra, 2010 (4) ESC 449 (SC), judgment of the Apex Court in the case of State of Bihar and others v. Mithlesh Kumar and judgment of the Himachal Pradesh High Court dated 21st August, 2012 in Writ Petition No. 11746 of 2011 (Meena Kumari and others v. State of Himachal Pradesh).

45. In N. Suresh Nathan's case (supra) interpretation of recruitment rules for the post of Assistant Engineer in Public Works Department was under consideration. The dispute in the case was whether a diploma holder Junior Engineer who obtains a degree while in service becomes eligible for appointment as Assistant Engineer by promotion on completion of three years' service including therein the period of service prior to obtaining the degree or the three years' service as a degree holder for this purpose is to be reckoned from the date he obtains the degree. The Apex Court after considering the submission held that if the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate. Following was laid down in paragraph 4 of the said judgment which is as under:

4. In our opinion, this appeal has to be allowed. There is sufficient material including the admission of respondents Diploma-holders that the practice followed in the Department for a long time was that in the case of Diploma-holder Junior Engineers who obtained the Degree during service, the period of three years' service in the grade for eligibility for promotion as Degree-holders commenced from the date of obtaining the Degree and the earlier period of service as Diploma-holders was not counted for this purpose. This earlier practice was clearly admitted by the respondents Diploma-holders in para 5 of their application made to the Tribunal at page 115 of the paper book. This also appears to be the view of the Union Public Service Commission contained in their letter dated December 6, 1968 extracted at pages 99-100 of the paper book in the counter-affidavit of respondents 1 to 3. The real question, therefore, is whether the construction made of this provision in the rules on which the past practice extending over a long period is based is untenable to require upsetting it. If the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate. It is in this perspective that the question raised has to be determined.

In the aforesaid case the past practice in the department to treat diploma holders eligible for promotion after expiry of three years from the date they obtained the degree was one of the possible interpretation of the rules and since the said interpretation was backed by practice, the same was accepted.

46. Against the Division Bench judgment of this Court in Prem Chandra's case (supra), the matter was taken in the Apex Court which is in State of U.P. and others v. Santosh Kumar Mishra, 2010(4) ESC 449 (SC). It is sufficient to note the relevant observations of the Apex Court to find out the ratio of the aforesaid judgment, The issue, which was involved in the aforesaid case, has been noted in paragraphs 1 and 5, which are quoted below:

1. The same criteria differently applied at two different points of time leading to different results and consequences, is the problem we are faced with in these Special Leave Petitions. The same principles which were applied in the case of the Respondents to deny them the benefit of appointment, were not given effect to when it came to their turn to get the benefit thereof.

5. According to the Respondents, on an interpretation of Rule 15(2) of the 1980 Rules by the State Government, they were entitled to be selected and appointed first on the vacancies advertised, as they belonged to previous batches and were denied appointment by the State Government earlier on the plea that notwithstanding their merit being superior to those of some of the diploma holders, who had obtained diploma prior in point of time, the latter candidates were to be given appointment first. As a result, those diploma holders, who had obtained diploma before the Respondents, were adjusted against the vacancies first, irrespective of their merit vis-a-vis the diploma holders of subsequent batches and the said practice was continued till 2002. However, when the fresh vacancies were declared and the Respondents were to be appointed on the same principle and practice, they were denied the benefit of the same citing the Rules of 1980 read with Rules of 2002, as amended by the Rules of 2003.

The Division Bench of this Court took the view that when candidates were not permitted on the ground that candidates of earlier batches have to be promoted first irrespective of their merit, while considering those candidates for promotion the said practice cannot be departed with. The Apex Court laid down following in paragraph 41 of the said judgment:

41. It is on account of a deliberate decision taken by the State Government that the private Respondents were left out of the zone of consideration for appointment as Pharmacists in order to accommodate those who had obtained their diplomas earlier. The decision taken by the State Government at that time to accommodate the diploma holders in batches against their respective years can no doubt be discontinued at a later stage, but not to the disadvantage of those who had been deprived of an opportunity of being appointed by virtue of the same Rules. In our view, the same decision which was taken to deprive the private Respondents from being appointed, could not now be discarded, once again to their disadvantage to prevent them from being appointed, introducing the concept of merit selection at a later stage. The same may be introduced after the private Respondents and those similarly-situated persons have been accommodated.

47. The ratio of the above judgment of the Apex Court can be culled out from the above observation where it laid down that the decision of the State Government to accommodate diploma holders in batches against their respective years can no doubt be discontinued at a later stage, but not to the disadvantage of those who had been deprived of an opportunity of being appointed by virtue of the same Rules. The present is not a case where at any point of time the appellant, who have obtained B.T.C. after the date of notification dated 29th August, 2010 were considered and not appointed. Thus the judgment in the case of State of U.P. and others v. Santosh Kumar Mishra, was on its own facts and is clearly distinguishable.

