

Civil Appeal No. 3707 of 2020 (Arising out of SLP(C)No.6841 of 2020) Ram Sharan Maurya and Ors. Vs. State of U.P. and others

REPORTABLE

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ORIGINAL/INHERENT JURISDICTION

CIVIL APPEAL NO.3707 OF 2020
(Arising out of Special Leave Petition(Civil) No.6841 of 2020)

Ram Sharan Maurya and others

State of U.P. and others

V ersus

WITH

...Appellants

...Respondents

CIVIL APPEAL NO.3708 OF 2020
(Arising out of Special Leave Petition(Civil) No.6847 of 2020)

WITH

CIVIL APPEAL NO.3709 OF 2020
(Arising out of Special Leave Petition(Civil) No.7817 of 2020)

WITH

CONTEMPT PETITION (C) NO. 418 OF 2020
IN
SPECIAL LEAVE PETITION(CIVIL) NO.6841 OF 2020)

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WITH

CIVIL APPEAL NO.3710 OF (Arising out of Special Leave
Petition(Civil) Diary No.12189 of 2020)

WITH

CIVIL APPEAL NO.3711 OF (Arising out of Special Leave
Petition(Civil) Diary No.12246 of 2020

WITH

CIVIL APPEAL NO.3720 OF (Arising out of Special Leave
Petition(Civil) Diary No.11446 of 2020

WITH

CIVIL APPEAL NO.3721 OF (Arising out of Special Leave
Petition(Civil) Diary No.11450 of 2020

WITH

CIVIL APPEAL NO.3722 OF (Arising out of Special Leave
Petition(Civil) Diary No.12016 of 2020

WITH

CIVIL APPEAL NO.3728 OF (Arising out of Special Leave
Petition(Civil) Diary No.13259 of 2020

2020
No.13741 of 2020)

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No.13742 of 2020)

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No.13743 of 2020)

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No.13745 of 2020)

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No.13746 of 2020)

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WITH

CIVIL APPEAL NO.3729 OF (Arising out of Special Leave Petition(Civil) Diary No.13288 of 2020

WITH

CIVIL APPEAL NO.3725 OF (Arising out of Special Leave Petition(Civil) Diary No.12798 of 2020

WITH

CIVIL APPEAL NO.3732 OF (Arising out of Special Leave Petition(Civil) Diary No.13517 of 2020

WITH

CIVIL APPEAL NO.3731 OF (Arising out of Special Leave Petition(Civil) Diary No.12452 of 2020

CIVIL APPEAL NO.3724 OF (Arising out of Special Leave Petition(Civil) Diary No.12792 of 2020

WITH

CIVIL APPEAL NO.3723 OF (Arising out of Special Leave Petition(Civil) Diary No.14138 of 2020

WITH

CIVIL APPEAL NO.3730 OF (Arising out of Special Leave Petition(Civil) Diary No.11452 of 2020

2020
No.13748 of 2020)

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No.13750 of 2020)

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WITH

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WITH

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(Arising out of Special Leave Petition(Civil) No.6846 of 2020)

WITH

CIVIL APPEAL NO.3713 OF 2020
(Arising out of Special Leave Petition(Civil) No.6842 of 2020)

WITH

CIVIL APPEAL NO.3714 OF 2020
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WITH

CIVIL APPEAL NO.3717 OF 2020
(Arising out of Special Leave Petition(Civil) No.13761 of 2020) Diary
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CIVIL APPEAL NO.3715 OF 2020
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WITH

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CIVIL APPEAL NO.3719 OF 2020
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WITH

SPECIAL LEAVE PETITION (CIVIL) D. NO.13142 of 2020

WITH

CIVIL APPEAL NO.3727 OF 2020
(Arising out of Special Leave Petition(Civil) No.13756 of 2020) Diary
No.13639 of 2020

WITH

WRIT PETITION (CIVIL) NO.703 OF 2020 WITH

CIVIL APPEAL NO.3733 OF 2020
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No.13872 of 2020

AND

CIVIL APPEAL NO.3734 OF 2020
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JUDGMENT

Uday Umesh Lalit, J.

1. Except Special Leave Petition (Civil) D.No.13142 of 2020: (i) permission to file Special Leave Petition is granted in all the concerned matters; and (ii) Special Leave to Appeal is granted in all matters.

2. These appeals arise out of the final judgment and order dated 06.05.2020 passed by the Division Bench of the High Court¹ in Special Appeal No.207 of 2019 and all connected matters whereby the Division Bench of the High Court set aside the Order dated 29.03.2019 passed by the Single Judge of the High Court in Writ Petition No.1188(SS) of 2019 and other connected matters. These appeals, *inter alia*, deal with the extent of rights of Shiksha Mitras and benefits conferred upon them by the decision of this Court in *State of U.P. and another vs. Anand Kumar Yadav and others*².

3. The facts leading to the decision of this Court in *Anand Kumar Yadav*² were set out in said decision as under:-

“3. Brief factual matrix may be noted. The U.P. Basic Education Act, 1972 (the 1972 Act) was enacted to regulate

1. ¹ The High Court of Judicature at Allahabad, Lucknow Bench
2. ² (2018) 13 SCC 560

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and control basic education in the State of U.P. Section 19 of the 1972 Act authorises the State Government to make rules to carry out the purpose of the Act. The U.P. Basic Education (Teachers) Service Rules, 1981 (the 1981 Rules) lay down sources of recruitment and qualification for appointment of teachers. The National Council for Teachers' Education Act, 1993 (NCTE Act) was enacted by Parliament for planned and coordinated development for teacher education system. The Right of Children to Free and Compulsory Education Act, 2009 (the RTE Act, 2009) was enacted by Parliament for free and compulsory education to all children of the age of 6 to 14 years. Section 23 provides for qualification for appointment of teachers. NCTE was

designated as authority under Section 23(1) to lay down the qualifications for appointment of teachers.

4. NCTE issued Notification dated 23-8-2010 laying down such qualifications. With regard to teachers appointed prior to the said notification, it was stated that they were required to have qualifications in terms of the National Council for Teacher Education (Determination of Minimum Qualifications for Recruitment of Teachers in Schools) Regulations, 2001 (the 2001 Regulations), if the teachers were appointed on or after 3-9-2001 subject to their undergoing NCTE recognised six months' special programme in certain situations. Teachers appointed before 3-9-2001 were required to have qualifications as per the prevalent recruitment rules. One of the requirements under the said notification is the requirement of passing Teachers Eligibility Test (TET). However, by Letter dated 8-11-2010, the Central Government sought proposals for relaxation under Section 23(2) of the RTE Act which was followed by the relaxation Order dated 10-9-2012 for certain categories of persons which was to operate till 31-3-2014. Vide Letter of NCTE dated 14-1-2011, NCTE accepted the proposal of the State of Uttar Pradesh for training of untrained graduate Shiksha Mitras by open and distance learning but it was made clear that no appointment of untrained teachers was permitted.

5. In exercise of powers under the RTE Act, 2009, the RTE Rules, 2010 were framed by the Central Government. At the same time, the State of U.P. also purported to frame rules called the U.P. RTE Rules, 2011.

