

AFR

Neutral Citation No. - 2024:AHC:24361

Reserved on 05.02.2024

Delivered on 13.02.2024

**Court No. - 36**

**Case :-** WRIT - A No. - 15229 of 2019

**Petitioner :-** Urvashi

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Mushir Khan, Amit Saxena (Senior Adv.)

**Counsel for Respondent :-** C.S.C., Akhilesh Kumar Singh, Amaresh Yadava, Chheda Lal Verma, Nand Kishore Singh, Shivendu Ojha, Sunil Kumar Srivastava, Vishnu Kumar

**Connected with**

1. **Case :-** WRIT - A No. - 4223 of 2022

**Petitioner :-** Mohammad Imran

**Respondent :-** State Of U P And 4 Others

**Counsel for Petitioner :-** Mushir Khan

**Counsel for Respondent :-** C.S.C., Shashi Kant Verma

2. **Case :-** WRIT - A No. - 14423 of 2019

**Petitioner :-** Hoshiyar Singh

**Respondent :-** State Of U.P. 4 Others

**Counsel for Petitioner :-** Rohit Upadhyay, Ashok Khare, Sr. Advocate

**Counsel for Respondent :-** C.S.C., Ram Bilas Yadav

3. **Case :-** WRIT - A No. - 2105 of 2020

**Petitioner :-** Rashmi Singh

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Nand Lal Pandey, P.K. Singh, Shashi Kant Singh, Suyash Pandey

**Counsel for Respondent :-** C.S.C., Mrigraj Singh

4. **Case :-** WRIT - A No. - 14432 of 2019

**Petitioner :-** Chandra Shekhar Ajad

**Respondent :-** State Of U.P. 4 Others

**Counsel for Petitioner :-** Rohit Upadhyay, Ashok Khare, Sr. Advocate

**Counsel for Respondent :-** C.S.C., Ram Bilas Yadav

5. **Case :-** WRIT - A No. - 14436 of 2019

**Petitioner :-** Kavita Yadav

**Respondent :-** State Of U.P. 4 Others

**Counsel for Petitioner :-** Rohit Upadhyay, Ashok Khare, Sr. Advocate

**Counsel for Respondent :-** C.S.C., Bhupendra Kumar Yadav

6. **Case :-** WRIT - A No. - 14533 of 2019

**Petitioner :-** Reeta Singh

**Respondent :-** State Of U.P. And 6 Others

**Counsel for Petitioner :-** P.K. Upadhyay, Vikram Yadav  
**Counsel for Respondent :-** C.S.C., Nisheet Yadav

**7. Case :-** WRIT - A No. - 15609 of 2019

**Petitioner :-** Suman Yadav

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Bheem Singh

**Counsel for Respondent :-** C.S.C., Bhanu Pratap Singh

**8. Case :-** WRIT - A No. - 15871 of 2019

**Petitioner :-** Divya Agrahari And 8 Others

**Respondent :-** State Of U.P. And 8 Others

**Counsel for Petitioner :-** Bashisth Narain Pandey, Ashok Khare, Sr. Advocate

**Counsel for Respondent :-** C.S.C., Ashok Kumar Yadav, Awadhesh

Kumar, Shyam Krishna Gupta, Syed Nadeem Ahmad

**9. Case :-** WRIT - A No. - 15862 of 2019

**Petitioner :-** Sanjiv Kumar Singh

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Umesh Prasad Singh, Ashok Khare, Sr. Advocate

**Counsel for Respondent :-** C.S.C., Shравan Kumar Panday

**10. Case :-** WRIT - A No. - 15922 of 2019

**Petitioner :-** Pramod Kumar And Another

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Shantanu Khare, Ashok Khare Sr. Advocate

**Counsel for Respondent :-** C.S.C., Shashi Kant Verma

**11. Case :-** WRIT - A No. - 15957 of 2019

**Petitioner :-** Nidhi Rai And Another

**Respondent :-** State Of U.P. And 5 Others

**Counsel for Petitioner :-** Bashisth Narain Pandey, Ashok Khare, Sr. Advocate

**Counsel for Respondent :-** C.S.C., Pranesh Dutt Tripathi, Syed Nadeem

Ahmad

**12. Case :-** WRIT - A No. - 17710 of 2019

**Petitioner :-** Jyoti Sahu

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Virendra Singh, Jitendra Shanker Pandey

**Counsel for Respondent :-** C.S.C., Nand Kishore Singh

**13. Case :-** WRIT - A No. - 16861 of 2019

**Petitioner :-** Sarita Saini

**Respondent :-** State Of U P And 4 Others

**Counsel for Petitioner :-** Sushil Kumar, Babu Lal Ram

**Counsel for Respondent :-** C.S.C., Sanjay Kumar Singh

**14. Case :-** WRIT - A No. - 16773 of 2019

**Petitioner :-** Kumari Harshita Singh

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Prabhakar Awasthi

**Counsel for Respondent :-** C.S.C., Pranesh Dutt Tripathi

15. Case :- WRIT - A No. - 17473 of 2019

Petitioner :- Akhilesh Yadav

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Shantanu Khare, Ashok Khare, Sr. Advocate

Counsel for Respondent :- C.S.C., Chandrakesh Rai

16. Case :- WRIT - A No. - 17593 of 2019

Petitioner :- Asad Ahamad

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- D.C. Dwivedi

Counsel for Respondent :- C.S.C., Krishna Kumar Chand

17. Case :- WRIT - A No. - 17749 of 2019

Petitioner :- Kanika Upadhyaya

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Nand Lal Pandey, Suyash Pandey

Counsel for Respondent :- C.S.C., Yogendra Singh Bohra

18. Case :- WRIT - A No. - 20584 of 2019

Petitioner :- Smt. Gulab Devi

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Vijay Bahadur Yadav, Manoj Yadav, Ravindra Kumar Singh

Counsel for Respondent :- C.S.C., Chandrakesh Rai

19. Case :- WRIT - A No. - 21282 of 2019

Petitioner :- Pooja Yadav

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Shyamal Narain, Ashwini Kumar, Ganesh Shanker Srivastava

Counsel for Respondent :- C.S.C., Krishna Kumar Chand

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**Hon'ble Saurabh Shyam Shamsery, J.**

1. Fairness is the soul of any competitive examination. Any compromise of merit would betray confidence and trust of meritorious candidates on examination system and in case some irregularity is detected during process of examination and there is a scope to cure it, in the interest of justice and to maintain fairness, an endeavour has to be taken to cure it. This is what happened in facts and circumstances of present cases.