48. The judgment of the Apex Court in the case of State of Bihar v. Mithlesh Kumar, laid down that norms or rules as existing on date when process of selection begins will control such selection and any alteration to such norms would not affect the continuing process, unless specifically the same were given retrospective effect. There cannot be any dispute to the proposition laid down by the Apex Court in the aforesaid judgment. However, the question which is relevant in the present case is as to when process of selection begins. As noted above, the benefit of clause 5 of the notification dated 23rd August, 2010 could be available only when an advertisement has been issued initiating the selection process. In the case of State of Bihar v. Mithlesh Kumar, requisition was sent by the Government of Bihar to the Bihar Public Service Commission on 12th March, 1999 and the respondent was also interviewed but subsequently the policy was changed and the Commission did not sent any recommendation as the State Government requested the Commission not to recommend any further name. Following was observed by the Apex Court in paragraph 19 of the said judgment:

19. Both the learned Single Judge as also the Division Bench rightly held that the change in the norms of recruitment could be applied 14 prospectively and could not affect those who had been selected for being recommended for appointment after following the norms as were in place at the time when the selection process was commenced. The Respondent had been selected for recommendation to be appointed as Assistant Instructor in accordance with the existing norms. Before he could be appointed or even considered for appointment, the norms of recruitment were altered to the prejudice of the Respondent. The question is whether those altered norms will apply to the Respondent." The above case is thus clearly distinguishable since selection was complete and after completion of selection the process was changed.

49. Learned counsel for the appellant has also relied on a judgment of the Himachal Pradesh High Court in Meena Kumari's case (supra). Learned Single Judge in the aforesaid case laid down following in paragraphs 6 and 7:

6. Independently, it be also observed that respondents themselves have been adopting a policy of pick and choose, with regard to certain similarly situated persons, who approached this Court by way of CWP No. 2994 of 2008, titled as Avinash Chander Sharma and others v. State of H.P. and others, wherein vide judgment dated 3.6.2011, the following observations were made:

Consequently, there will be a direction to respondent No. 1 to take a decision with regard to filling-up of the backlog of posts of JBT in entire State of Himachal Pradesh, in accordance with the Reservation Policy and also procedure prescribed under the Rules. It is the grievance of the petitioner that no requisition is being sent by the Government to the ex-servicemen Cell for sponsoring the names mentioned in their roles. All posts to be filled-up by ex-servicemen or their dependants are to be identified and notified accordingly. It is clarified that till such time this procedure is not complied with, no posts of JBT shall be filled-up. The process of identification of the posts in question, if required, shall positively be completed within a period of four months from the receipt of copy of this judgment. Only thereafter, process for selection and appointment shall take place, which in any even must complete within a reasonable period, in accordance with statutory rules, guidelines and instructions.

7. Significantly, while complying with such directions, respondents themselves have given appointment to the petitioners therein without insisting upon the condition of clearance of TET. Hence, this discriminatory approach cannot be allowed to be adopted by the Government in the case of the present petitioners. A uniform policy and approach has to be adopted qua all similarly situated persons. There cannot be any pick and choose. The actions of the State in the instant cases are thus arbitrary, whimsical and illegal.

50. In the aforesaid case the State of Himachal Pradesh implemented the direction of the Court to take a decision with regard to filling up the post of JBT in accordance with the reservation policy and procedure prescribed in the rules. In complying with the direction the State adopted a discriminatory approach which was disapproved by the High Court. In the present case the submission of the counsel for the appellants is that when the candidate of first batch of B.T.C. 2004 were appointed subsequent to notification dated 29th August, 2010 without insisting them passing of TET, the same cannot be pressed into service against the appellants who are similarly situated. When prescribing of qualification for appointment of Assistant Teachers in basic schools is regulated by qualification prescribed by academic authority under Section23 of the 2009 Act, the State is not a free agent to make appointment. The appointment of candidates, according to 2001 NCTE regulation could be made provided their eases are covered by Clause 5. We have already observed that cases of appellants are not covered by Clause 5 since it cannot be held that advertisement initiating process of appointment of teachers had began prior to the date of notification. Thus, as observed above, directing the State to make appointment of the candidates whose cases are not covered by Clause 5 shall be asking the State to act contrary to notification dated 23rd August, 2010 which is not permissible.