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6. Reference may now be made to the scheme under which the Shiksha Mitras were recruited. On 26-5-1999, a Government Order was issued by the State of U.P. for engagement of Shiksha Mitras (Parateacher). The purported object of the Order was to provide universal primary education and for maintenance of teacher student ratio in primary schools by hiring persons who were not duly qualified at lesser cost as against the prescribed salary of a qualified teacher. The Government Order (G.O.) stated that up to the limit of 10,000, Shiksha Mitras could be contracted for academic session 1999-2000 at honorarium of Rs 1450 per month. The salient aspects of the scheme as summed up in the impugned judgment³ of the High Court from the said G.O. were: (*Anand Kumar case*³, SCC OnLine All para 17)

“(i) The appointment of Shiksha Mitras was to be against the payment of an honorarium;

(ii) The appointment was to be for a period of eleven months renewable for satisfactory performance;

(iii) The educational qualifications would be of the intermediate level;

(iv) The unit of selection would be the village where the school is situated and in the event that a qualified candidate was not available in the village, the unit could be extended to the jurisdiction of the Nyaya Panchayat;

(v) The services of a Shiksha Mitra could be terminated for want of satisfactory performance;

(vi) Selection was to be made at the village level by the Village Education Committee; and

(vii) The scheme envisaged the constitution, at the district level, of a Committee presided over by the District Magistrate and consisting, inter alia, of the Panchayat Raj Officer and the District Basic

³ 2015 SCC OnLine All 3997 : ILR 2015 All 1108 [Anand Kumar Yadav vs. Union of India]

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Education Officer among other members to oversee implementation.”

7. Further G.Os. were issued by the State of U.P. including G.O. dated 1-7-2001 expanding the scheme and clarifying that the scheme was not for employment in a regular service but to provide opportunity to the rural youth to render community service.

8. Even though vide Notification dated 23-8-2010, minimum statutory qualification was laid down by NCTE, the issue for relaxation under Section 23(2) of the RTE Act was taken up by the Union Government for relaxation for the limited interim statutory period and if a particular State did not have adequate institutions for teachers training or did not have the adequate number of candidates during the period. The State Government, in response to the letter of the Central Government, responded by stating that it had appointed Shiksha Mitras on contractual basis who were required to be given teachers training. The Central Government issued an Order for relaxation under Section 23(2) subject to certain conditions for the period up to 31- 3-2014.

9. The State Government submitted a revised proposal dated 3-1-2011 envisaging giving of training to the Shiksha Mitras which was accepted by the Central Government in terms of the Letter dated 14-1-2011 for two years' diploma in elementary education through open and distance learning mode with a clear understanding that no untrained teachers will be appointed.

10. Finally, the State of U.P. took the following steps which were subject-matter of challenge before the High Court:

10.1. The Notification dated 30-5-2014 amending the U.P. RTE Rules introducing Rule 16-A authorising the State Government to relax minimum educational qualifications for appointment of Assistant Teachers in Junior Basic Schools.

10.2. The Notification dated 30-5-2014, amending the 1981 Rules: Rule 8 laid down revised qualifications for appointment of Assistant Master and Assistant Mistress of

Junior Basic Schools which qualifications are different from the statutory qualifications under Section 23 of the RTE Act. Rule 5 was amended to add Shiksha Mitras as source for recruitment of teachers in addition to the existing source of direct recruitment in accordance with the existing rules. Rule 14 was also amended to enable Shiksha Mitras to be appointed as teachers against substantive posts without having the qualifications prescribed under Section 23 of the RTE Act.

10.3. G.O. dated 19-6-2013 was issued giving permission for appointment of Shiksha Mitras on the post of Assistant Teachers in primary schools without having the eligibility and qualifications in terms of the RTE Act, 2009. A time table was laid down for absorption of Shiksha Mitras as Assistant Teachers.

10.4. The consequential executive orders were issued for absorption of 1,24,000 graduate Shiksha Mitras and 46,000 intermediate Shiksha Mitras.”

.....

13. Batch of writ petitions was filed before the High Court by persons who claimed to be eligible for appointment and whose chances were affected by filling up of vacancies of teachers by regularising the Shiksha Mitras against the said vacancies.....

14. Case set out in the petition was that in view of Notification issued by NCTE on 23-8-2010 laying down minimum qualification for appointment of Assistant Teacher for Classes I to VIII, the decision of the U.P. Government dated 19-6-2014 and amendments made by the U.P. Government on 30-5-2014 were in conflict with the Notification issued by NCTE on 23-8-2010 and could not, thus, be justified. TET being a mandatory qualification, the State Government could not make any appointment to the post of teacher without the said qualification. The appointments did not fall under the relaxation clause being post 23-8-2010 Notification and being not covered by the conditions for relaxation. The 1981 Rules of the State could not incorporate a provision for absorption of Shiksha Mitras in violation of law laid down by this Court in *State of*

*Karnataka v. Umadevi (3)*⁴ as their appointment was dehors the 1981 Rules, having not been made after following the rules for appointment of teachers. It was also submitted that the nature of appointment of Shiksha Mitras was contractual to enable them to render community service and not in terms of prescribed qualifications for appointment of teachers. Training by open and distance learning mode was relevant only for teachers validly appointed and not for contractual employees appointed dehors the rules. Moreover, 46,000 Shiksha Mitras were not even graduates which was a condition for approval by NCTE in its letter dated 14-1-2011.....”

3.1 The decision rendered by the Full Bench of the High Court of Judicature at Allahabad was dealt with as under:-

“17. The findings of the High Court in brief are that having regard to the nature of appointment of Shiksha Mitras, they could not be treated as teachers in terms of the 1981 Rules. They also did not have the qualifications prescribed under the said Rules inasmuch as on the date of appointment, they did not have graduate degree nor they had basic teachers’ certificate as prescribed under the 1981 Rules. Reservation policy had also not been followed. No doubt they may have served the need of the hour, their regular appointment in violation of the requisite statutory qualification was illegal. Reference was made to earlier Full Bench judgment in *Sandhya Singh v. State of U.P.*⁵ with regard to the nature of such appointments.

18. It was further held that Section 23(2) permitted relaxation of minimum qualification for appointment of teachers only for a limited period not exceeding five years and qualification for TET could not be relaxed as held by the Full Bench judgment of the High Court in *Shiv Kumar Sharma v. State of U.P.*⁶ for post-23-8-2010 appointments. Nor pre-23-8-2010 appointments could be saved unless initial appointments were to the post of teachers in terms of

4. ⁴ (2006) 4 SCC 1 : 2006 SCC (L&S) 753

5. ⁵ (2013) 7 ADJ 1 (FB)

6. ⁶ 2013 SCC OnLine All 4097 : (2013) 6 ALJ 366 : 6 ADJ 310 (FB)

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applicable rules as stated in the Notification dated 23-8- 2010. The amendments to the State RTE Rules, 2011 and the Service Rules of 1981 were in conflict with the mandate of Section 23(2) under which power to relax the minimum qualifications was vested only with the Central Government for a limited period. Moreover, the regularisation of Shiksha Mitras as teachers was not permissible in view of the law laid down in *Umadevi (3)*⁴. The appointment of Shiksha Mitras was not as teachers nor could it be held to be merely irregular in the absence of their minimum qualifications for the post of teachers which was a distinguishing feature rendering the judgments *State of Karnataka v. M.L. Kesari*⁷ and *Amarendra Kumar Mohapatra v. State of Orissa*⁸ inapplicable.