2. Petitioners have participated in selection for recruitment of 68500 Assistant Teachers in Basic Education Department in the year 2018. After examination, petitioners were in the list of selected candidates (41556) in a

result declared as 16<sup>th</sup> August, 2018. Petitioners thereafter appeared in counselling, their documents were verified, they were appointed and later on they joined in September, 2018 on probation of one year. Petitioners appointments were cancelled by means of similarly worded orders impugned in writ petitions and one of such impugned order dated 07.09.2019 annexed in leading writ petition, i.e., Writ-A No. 15229 of 2019, is reproduced hereinafter:

"कार्यालय- जिला बेसिक शिक्षा अधिकारी, हमीरपुर

आदेश सं०: वे०शि०/ 236 /2019-20

दिनांक 07:09 2019

आदेश

शासनादेश संख्या/1267/68-5-2018/2013 दिनांक 18-08-2018 एवं शासनादेश सं०/1321/68-5-2018 दिनांक 28.08.2018 के क्रम में सचिव, बेसिक शिक्षा परिषद उ०प्र०, प्रयागराज के स्तर से निर्गत पत्रांक: बे०शि०प०/7263-7507/2018-19 दिनांक 19.08.2018 के द्वारा 68500 स०अ० भर्ती के अर्न्तगत लिखित परीक्षा में उत्तीर्ण 41556 अभ्यर्थियों के सापेक्ष जनपद हमीरपुर हेतु 263 उत्तीर्ण अभ्यर्थियों की सूची उपलब्ध कराते हुये जनपद के ग्रामीण क्षेत्र में संचालित प्राथमिक विद्यालयों में पदस्थ किये जाने हेतु निर्देश प्रदान किये गये थे। प्राप्त निर्देश के समादर में, प्राप्त सूची के अनुसार अभ्यर्थियों के शैक्षिक अभिलेखों की जांच किये जाने हेतु दिनांक 01-09-2018 से 03-09-2018 तक जिला शिक्षा एवं प्रशिक्षण संस्थान भरुवा सुमेरपुर-हमीरपुर में काउन्सिलिंग आयोजित की गयी, आयोजित काउन्सिलिंग में प्राप्त 263 की सूची में से शैक्षिक अभिलेखों की जांच करवाये जाने हेतु 259 अभ्यर्थी उपस्थित हुये, उपस्थिति 259 अभ्यर्थियों में से सुश्री ज्योति साहू पुत्री श्री जगदेव प्रसाद देहाती एवं सुश्री उर्वशी पुत्री श्री राजेश कुमार का भी नाम सम्मिलित था, जोकि परिषद कार्यालय से 263 की प्राप्त सूची के क्रमांक 125 पर सुश्री ज्योति साहू पुत्री श्री जगदेव प्रसाद देहाती व 205 पर सुश्री उर्वशी पुत्री श्री राजेश कुमार का नाम अंकित था। शैक्षिक अभिलेखों की जांच हेतु आयोजित काउन्सिलिंग में 04 अभ्यर्थियों द्वारा प्रतिभाग नहीं किया गया। शैक्षिक अभिलेखों की जांच करवाये जाने हेतु दिनांक 01-09-2018 से 03-09-2018 तक आयोजित काउन्सिलिंग में उपस्थित 259 अभ्यर्थियों को विद्यालयों में पदस्थ किये जाने हेतु संबंधित अभ्यर्थियों से विकल्प लिये जाने के निमित्त दिनांक 04-09-2018 को चयन समिति के समक्ष काउन्सिलिंग आयोजित की गयी।

उक्त आयोजित काउन्सिलिंग में 259 अभ्यर्थियों का चयन समिति के अनुमोदनापरान्त व विद्यालय में पदस्थ किये जाने हेतु चयन समिति के समक्ष सुश्री ज्योति साहू पुत्री श्री जगदेव प्रसाद देहाती एवं सुश्री उर्वशी पुत्री श्री राजेश कुमार द्वारा प्रस्तुत किये गये विकल्प के आधार पर कार्यालय के आदेश सं०/307/2018-19 दिनांक 05.09.2018 द्वारा सुश्री ज्योति साहू पुत्री श्री जगदेव प्रसाद देहाती की नियुक्ति कन्या प्राथमिक विद्यालय, रीवन विकास खण्ड, मौदहा में एवं सुश्री उर्वशी पुत्री श्री राजेश कुमार की नियुक्ति कन्या प्राथमिक विद्यालय बेरी, विकास खण्ड, कुरारा में सहायक अध्यापक पद पर ग्रेड पे० 4200/- में नितान्त अस्थायी रूप से एक वर्ष की परीक्षा काल अवधि में की गयी थी जिनका नाम कमशः 220 व 226 पर अंकित किया गया था। निर्गत किये गये नियुक्ति पत्र में इस बात का स्पष्ट उल्लेख कर दिया गया था कि यदि नविष्य में कोई अभिलेख त्रुटिपूर्ण/ फर्जी पाया जाता है तो सम्बन्धित की, की गयी नियुक्ति स्वतः निरस्त समझी जायेगी।

शासनादेश सं० 1498 (i)/68-4-2018 दिनांक 05.10.2018 के बिन्दु (छ) में दिये गये निर्देश के क्रम में सचिव, बेसिक शिक्षा परिषद उ०प्र० प्रयागराज के स्तर से निर्गत पत्रांक: बे०शि०प०/ 8564-8642/2019-20 दिनांक 16.08.2019 के द्वारा सहायक अध्यापक भर्ती परीक्षा 2018 के दिनांक 13.08.2018 को घोषित परीक्षफल में उत्तीर्ण 49 ऐसे अभ्यर्थी जो पुर्नमूल्यांकन के पश्चात अनुत्तीर्ण घोषित किये गये हैं, जो वर्तमान में सहायक अध्यापक पद पर नियुक्ति हैं, को सेवा से पृथक्करण किये जाने हेतु शासनादेश सं०: 522/अरसठ-4-2019 दिनांक 29.07.2019 में दिये गये निर्देशों के अनुपालन में अग्रिम कार्यवाही किये जाने हेतु निर्देश प्रदान किये गये हैं तथा सचिव, उ०प्र० बेसिक शिक्षा परिषद, प्रयागराज के पत्रांक बे०शि०प०/8756-89/2019-20 दिनांक 19.08.2019 के द्वारा अनुत्तीर्ण 04 अभ्यर्थियों की सूची उपलब्ध कराया गयी है। सचिव, बेसिक शिक्षा परिषद उ०प्र०, प्रयागराज के पत्र दिनांक 19-08-2019 के साथ सलग्न अनुत्तीर्ण घोषित अभ्यर्थी की सूची में सुश्री ज्योति साहू पुत्री श्री जगदेव प्रसाद देहाती एवं सुश्री उर्वशी पुत्री श्री राजेश कुमार का नाम अंकित हैं, जोकि उक्तवत् जनपद में कार्यरत है।

अतः शासनादेश सं० 1498 (i)/68-4-2018 दिनांक 05.10.2018 के बिन्दु (छ) में दिये गये निर्देश के क्रम में सचिव, बेसिक शिक्षा परिषद उ०प्र० प्रयागराज के स्तर से निर्गत पत्रांक: बे०शि०प०/ 8564-8642/2019-20 दिनांक 16.08.2019 एवं पत्रांक वे०शि०प०/8756-89/2019-20 दिनांक 19.08.2019 तथा शासनादेश सं० 522 / अरसठ-4-2019 दिनांक 29.07.2019 के द्वारा प्राप्त निर्देश के अनुपालन में उ०प्र० बेसिक शिक्षा परिषद कर्मचारी वर्ग नियमावली 1973 में अंकित वृहत खण्ड के बिन्दु (6) एवं उ०प्र० सरकारी सेवक (अनुशासन एवं अपील नियमावली 1999) के बिन्दु (ख) दीर्घ