51. Sri Shailendra, learned counsel appearing for the appellant in Special Appeal No. 2391 of 2011, apart from adopting the submissions made by Sri Khare, has also contended that National Council of Teacher Education has no jurisdiction to prescribe qualification for appointment on the post of Assistant Teacher in basic schools. It is contended that under the 1993 Act, the NCTE can only prescribe qualification for teachers to impart teachers training. It is submitted that NCTE can have jurisdiction with regard to training qualifications in an institution and NCTE has no jurisdiction to prescribe qualification for basic schools. The submission of counsel for the appellants is fallacious since while laying down the qualification for appointment of teachers in basic schools vide notification dated 23rd August, 2010, the NCTE was not exercising any jurisdiction under the 1993 Act, rather the NCTE was laying down the qualifications under Section 23 of the 2009 Act as an academic authority as authorised by the Central Government. The Parliament has legislative competence to legislate on education as contained in Entry-25 of Last-III of VIIth Schedule of the Constitution of India. The education obviously includes primary education. The State by virtue of Article 21A is obliged to provide free and compulsory education to children. Under the 2009 Act the NCTE has every competence to make provision laying down minimum qualification for appointment of teachers in primary schools. The NCTE is an academic authority authorised by the Central Government under the 2003 Act, hence there is no lack of jurisdiction in the NCTE to lay down minimum qualification for appointment of teachers in primary schools as per Section 23 of the 2009 Act and the submission of counsel for the appellant that NCTE has no jurisdiction to lay down the qualification for basic schools is fallacious.

52. The submission of Sri Shailendra that notification dated 23rd August, 2010 is invalid since it has not been laid as required by Section 38(3)of the 2009 Act also cannot be accepted. Section 38(3) of the 2009 Act is applicable on rules framed by the appropriate Government exercising power under Section 38. The notification dated 23.8.2010 has been issued in exercise of power under Section 23 of the 2009 Act which can be exercised by the academic authority by notification. The notification dated 23.8.2010 has been published in the Gazette of India dated 25.8.2010 hence fully enforceable.

53. Now comes the second issue, as noted above. The claim of the appellants who are BA/BSc with 50% and possesses B.Ed. qualification is that they are eligible for appointment as Assistant Teacher according to Clause 3 of the notification dated 23rd August, 2010 without requirement of having passed TET since the qualification of BA/BSc with at least 50% marks and B.Ed. has been provided for appointment as Assistant Teacher to teach Classes I to V with rider that such appointees shall be imparted six months special programme in elementary education. It is submitted that qualifications under Clause 3 of the notification dated 23rd August, 2010 are independent qualifications and are not controlled by Clause 1 of the notification which requires passing of TET for appointment as Assistant Teacher to teach Classes I to V and Classes VI to VIII. For answering the question the scheme of the 2009 Act and the scheme as delineated by notification dated 23rd August, 2010 has to be looked into.

54. Section 23 of the 2009 Act provides qualification for appointment and terms and conditions of service of teachers. For ready reference Section 23 of the 2009 Act is quoted below:

23. Qualification for appointment and terms and conditions of service of teachers.--(1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

55. Sub-section (1) of Section 23 requires that any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government shall be eligible for appointment as teacher. The NCTE has been authorised by the Central Government to act as an academic authority. Sub-section (2) of Section 23 provides that where a State does not have training institutions offering courses or training in teacher education, or teachers possessing teachers possessing minimum qualification are not eligible in sufficient number, the Central Government may, if it deems necessary, by notification relax the minimum qualifications required for appointment as a teacher. The Legislature was well aware of the shortage of teachers throughout the country and non availability of sufficient number of qualified teachers to teach in primary classes. Thus sub-section (2) of Section 23 specially reserved a right in the Central Government for relaxation in the minimum qualification required for appointment for a period not exceeding five years. The provisions of 2009 Act. thus clearly indicate that Legislature was well aware of non availability of qualified teachers to teach in primary schools.

56. Now we come to the scheme of the notification dated 23rd August, 2010, which has already been quoted above. Clause 1(i) of the notification provides for minimum qualification for teachers for Classes I to V. The qualification for teachers for Class I to V are Senior Secondary (or its equivalent) with at least 50% marks and 2 year Diploma in Elementary Education or Senior Secondary (or its equivalent) with at least 45% marks and 2 year Diploma in Elementary Education in accordance with NCTE Regulations 2002 or Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor of Elementary Education (B.El.Ed.) or Senior Secondary (or its equivalent) with at least 50% marks and 2 years Diploma in Education (Special Education) AND pass in Teacher Eligibility Test (TET). For Class VI to VIII the qualifications are BA/BSc and 2 year Diploma in Elementary Education or BA/BSc with at least 50% marks and 1 year Bachelor in Education or BA/BSc with at least 45% marks and 1 year Bachelor in Education in accordance with the NCTE Regulations issued from time to time or Senior Secondary (or its equivalent) with at least 50% marks and 4 year Bachelor in Elementary Education (B.E1. Ed) or Senior Secondary (or its equivalent) with at least 50% marks and 4 year BA/BSc Ed or B.A. Ed./BSc. Ed or BA/BSc with at least 50% marks and 1 year B.Ed. AND pass in the Teacher Eligibility Test (TET). Clause 3 of the notification only contains a provision that a person with BA/BSc with at least 50% marks and B.Ed. shall also be eligible for appointment to teach Class 1 to V up to 1st January, 2012 provided he undergoes after appointment an NCTE recognised 6 months special program in elementary education. Thus the provisions of Clause 3 are a substantive provisions which are in addition to the minimum qualification prescribed for teachers to teach Class I to VIII. In Clause 3 the qualification BA/BSc and BEd for appointment as teacher to teach Class I to V is provided for and the use of word "also" in Clause 3(a) clearly indicates that the said qualifications are in addition to qualifications as laid down in Clause 1. Thus it cannot be held that person having BA/BSc with 50% marks and B.Ed. is not eligible for appointment as teacher in Class 1 to 5 unless he passes TET.

