

Court No. - 28**A.F.R.****Case :-** WRIT - A No. - 19409 of 2020**Petitioner :-** Vijay Gupta**Respondent :-** State Of U.P. Thru.Addl.Chief Secy.Basic Education
Lko. Andors**Counsel for Petitioner :-** Surya Prakash Singh**Counsel for Respondent :-** C.S.C.**AND****Case :-** WRIT - A No. - 24508 of 2020**Petitioner :-** Deeksha Agrahari**Respondent :-** State Of U.P.Thru.Addl. Chief Secy.Basic Education
And Ors.**Counsel for Petitioner :-** Vinod Kumar,Man Mohan**Counsel for Respondent :-** C.S.C.,Jaibind Singh Rathour,Ran Vijay
Singh**AND****Case :-** WRIT - A No. - 7676 of 2021**Petitioner :-** Alok Kumar Tiwari**Respondent :-** State Of U.P.Thru.Addl.Chief Secy. Basic Education
And Ors.**Counsel for Petitioner :-** Virendra Kumar Dubey**Counsel for Respondent :-** C.S.C.,Prashant Arora,Ran Vijay Singh**AND****Case :-** WRIT - A No. - 7816 of 2021**Petitioner :-** Laxmi**Respondent :-** State Of U.P.Thru.Addl.Chief Secy. Basic Education
And Ors.**Counsel for Petitioner :-** Virendra Kumar Dubey**Counsel for Respondent :-** C.S.C.,Ajay Kumar,Ran Vijay Singh**AND****Case :-** WRIT - A No. - 9149 of 2021**Petitioner :-** Sandhya Sonker And Ors.**Respondent :-** State Of U.P.Thru.Addl.Chief Secy. Basic Education
And Ors.**Counsel for Petitioner :-** Deepak Singh**Counsel for Respondent :-** C.S.C.,Rajiv Singh Chuahan,Ran Vijay
Singh**AND**

Case :- WRIT - A No. - 9333 of 2021

Petitioner :- Richa Singh Yadav

Respondent :- State Of U.P.Thru.Addl.Chief Secy. Basic Education And Ors.

Counsel for Petitioner :- Deepak Singh

Counsel for Respondent :- C.S.C.,Ajay Kumar,Ran Vijay Singh

AND

Case :- WRIT - A No. - 10236 of 2021

Petitioner :- Km Anju Kumari Shakya

Respondent :- State Of U.P.Thru.Addl.Chief Secy. Basic Education And Ors.

Counsel for Petitioner :- Vishal Kumar Upadhyay

Counsel for Respondent :- C.S.C.,Ajay Kumar,Ran Vijay Singh

AND

Case :- WRIT - A No. - 10456 of 2021

Petitioner :- Meenu Nirala

Respondent :- State Of U.P. Thru. Secy. Basic Edu. Lko And Others

Counsel for Petitioner :- Abhishek Khare,Saumya

Counsel for Respondent :- C.S.C.,Ajay Kumar

AND

Case :- WRIT - A No. - 10980 of 2021

Petitioner :- Radha Pandey

Respondent :- State Of U.P. Thru. Prin. Secy. Basic Edu. Lko And Others

Counsel for Petitioner :- Jitendra Prakash Mishra,Ajay Singh Chauhan

Counsel for Respondent :- Ajay Kumar,Ran Vijai Singh

AND

Case :- WRIT - A No. - 11306 of 2021

Petitioner :- Km. Pallavi Shukla

Respondent :- State Of U.P. Thru. Prin. Secy. Basic Education And Ors.

Counsel for Petitioner :- O.P. Tiwari

Counsel for Respondent :- C.S.C.,Rajeev Singh,Ran Vijay Singh,Sarvesh Kumar Dubey

AND

Case :- WRIT - A No. - 11827 of 2021

Petitioner :- Manoj Kumar

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Basic Edu. Lko

And Ors.