शास्तियाँ (4) में निहित प्राविधानुसार तत्काल प्रभाव से सुश्री ज्योति साहू पुत्री श्री जगदेव प्रसाद देहाती सहायक अध्यापिका कन्या प्राथमिक विद्यालय, रीवन विकास खण्ड, मौदहा एवं सुश्री उर्वशी पुत्री श्री राजेश कुमार सहायक अध्यापिका कन्या प्राथमिक विद्यालय, बेरी विकास खण्ड, कुरारा जनपद-हमीरपुर में की गयी नियुक्ति को तत्काल प्रभाव से एतद् द्वारा निरस्त करते हुये सेवा से पृथक किया जाता है।"

3. Sri Ashok Khare, learned Senior Counsel assisted by Sri Himanshu Singh, Advocate and Sri P.K. Upadhyay, Sri Umesh Prasad Singh, Sri Bashisth Narayan Pandey, Sri Sanjeev Kumar Singh, Advocates for different petitioners, submitted that above referred impugned order does not disclose any reason(s) for cancellation of appointments of respective petitioners as well as Government Order dated 05.10.2018 and subsequent Circular dated 16.08.2019 would not provide any power to concerned respondent to pass impugned orders. On basis of pleadings they submitted that respondents have no power to re-evaluate the answer booklets of petitioners as relevant rules and procedure does not permit to do so. Learned counsel have submitted that in absence of any procedure prescribed, entire exercise to recheck answer booklets was illegal and impermissible, therefore, impugned orders cannot survive.

4. Learned counsel further submitted that both Government Orders dated 05.10.2018 and 16.08.2019, referred in impugned orders, do not deal with issue of re-examination of answer booklets, rather details mentioned in said Government Orders would indicate that exercise undertaken was contrary to procedure prescribed. For reference both Government Orders are reproduced hereinafter:

**Government Order dated 05.10.2018**

"प्रेषक,

चन्द्रशेखर,

विशेष सचिव,

उ०प्र० शासन।

सेवा में,

सचिव,

परीक्षा नियामक प्राधिकारी

उ०प्र०, इलाहाबाद

बेसिक शिक्षा अनुभाग

लखनऊ, दिनांक 05 अक्टूबर, 2018

विषय- सहायक अध्यापक भर्ती परीक्षा - 2018 में हुई अनियमितताओं की जांच के सम्बन्ध में।

महोदय,

उपर्युक्त विषय के सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि बेसिक शिक्षा विभाग, उ०प्र० द्वारा 68500 पदों पर सहायक अध्यापकों की सम्पन्न हुई भर्ती परीक्षा-2018 में हुई अनियमितताओं की जांच हेतु श्री संजय आर० भूसरेड्डी की अध्यक्षता में गठित तीन सदस्यीय उच्चस्तरीय जांच समिति की जांच आख्या एवं सचिव, परीक्षा नियामक प्राधिकारी द्वारा समस्त 1,07,865 उत्तर पुस्तिकाओं की करायी गयी स्कूटनी के आधार पर शासन द्वारा निर्णय लिये गये हैं, जिसमें तात्कालिक प्रभाव से कार्यवाही किये जाने की अपेक्षा की गयी है:-

(ख) राज्य विज्ञान शिक्षा संस्थान के 07 अधिकारियों जिन्हें भर्ती परीक्षा का मूल्यांकन सुचारु रूप से संचालित करने की जिम्मेदारी सौंपी गयी थी, के द्वारा अपने कार्य में न केवल लापरवाही बरती गयी, उत्तर पुस्तिकाओं का उनके द्वारा पर्यवेक्षण नहीं किया गया जिसके कारण उत्तर पुस्तिकाओं के मूल्यांकन में कतिपय कमियां हुई एवं परिणाम प्रभावित हुआ। अतः इन सातों के विरुद्ध शिथिल पर्यवेक्षण एवं अपना कार्य नियमों के आलोक में उत्तरदायित्वपूर्ण ढंग से न करने के कारण इन सभी के विरुद्ध अनुशासनिक कार्यवाही किये जाने का निर्णय लिया गया है।

(ग) सहायक अध्यापक भर्ती परीक्षा-2018 का परीक्षा परिणाम तैयार करने वाली एजेन्सी मैनेजमेन्ट कंट्रोल सिस्टम प्राइवेट लिमि०, 29 विधान सभा मार्ग, लखनऊ द्वारा परीक्षा परिणाम घोषित करने में असावधानी बरती गयी तथा परीक्षा परिणाम में विसंगतियां तथा गम्भीर त्रुटियां भी की गयी। एजेन्सी की लापरवाही से त्रुटियां होने के कारण घोषित परीक्षा परिणाम में भी त्रुटियां हुई, जिसके लिए इस एजेन्सी को तात्कालिक प्रभाव से ब्लैकलिस्ट करने की कार्यवाही के साथ-साथ सभी विभागों को इस आशय की सूचना दी जाए कि भविष्य में वह इस एजेन्सी से कार्य न कराये। इसके अतिरिक्त यदि एजेन्सी को कोई भुगतान किया जाना अवशेष है तो यह भुगतान न किया जाय एवं अनुबन्ध की शर्तों के अनुरूप एजेन्सी के विरुद्ध अन्य दण्डात्मक कार्यवाही भी सुनिश्चित किये जाने का निर्णय लिया गया है।

(घ) पारदर्शिता के दृष्टिगत यह निर्णय भी लिया गया है कि कोई भी अभ्यर्थी यदि अपनी उत्तर पुस्तिका का पुनर्मूल्यांकन करना चाहता है तो उसे निःशुल्क पुनर्मूल्यांकन का अवसर प्रदान किया जाय। पुनर्मूल्यांकन के लिए निःशुल्क आवेदन करने हेतु दिनांक 11.10.2018 से 20.10.2018 के मध्य ऑन-लाइन

आवेदन प्राप्त करने का निर्णय लिया गया है। कृपया इस सम्बन्ध में एन०आई०सी० के साथ मिलकर आवेदन पत्र का प्रारूप डिजाइन करते हुए दिनांक 11.10.2018 से 20.10.2018 के मध्य ऑन-लाइन आवेदन प्राप्त करने की व्यवस्था करें तथा उससे पूर्व समाचार पत्रों के माध्यम से विज्ञापन प्रकाशित करते हुए इसका समुचित प्रचार-प्रसार करायें।

(च) जांच समिति को प्राप्त कुल 725 शिकायतों में से मात्र 285 अभ्यर्थियों की शिकायतें ही मूल्यांकन में अनियमितता से सम्बन्धित थीं। जांच समिति द्वारा उक्त कुल 285 शिकायतों के गहनतापूर्वक परीक्षण के बाद यह पाया गया कि कुल 110 अभ्यर्थियों के प्रकरणों में परीक्षाफल में कोई परिवर्तन नहीं पाया गया तथा 17 प्रकरण सहायक अध्यापक भर्ती परीक्षा से सम्बन्धित नहीं थे। इस प्रकार कुल  $285 - (110 + 17) = 158$  प्रकरणों में भी शासन द्वारा स्वयं पुनर्मूल्यांकन कराए जाने का निर्णय लिया गया है।