57. It is well established rule of statutory interpretation that two provisions of a Statute have to be interpreted in a manner so as to give meaning and purpose to both the provisions and they have to be harmoniously construed. Following was laid down by the Apex Court in the case of Krishna Kumar v. State of Rajasthan and others,  : 1991(4) SCC 258, in paragraph 11 which is as under:

11. It is well-settled principle of interpretation that where there appears to be inconsistency in two sections of the same Act, the principle of harmonious construction should be followed in avoiding a head on clash. It should not be lightly assumed that what the Parliament has given with one hand, it took away with the other. The provisions of one section of statute cannot be used to defeat those of another unless it is impossible to reconcile the same. In Venkataramana Devaru v. State of Mysore, this Court observed:

The rule of construction is well-settled that when there are in an enactment two provisions which cannot be reconciled with teach other, they should be so interpreted that, if possible, effect should be given to both. This is what is known as the rule of harmonious construction.

58. Again the Apex Court in the case of Jagdish Singh v. Lt. Governor, Delhi and others,  : 1997(4) SCC 435, has laid down following in paragraph 7 which is as under:

7. A conjoint reading of the aforesaid provisions would make it clear that Rule 24 provides the conditions to be complied with by a person for being admitted as a member of a co-operative society. Rule 25 enumerates the disqualifications of a person for becoming a member of a co-operative society. Sub-clause (c) of Rule 25(1) deals with the disqualifications of a person in case of a housing society, clause (iii) of Rule 25(1) (c) provides that the said person or his spouse or any of his dependent children if is a member of any other housing society then he cant become a member of another housing society unless permitted by the Registrar, Sub-rule (2) of Rule 25 provides for a deemed cessation of a member in the event that member incurs any of the disqualifications mentioned in sub-rule (1) of Rule 25 with effect from the date of such disqualification. Sub-rule (4) of Rule 25 confers power to decide a dispute as to whether a member has incurred any of the disqualifications referred to in sub-rule (1). Rule 28 of the Rules confers power on the Registrar directing removal of an individual from membership either or both of the co-operative societies when such individual has become a member of two co-operative societies of the same class. The short question that arises for consideration is whether a person who is a member of a housing co-operative society having incurred the disqualification under Rule 25(1) (c) (iii) on being a member of a subsequent housing society would cease to be a member of both the societies with effect from the date of the disqualification incurred by him. It is a cardinal principal of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a harmonious construction should be given, Further a statute or a rule made thereunder should be read as a whole and one provision should be construed with reference to the other provision so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonisation between them. The well-known principle of harmonious construction is that effect should be given to all the provisions, and therefore, this Court had held in several cases that a construction that reduces one of the provisions to a 'dead letter' is not a harmonious construction as one part is being destroyed and consequently Court should avoid such a construction. Bearing in mind the aforesaid rules of construction if sub-rule (2) of Rule 25 and Rule 28 are examined the obvious answer would be that under sub-rule (2) the deemed cessation from membership of the person concerned is in relation to the society pertaining to which disqualifications are incurred A plain reading of Rule 28 makes it crystal clear that the Registrar when becomes aware of the fact that an individual has become a member of two co-operative societies of the same class which obviously is a disqualification under Rule 25 then he has the discretion to direct removal of the said individual from the membership of either or both the co-operative societies. If sub-rule (2) of Rule 25 is interpreted to mean that deemed cessation of the person concerned from membership of both the societies then the question of discretion of the Registrar under Rule 28 will not arise. If the interpretation given by the Registrar to sub-rule (2) of Rule 25 as well as the contention raised by the learned counsel for the respondents is sustained then the said sub-rule will be at loggerhead with Rule 28. On the other hand, if sub-rule (2) is interpreted to mean that the deemed cessation is in relation to the society in respect of which the person concerned incurs the disqualification then both sub-rule (2) as well as Rule 28 would have its play. Rule 28 in our considered opinion cannot be held to be otiose and must be allowed to have its full play. In this view of the matter the only way by which sub-rule (2) of Rule 25 and Rule 28 can be harmoniously construed is to construe sub-rule (2) to Rule 25 to mean that the deemed cessation of the person concerned from the membership of the society is the society in respect of which the disqualification was incurred. In the casein hand the disqualification which the appellant incurred was in respect of his membership of the Tribal Co-operative Housing Society Ltd. as he could not have become a member of the said society as he was already a member of Dronacharaya Co-operative Group Housing Society, and therefore, by operation of sub-rule (2) he would deem to have ceased to be a member from the Tribal Co-operative Housing Society right from the inception in November, 1983 and not from the Dronacharaya Co-operative Group Housing Society.