3.2. Affirming the view taken by the Full Bench, this Court concluded:-

“28. We are in agreement with the above findings. In view of clear mandate of law statutorily requiring minimum qualification for appointment of teachers to be appointed after the date of the Notification dated 23-8-2010, there is no doubt that no appointment was permissible without such qualifications. Appointments in the present case are clearly after the said date. Relaxation provision could be invoked for a limited period or in respect of persons already appointed in terms of applicable rules relating to qualifications. The Shiksha Mitras in the present case do not fall in the category of pre 23-8-2010 Notification whose appointment could be regularised.

29. Further difficulty which stares one in the face is the law laid down by this Court on regularisation of contractually appointed persons in public employment. Appointment of Shiksha Mitras was not only contractual, it was not as per qualification prescribed for a teacher nor on designation of teacher nor in pay scale of teachers. Thus, they could not be regularised as teachers. Regularisation could only be of mere irregularity. The exceptions carved out by this Court do not apply to the case of the present nature.

7. ⁷ (2010) 9 SCC 247 : (2010) 2 SCC (L&S) 826

8. ⁸ (2014) 4 SCC 583 : (2014) 2 SCC (L&S) 54

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30. In view of our conclusion that the Shiksha Mitras were never appointed as teachers as per applicable qualifications and are not covered by relaxation order under Section 23(2) of the RTE Act, they could not be appointed as teachers in breach of Section 23(1) of the said Act. The State is not competent to relax the qualifications.

.....

32. On the one hand, we have the claim of 1.78 lakh persons to be regularised in violation of law, on the other hand is the duty to uphold the rule of law and also to have regard to the right of children in the age of 6 to 14 years to receive quality education from duly qualified teachers. Thus, even if for a stop-gap arrangement teaching may be by unqualified teachers, qualified teachers have to be ultimately appointed. It may be permissible to give some weightage to the experience of Shiksha Mitras or some age relaxation may be possible, mandatory qualifications cannot be dispensed with. Regularisation of Shiksha Mitras as teachers was not permissible. In view of this legal position, our answers are obvious. We do not find any error in the view³ taken by the High Court.”

3.3 However, in the peculiar fact situation, following observations were made by this Court:-

“**33.** Question now is whether in the absence of any right in favour of Shiksha Mitras, they are entitled to any other relief or preference. In the peculiar fact situation, they ought to be given opportunity to be considered for recruitment if they have acquired or they now acquire the requisite qualification in terms of advertisements for recruitment for next two consecutive recruitments. They may also be given suitable age relaxation and some weightage for their experience as may be decided by the authority concerned. Till they avail of this opportunity, the State is at liberty to continue them as Shiksha Mitras on same terms on which they were working prior to their absorption, if the State so decides.”

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4. Paragraph 33 of the decision in *Anand Kumar Yadav*² thus directed that Shiksha Mitras be given:-

1. a) opportunity to be considered for recruitment if they had acquired or would acquire requisite qualifications in terms of advertisement for recruitment.
2. b) for next two consecutive recruitments; and
3. c) in such recruitments, they would be entitled to:-
 1. i) suitable age relaxation; and
 2. ii) some weightage for their experience, as may be

decided by the authority concerned.

the decision in *Anand Kumar Yadav*², a Press Note was

5. After

released by the State Government on 21.08.2017, which referred to the directions in aforesaid paragraph 33 and stated:

“1. In sequence of compliance of above, Government to such teachers who were absorbed/ adjusted at the post of teacher, they will be deemed reverted on the post of Shiksha Mitra w.e.f. 1.8.2017. They will have option to join duty in their present school or at the school of their original posting.

2. State Government shall organize exam of TET in the month of October 2017 and all such Shiksha Mitras shall be provided an opportunity to acquire the required qualification.

3. After TET examination is held, for the purposes of selection of Assistant Teachers in the Primary Schools under the Board, advertisement of vacancy in appropriate

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number shall be got published in the month of December 2017 and all the eligible applicants shall be provided with opportunity to make application.

4. In sequence of the order passed by the Hon'ble Supreme Court, amendment was brought in “Uttar Pradesh Basic Shiksha (Teachers) Service Rule, 1981” and for the purposes of recruitment on vacant posts of Assistant Teachers, advertisement shall be made. Above said amendment shall be brought in educational qualification and in determining the factor which shall be as under:-

a. Existing and proposed amendment in UP Basic Education (Teacher) Service Rule, 1981 for the purposes of selection on the basis of Educational Factor:-

Appendix

On the basis of Educational factor

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S. No.	Exam	Existing	Proposed
1.	High School	10%	10%
2.	Intermediate	20%	20%
3.	Graduation/ Degree	40%	40%
4.	BTC Training	First Division - 12 Marks (Theory) First Division - 12 Marks (Practical) Second Division – 06 marks (Theory) Second Division – 06 marks (Practical) Third Division – 3 marks (Theory)	First Division - 12 Marks (Theory) First Division - 12 Marks (Practical) Second Division – 06 marks (Theory)

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		Third Division – 3 marks (Practical)	Second Division – 06 marks (Practical) Third Division – 3 marks (Theory) Third Division – 3 marks (Practical)
5.	Experience of work as Shiksha Mitra in the Board Schools		For the work done by them as Shiksha Mitra in each complete service year 2.5 marks per year but maximum weightage is 25 marks.

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5. All Shiksha Mitras shall be given honorarium of Rs.10,000/- per month w.e.f. 1.8.2017.”

6. On 09.11.2017, the State Government notified UP Basic (Teachers) Service (20th Amendment) Rules, 2017 amending 1981 Rules⁹. Following expressions were defined in Rule 2 as under:-

UP Basic Education (Teachers) Service Rules, 1981

“(s) "Teacher Eligibility Test" means the Teacher Eligibility Test conducted by the Government or by the Government of India;

(t) "Qualifying marks in Teacher Eligibility Test" Qualifying marks in Teacher Eligibility Test will be such as may be prescribed from time to time by the National Council for Teacher Education, New Delhi;

(u) "Trainee teacher" means a candidate who has passed B.Ed./B.Ed. (Special Education)/D.Ed. (Special Education) and has also passed the teacher eligibility test and has been selected for eventual appointment as assistant teacher in Junior Basic School after successful completion of six months special training programme in elementary education recognised by National Council for Teacher Education (NCTE);

(v) "Shiksha Mitra" means a person working as such in junior basic schools run by Basic Shiksha Parishad under the Government Orders prior to the commencement of Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011;

Or a person who has been a Shiksha Mitra and appointed as an Assistant Teacher in Junior Basic Schools run by Basic Shiksha Parishad and reverted to work as Shiksha Mitra in pursuance of the judgment of the Apex Court in SLP No. 32599/2015 State of U.P. and others v. Anand Kumar Yadav and others.

(w) "Assistant Teacher Recruitment Examination" means a written examination conducted by the Government for recruitment of a person in junior basic schools run by Basic Shiksha Parishad;

(x) "Qualifying Marks of Assistant Teacher Recruitment Examination" means such minimum marks as may be determined from time to time by the Government.