(छ) कुल 1,07,865 उत्तर पुस्तिकाओं के स्कूटनी में कुल 343 प्रकरणों में मिलान करने पर अन्तर पाया गया, जिसमें से 239 प्रकरणों में परीक्षा परिणाम अप्रभावित है शेष 51 प्रकरण ऐसे हैं जिनमें जो अभ्यर्थी अभी अनुत्तीर्ण है तथा अनर्ह है वे उत्तीर्ण तथा अर्ह हो जाते हैं तथा 53 प्रकरण ऐसे हैं, जिनमें जो अभ्यर्थी अभी उत्तीर्ण तथा अर्ह हैं. वे अनर्ह तथा अनुत्तीर्ण हो जाते हैं। शासन द्वारा इन 53 उत्तर पुस्तिकाओं का भी पुनर्मूल्यांकन कराए जाने का निर्णय लिया गया है तथा जो 51 अन्यर्थी अर्ह हो गये हैं उन्हें काउंसलिंग की अनुमति देते हुए अग्रिम कार्यवाही किये जाने का निर्णय लिया गया है।

(ज) स्कूटनी में जिन 343 प्रकरणों में अन्तर पाया गया है उन 343 उत्तर पुस्तिकाओं का मूल्यांकन करने वाले परीक्षकों को कारण बताओ नोटिस निर्गत करते हुए उनके विरुद्ध दण्डात्मक कार्यवाही किये जाने का निर्णय भी लिया गया है।

अतएव कृपया तदुसार तत्काल अग्रतर आवश्यक कार्यवाही करते हुए कृत कार्यवाही से शासन को भी अवगत कराने का कष्ट करें।" (Emphasis supplied)

**Government Order dated 16.08.2019**

"प्रेषक,

सचिव,

उ०प्र० बेसिक शिक्षा परिषद,

प्रयागराज।

सेवा में,

जिला बेसिक शिक्षा अधिकारी,

समस्त जनपद, उत्तर प्रदेश।

पत्रांक:- बे०शि०प० /8564-8642/2019-20 दिनांक- 16-08-19



विषय:- सहायक अध्यापक भर्ती परीक्षा-2018 पुनर्मूल्यांकन के सम्बन्ध में निर्गत शासनादेश दिनांक 05.10.2018 के बिन्दु संख्या (छ) में दिये गये निर्देश के अनुपालन के सम्बन्ध में।

महोदय,

कृपया उपर्युक्त विषयक सचिव परीक्षा नियामक प्राधिकारी उ०प्र० प्रयागराज के पत्रांक गोप०/स०अ०म०प०-18/9414-17/2019-20 दिनांक 01.08.2019 का संदर्भ ग्रहण करने का कष्ट करें जिसके द्वारा अवगत कराया गया है कि शासनादेश संख्या-522/अरसठ-4-2019 दिनांक 29 जुलाई 2019 द्वारा सम्यक विचारोपरान्त सहायक अध्यापक भर्ती परीक्षा 2018 पुनर्मूल्यांकन हेतु निर्गत शासनादेश दिनांक 05.10.2018 के बिन्दु संख्या (छ) में दिये गये निर्देश के क्रम में पुनर्मूल्यांकन पश्चात उन्नीस पाये गये 49 अभ्यर्थियों का परीक्षाफल घोषित किये जाने एवं उक्त 49 अभ्यर्थियों, जो पूर्व घोषित परीक्षाफल दिनांक 13.08.2018 के अनुसार उत्तीर्ण एवं वर्तमान में सहायक अध्यापक के पद पर नियुक्त हैं, को सेवा से पृथक्करण कराये जाने हेतु निर्देश दिये गये हैं।

सचिव परीक्षा नियामक प्राधिकारी उ०प्र० प्रयागराज द्वारा अपने पत्र दिनांक 01.08.2019 के साथ सहायक अध्यापक भर्ती परीक्षा 2018 के दिनांक 13.08.2018 को घोषित परीक्षाफल में उत्तीर्ण 49 ऐसे अभ्यर्थी जो पुनर्मूल्यांकन के पश्चात अनुत्तीर्ण घोषित किये गये हैं, का संशोधित परीक्षाफल घोषित करते हुए घोषित परीक्षाफल की सूची (कुल 49 अन्यर्थियों की सूची) जो वर्तमान में सहायक अध्यापक के पद पर नियुक्त हैं, को सेवा से पृथक्करण किये जाने हेतु शासनादेश दिनांक 29.07.2019 में दिये गये निर्देशों के अनुपालन हेतु संलग्न की गयी है।

उक्त के सम्बन्ध में आपको निर्देशित किया जाता है कि शासनादेश दिनांक 29.07.2019 का अक्षरशः अनुपालन एवं उ०प्र० बेसिक शिक्षा परिषद कर्मचारी वर्ग नियमावली, 1973 व उत्तर प्रदेश सरकारी सेवक (अनुशासन एवं अपील नियमावली 1999) में दी गयी व्यवस्थानुसार कार्यवाही करना सुनिश्चित करें।

उक्त प्रकरण के सम्बन्ध में आप द्वारा कैविएट माननीय उच्च न्यायालय में दाखिल किया जाना सुनिश्चित किया जाय।" (Emphasis supplied)

5. The above referred Government Order and Circular have declared that:

(i) Total 1,07,865 answer booklets were examined.

(ii) On examination of 1,07,865 answer booklets difference was found in 343 answer booklets.

(iii) Out of above referred 343 booklets-

(a) despite difference result of 239 candidates was remained unaffected;

(b) due to rechecking 51 candidates, who were earlier declared failed, were found successful; and,

(c) remaining 53 candidates, who were earlier declared successful, were found failed on rechecking.

The petitioners before this court are from above referred batch of 53 candidates.

6. Learned counsel for petitioners have placed reliance on judgments passed by this Court in **Constable 979 Civil Police Omveer Singh and others vs. State of U.P. and others, Neutral Citation No. - 2016:AHC:9510-DB** and **Ram Naresh Singh and others vs. State of U.P. and others, Neutral Citation No. - 2017:AHC:185314**. Relevant paragraphs of the judgments are reproduced hereinafter:

**Omveer Singh (supra)**

*“10. In the judgment and order dated 17.02.2012 impugned in Special Appeal No.839 of 2012, the learned Single Judge has observed and recorded finding to the effect that Petitioner-Appellant Rajveer Singh and petitioner non-appellant/intervenor Suresh Chandra have secured 53 marks in first evaluation while in the second evaluation Rajveer Singh Yadav has got 46 marks and Suresh Chandra have got 45 marks.*

*11. Relevant part of judgment and order impugned reads as under:*

*“... Answer sheet in question has not at all been checked as not even a single mark is there which would reflect that at any point of time same have been objectively checked by the examiner concerned and examiner has proceeded to award marks looking into the performance as put in by the petitioners.*

*Confronted with this Examination Controller who is present in person contended that specific instructions have been issued to the examiner and examiner was only required to fill up front page and in view of this it has been stated that transparency has been maintained in evaluation.*

*Evaluation process which has been so adopted is not at all been approved of as answer sheets in question bears no mark whatsoever which would reflect that mind has been applied by the examiner while evaluating the said answer sheets as each and every answer sheet has been left blank without any sign of any evaluation exercise having been carried out except that on the cover page of answer sheet marks has been awarded and that too on two occasions. Evaluation is an act or process to ascertain the quality of performance put in by the candidate who has undertaken the examination. Such type of evaluation of examining body cannot be approved of as under the Right to Information Act, 2005 any incumbent can get answer sheet in question to satisfy himself/herself as to whether it has been properly evaluation or not.*