59. The fact that in the notification the said appointment to BA/BSc with 50% marks and B.Ed. for Class I to V was limited till 1st January, 2012 clearly indicated that the said Clause 3 was inserted as exception to an additional qualification to one which was provided in Clause 1. Further requirement that such teachers appointed to Classes I to V which were BA/BSc with 50% marks and B.Ed. shall be provided six months elementary program is clearly for achieving the purpose for which notification was issued.

60. The notification dated 23rd August, 2010 has been amended by notification dated 29th July, 2011 wherein paragraph 3 was substituted as follows:

3(i) Training to be undergone,- A person-

(a) with Graduation with at least 50% marks and B.Ed. qualification or with at least 45% marks and 1-year Bachelor in Education (B.Ed.), in accordance with NCTE (Recognition Norms and Procedure) Regulations issued from time to time in this regard, shall also be eligible for appointment to Class I to V up to 1st January, 2012, provided he/she undergoes, after appointment, an NCTE recognized 6-month Special Programme in Elementary Education;

(b) with D.Ed. (Special Education) or B.Ed. (Special Education) qualification shall undergo, after appointment an NCTE recognised 6-month Special Programme in Elementary Education. ...

The scheme of Clause 3 as an additional qualification for appointment as teacher to teach Class I to V was thus clearly retained and continued even after amendment.

61. Sri C.B. Yadav, learned Additional Advocate General appearing for the State submits that notification dated 23.8.2010 both in paragraph 1 as well as in paragraph 3 require a candidate to have passed TET. As noted above, qualifications as prescribed in paragraph 1 of the notification specifically includes the qualification by words "And pass in the Teacher Eligibility Test (TET)". In paragraph 3, there is no such clause present requiring passing of teacher eligibility test. When the statutory authority in paragraph 1 has specifically included qualification "pass in the teacher eligibility test", there was no reason for not mentioning the same in clause 3 of the notification dated 23.8.2010 if, it was intended that candidates who are covered by clause 3 should also have passed TET. A plain meaning of the words have to be taken and accepting the argument of learned Additional Advocate General shall be nothing but to add words in the notifications which are not present in clause 3. Learned Additional Advocate General submits that the State in its rules namely U.P. Basic (Teachers) Service Rules, 1981 has provided by amendment qualifications of passing TET and in the advertisement which has been issued for appointing trainee teachers also, the qualifications of passing TET has been mentioned.

62. He further submits that the State has also framed Rules under Section 38 of 2009 Act namely; U.P. Right of Children to Fee and Compulsory Education Rules, 2011 which also require passing of TET. The guidelines issued by the Government of India dated 8.11.2010 in exercise of powers under Section 35(1) has also been referred to.

63. The basic education in the State of U.P. is regulated by an Act namely; U.P. Basic Education Act, 1972. Statutory rules have been framed under the U.P. Basic Education Act, 1972 namely; U.P. Basic Education (Teachers) Service Rules, 1981. 1981 Rules contains provisions for cadre of strength, recruitment, qualifications, procedure for recruitment and certain other provisions regulating the service conditions of teachers of basic schools. As noted above, Parliament has enacted the Right of Children to Free and Compulsory Education Act, 2009 of which Section 23 provides for qualification for appointment and terms and conditions of service of teachers. Section 23(1) provides that any person possessing such minimum qualifications as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a Teacher. Central Government has notified National Council for Teacher Education as academic authority which has issued notification dated 23.8.2010 laying down minimum qualifications for appointment of teacher in a basic school. Prior to laying down the qualifications under Section 23 by the academic authority, the qualification for appointment of teacher in the basic schools were prescribed in 1981 Rules. It is relevant to note that the State has amended the 1981 Rules by U.P. Basic Education (Teachers) Service (12th Amendment) Rules, 2011 dated 9.11.2011 by which Rule 8 which provided for essential qualifications for appointment of teacher has been amended. The amendment in Rule as brought by 12th Amendment Rules are as follows:





64. After the issuance of the notifications dated 23.8.2010 under Section 23(1), the qualifications for appointment of teachers of basic schools have to be regulated by qualifications prescribed by the academic authority. As noted above, the State has also framed Rules under Section 28of 2009 Act namely; U.P. Right of Children to Free and Compulsory Education Rules, 2011. Rule 15 of the said Rules contains heading "TEACHERS", which specifically provides that minimum educational qualifications for teacher laid down by an authority, authorised by the Central Government, by notification, shall be applicable for every school referred to in clause (n) Section 2. Rules 15 and 16 which are relevant are quoted below:

15. Minimum qualification of teachers:

Section 23 (1).- The minimum educational qualifications for teachers, laid down by an authority, authorized by the Central Government, by notification, shall be applicable for every school referred to in clause (n) Section 2.