(y) "Guidelines of Assistant Teacher Recruitment Examination" means such guidelines as may be determined from time to time by the Government.”

6.1. The sources of recruitment of teachers now set out in Rule 5 were:- “

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5. Sources of recruitment. - The mode of recruitment to

the various categories of posts mentioned below shall be as

follows :

(a)(i) Mistresses of Nursery Schools	By direct recruitment as
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		provided in Rule 14.
	(ii) Assistant Masters and Assistant Mistresses of Junior Basic Schools	By direct recruitment as provided in Rule 14.
(b)	(i) Headmistresses of Nursery Schools	By promotion as provided in Rule 18.
	(ii) Headmasters and Headmistresses of Junior Basic Schools	By promotion as provided in Rule 18.
	(iii) Assistant Masters of Science-Maths for Senior Basic Schools	By promotion as provided in Rule 18.
	(iv) Assistant Mistresses of Science- Maths for Senior Basic Schools	By promotion as provided in Rule 18.
	(v) Assistant Masters of other than Science Maths for Senior Basic Schools	By promotion as provided in Rule 18.
	(vi) Assistant Mistresses of other than Science Maths for Senior Basic Schools	By promotion as provided in Rule 18.
	(vii) Headmasters of Senior by promotion as provided in Rule 18 Basic Schools.	
	(viii) Headmistresses of Senior by promotion as provided in Rule 18 Basic Schools.	

Provided that if suitable candidates are not available for promotion to the posts mentioned at (v) and (vi) above, appointment may be made by direct recruitment in the manner laid down in Rule 15.”

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6.2. The Essential Qualifications for appointment to the posts referred to in Clause (a) of Rule 5 were stipulated in Rule 8(1) as under:-

“8. Academic Qualifications-(1) 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:

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Post	Academic Qualifications
(i) Mistresses of Nursery School	Bachelors degree from a University established by law in India or a degree recognised by the Government equivalent together with Certificate of teaching (Nursery) from recognised training institution of Uttar Pradesh and any other training course recognised by the Government as equivalent thereto and teacher eligibility test passed conducted by the Government or by the Government of India. thereto

(ii) Assistant Master Assistant Mistresses of Junior Basic Schools and	ii.(a) Bachelors degree from a University established by law in India or a degree recognised by the Government equivalent thereto together with any other training course recognised by the Government as equivalent thereto together with the training qualification consisting of a Basic Teacher's Certificate (BTC), two years BTC (Urdu) Vishisht BTC. Two year Diploma in Education (Special Education) approved by Rehabilitation council of India or four year Degree in Elementary Education (B.El.Ed.), two years Diploma in Elementary Education (by whatever name known) in accordance with the National Council of Teacher of Education (Recognition, Norms and Procedure),
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	Regulation or any training qualifications to be added by National Council for Teacher Education for the recruitment of teachers in primary education and teacher eligibility test passed conducted by the Government of India and passed Assistant Teacher recruitment Examination conducted by the Government. (b) A trainee Teacher who has completed successfully six months special training programme in elementary education recognized by National Council for Teacher Education. (c) a shikshamitra who possessed bachelors degree from a University established by law in India or a degree recognised by the Government equivalent thereto and has completed successfully two year distant learning B.T.C. course or basic Teacher's Certificate (B.T.C.), Basic Teacher's Certificate (B.T.C.) (Urdu) or Vishisht B.T.C. conducted by the State Council of Educational Research and Training and passed the Teacher Eligibility Test conducted by the Government of India and passed Assistant Teacher recruitment Examination conducted by the Government.
(iii) Trainee Teacher	iii. Bachelors degree from a University established by law in India or a degree recognized by the Government equivalent thereto together with B.Ed./B.Ed.(Special Education)/D.E.d.(Special Education) qualification and passed the teacher eligibility test conducted by the Government or by the Government of India.

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However, in case of B.Ed. (Special Education)/D.Ed.(Special Education) a course recognised by Rehabilitation Council of India (RCI) only shall be considered.

Thus, Shiksha Mitras became eligible for appointment to the posts of “Assistant Masters and Assistant Mistresses of Junior Basic Schools” and the required academic qualifications as stated in Rule 8 were:-

1. a) Bachelor’s degree from a University.
2. b) Successful completion of two years distant learning of B.T.C. course or its equivalent course.
3. c) Passing of the Teachers’ Eligibility test (‘TET’, for short).
4. d) Passing of Assistant Teacher Recruitment Examination (“ATRE”, for short) conducted by the State Government.

6.3. Rule 14 dealt with determination of vacancies and preparation of list as under:-

“14. Determination of vacancies and preparation of list-

(1)(a) 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, and other categories under Rule 9 and at least two leading daily newspapers having adequate circulation in the State as well as in concerned district inviting applications from

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candidates possessing prescribed training qualification and teacher eligibility test passed, conducted by the Government or by the Government of India and passed Assistant Teacher Recruitment Examination conducted by the Government.

(b) The Government may from time to time decide to appoint candidates, who are graduates along with B.Ed./B.Ed. (Special Education)/D.Ed. (Special Education) and who have also passed teacher eligibility test conducted by the Government or by the Government of India, as trainee teachers. These candidates after appointment will have to undergo six months special training programme in elementary education recognised by National Council of Teacher Education (NCTE). 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, and other categories under Rule 9 and advertisement would be issued in at least two leading daily newspapers having adequate circulation in the State as well as in concerned district inviting applications from candidates who are graduates along with B.Ed./B.Ed. (Special Education)/D.Ed. (Special Education) and

who have also passed teacher eligibility test conducted by the Government or by the Government of India.

(c) The trainee teachers, after obtaining the certificate of successful completion of six months special training in elementary education shall be appointed as assistant teachers in junior basic school against substantive post in regular pay-scale. The appointing authority will be duty bound to appoint the trainee teachers as assistant teachers within one month of issue of certificate of successful completion of said training.

(2) The appointing authority shall scrutinize the applications received in pursuance of the advertisement under clause (a) or (b) of sub-rule (1) of Rule 14 and prepare a list of such persons as appear to possess the prescribed academic qualifications and be eligible for appointment.

(3) (a) The names of candidates in the list prepared under sub-rule (2) in accordance with clause (a) of sub-rule (1) of Rule 14 shall then be arranged in such manner that the candidate shall be

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arranged in accordance with the quality points and weightage as specified in the Appendix-I :

Provided that if two or more candidates obtain equal marks, the candidate senior in age shall be placed higher.

(b) The names of candidates in the list prepared under sub-rule (2) in accordance with clause (b) of sub-rule (1) of Rule 14 shall then be arranged in such manner that the candidate shall be arranged in accordance with the quality points specified in the appendix-II :

Provided that if two or more candidates obtain equal marks, the candidate senior in age shall be placed higher.

(c) The names of candidates in the list prepared in accordance with clause (c) sub-rule (1) of Rule 14 for appointment as assistant teacher shall be same as the list prepared under clause (b) sub- rule (3) of Rule 14 unless the candidate under the said list is unable to successfully complete the six months special training course in elementary education in his first attempt. If the candidate successfully completes the six months special training in his second and final attempt, the candidate's name shall be placed under the names of all those candidates who have completed the said six months special training in their first attempt.

(4) No person shall be eligible for appointment unless his or her name is included in the list prepared under sub-rule (2).