Counsel for Petitioner :- Deepak Singh

Counsel for Respondent :- C.S.C.,Ajay Kumar,Ran Vijay Singh

AND

Case :- WRIT - A No. - 11900 of 2021

Petitioner :- Shilu Yadav

Respondent :- State Of U.P. Thru. Secy. Basic Education Lko.And Ors.

Counsel for Petitioner :- Suresh Kumar Singh,Seemant Singh

Counsel for Respondent :- C.S.C.,Ran Vijay Singh,Sandeep Kr.Yadav

AND

Case :- WRIT - A No. - 12454 of 2021

Petitioner :- Amit Kumar Agrahari

Respondent :- State Of U.P. Thru. Secy. Basic Edu. Lko And Others

Counsel for Petitioner :- Abhishek Khare,Saumya

Counsel for Respondent :- C.S.C.,Ajay Kumar,Ran Vijay Singh

AND

Case :- WRIT - A No. - 13168 of 2021

Petitioner :- Sunil Kumar Anand

Respondent :- State Of U.P. Thru. Prin. Secy. Basic Shiksha Lko. And Ors.

Counsel for Petitioner :- Namit Sharma,Abhishek Srivastava,Murtaza Hasnain Khan

Counsel for Respondent :- C.S.C.,Ajay Kumar,Ran Vijay Singh

AND

Case :- WRIT - A No. - 13205 of 2021

Petitioner :- Shiwani Chaurasia

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Basic Edu. Lko And Ors.

Counsel for Petitioner :- Sanjay Misra,Mrs. Anju Raghuvansh,Niranjan Singh

Counsel for Respondent :- Ajay Kumar,Ranvijay Singh

AND

Case :- WRIT - A No. - 13210 of 2021

Petitioner :- Shalini Pandey

Respondent :- State Of U.P. Thru. Secy. Basic Edu. Lko And Others

Counsel for Petitioner :- Abhishek Khare,Saumya

Counsel for Respondent :- C.S.C.,Ajay Kumar,Ran Vijay Singh

AND

Case :- WRIT - A No. - 13211 of 2021

Petitioner :- Archana Patel

Respondent :- State Of U.P. Thru. Secy. Basic Edu. Lko And Others

Counsel for Petitioner :- Abhishek Khare,Saumya

Counsel for Respondent :- C.S.C.,Ajay Kumar,Ran Vijay Singh

AND

Case :- WRIT - A No. - 13212 of 2021

Petitioner :- Dharendra Kumar Saroj And Others

Respondent :- State Of U.P. Thru. Secy. Basic Edu. Lko And Others

Counsel for Petitioner :- Abhishek Khare,Saumya

Counsel for Respondent :- C.S.C.,P.K. Singh Bisen,Ran Vijay Singh

AND

Case :- WRIT - A No. - 13848 of 2021

Petitioner :- Priya Singh

Respondent :- State Of U.P. Thru. Secy. Basic Education Lko.And Ors.

Counsel for Petitioner :- Suresh Kumar Singh,Seemant Singh

Counsel for Respondent :- C.S.C.,Ajay Kumar,Ran Vijay Singh

AND

Case :- WRIT - A No. - 14273 of 2021

Petitioner :- Barai Nima Jawahar Lal

Respondent :- State Of U.P. Thru. Addl.Chief Secy.Basic Education Lko.Andors

Counsel for Petitioner :- Vishal Kumar Upadhyay,Amir Mohsin Rizvi

Counsel for Respondent :- Ran Vijay Singh

AND

Case :- WRIT - A No. - 14568 of 2021

Petitioner :- Shashank Tiwari

Respondent :- State Of U.P.Thru Secy.Basic Edu. Lucknow And Ors.

Counsel for Petitioner :- Rakesh Chandra Tripathi,Rakesh Pathak

Counsel for Respondent :- C.S.C.,Ran Vijay Singh,Shivam Sharma

AND

Case :- WRIT - A No. - 15525 of 2021

Petitioner :- Ram Naresh Pandey

Respondent :- State Of U.P. Thru. Addl.Chief Secy. Basic Education

And Ors.