16. Relaxation of minimum qualification:

Section 23(2).--(1) The State Government shall estimate the teacher requirement as per the norms in the Schedule for all schools referred to in clause (n) of Section 2 within the State.

(2) If teachers possessing prescribed minimum qualifications are not available as estimated under sub-rule (1), then the State Government shall request the Central Government by 31st March, for relaxation of the prescribed minimum qualification.

(3) The State Government shall take necessary action after the notification issued by the Central Government, for relaxation in the minimum qualification on the request under sub-rule (2).

(4) The relaxation from minimum qualifications shall be for maximum period of five years from the commencement of the Act i.e. till 31st March, 2015, within such period the teachers appointed under the relaxed condition shall acquire the minimum educations qualifications prescribed under Rule 15.

(5) No appointment of teacher for any school can be made in respect of any person not possessing the minimum educational qualifications prescribed under Rule 15 without the notification referred to in sub-rule (3).

65. Rule 15 which has been framed by the State under 2009 Act thus, clearly contemplates that educational qualifications for teachers as laid down by authority authorised by the Central Government shall be applicable. Thus, after issuance of notification under Section 23(1), the qualifications of teachers are to be regulated by authority. The purpose of providing qualifications of teachers by notification under Section23(1) is for enforcing uniform qualifications throughout the country for appointment of teachers in basic schools. The 2009 Act enacted by Parliament is referable to Entry 25 List 3 of the Constitution of India. When an enactment is made by the Parliament on the same subject, any enactment of the State earlier existing which is also referable to Entry 25 List 3 has to give way to the Parliamentary enactment. Rule 15 of 2011 Rules as quoted above framed by the State clearly contains the aforesaid concept. Thus, what is enforceable is the notification dated 23.8.2010 regarding the qualification of teachers and any rule framed by the State under the 1981 Act under the State enactment has to give way. Further the State under 1981 Rules cannot provide for any qualification contrary to the qualification as laid down by the notification dated 23.8.2010. As noted above, Section 23(2) of the 2009 Act empowers the Central Government by notification to relax the minimum qualifications required for appointment as a teacher where a State doesn't have adequate institutions offering courses or training in teacher education. Section 23(2) is quoted below:

23. Qualifications for appointment and terms and conditions of service of teachers.--(1)...

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under sub-section (1) are not available in sufficient numbers, the Central Government may, if its deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification:

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under sub-section (1), shall acquire such minimum qualifications within a period of five years.

66. As noted above, possessing qualifications of teachers in paragraph 3 was permissible only up to 1.1.2012. The State Government have submitted a proposal to the Central Government by letter dated 26.7.2012 for relaxation of minimum qualifications for appointment of teachers under section (1) of Section 23 by allowing persons referred to in clause (1) (a) of paragraph 3 of the said notification. The Central Government after considering the request of the State Government issued a notification dated 10.9.2012 in exercise of power under Section23(2). It is useful to extract the aforesaid notification dated 10.9.2012 which is as follows:

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of School Education and Literacy)

NOTIFICATION

New Delhi, the 10th September, 2012

S.O. 2165(E).--WHEREAS the National Council for Teacher Education (hereinafter referred to as the Council) for Teacher Education (hereinafter referred to as the Council), in pursuance of sub-section (i) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009), (hereinafter referred to as the said Act), has, vide its notification number F. No. 61/03/20/2010/NCTE/ (N & S), dated the 23rd August, 2010, published in the Gazette of India, Extraordinary, Part III, Section 4, dated the 25th August, 2010, (hereinafter referred to as the said notification), as amended vide notification number 61-1/2011-NCTE (N & S), published in the Gazette of India Extraordinary, Part III, Section 4, dated the 2nd August, 2011, laid down the minimum qualification for a person to be eligible for appointment as a teacher for classes I to VIII in a school referred to in clause (n) of Section 2 of the said Act.

AND WHEREAS sub-clause (a) of clause (i) of paragraph 3 of the said notification as amended from time to time, provides that a person with graduation with atleast fifty per cent marks and Bachelor of Education (B.Ed.) qualification or with at least forty-five per cent marks and one year Bachelor in Education in accordance with the National Council for Teacher Education (NCTE) (Recognition Norms and Procedure) Regulations, referred to in the said Notification as amended from time to time, shall also be eligible for appointment to Class I to V up to 1st January, 2012 provided he/she undergoes, after appointment, a National Council for Teacher Education (NCTE) recognised six month Special Programme in Elementary Education.

AND WHEREAS sub-section (2) of Section 23 of the said Act provides that where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications laid down under sub-section (1) of Section 23 of the said Act are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher for such period, not exceeding five years, as may be specified in that notification;

AND WHEREAS the State Government of Uttar Pradesh vide its letter dated the 26th of July, 2012 submitted a proposal to the Central Government for relaxation of the requirement of minimum qualifications for appointment of teachers laid down by the Council under sub-section (1) of Section 23 of the said Act, by allowing persons referred to in sub-clause (a) of Clause (i) of paragraph 3 of the said notification, as amended from time to time, eligible for appointment as a teacher for classes I to V beyond the date of 1st January, 2012, subject to the fulfilment of conditions laid down in the said sub-clause.