(5) The list prepared under sub-rule (2) and arranged in accordance with clause (a) and (b) of sub-rule (3) of Rule 14 shall be forwarded by the appointing authority to the selection committee.”

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6.4. Appendix I referable to Rule 14(3)(a) and Appendix II referable to Rule 14(3)(b) as amended by the 20th Amendment were as under:-

“APPENDIX-I¹⁰

[See Rule 14 (3)a]

Quality points and weightage for selection of candidates

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	Name of Examination/ Degree	Quality points
1.	High School	Percentage of Marks in the examination x 10 100
2.	Intermediate	Percentage of Marks in the examination x 10 100
3.	Graduation Degree	Percentage of Marks in the examination x 10 100
4.	B.T.C. Training	Percentage of Marks in the examination x 10 100
5.	Assistant Teacher Recruitment Examination	Percentage of Marks in the examination x 60 100
6.	Weightage Teaching experiences as shikshamitra or/as teacher working as such in junior basic schools run by Basic Shiksha Parishad.	2.5 marks per completed teaching year, up to maximum 25 marks, whichever is less.

¹⁰ Appendix-I Subs. by Noti. No.2282/LXXIX-5-2017-282-98 dated 9th Nov., 2017 (Twentieth Amendment) Rules, 2017. Published in U.P. Gazette. Extra., Part 4, Section (Ka), dated 9th November, 2017 (w.e.f. 9.11.2017).

Notes I – If two or more candidates have equal quality points, the name of the candidate who is senior in age shall be placed higher in the list.

2. If two or more candidates have equal quality points and age, the name of the candidate shall be placed in the list in English alphabetical order.”

“APPENDIX-II¹¹

[See Rule 14 (3)(b)]

Quality Points for Selection of candidates

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	Name of Examination/ Degree	Quality points
1.	High School	Percentage of Marks 10
2.	Intermediate	Percentage of Marks x 2 10
3.	Graduation Degree	Percentage of Marks x 4 10
4.	Bachelor of Education (B.Ed.)/B.Ed. (Special Education)/B. Ed. (Special Education)	Percentage of Marks x 3 10

Note – If two or more candidates have equal quality points the name of the candidate who is senior in age shall be placed higher in the list. If two or more candidates have equal quality point; and age, the name of the candidate shall be placed in the list in English alphabetical order.”

7. On 09.01.2018, a G.O. was issued framing Guidelines for ATRE to be conducted in 2018 (“ATRE-2018”, for short) for filling up 68,500 posts of Assistant Teachers for junior basic schools. Paragraph 7 of the Enclosure

¹¹ Appendix Ins. by (Sixteenth Amendment) Notification No.3338/LXXIX-5-2012-14(10)-2010, dated 4 December, 2012 (w.e.f. 4-12-2012)

to the G.O. prescribed the minimum qualifying marks for ATRE 2018 as minimum of 67 marks out of 150 i.e. 45% for General and OBC candidates and 60 out of 150 i.e. 40% for SC/ST candidates. Paragraphs 4.1, 5 and 7 of the Enclosure to G.O. were:-

“4. The minimum qualification for the application:-

(1) In Rule 8 of the Uttar Pradesh Basic Education (Teachers) Service (20th Amendment) Rules, 2017 the described educational, training passed, Government of India or by the State Government the organized Teachers Eligibility Examination (Primary Level) passed candidates will be eligible for filing the application in the Assistant Teachers Recruitment Examination, 2018.

5. The Subject Matter and the Structure of the Recruitment Examination of the Assistant Teachers:-

By the office of the Secretary, Uttar Pradesh Basic Education Council, Allahabad and in accordance with the advertisement which has been published vide Advertisement bearing No.Basic Education Council/15876/2017-18 dated 28.10.2017:-

Time of the examination 3.00 hours Total Marks 150 Type of questions very small question No. of question 150 The level of the Subject Matter:-

(1) Hindi Language, Sanskrit and English, Science, Maths, environment and Social Studies (upto Class 12 level).

(2) Teaching Efficiency, Child Psychology, Information Technology, Life Efficiency Management and Attitude – (Upto D.L.Ed. syllabus).

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SUBJECT	SYLLABUS	MARKS
Hindi Language, Sanskrit and English	Grammar and unread story and poem, Grammar Comprehension	40
Science	Science in daily life, movement force, energy, distance, light, sound, world of creature, healthy human body, cleanness and nutrition, environment and natural resources, the goods and state of goods.	10
Maths	Numeric competency, mathematical operations, decimal, locations valid, variant, interest, profit- loss, percentage division, factor, unitary rule, general mathematics, area average volume, ratio and all the problems, general Geometry, general statistics seed	20
Environment and the General	Construction of the Earth, Rivers, Mountain, Island, Ocean and Lives, Natural Property, Latitude and Longitude, Solar	10

studies	System, Indian Geography, India Freedom Movement, Indian Social Reformer, Constitution of India, Our Government Arrangement, Traffic and Road Safety, Indian Economics and challenges, our culture ancestor, environment conservation, natural calamity management	
Teaching Efficiency	The method of teaching and efficiency, the theory	10

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	of teaching, present Indian social and primary education, education, endeavour preliminary educational valuation and measurement preliminary education efficiency, educational management and administration inclusive new of the education,	
Child Psychology	Personal Variance, the factors which affect the child development, identification of the need of learning, the creation of the theory of the environment of reading and in the class education its practical use and merit, special arrangement for the handicapped (Divyangjan) students.	10
General Knowledge/ Current Affairs	Important current affairs – relating to the International, National, State the important events place personality, constructions, International, relating to the State the important accident place, personality, construction, International and National Award / Sports, Indian, culture and Arts etc.	30
Logic Knowledge	Analogies, assertion and reason, binary logic, classification, clocks and calendars, inequalities, decoding, reasoning, cubes number series, puzzles, symbols coded coding- critical	5

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	and notations, venn diagrams and dice, data interpretation, direction sense test, grouping and selections, inferences, letter series.	
Information Technology	Development Teaching efficiency, Art Teaching and in the School Management Area information technology computer, internet, smartphone, OER (Open Educational Resources), in the education the important Aps, digital, the information regarding use of the education materials.	5
Life Efficiency/ Management and Attitude	Commercial Character and Policy, Motivation Role of Teaching (facility giver, listener, guider, motivator, consultant), Constitutional and Humanitarian merit, punishment and Award arrangement and its effective use.	10

..... 7. Qualifying Marks:

1.

In the Assistant Teachers Recruitment Examination, the candidates who are participating for them the examination result will be issued / given on the website. For the General and OBC Class candidates who receive 67 marks out of total 150 marks viz. 45% marks or more and then only those General and OBC Class candidates will be issued passed certificate in the Assistant Teachers Recruitment Examination.

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2. For the Scheduled Caste / Scheduled Tribes candidates the minimum qualifying marks will be 40% viz. 60 marks out of total 150 marks.
3. Only by passing the Assistant Teachers Recruitment Examination will not give any right of employment to those candidates because for this appointment only this is one of the eligible measurement.”