Counsel for Petitioner :- Vijay Kumar Srivastava, Shailendra Kumar Dubey

Counsel for Respondent :- C.S.C., Ghaus Beg, Ran Vijay Singh

AND

Case :- WRIT - A No. - 16122 of 2021

Petitioner :- Shipra Yadav

Respondent :- State Of U.P. Thru. Secy. Basic Education Lko. And Ors.

Counsel for Petitioner :- Amit Chaudhary

Counsel for Respondent :- C.S.C., Ran Vijay Singh, Shivam Sharma

AND

Case :- WRIT - A No. - 17844 of 2021

Petitioner :- Vishnu Kumar

Respondent :- State Of U.P. Thru. Secy. Basic Edu. And Ors.

Counsel for Petitioner :- Abhishek Khare, Saumya

Counsel for Respondent :- C.S.C., Jaibind Singh Rathour, Ran Vijay Singh

AND

Case :- WRIT - A No. - 23482 of 2021

Petitioner :- Ashish Mishra And Anr.

Respondent :- State Of U.P. Thru. Secy. Basic Education And Ors.

Counsel for Petitioner :- Abhishek Khare, Saumya

Counsel for Respondent :- C.S.C., Prashant Arora, Ran Vijay Singh

AND

Case :- WRIT - A No. - 24783 of 2021

Petitioner :- Vandana

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Basic Edu. Lko. And Ors.

Counsel for Petitioner :- Rajit Ram

Counsel for Respondent :- C.S.C., Neeraj Chaurasiya, Ranvijay Singh

AND

Case :- WRIT - A No. - 25902 of 2021

Petitioner :- Varsha

Respondent :- State Of U.P. Thru. Prin. Secy. Basic Edu. Lko. And Ors.

Counsel for Petitioner :- Brijesh Kumar Kuldeep, P.K. Mishra

Counsel for Respondent :- C.S.C., Ajay Kumar, Ran Vijay Singh

AND

Case :- WRIT - A No. - 27459 of 2021

Petitioner :- Ajit

Respondent :- State Of U.P. Thru. Secy. Basic Edu. Lko. And Ors.

Counsel for Petitioner :- Abhishek Khare,Aahuti Agarwal,Saumya

Counsel for Respondent :- C.S.C.,Prashant Arora,Ran Vijay Singh

Hon'ble Om Prakash Shukla,J.

1. Heard Shri Abhishek Khare, Ms. Aahuti Agarwal, Shri Virendra Kumar Dubey, Shri Deepak Singh, Shri P.K. Mishra, Advocates as learned counsel for their respective petitioners and Shri Ran Vijay Singh, learned Additional Chief Standing Counsel for U.P. Basic Education Board and perused the record.
2. The present bunch of writ petitions engaging the attention of this Court has been filed by petitioners, whose candidature for the post of Assistant Teachers in primary school in pursuance of the advertisement issued by the State of Uttar Pradesh in the year 2019 were either not found proper due to inaccuracy and/or discrepancy between the online application and the actual status of the said candidate, or, even if the candidature of these petitioners were considered and these petitioner's found their way to the final selection list, however subsequently, the department, finding disparity in the declaration made in the online application and the actual status of the said candidate, their recruitment were cancelled and consequent recovery were directed by the respondent.
3. Both the sides have relied on various judgments/orders of this court as well as the Hon'ble Apex Court to buttress their point of submission and drive home their own respective cases and each of them have tried to convey that the present case is a covered matter and as such the same can be finally decided.