*Here in the present case answer sheets have been left blank and and it has not at all been shown and demonstrated before this Court as to in what way and manner said answer sheets in question have been evaluated and on cover paper on first evaluation 53 marks have been awarded to both the petitioners and on second evaluation same have been reduced to 46 and 45 marks respectively. Except for awarding marks, no other record of evaluation has been maintained. The examiner has purportedly evaluated the answer sheet on first occasion and on second occasion marks have been reduced. Once answer sheet would have been examined, then this Court could also examine the action of examiner in reducing the marks and specially when in the Rules there is no provision for re-evaluation. Evaluation exercise in effect are reasons given by examiner for awarding such marks. Exercise undertaken is not at all subscribed by rules."*

*12. In the facts of the case as purported evaluation of answer sheet is not at all being approved of and it does not indicate any application of mind vis-a-vis marks given and on the basis of above, learned Single Judge has allowed the writ petition Nos. 38563 of 2011 and 38676 of 2011 with direction to afresh evaluation of the answer-sheets of petitioner-appellant Rajveer Singh Yadav and petitioner- non appellant Suresh Chandra.*

*13. Though learned standing counsel has tried his best to counter the observation and findings recorded by learned Single Judge as referred in detail in predecesing paragraph, despite repeated queries by the Court about second evaluation of answer sheets, **learned Standing Counsel could not show for specific provision which was authorising the Board for second evaluation of answer sheet and award marks to appellants on the basis of average marks of two evaluated these answer sheets of Hindi Essay Paper except to submissions made on the basis of above referred paragraph No.15 of the counter affidavit filed in Civil Misc. Writ Petition No.38563 of 2011 by Shri Habibul Hasan, Deputy S.P., U.P. Police Recruitment and Promotion Board, Lucknow.***

14. *In these circumstances, we find no occasion to take a different view as observed in the findings recorded by the learned Single Judge except of modification in direction regarding reevaluation of answer sheets afresh.*

15. *It is clear from the averments of paragraph nos. 15 and 16 of the counter affidavit of Shri Habibul Hasan, Deputy S.P., that answer-sheets of Hindi Essay Paper of the candidates have been subjected to evaluation twice and the candidates were finally awarded marks in Hindi paper on the basis of average of the marks of the two evaluations. The writ court has allowed the Writ Petition Nos.38563 of 2011, Rajveer Singh Yadav and Writ Petition No.38576 of 2011, Suresh Chandra Vs. State of U.P. with direction to evaluate of answer sheets of Hindi Essay Paper of above petitioners afresh.*

16. *In view of observations and finding recorded by the learned Single Judge in respect of various discrepancies in evaluation of the answer sheet of Hindi Essay Paper and impermissibility of evaluation process of answer-sheet by the Board, and due to non-satisfactory answer for second the evaluation of answer-sheets and any specific provision or authority for permission of second evaluation of answer sheets. We are of considered view that manner of the second evaluation of answer sheets of Hindi Essay Paper adopted by the respondents is arbitrary, violative of concerned recruitment rules, unauthorised and illegal.” (Emphasis supplied)*

**Ram Naresh Singh (supra)**

“93. *Both in the case of the Rajesh Kumar (supra) and in the case of Vikas Pratap Singh (supra) almost on similar facts, the Supreme Court has held that candidates, who were selected earlier due to erroneous decision of the Selection Board and who continued to work for sometime on the said post, could not be allowed to suffer because of the error on the part of the Selection Board. At the same time, no candidate could be allowed to earn an undeserved advantage over others by an application of a erroneous Answer Key.*

94. *In balancing the equities the Hon'ble Supreme Court directed that candidates later on selected by application of rectified Answer Key were to be given appointment and such candidates would earn their seniority from the date the wrongly selected candidates were first appointed in accordance with their merit position. The appointments of such correctly selected candidates after reevaluation of their Answer Scripts should relate back to the date when wrongly selected candidates were first appointed with continuity of service to them for the purpose of seniority, but without any back wages or other incidental benefits.*

95. *Such candidates, who could not make a grade after reevaluation, i.e. candidates like the petitioners herein should not be ousted from service, but should figure at the bottom of the list of the selected candidates based on*

*the first selection in terms of the advertisement issued, and also all such selected candidates, whose results had been announced after the second selection pursuant to a later advertisement.*

*96. This Court in respectful deference to the observations made by the Hon'ble Supreme Court in the case of Rajesh Kumar (supra) and in the case of Vikas Pratap Singh (supra) and in Civil Appeal No. 367 of 2017 (Ran Vijay Singh and others vs State of U.P. and others) may also issue such directions for the case of writ petitioners herein.*

*97. The writ petitioners therefore cannot be ousted from service altogether and shall be kept at the bottom of the rectified Select List issued for Advertisement No. 1 of 2010, and also any other Select List on the basis of any later advertisement issued by the Selection Board, selection on the basis of which has been completed and recommendations made for appointment. The petitioners shall be offered fresh appointments on the posts of Hindi Teachers L.T. Grade in Institution, which have determined such vacancies in direct recruitment quota and intimated them to the District Inspector of School concerned and further notified to the Selection Board, but on which vacancies selection has not been advertised or finalized by the Selection Board till date.*

*98. If need be then supernumerary posts be created for the petitioners as directed by the Hon'ble Supreme Court in Civil Appeal No. 367 of 2017 for similarly situated appellants therein, who were ousted as a consequence of rectification of result of selection held for Trained Graduate Grade Teachers in Advertisement No. 1 of 2009 of the Selection Board.”*

(Emphasis supplied)

7. Per contra, Sri Ashish Kumar Nagvanshi, learned Additional Chief Standing Counsel, Sri Manvendra Dixit, Sri Brijesh Narayan Srivastava, Sri L.M. Singh and Sri Suresh Srivastava, learned Standing Counsel for State-Respondents and Sri Chandra Shekhar Singh, Sri Akhilesh Kumar Sharma, Sri Sanjay Singh, Sri Ashish Kumar Singh, Sri Shivendra Singh Bhadauria and Sri Shashi Prakash Singh, Advocates appearing for respective District District Basic Education Officers, have placed reliance on counter affidavit and orders passed by this Court during hearing that after re-evaluation it was found that despite petitioners got very less marks, as mentioned in their respective answer booklets, in tabulation chart they were granted much more marks. They referred the tabulation chart annexed alongwith counter affidavit and scanned copy of the same is pasted hereinafter:

सहायक अध्यापक भर्ती परीक्षा 2018								
क्रम	अनुक्रमिक	नाम	पिता का नाम	संवर्ग	पूर्व घोषित परीक्षा परिणाम में अंकित अंक	उत्तर पुस्तिका में अंकित अंक	सुनिश्चित/अन्य उपलब्ध प्राप्त अंक	टिप्पणी
1.	01042210394	RENU CHOUDHARY	MAHENDER SINGH	GENERAL	68	52	52	अनुत्तीर्ण
2.	01052009354	KAVITA YADAV	DALVIR SINGH YADAV	OBC	88	55	59	अनुत्तीर्ण
3.	01010502342	SUNIL KUMAR	RAIS PAL SINGH	SC	68	52	55	अनुत्तीर्ण
4.	35350200702	BASANT KUMAR YADAV	RAM AYODHYA YADAV	OBC	75	8	9	अनुत्तीर्ण
5.	01012009311	CHANDRA SHEKHAR AJAD	ARVIND KUMAR	OBC	77	54	58	अनुत्तीर्ण
6.	01011004363	HOSHIYAR SINGH	JASVANT SINGH	OBC	84	34	36	अनुत्तीर्ण
7.	35371406923	RAJU	BAJU NATH	OBC	72	46	47	अनुत्तीर्ण
8.	35352411419	MANJU SHAH	CHANDRA NATH SHAH	OBC	68	60	62	अनुत्तीर्ण
9.	01013811019	VIVEK SINGH TOMAR	PURUSHOTTAM SINGH TOMAR	GENERAL	93	36	39	अनुत्तीर्ण
10.	35350401964	CHANDA	MUNNI LAL	SC	69	40	45	अनुत्तीर्ण
11.	35380703501	DIVYA AGRAHARI	GIRISH KUMAR	GENERAL	81	18	19	अनुत्तीर्ण
12.	35350803681	SAVITRI DEVI	LOK NATH SINGH	OBC	92	12	14	अनुत्तीर्ण
13.	35351808610	RICHA PANDEY	KRISHNA NARAYAN PANDEY	GENERAL	67	50	52	अनुत्तीर्ण
14.	56560200726	SUSHMA SINGH	RAJ BAHADUR SINGH	GENERAL	91	50	50	अनुत्तीर्ण
15.	08080301222	HARSHITA SINGH	MATA DEEN	SC	65	44	45	अनुत्तीर्ण
16.	68680100434	JYOTI SAHU	JAGDEY PRASAD DEHATI	OBC	77	62	63	अनुत्तीर्ण
17.	16160100122	URVASHI	RAJESH KUMAR	SC	62	53	54	अनुत्तीर्ण
18.	16161106818	MOHAMMAD IMRAN	QYAMUDDEN	OBC	79	47	52	अनुत्तीर्ण
19.	35423913031	MUNNA KUMAR SINGH	RAJDEO SINGH	GENERAL	69	49	51	अनुत्तीर्ण

20.	35360904524	PRACHI SAHU	ANAND KUMAR SHASTRI	OBC	78	45	47	अनुत्तीर्ण
21.	49490100200	KM PREM LATA	VEDABYAS SHUKLA	GENERAL	83	54	56	अनुत्तीर्ण
22.	49491507054	KM SUMAN YADAV	DHODHAI YADAV	OBC	75	27	28	अनुत्तीर्ण
23.	49501707870	KM SANGITA YADAV	DOODH NATH YADAV	OBC	69	59	61	अनुत्तीर्ण
24.	59600401805	KM SHALU	SATISH KUMAR	SC	99	43	43	अनुत्तीर्ण
25.	16200503028	SANJIV KUMAR SINGH	CHANDRA BHAN SINGH	GENERAL	80	51	52	अनुत्तीर्ण
26.	59600602972	BINDU KALA VERMA	MUNNI LAL VERMA	OBC	69	59	61	अनुत्तीर्ण
27.	16171106549	POOJA YADAV	V S YADAV	OBC	90	55	61	अनुत्तीर्ण
28.	59591507149	USHA SINGH	LATE MAN SINGH	OBC	68	21	25	अनुत्तीर्ण
29.	42420704968	REETA SINGH	VIJAY NARAYAN SINGH	GENERAL	83	43	43	अनुत्तीर्ण
30.	39410602847	ASAD AHMAD	MAHMOOD AHMAD	OBC	82	57	50	अनुत्तीर्ण
31.	12130100621	DINESH KUMAR	RAMCHARAN SINGH	OBC	74	63	65	अनुत्तीर्ण
32.	63630502325	JITENDRA KUMAR SAHU	HANUMAN PRASAD SAHU	OBC	69	59	65	अनुत्तीर्ण
33.	22221407174	RUBY RATHI	MAHAK SINGH	SC	86	36	42	अनुत्तीर्ण
34.	52520301746	NIDHI RAI	NAGENDRA RAI	GENERAL	74	64	65	अनुत्तीर्ण
35.	42430302324	MD EJA HAR	IDRISH ANSARI	OBC	68	8	8	अनुत्तीर्ण
36.	39390100180	AKHILESH YADAV	MANSINGH YADAV	OBC	91	61	61	अनुत्तीर्ण
37.	39410903888	GULAB DEVI	MULAYAM SINGH	OBC	84	4	4	अनुत्तीर्ण
38.	42440100187	PRAMOD KUMAR	RAJ BAHADUR YADAV	OBC	86	46	54	अनुत्तीर्ण
39.	52530100255	ARVIND DHAR DWIVEDI	PREM NARAYAN DWIVEDI	GENERAL	74	24	24	अनुत्तीर्ण



क्रम	अनुक्रमांक	नाम	पिता का नाम	वर्ग	पुर्न मूल्यांकन परीक्षा में अंक	उत्तर पुस्तिका में अंक	पुर्न मूल्यांकन उपरान्त प्राप्त अंक	टिप्पणी
40.	52530100123	JAINENDRA PRASAD SAHANI	RAMHARSH PRASAD SAHANI	OBC	89	50	50	अनुत्तीर्ण
41.	42420402559	RASHMEE SINGH	NARENDRA BAHADUR SINGH	GENERAL	70	53	53	अनुत्तीर्ण
42.	42420805178	SURESH KUMAR	KISHORI LAL	OBC	69	61	62	अनुत्तीर्ण
43.	29311909153	CHANDRA SHEKHAR	MAN	SC	79	35	35	अनुत्तीर्ण
44.	22242810071	KANIKA UPADHYAY	TARKESH CHANDRA UPADHYAY	GENERAL	92	62	63	अनुत्तीर्ण
45.	39410401621	SARITA SAINI	SHYAMU SAINI	OBC	69	59	60	अनुत्तीर्ण
46.	42450100025	KM MAYA	RAM BRIKSH RAM	SC	68	51	56	अनुत्तीर्ण
47.	52550302145	KRISHNA KUMAR RAI	VED PRAKASH RAI	GENERAL	90	50	51	अनुत्तीर्ण
48.	29341205646	KM NANDO RANA	HORILAL	ST	73	53	54	अनुत्तीर्ण
49.	42420503721	NEETU SINGH	BHRIGUNATH SINGH	GENERAL	93	37	40	अनुत्तीर्ण

8. Learned counsel also submitted that on basis of complaints marks given on answer booklets were compared with tabulation chart and 343 cases were found where there was difference between two. All 343 booklets were re-examined and finally 53 cases were detected where there was huge different and merit was compromised. These candidates were wrongly selected, therefore, their appointments were cancelled. Original booklets were summoned by this court and above discrepancies were found. The petitioners were allowed to get photocopy of booklets also. On facts, judgments cited by petitioners are distinguishable.