8. On 15.03.2018, by 22nd Amendment, 1981 Rules were amended removing the requirement of passing of ATRE from the essential qualifications contained in Rule 8. However, the requirement was retained in Rule 14 dealing with the procedure for selection of Assistant Teachers. The relevant part of Rule 8(1) dealing with Academic Qualifications for “Assistant Master and Assistant Mistresses of Junior Basic Schools” read as follows:-

“ii. (a) Bachelors degree from a University established by law in India or a degree recognised by the Government equivalent thereto together with any other training course recognized by the Government as equivalent thereto together with the training qualification consisting of a Basic Teacher’s Certificate (BTC), two year BTC (Urdu) Vishisht BTC. Two year Diploma in Education (Special Education) approved by the Rehabilitation Council of India or four year degree in Elementary Education (B.El.Ed.), two year Diploma in Elementary Education (by whatever name known) in accordance with the National Council of Teacher Education (Recognition, Norms and

Procedure) Regulations, 2002 or any training qualifications to be added by National Council for Teacher Education for the recruitment of teachers in primary education.

and

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teacher eligibility test passed conducted by the Government or by the Government of India.”

Rule 14 dealing with Procedure of selection stood substituted as under:-

“14(1)(a) – Determination of vacancies

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, and other categories under rule 9 and published in at least two leading daily newspapers having adequate circulation in the State as well as in concerned district inviting applications from candidates possessing prescribed training qualification and passed teacher eligibility test, conducted by the Government or by the Government of India and passed Assistant Teacher Recruitment Examination conducted by the Government.

(b) Recruitment Examination- For every notified vacancy under clause (a) for recruitment of Assistant Master or Assistant Mistress of Junior Basic School, a separate Assistant Teacher Recruitment Examination shall be conducted by the Government.

(c) The Government may from time to time decide to appoint candidates, who are graduates along with B.Ed/B.Ed. (Special Education)/D.Ed. (Special Education) and who have also passed teacher eligibility test conducted by the Government or by the Government of India, as trainee teachers. These candidates after appointment will have to undergo six months training programme in elementary education recognized by National Council of Teacher Education (NCTE). The appointing authority shall determine the number of vacancies as also the number to be reserved for candidates belonging to Scheduled Castes, Scheduled Tribes, Backward Classes, and other categories under rule 9 and advertisement would be issued in at least two leading daily news papers having adequate circulation

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in the State as well as in concerned district inviting applications from candidates who are graduates along with B.Ed./B.Ed. (Special Education)/D.Ed. (Special Education) and who have also passed teacher eligibility test conducted by the Government or by

the Government of India and passed Assistant Teacher Recruitment Examination conducted by the Government.

(d) The trainee teachers, after obtaining the certificate of successful completion of six months special training in elementary education, shall be appointed as assistant teachers in junior basic schools against substantive post in regular pay-scale. The appointing authority will be duty bound to appoint the trainee teachers as assistant teachers within one month of issue of certificate of successful completion of said training.

(2) Preparation of Merit List – The appointing authority shall scrutinize the applications received in pursuance of the advertisement under clause (a) or clause (c) of sub-rule (1) and prepare a merit list of such persons as appear to possess the prescribed academic qualifications and passed Assistant Teacher Recruitment Examination be eligible for appointment.

(3)(a) The names of candidates in the list prepared under sub-rule (2) in accordance with clause (a) of sub-rule (1) of rule 14 shall then be arranged in such manner that the candidate shall be arranged in accordance with the quality points and weightage as specified in the appendix-I.

Provided that if two or more candidates obtain equal marks, the candidates senior in age shall be placed higher.

Provided that a person working as Shiksha Mitra in Junior Basic Schools run by Basic Shiksha Parishad shall be given weightage in the recruitment of the post of Assistant Teacher, only in two consecutive Assistant Teacher Recruitment Examination conducted by the Government after July 25, 2017.

(b) The names of candidates in the list prepared under sub- rule (2) in accordance with clause (c) of sub-rule (1) of rule 14 shall then be arranged in such manner that the candidate shall be arranged in accordance with the quality points specified in the appendix-II:

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Provided that if two or more candidates obtain equal marks, the candidate senior in age shall be placed higher.

(c) The names of candidates in the list prepared in accordance with clause (d) of sub-rule (1) of rule 14 for appointment as assistant teacher shall be same as the list prepared under clause (c) sub-rule (3) of rule 14 unless the candidate under the said list is unable to successfully complete the six months special training course in elementary education in his first attempt. If the candidate successfully completes the six months special training in his second and final attempt, the candidate's name shall be placed under the names of all those candidates who have completed the said six months special training in their first attempt.

(4) No person shall be eligible for appointment unless his or her name is included in the list prepared under sub-rule (2).

(5) The list prepared under sub-rule (2) and arranged in accordance with clause (a) and (b) of sub-rule (3) of rule 14 shall be forwarded by the appointing authority to the selection committee.”

9. In March, 2018, TET examination was held, in which approximately 3,86,000 candidates including about 40,000 Shiksha Mitras qualified.

10. On 21.05.2018, a G.O. was issued relaxing the qualifying marks of 45-40% to 33-30% for General and Reserved categories respectively. This relaxation was challenged by filing W.P. No.20404 of 2018 by some candidates and the operation of said G.O. was stayed by the High Court vide Order dated 23.07.2018.

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11. On 27.05.2018 ATRE-2018 was conducted. In the results, 41,556 candidates were declared to have qualified with qualifying marks of 45-40% out of which, 40296 candidates applied for counselling and were selected for appointment on 13.08.2018. About 4500 candidates were added to this number after re-valuation process.

12. On 28.06.2018, the National Council for Teachers Education (“NCTE”, for short) amended its OM dated 23.08.2018. The notification dated 28.06.2018 was to the following effect:-

“F.No.NCTE-Regl 012/16/2018.- In exercise of the powers conferred by sub-section (1) of Section 23 of Right of Children to Free and Compulsory Education Act, 2009 (35 of 2009) and in pursuance of notification number S.O. 750(E), dated the 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 makes the following further amendments to the notification number F.N. 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 namely:-

(1) In the said notification, in para 1 in sub-para (i), in clause (a) after the words and brackets “Graduation and two year Diploma in Elementary Education (by whatever name known), the following shall be inserted, namely:-

OR

“Graduation with at least 50% marks and Bachelor of Education (B.Ed.)”

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(2) In the said notification in para 3, for sub-para(a), the following sub-para shall be substituted namely:-

“(a) who has acquired the qualification of Bachelor of Education from any NCTE recognised institution shall be considered for appointment as a teacher in classes I to V provided the person so appointed as a teacher shall mandatorily undergo a six month Bridge Course in Elementary Education recognised by the NCTE, within two years of such appointment as primary teacher”

13. On 26.09.2018, while dealing with the issue as to the stage at which the weightage is to be given to Shiksha Mitras for their experience in terms of the directions of this Court in *Anand Kumar Yadav*² and 1981 Rules, Division Bench of the High Court of Judicature at Allahabad in *Kulbhusan Mishra and another vs. State of U.P. and others* (Special Appeal No. 812 of 2018 etc.) observed:-

“...we are of the considered view that weightage was not contemplated to be added to the marks obtained by a person in the Assistant Teacher Recruitment Examination.”