4. The common and germane background to the deciding of the issues involved in these writ petitions lie in a narrow compass.
5. The state of Uttar Pradesh issued a notification to fill up 69000 posts of Assistant Teachers in Primary Schools in various districts of the state, pursuant to which an Assistant Teacher Recruitment Examination, 2019 was conducted by the Examination Regulatory Authority, Prayagraj. As per the recruitment process, candidates were to apply online, who were allotted registration number and assigned roll number for appearing in the examination, for which the results were declared on 12.05.2020. After declaration of result, the U.P. Basic Shiksha Parishad invited online applications from successful candidates for counselling and appointment.
6. Pertinently, the aforesaid ambitious recruitment scheme of the state of Uttar Pradesh was mired with litigations having been filed before this Court as well as the Hon'ble Supreme Court, which led to issuance of Government order dated 4th of December, 2020 in clarification and another letter dated 05.03.2021 issued by the Additional Chief Secretary, Government of Uttar Pradesh, relating to the appointment of assistant Teachers.
7. A harmonious reading of both the Government orders would lead one to an impeccable conclusion that both these orders have been issued with a purpose, which inter-alia state that no candidate should be permitted to rectify any mistake committed by him/her while filing up online application form so as to have an impact on the smooth conducting of the selection process and to avoid any alteration or change in the inter se merit of the

candidates which would eventually lead to a change in the final merit/select list.

8. Although various orders and judgements of this Court have been cited by both the parties, however this Court finds that apparently there are two judgments of the Hon'ble Apex Court, which holds the ground as on today. The communication dated 05.02.2021 was a subject matter of interpretation before the Hon'ble Apex Court in the case of Jyoti Yadav & Anr. V/s The State of Uttar Pradesh & Ors. (Writ Petition No. 322 of 2021) decided along with 8 other writ petitions, wherein the Hon'ble Court vide its order dated 8th of April, 2021 held as follows:

“14. Wherever the mistakes committed by the candidates purportedly gave additional marks or weightage greater than what they actually deserved, according to the Communication dated 05.03.2021, their candidature would stand rejected. However, wherever mistakes committed by the candidates actually put them at a disadvantage as against their original entitlement or the variation could be one attributable to the University or issuing authority, an exception was made by said Communication. The reason for treating these two categories of candidates differently cannot thus be called irrational.

In the first case, going by the marks or information given in the application form the candidate would secure undue advantage whereas in the latter category of cases the candidate would actually be at a disadvantage or where the variation could not be attributed to them. The candidates in the latter category have been given a respite from the rigor of the declaration. The classification is clear and precise. Those who could possibly walk away with the undue advantage will continue to be governed by the terms of the declaration, while the other category would be given some relief

- 15. Having considered all the rival submissions, in our view, the Communication dated 05.03.2021 made a rational distinction and was designed to achieve a purpose of securing fairness while maintaining the integrity of the entire process. If, at every juncture, any mistakes by the candidates were to be addressed and considered at individual level, the entire process of selection may stand delayed and put to prejudice. In order to have definiteness in the matter certain norms had to be prescribed and prescription of such stipulations cannot be termed to be*

arbitrary or irrational. Every candidate was put to notice twice over, by the Guidelines and the Advertisement.

16. *Having found the Communication dated 05.03.2021 to be correct, the cases of the petitioners must be held to be governed fully by the rigors of the said Communication.*
17. *We, therefore, see no reason to interfere in these petitions and no opportunity beyond the confines of the Communication dated 05.03.2021 can be afforded to the petitioners to rectify the mistakes committed by them. We, therefore, reject the submissions and dismiss all these petitions.”*

9. Thus, the Hon’ble Apex Court held that wherever a candidate had put himself at a disadvantageous position, his candidature is not to be cancelled but if the candidate had been placed at an advantageous position which is beyond his right to claim, his candidature is to be cancelled. To the same effect is the judgment dated 29th of June, 2021 passed by the Hon’ble Apex Court in the case of Rahul Kumar vs. State of Uttar Pradesh and others, (Writ Petition No. 378 of 2021). It would be profitable to quote the relevant paragraph nos. 7, 8 and 9 of the aforesaid judgment, which read as under:

- “7. *We need not consider individual fact situation as the reading of the G.O. and the Circular as stated above is quite clear that wherever a candidate had put himself in a disadvantaged position as stated above, his candidature shall not be cancelled but will be reckoned with such disadvantage as projected; but if the candidate had projected an advantaged position which was beyond his rightful due or entitlement, his candidature will stand cancelled. The rigour of the G.O. and the Circular is clear that wherever undue advantage can enure to the candidate if the discrepancy were to go unnoticed, regardless whether the percentage of advantage was greater or lesser, the candidature of such candidate must stand cancelled. However, wherever the candidate was not claiming any advantage and as a matter of fact, had put himself in a disadvantaged position, his candidature will not stand cancelled but the candidate will have to remain satisfied with what was quoted or projected in the application form. These petitions are, therefore, disposed of in the light of what is stated above.*
8. *It must however be stated here that the authorities are not strictly following the intent of the G.O. and the Circular.*

For example, the Office Order dated 28.03.2021 issued by the Basic Teacher Education Officer, District Hardoi, shows cancellation of the candidature of one Raghav Sharan Singh at Serial No.4, though the projection of marks by way of mistake by said candidate was to his disadvantage. Logically, said candidate would be entitled to have his candidature considered and reckoned at the disadvantaged level. The record shows that even with such disadvantage, the candidate was entitled to be selected.

9. *We have given this illustration only by way of an example. The authorities shall do well to consider every such order issued by them and cause appropriate corrections or modifications in the light of conclusions stated above. ”*

10. *From the facts of the bunch of cases listed before us and as has been pointed by some of the counsels, it is evident that the issue has not been examined by the competent authority in terms of the observations made by the Supreme Court in the aforesaid two judgments which relate to the selection process in question. In fact, in some of the cases, the rejection of the candidature, is prior to the aforesaid judgments.”*

10. Both the judgements, succinctly, denote that, in case a candidate furnishes some information in his/her online application form which, although not in commensurate to the actual information, but does not put him/her to any advantageous position, such misinformation, in seclusion, may not be treated as a ground for rejecting the candidature. As a matter of fact, the judgment passed by the Hon’ble Apex Court in Archana Chauhan V/s State of Uttar Pradesh & ors. (Civil Appeal No. 3068/2020) also directs the rectification of the mistake keeping in view that the error on the part of the said candidate did not, in any way, enure to her advantage but was to her detriment.

11. The aforesaid judgments of the Hon’ble Supreme Court relate to discrepancy in the marks mentioned in the online application filled by the candidates and their urge to rectify the same, which has been interpreted by the Apex Court in the aforesaid terms. However, the controversy in these present writ petitions is concerning some discrepancies/error mentioned in the

application form relating to “Shiksha Mitra”, wherein in some petitions the weightage marks for working as shikha Mitra had not been given appropriately, whereas in some cases the petitioners have been erroneously considered as Shiksha Mitra and were although initially given appointment, however, subsequently their appointment were cancelled and consequential recovery orders were issued against them. These discrepancies/error have crept either due to non-mentioning or clicking the wrong key/code, leading to erroneous weightage given for working as Shiksha Mitra or erroneously opting for BTC through regular channel or BTC through correspondence.

12. This Court finds that the issue relating to any kind of rectification of error in the application form by any candidate of Assistant Teacher Recruitment Examination, 2019, stands settled by the aforesaid judgments of the Hon’ble Apex Court. The Hon’ble Apex Court have clearly interpreted the Government orders and have drawn a Lachman Rekha for considering any kind of error, by holding that the rigour of the G.O. and the Circular made it clear that;

(a) wherever undue advantage can enure to the candidate if the discrepancy were to go unnoticed, regardless whether the percentage of advantage was greater or lesser, the candidature of such candidate must stand cancelled.

(b) However, wherever the candidate was not claiming any advantage and as a matter of fact, had put himself in a disadvantaged position, his candidature will not stand cancelled but the candidate will have to remain satisfied with what was quoted or projected in the application form.