9. Heard learned counsel for parties and perused the material available on record.

10. Before adverting to rival submissions, it would be relevant to quote relevant orders passed by this Court during hearing as under:

**Order dated 07.11.2019**

*“Heard Sri Amit Saxena, learned Senior Counsel assisted by Sri Mushir Khan, learned counsel for the petitioner, learned standing counsel for respondent Nos. 1, 2 & 4 and Sri Nand Kishore Singh, learned counsel for respondent Nos. 3 & 5.*

*Learned counsel for the petitioner submitted that petitioner had appeared in Assistant Teacher Recruitment Examination- 2018 in which he was declared successful and accordingly he was appointed. Pursuant to that, he has submitted his joining but all of sudden, without providing opportunity of hearing, impugned order dated 07.09.2019 has been passed by which his services were terminated on the ground that after re-evaluation, he was awarded lesser marks than the cut-off-marks required for appointment. It is next submitted that once petitioner has joined his*

services, he can only be terminated in accordance with service rules applicable in the case of petitioner.

*Put up this case on 15.11.2019 in the additional cause list.*

***Learned standing counsel is directed to produce original answer book, model answer key as well as records/complaints which leads to re-evaluation of answer book of petitioner on the next date fixed.***

*Learned standing counsel as well as Sri Nand Kishore Singh, learned counsel for respondent Nos. 3 & 5 shall also inform the Court that whether any notice has been given to the petitioner or not and in case any such notice is given, they shall also produce the copy of the same.”*

**Order dated 15.11.2019**

***“Pursuant to order of this Court dated 7.11.2019, learned Standing Counsel has produced two sealed cover envelopes, one sealed cover envelop is having 14 answer books and other sealed cover envelop is having photostat copy of tabulation chart. The same are retained in the custody of Registrar General which shall be produced in the Court tomorrow i.e. 16.11.2019 at 10.00 A.M.***

*Put up tomorrow i.e. 16.11.2019 in the additional cause list alongwith connected matters.”*

**Order dated 16.11.2019**

*“Heard learned counsel for the petitioner, learned standing counsel for respondent Nos. 1, 2 & 4 and Sri Nand Kishore Singh, learned counsel for respondent Nos. 3 & 5.*

*Brief facts of the case are that earlier petitioner along with many other candidates had appeared in Assistant Teacher Recruitment Examination-2018 and declared successful. Ultimately they have been given appointment. Pursuant to the appointment letters, they have submitted their joining and working at the place of their posting. Now by impugned order dated 16.08.2019, her services has been terminated and in the impugned order, it is mentioned that after receiving some complaints, re-evaluation was conducted and 49 candidates including petitioner was found fail as they have not obtained minimum cut off marks and due to which her services was terminated. Similar orders of termination have also been passed in the matter of 48 candidates.*

*The main argument of learned counsel for the petitioner was that she had never applied for revaluation, therefore, her answer book cannot be revaluated and further no opportunity was given to her prior to passing the impugned order.*

*This Court vide order dated 07.11.2019 directed learned standing counsel to produce original answer book, model answer key as well as*



*records/complaints which leads to re-evaluation of answer book of petitioner.*

*Pursuant to that, original answer book of 14 candidates including petitioner out of 49 candidates along with photocopy of tabulation chart having marks of petitioner as well as many other candidates have been produced before the Court. Letter dated 01.08.2019 has also been produced before the Court having the list of all such 49 candidates along with chart of their marks after first evaluation, revaluation and also marks mentioned in tabulation chart upon which they have been given appointment. This letter was sent to Secretary, Board of Basic Education, U.P. Prayagraj by Secretary, Examination Regulatory Authority, Prayagraj. Photocopy of tabulation chart and letter dated 01.08.2019 along with detail chart of 49 candidates be taken on record.*

*Mr. Anil Bhushan Chaturvedi, Secretary, Examination Regulatory Authority is also present before this Court for proper assistance.*

*By the perusal of 14 answer books as well as tabulation chart annexed along with letter dated 01.08.2019, it is found that after re-evaluation, either marks of the petitioner and other candidates have been increased or there is no change in their marks, but most shocking and surprising thing is that tabulation chart is having entirely different marks which is much higher than the marks given on the answer books after first evaluation and revaluation.*

*Petitioner before this Court had earlier obtained 53 marks and after re-evaluation she has been awarded 54 marks whereas in the tabulation charge, she has been given 62 marks and upon that she has been given appointment on the post of Assistant Teacher.*

*The position is same about all other 48 candidates mentioned in tabulation chart annexed along with letter dated 01.08.2019. For example, another candidate namely Divya Agrahari who is also petitioner in other petition had been awarded 18 marks and after revaluation she has been awarded 19 marks but in the tabulation chart, she has been given 81 marks, Basant Kumar Yadav had been awarded 8 marks and after revaluation, he has been awarded 9 marks, but in tabulation chart, he has been given 75 marks, M.D. Ejahar had been awarded 8 marks and after revaluation, he has been again awarded 8 marks, but in tabulation chart, he has been given 68 marks and Gulab Devi had been awarded 4 marks and after revaluation, she has also been again awarded 4 marks, but in tabulation chart, she has been given 84 marks. Other candidates are also having the same factual position.*

*On being confronted by the Court, Mr. Anil Bhushan Chaturvedi, Secretary, Examination Regulatory Authority has informed the Court that appointments are given to the candidates on the basis of marks mentioned in tabulation chart, which is also shown in chart annexed along with letter dated 01.08.2019. He further informed that in all these matters, show cause*

*notice has been issued to concerned teachers, who had prepared the tabulation chart, but no F.I.R. has been lodged in this matter.*

***After perusing the 14 answer books, tabulation chart as well as chart annexed along with letter dated 01.08.2019, it is very much clear that fraud was played at very large scale and it is a fit case to lodge FIR, therefore, Examination Regulatory Authority, Prayagraj is directed to lodge FIR in this matter.***

*Learned standing counsel for respondent Nos. 1, 2 & 4 and Sri Nand Kishore Singh, learned counsel for respondent Nos. 3 & 5 pray for and are granted two weeks time to file counter affidavit. Rejoinder affidavit, if any, may be filed within one week thereafter.*

*List this case on 11.12.2019 in top three cases along with connected matters.*

***Original answer books of 14 candidates is returned to Mr. Anil Bhushan Chaturvedi, Secretary, Examination Regulatory Authority. He is directed to produce answer books of all 49 candidates including these 14 answer books and also copy of F.I.R. lodged in this matter on the next date fixed.”***

**Order dated 12.12.2019**

*“Counter affidavit filed on behalf of respondent nos. 1 and 4 is taken on record.*

*Sri Ashok Khare, learned Senior Advocate submitted that the appointment of the petitioners, in this petition and other connected petitions, have been cancelled on the ground that in revaluation their marks have been reduced, due to which, they did not secure minimum qualifying marks and as such, their appointments have been cancelled.*

*This Court passed an order on 16.11.2019 directing the respondents to produce answer books of all the 49 candidates. Pursuant to the direction of this Court dated 16.11.2019, Sri R.P. Dubey, learned Standing Counsel submitted that answer books of all the 49 candidates have been brought to the Court.*

*Sri Ashok Khare, learned Senior Advocate contended that since there are allegations against the petitioners that the marks have been tempered in the examination copy, therefore, the petitioners have right to see the examination copies. He submits that there is provision to supply scanned copy of answer books, therefore, respondents may be directed to supply the photo-copy of the answer-books to the counsel of each candidates.*

***Sri R.P. Dubey, learned Additional Chief Standing Counsel, on instructions from Sri Prem Sanker Singh, Deputy Registrar submitted that the respondents have no objection in supplying the photo-copies of the answer-books to the counsel of each candidates.***