14. On 01.12.2018, a G.O. was issued notifying 2nd ATRE (“ATRE-2019”, for short) for filling up 69,000 vacancies of Assistant Teachers. Paragraphs 1, 4.1, 4.2 and 5 of the Annexure to the G.O. were:-

“In the schools managed by the Basic Education Department the teachers imparting education have major role in the development of girls and boys studying in the schools. It has been therefore decided that in order to fill

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the vacant seats of the teachers in the primary schools a state level Assistant Teachers Recruitment Examination will be conducted.

Only those candidates who are graduate, trained and those who have passed the Teachers Eligibility Test will be eligible to appear in the said examination.

.....

4. The minimum qualification, age and residence for the application:-

(1) In Rule 8 of the Uttar Pradesh Basic Education (Teachers) Service (22nd Amendment) Rules, 2018 the described educational, training passed, Government of India or by the State Government the organized Teachers Eligibility Examination

(Primary Level) passed candidates will be eligible for filing the application in the Assistant Teachers Recruitment Examination, 2019.

(2) By the National Teachers Education Council, New Delhi the Minimum Qualification with regard to the Class- 1 to Class-5 the issued Notification dated 23.08.2010, 29.07.2011, 12.11.2014 and 28.11.2014 (has been described in Appendix-2 in preamble 1.2) and on 28.06.2018 fixed eligible candidates are entitled to file application in the Assistant Teachers Recruitment Examination, 2019.”

5. The Subject Matter and the Structure of the Recruitment Examination of the Assistant Teachers:-

Time of the examination 2.30 hours (from 11.00 a.m. to 13.30 p.m.) Total Marks 150

Type of questions very small optional question, No. of questions 150

The level of the Subject Matter:-

(1) Hindi Language, Sanskrit and English, Science, Maths, Environment and Social Studies (upto Class 12 level).

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(2) Teaching Efficiency, Child Psychology, Information Technology, Life Efficiency Management and Attitude – (Upto D.L.Ed. syllabus).”

The tabular chart appended thereafter was identical to one in G.O. dated 09.01.2018 for ATRE-2018. The chart dealt with same subjects with identical syllabus and marks against each subject.

15. An advertisement was thereafter issued on 29.12.2018 notifying that ATRE-2019 would be conducted on 06.01.2019.

16. On 03.01.2019, an order was passed by the High Court of Judicature at Allahabad in Writ A No.27461 of 2018 to the following effect:-

“The grievance raised by means of the present writ petition is that without notifying the minimum qualifying marks the respondents are going to conduct written examination of Assistant Teacher Recruitment Examination-2019 on 06.01.2019.

According to the petitioners, earlier when the examinations were conducted, minimum qualifying marks were duly declared by the respondents. In this regard the circular issued by the State Government dated 01st December, 2018 (Annexure-1 to the writ petition) has been placed before this Court.

Standing Counsel has put in appearance on behalf of respondent nos. 1 and 3. Sri A.K. Yadav has put in appearance on behalf of respondent no.2.

All the respondents are granted three days' time to seek instruction in the matter.

Put up this matter as fresh on 08.01.2019.”

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17. ATRE-2019 was conducted on 06.01.2019 without there being any specification of minimum qualifying marks.

18. However, on the next day i.e. on 07.01.2019, following order was passed by the Special Secretary to the State Government:-

“To

1. Director,

State Education Research and Training Council, Uttar

Pradesh, Lucknow.

2. Secretary, Exam Controller Authority, U.P.

Prayagraj.

Basic Siksha Anubhag – 4 Lucknow Date 07 January 2019.

Subject:- Regarding prescribing the minimum qualifying marks in respect of 'Assistant Teacher Recruitment Exam 2019' for Primary Schools run by Uttar Pradesh, Basic Siksha Council.

Sir,

Refer to the letter no. B.S.C. 16426-27/2018-19 dated 05 January, 2019 of the Secretary, Basic Siksha Council regarding aforesaid subject, whereby it has been requested to prescribe the minimum qualifying marks for the 'Assistant Teacher Recruitment Exam 2019'.

2. In this regard I have been directed to state that after proper deliberation by the Government, in pursuant to the G.O. No.2056/68-4-2018 dated 01.12.2018 issued for conducting the 'Assistant Teacher Recruitment Exam 2019', for the purpose of result minimum qualifying marks are being prescribed. This Minimum Qualifying Marks will be only for 'Assistant Teacher Recruitment Exam 2019':-

(a) For the candidates of General Category, candidates getting 97 marks of the total 150 meaning 65% and more will be considered passed for 'Assistant Teacher Recruitment Exam 2019'.

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(b) For the candidates of all other Reserved Categories, candidates getting 90 marks of the total 150 meaning 60 percent and more will be considered passed for 'Assistant Teacher Recruitment Exam 2019'.

(c) Candidates qualified on the basis of aforesaid 'a' and 'b' will be eligible to apply against the 69000 vacancies advertised and on qualifying merely on the basis of aforesaid minimum marks will not have any claim for recruitment because this exam is only one of the eligible standard for recruitment.

(d) In case of more candidates qualifying than the prescribed number of posts (69000), of the total qualified candidates, eligible candidates will be selected on the basis of final merit list against the advertised posts in accordance with Appendix-I of twentieth Amendment of Uttar Pradesh Basic Siksha (teachers) Rules, 1981. Remaining candidates will automatically be out from the selection process and they will not have any claim on the basis of the 'Assistant Teacher Recruitment Exam 2019'.

(e) No communication will be entertained in respect of the Minimum Qualifying Marks.”

19. On or about 16.01.2019, the first petition namely W.P. No.118(SS) of 2019 was filed by some Shiksha Mitras challenging the aforementioned Order dated 07.01.2019 and assailing the fixation of minimum qualifying marks. About 99 Writ Petitions in all were filed by Shiksha Mitras questioning the Order dated 07.01.2019.

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20. On 24.01.2019, 23rd Amendment to 1981 Rules was published. By

this Amendment, the essential qualifications in Rule 8(ii) were substituted

as under:-

“(ii)(a) Bachelors degree from a University established by law in India or a degree recognized by the Government equivalent thereto together with any other training course recognised by the Government as equivalent thereto together with the training qualification consisting of a Basic Teacher’s Certificate (BTC), two year BTC (Urdu) Vishisht BTC. Two year Diploma in Education (Special Education) approved by Rehabilitation council of India or four year Degree in Elementary Education (B.El.Ed.), two year Diploma in Elementary Education (by whatever name known) in accordance with the National Council of Teacher Education (Recognition, Norms and Procedure), Regulations 2002, Graduation with at least fifty percent marks and Bachelor of Education (B.Ed.), provided that the person so appointed as a teacher shall mandatorily undergo a six month Bridge Course in Elementary Education recognised by the NCTE, within two years of such appointment as primary teacher or

any training qualifications to be added by National Council of Teacher Education for the recruitment of teachers in primary education.

and

teacher eligibility test passed conducted by the Government or by the Government of India.”

Consequently, Graduates having 50 per cent or more marks and holding degree of Bachelor of Education (B.Ed.) became eligible for posts of Assistant Master and Assistant Mistresses in Junior Basic Schools in the manner laid down in the Amendment. The concerned provisions in 1981

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Rules dealing with eligibility of such candidate were given retrospective effect from 01.01.2018.