AND WHEREAS the Central Government on being satisfied with the proposal of the State Government of Uttar Pradesh that the teachers possessing minimum qualification as laid down under sub-section (i) of Section 23 of the said Act are not available in that State in sufficient numbers, and it deems necessary that the requirement of minimum qualifications for appointment as teachers in respect of State of Uttar Pradesh be relaxed under sub-section (2) of Section 23 of the said Act;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (2) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009), the Central Government hereby relaxes in respect of the State of Uttar Pradesh, the minimum qualifications laid down by the National Council for Teacher Education under sub-section (1) of Section 23 of the said Act in so far as they relate to classes I to V. and allows persons referred to in sub clause (a) of clause (1) of paragraph 3 of the said notification as amended from time to time, eligible for appointment as a teacher for classes I to V beyond the 1st January, 2012, subject to fulfilment of the conditions specified under the said sub clause.

2. The relaxation granted under this notification shall be valid for a period upto the 31st March, 2014, subject to fulfilment of following conditions, namely:

(i) the State Government shall conduct the Teacher Eligibility Test as specified in the said notification as amended from time to time, in accordance with the Guidelines for conducting Teacher Eligibility Test, under the Right of Children to Free and Compulsory Education Act, 2009, issued by the Council vide its letter dated the 11th February, 2011 and those persons who pass the Teacher Eligibility Test be considered for appointment as a teacher in classes I to VIII;

(ii) the State Government and other school managements shall amend the recruitment rules relating to appointment of teachers so as to provide for the minimum qualifications required for appointment of teachers laid down under the said notification as amended from time to time;

(iii) the State Government shall in the matter of appointment of teacher give priority to those eligible candidates who possess the minimum qualifications specified in the said notification as amended from time to time and thereafter consider other candidates eligible with the qualifications referred to in sub-clause (a) of clause (i) of paragraph 3 thereof;

(iv) advertisement for appointment of teachers shall be given wide publicity, including outside the State;

(v) The State Government and other school managements shall ensure that teachers employed or engaged by them who possess the minimum qualifications referred to in sub clause (a) of clause (i) of paragraph 3 of the said notification as amended from time to time, under go, after appointment, a National Council for Teacher Education (NCTE) recognised six month Special Programme in Elementary Education;

(vi) the relaxation specified in this notification shall be one time and no further relaxation under sub-section (2) of Section 23 shall be granted to the State of Uttar Pradesh; and

(vii) the State Government shall take steps to increase the institutional capacity for preparing persons with specified qualifications so s to ensure that only persons possessing qualifications laid down under the said notification are appointed as teachers for classes I to V after the 31st March, 2012.

3. The persons referred to in subclause (a) of clause (i) of paragraph 3 of the said notification as amended from time to time, shall also be eligible for appearing in the Teacher Eligibility Test conducted by the State Government in respect of teacher appointments made in the State up to 31st March, 2014, in accordance with subparagraph (iii) of paragraph 5 of the Guidelines for conducting Teacher Eligibility Test under the Right of Children to Free and Compulsory Education Act, 2009 issued by the Council vide its letter dated the 11th February, 2011.

[E. No. 1-17/2010-EE. 4]
VRINDA SARUP, Addl. Secy.

67. The 4th paragraph of the aforesaid notifications clearly contemplates that State Government has submitted proposal for relaxation of the requirement of minimum qualifications for appointment of teachers laid down by the Council under sub-section (1) of Section 23 of the said Act, by allowing persons referred to in subclause (a) of Clause (i) of paragraph 3 of the said notification, as amended from time to time, eligible for appointment as a teacher to teach classes I to V beyond the date of 1st January, 2012. The aforesaid notification thus, clearly contemplates relaxation for permitting the appointment of teachers referred to in paragraph 3 beyond 1.1.2012. The Central Government has granted the relaxation subject to conditions as mentioned in paragraph 2. The notification dated 10.9.2012 thus, also clearly re-enforces the view that the candidates possessing qualifications as referred to in paragraph 3 i.e. candidates having passed B.A. B.Sc. with 50% and B.Ed. are eligible for appointment as teacher for teaching class I to V beyond 1.1.2012 i.e. upto 31.3.2014. Thus, the eligibility of candidates in paragraph 3 has been continued by Central Government by allowing relaxation under sub-section (2) of Section 23. Thus, the submissions of the State that for appointment of teachers in basic schools a candidate should necessarily pass TET is misconceived. The relaxation having been granted by the Central Government under Section 23(2) beyond the period 1.1.2012, still the candidates possessing qualifications as required in paragraph 3 of the notification dated 23.8.2010 can be appointed.