13. From the facts of the bunch of writ petitions, as has been rightly pointed by some of the counsels, it is evident that the issue has not been examined by the competent authority in terms of the observations made by the Supreme Court in the aforesaid two judgments which relate to the selection process in question. In fact, in some of the cases, the rejection of the candidature as in Writ Petition-A No. 16122/2021 (Shipra Yadav v/s State of U.P), is prior to the aforesaid judgments.

14. This Court further finds that a Division Bench of this court in similar circumstances, having arrived at a decision that the candidature of the petitioners have been rejected without giving due regard to the judgements of the Hon'ble Apex Court, the Hon'ble Division Bench in a bunch of 24 matters, the lead case being Ashutosh Kumar Srivastava & Others V/s State of Uttar Pradesh & Ors. (Special Appeal Defective No. 302 of 2020), has inter-alia given the following directions:

“11. As we find that the issues have not been examined by the competent authority in the light of the observations made by the Supreme Court in the aforesaid judgments interpreting the Government Orders dated 04.12.2020 and 05.03.2021, the matter needs to be re-examined.

12. While setting aside the impugned orders rejecting the candidature of the candidates on account of the error committed by them, we remit the matter to the authority of the district concerned for re-examination thereof in light of the aforesaid judgment of the Supreme Court and to take a final decision thereon.

13. It is made clear that candidates, whose names do not find place in the select list dated 12.5.2020, will not get any benefit with the change of marks as their merit position will not be changed for the reason that in case this is allowed to happen at this stage, it will open the entire selection process which is not the spirit of the order passed by this Court.

14. The entire process shall be completed by the competent authority within a period of one month from the date of receipt of a copy of this order

15. *It is further directed that in case any candidate is found entitled for appointment and is offered appointment on review of his/her case in terms of the aforesaid directions, he/she shall get all the benefits from the date, he/she joins the service.*
16. *The order passed in this bunch of appeals/writ petitions may not be treated to be an order in rem rather it is an order in personam limited to the candidates before the Court who were vigilant enough to place their grievance before the Court.”*

15. In view of the authoritative decision passed by the Hon’ble Division Bench, this Court does not find any reasons as to why the benefit extended by the Division Bench to the petitioners in that matter, should not be extended to the petitioners of the present bunch of matters.

16. In view of the above, the present bunch of matters are **disposed of** with the following directions:

- (i) The issue relating to Shiksha Mitra be re-examined by the competent authority in the light of the observations made by the Supreme Court in the aforesaid judgments;
- (ii) All impugned orders rejecting the candidature of the candidates on account of the error committed by them relating to Shiksha Mitra are **set-aside**;
- (iii) It is made clear that candidates, whose names do not find place in the select list dated 12.5.2020, will not get any benefit with the change of marks as their merit position will not be changed for the reason that in case this is allowed to happen at this stage, it will open the entire selection process

which is not the spirit of the order passed by this Court;

- (iv) These cases are remitted to the authority of the district concerned for re-examination thereof considering the aforesaid judgment of the Supreme Court and to take a final decision thereon.
- (v) The entire process shall be completed by the competent authority within a period of eight weeks from the date of receipt of a copy of this order, considering the respective writ petition as representation of the candidate concerned;
- (vi) It is further directed that in case any candidate is found entitled for appointment and is offered appointment on review of his/her case in terms of the aforesaid directions, he/she shall get all the benefits from the date, he/she joins the service.
- (vii) Any recovery proceedings, initiated, by the concerned authority shall be kept in abeyance and shall be subject to the decision/outcome of competent authority of the district concerned.

17. With the aforesaid directions, the writ petitions are **disposed of**. It is made clear that this Court has not expressed its view on the merits of any individual case and the competent authority of the district concerned is at liberty to take an independent decision within the parameters fixed by the Judgment of the

Hon'ble Apex Court as well as the Division Bench of this Court.

18. In the peculiar facts of the present case, there shall be no order as to cost.

Order Date :- 05.12.2022

S. Shivhare/-