*In view of the statement of Sri R.P. Dubey, learned Chief Standing Counsel, this Court directs the respondents to supply the photo-copies of the answer books to the counsel of candidates, who are desirous to obtain it.*

*In this regard, the petitioners are directed to supply the list of candidates, who are desirous of obtaining the photo-copies of the answer books, with details by 2:00 pm on 13.12.2019 in the Office of the Chief Standing Counsel which may be collected by representatives of the Department for doing needful.*

*It is further provided that the counsels of the candidates whose name figures in the list of candidate for obtaining photo-copies of examination, may approach in the Chamber of Chief Standing Counsel to collect the same from the representatives of the Department on 16.12.2019 between 3:00 pm to 5:00 pm*

*Put up this case on 18.12.2019 in the additional cause list.”*

**Order dated 10.01.2020**

*“Sri Amit Saxena, learned Senior Counsel assisted by by Saurabh Singh, for the petitioner submits that pursuant to the order of this Court dated 12.12.2019, scanned copy has been supplied to the petitioner by the respondents and perusal of the scanned copy reflects that there is no tampering by the petitioner in the copy.*

*He submits that the observation made by this Court in its order dated 16.11.2019 that "fraud was played at very large scale" may be modified.*

*Since the petitioner is seeking modification of the order dated 16.11.2019 passed by this Court, therefore, in view of the said fact, let the record of this case be placed before Hon'ble The Chief Justice for necessary orders.”*

**Order dated 16.08.2021**

**“Civil Misc. Modification Application No. 5 of 2020**

*Heard Sri R.K. Ojha, learned senior counsel assisted by Sri Shivendu Ojha, learned counsel for the applicant and Sri J.N. Maurya, learned Chief Standing Counsel on behalf of State.*

*Learned counsel for the applicant submits that while passing the order dated 16.11.19, Court has made an observation and further directed to file FIR. In fact, Court has observed that fraud was played at very large scale and it is a fit case for lodging for FIR, therefore, Investigating Officer is bound with the observation made by the Court and cannot investigate the matter on its own. Court may also please to issue necessary direction to I.O. to carry out investigation without being influenced with the observation made by the Court vide order dated 16.11.2019.*

*I have considered the submissions made by learned counsel for the petitioner.*

*Paragraph in question for which modification application is filed is as follows;*

*"After perusing the 14 answer books, tabulation chart as well as chart annexed along with letter dated 01.08.2019, it is very much clear that fraud was played at very large scale and it is a fit case to lodge FIR, therefore, Examination Regulatory Authority, Prayagraj is directed to lodge FIR in this matter."*

*From the perusal of above noted paragraph, contention of learned senior counsel for the applicant appears to be correct, therefore, I.O. is given liberty to carry out investigation on the basis of evidences and witnesses available to him without being influenced with the observation made by the Court in the above noted paragraph.*

*Accordingly, modification application is allowed and order dated 16.11.2019 is modified to that extent only.*

*It is made clear that the case shall not be treated as tied up or part heard to this Bench in future and shall be listed before appropriate Bench."*

(Emphasis supplied)

11. Heard learned counsel for parties, perused the record and also carefully perused above referred orders passed by this Court during hearing.
12. Original answer booklets of 14 candidates including petitioner in Writ-A No. 15229 of 2019 and later on answer booklets of 49 candidates were summoned and atleast 14 booklets were examined and perused by Coordinate Bench and Court was shocked that marks mentioned in answer booklets vis-a-vis tabulation chart were different and much higher marks were given in tabulation chart. The Court notes that in the case of petitioner-Urvashi, she obtained 53 marks as mentioned in answer booklet, on re-evaluation she was awarded 54 marks, whereas in tabulation chart she was given 62 marks, i.e., her marks were increased atleast by 8-9 marks, which is nothing but to give undue advantage to said petitioner. Coordinate Bench has also noted similar irregularities with regard to some other petitioners also. Shockingly three candidates, who got 4, 8 and 8 marks respectively on basis of answers on their answer booklets, were shown as much as 84, 45 and 68

marks respectively in tabulation chart, i.e., huge variation of 80, 37 and 60 marks respectively. It is apparent that fraud was writ large.

13. In order to maintain fairness the Coordinate Bench vide order dated 12.12.2019 has allowed all petitioners to apply scanned photocopy of answer booklets so that they can verify the allegations. However, during argument none of the petitioners have come up with a submission that there was any ambiguity that despite they get lesser marks in their answer booklets, they were provided much more marks in tabulation chart so that they could qualify in merit list.

14. In aforesaid circumstances, there is no factual dispute that petitioners were granted benefit and were awarded more marks than their merit in tabulation chart, i.e., fairness and merit was compromised. The petitioners were not fairly qualified for post of Assistant Teachers. The petitioners were not able to dispute above referred factual position.

15. In above factual background, only issue left for consideration is, whether in aforesaid circumstances even there is no specific provision for re-evaluation, the entire exercise of re-evaluation could be declared illegal ignoring above referred glaring undisputed fact that petitioners were granted more marks above than their merit, i.e., marks granted on basis of their answer booklets, and they were illegally benefited.

16. The first judgment relied by learned counsel for petitioners is **Omveer Singh (supra)**. Facts of **Omveer Singh (supra)** are absolutely distinguishable from facts of present case. As referred above, in the present case undisputedly petitioners were illegally benefited by giving more marks in tabulation chart whereas in **Omveer Singh (supra)** petitioners therein were put in an adverse position when they were granted average marks out of the marks granted in two evaluations and in those circumstances the Division Bench has held that procedure for fresh evaluation was wrong.

17. In **Ram Naresh Singh (supra)** (para 93), as quoted above, the Court has noted that no candidate could be allowed to earn an undeserved advantage over others by application of an erroneous answer key, though in

order to maintain equity, some relief was granted taking note the period of appointment also. However, in the present case petitioners were appointed on basis of result in September, 2018 and within one year (i.e., September, 2019) impugned orders were passed. Therefore, the short period of one year is not sufficient to tilt the balance of convenience in favour of petitioners and it could not be ignored that petitioners were in probation period.

18. In aforesaid circumstances, there is no dispute that petitioners were illegally benefited and this Court has verified the said fact from perusal of record produced before Court during hearing. Petitioners have also not been able to dispute that they were granted more marks than their merit so that they could qualify examination, otherwise according to their actual marks they could not get appointment. Less meritorious candidates are not allowed to continue in service at the cost of meritorious candidates and in order to maintain fairness, the procedure adopted by respondents could not be said to be illegal. There is no allegation of any impurity in process of rechecking. As referred above, First Information Reports were lodged. Outcome of investigation is not on record. Complicity of petitioners is also required to be investigated since they were the beneficiaries of fraud.

19. The impleadment applications are rejected since it is informed that the persons seeking impleadment are facing criminal proceedings and it is on record that a First Information Report has already been lodged against them and possibly investigation may also be completed.

20. The writ petitions are accordingly dismissed. A cost of Rs. 5000/- is fixed for each petitioners to be paid within four weeks from today in favour of High Court Legal Services Committee and receipt thereof shall be placed on record.

**Order Date :- 13.02.2024**

AK

**[Saurabh Shyam Shamsbery, J.]**