68. The State having misconstrued the scope of clause 3 of notification dated 23.8.2010, by 12th Amendment Rules incorporated qualifications which require passing of TET by the candidates whereas the qualifications as mentioned in paragraph 3 have not been reflected in the Rules. When under 2009 Act and by virtue of notifications dated 23.8.2010 the relaxation granted by the Central Government vide notification dated 10.10.2012, the persons referred to in clause 3 of the notifications are still eligible for appointment, denying them right of consideration for appointment citing Rule 8 of 1981 Rules as amended from time to time is misconceived and is contrary to the statutory schemes of 2009 Act. 1981 Rules cannot contain any rule contrary to qualifications as prescribed under Section 23(1) and any such contrary prescription is unenforceable. We are thus of the view that persons having B.A. B.Sc. with 50% marks and B.Ed. are still eligible to be considered for appointment as teacher in class I to V in basic school.

69. In the above context, it is relevant to refer to clause 2(iii) of the notifications dated 10.9.2012. The clarification which is quoted for ready reference is as follows:

(viii) the State Government shall in the matter of appointment of teacher give priority in the said notification as amended from time to time and thereafter consider other candidates eligible with the qualifications referred to in sub-clause (a) of clause (i) of paragraph 3 thereof;

70. The notification dated 10.9.2012 requires that State Government shall in the matter of appointment of teacher give priority to those eligible candidates who possess minimum qualifications specified in the said notification and thereafter consider every candidate eligible as per qualifications referred to under sub-clause (a) of clause (i) of paragraph 3. This requirement itself makes it clear that persons referred to in paragraph 3 are also eligible. However, a priority has to be given to person possessing minimum qualifications specified in the notification. The notification referred to is obviously notification dated 23.8.2010. Thus, priority has to be given to those candidates, who fulfil qualifications prescribed under paragraph 1 of the notification dated 23.8.2010 and there is no concept of priority amongst the candidates who possess qualifications under paragraph 3.

71. Learned Counsel appearing for the State has also referred to a guidelines dated 8.11.2010 issued under Section 35(1) issued by the Government of India. In paragraph 4 of the guidelines emphasis has been made i.e. "conditions of possessing TET will not be relaxed by the Central Government". The said guidelines have been issued for implementation of the provisions of Section 23(2) which is clear from the subject of guidelines which as follows:

Subject: Guidelines under Section 351 of the Right of Children to Free and Compulsory Education (**RTE**) Act, 2009 for implementation of the provisions of Section 23(2)-reg.

72. Guidelines only mentions that conditions of possessing TET will not be relaxed by the Central Government thus, it require that the State Government should not submit any proposal for relaxation of TET which obviously referred to qualifications prescribed in paragraph 1 because it is only in paragraph 1 that requirement of passing TET is mentioned. The said guidelines cannot be read to mean that in paragraph 3 of the notification dated 23.8.2010 also requirement of passing TET is to be read in. Learned Additional Advocate General has submitted that the State has already initiated process for appointment of more than 72,000 trainee teachers and process has been initiated which according to corrigendum/amendment dated 31.12.2012 is to be completed by 31.3.2012. He submits that more than seven lacs applications have been received in response to the advertisement and the process is under way.

73. In view of the aforesaid discussions, we are of the view that the persons who are qualified under clause 3 of notification dated 23.8.2010 should also be eligible for consideration for appointment as assistant teacher in basic schools in the State of U.P. Whether the appointment is made as a trainee teacher or assistant teacher is of not much significance. The appointment on the post of teacher in whatever name or nomenclature it is referred to has to be made after considering all eligible persons as per notification dated 23.8.2010. We are of the view that State having not permitted applications from such candidates who are qualified under clause 3 without they having passed TET to participate in selection, it is required to issue corrigendum. Such candidate who possess qualifications prescribed in clause 3 under the notification dated 23.8.2010 be also permitted to participate in the selection. In the result all the Special appeals are disposed of with the following directions:

(i) The appellants/other eligible candidates who have passed BA/BSc with 50% and are B.Ed being fully eligible for appointment as Assistant Teacher to teach Classes I to V as per Clause 3 of the notification dated 23rd August, 2010, as amended from time to time, are entitled for consideration for their appointment on vacant posts of Assistant Teachers in Classes I to V. The State authorities including the concerned District Basic Education Officers are directed to consider the claim of such persons while considering the appointment on the post of Assistant Teacher in institutions to teach Classes I to V.

(ii) The State is directed to issue a corrigendum so that all eligible candidates as per clause 3 of the notification dated 23.8.2010 as amended i.e. candidates having 50% marks in B.A./ B.Sc. with B.Ed. should also be permitted to participate in the ongoing process of appointment of trainee teachers. At least 15 days time be allowed to submit applications by abovementioned candidates.

(iii) The prayer of the appellants possessing BTC/Special BTC qualifications obtained after 23.8.2010 to issue direction to appoint them giving benefit of paragraph 5 of the notification dated 23rd August, 2010 cannot be accepted.

Parties shall bear their own costs.