21. On 07.03.2019, 24th Amendment to 1981 Rules was published further amending Rule 8(ii) by adding sub-clause (aa) after sub-clause (a) to the following effect:-

“(aa) Graduation with at least fifty percent marks and Bachelor of Education (B.Ed.), provided that the person so appointed as a teacher shall mandatorily undergo a six month Bridge Course in Elementary Education recognised by the NCTE, within two years of such appointment as primary teacher or any training qualifications to be added by National Council of Teacher Education for the recruitment of teacher in primary education, and teacher eligibility test passed conducted by the Government or by the Government of India.”

This Amendment gave retrospective effect to sub clause (aa) of Rule 8(ii) from 28.06.2018.

22. A Single Judge of the High Court allowed W.P. No.1188(SS) of 2019 (Mohd. Rizwan and others vs. State of U.P.) and other 98 Writ Petitions by common judgement and order dated 29.03.2019. Some of the relevant passages from the judgement are:-

“1. The order under challenge is Government Order bearing No.46/68-4-2019-2056/2019 dated 7.1.2019 issued by the Special Secretary, Basic Education Anubhag-4, Government of U.P., Lucknow fixing the minimum qualifying marks for Assistant Teacher Recruitment Examination, 2019 as 65% for general category and 60%

for reserved category. Undisputedly, no minimum qualifying marks have been fixed vide Government Order dated 01.12.2018 and notification/advertisement dated 05.12.2018, pursuant to which, the examination in question has been conducted on 6.1.2019. Undisputedly, the exercise for fixing minimum qualifying marks have been started pursuant to the letter bearing no. B.Sh.P.-16426- 27/2018-19 dated 5.1.2019 preferred by the Secretary, Board of Basic Education to the Government making request for fixation of minimum qualifying marks for the examination in question, meaning thereby, the State Government must be intending something other way to declare the result of Assistant Teacher Examination, 2019.

.....

157. Under the given circumstances it has been noted that the Assistant Teacher Recruitment Examination may not be treated as shortlisting examination by prescribing such a high minimum qualifying marks as the same may affect the rights of the petitioners (Shiksha Mitras) who may likely to be deprived from getting weightage of 25 marks which is statutory prescription in the 22nd Amendment. Further, since the Assistant Teacher Recruitment Examination is not the minimum qualification prescribed by the Academic authority and the same has been added in the Rules of 1981 by way of 20th and 22nd Amendment, therefore, the qualifying marks should be minimum qualifying marks. Further, the said qualifying marks should be seen like minimum. Further, the Shiksha Mitras should be subjected for the same treatment as has been given to them in earlier examination of Assistant Teacher Recruitment Examination-2018 in terms of judgment of Hon'ble Apex Court in re: Anand Kumar Yadav (supra). Since this examination would be the second and last examination for the Shiksha Mitras in terms of the aforesaid judgement of Hon'ble Apex Court, therefore, this examination i.e. Assistant Teacher Recruitment Examination-2019 should be conducted in a similar manner as the Assistant Teacher Recruitment Examination-2018 has been conducted.

.....

159. To be more precise, since to provide weightage to the candidates, who have qualified Assistant Teacher Recruitment Examination, is a legal prescription under Rule

14(3)(a) of the Rules and the same weightage has been provided in the earlier examination to those candidates, who have qualified Assistant Teacher Recruitment Examination with the minimum 45% and 40% qualifying marks, therefore, enhancing the qualifying marks up to 65% and 60%, permitting the candidates, who are having B.Ed. qualification and quality point marks of those candidates may not be determined as per Appendix-I is nothing but appears to be an attempt to oust those persons, who are eligible for the weightage.

.....

163. It would be apt to consider here the relevant provision of law, which provides about qualifying marks in Teacher Eligibility Test and qualifying marks in Assistant Teacher Recruitment Examination. As per Rule 2(t) of the Rules 1981 (as amended by Twenty Second Amendment, 2018), qualifying marks in Teacher Eligibility Test will be such as may be prescribed from time to time by the NCTE, whereas as per Rule 2(x), qualifying marks of Assistant Teacher Recruitment Examination means such minimum marks as may be determined from time to time by the Government. Conjoint reading of aforesaid provisions reveals that for Teacher Eligibility Test, qualifying marks shall be prescribed by the NCTE and there is no rider as to what qualifying marks should be fixed, therefore, for Teacher Eligibility Test, the qualifying marks is 60% and 55% for both the category and there is no quarrel on it.

164. However, in Assistant Teacher Recruitment Examination, it has categorically been indicated in Rule 2(x) that the qualifying marks means such minimum marks determined by the State Government from time to time. On account of aforesaid prescription, the State Government has firstly determined the minimum qualifying marks as 45% and 40% for both the categories and thereafter, for the same selection of Assistant Teacher Recruitment Examination, it has been fixed as 33% and 30% as the State Government could have determined any minimum marks from time to time, therefore, it is the domain of the State Government to fix the qualifying marks for the Assistant Teacher Recruitment Examination, but such qualifying marks should be 'minimum' and 'minimum' should be seen like 'minimum'. 'Minimum' may not be seen as 'maximum'.

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165. Further, since the person, who qualifies the Assistant Teacher Recruitment Examination with minimum qualifying marks shall not be appointed on the post of Assistant Teacher, rather, he/she shall only be eligible to reach in the next stage, thereby he/she shall be awarded weightage and the his/her total quality points shall be calculated. On the basis of total quality points, the candidate shall come in the zone of eligible candidate, who shall be appointed according to his/her merit. Meaning thereby, qualifying the examination of Assistant Teacher Recruitment Examination does not make the person eligible to be selected on the post of Assistant Teacher, but it only makes him/her eligible to get weightage, therefore, the submission of learned counsel for the State-respondents that so as to short list the eligible candidates, merit of Assistant Teacher Recruitment Examination has been enhanced up to 65% is misfit argument.

.....

172. Admittedly, the examinees were not aware about the decision of the State Government regarding minimum qualifying marks before the examination in question so besides the fact that rules of game may not be fixed after start of the game, one more aspect is relevant here that in view of the dictum of Hon'ble Apex Court in re: P.V. Indirsan (2) (supra) and Rahul Dutta (supra) the minimum eligibility marks should be declared before the examination and if the marks have not been fixed prior

to the examination in question, may not be fixed later on, therefore the impugned order dated 07.01.2019 would be said to have been issued in derogation of aforesaid laws of the Hon'ble Apex Court.

173. Therefore, in view of the aforesaid findings I am of the considered view that by not declaring the minimum qualifying marks of Assistant Teacher Recruitment Examination before holding examination is causing prejudice to the petitioners, including all aspirants, as they have been denied an opportunity to adequately prepare for the result. Further, since the State Government had to conduct two examinations to appoint Assistant Teacher pursuant to the direction of Hon'ble Apex Court in re: Anand Kumar Yadav (supra), therefore, the manner of these two examinations should be similar inasmuch as for Shiksha Mitras, Assistant Teacher Recruitment

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Examination-2019 was the second and last examination to get benefit of weightage as per judgement of Anand Kumar Yadav (supra).”

22.1 While considering the issue of eligibility of B.Ed. candidates, it was observed:-

“154. It is true that there is no challenge in any of the writ petitions that the inclusion of B.Ed. candidates is unwarranted and uncalled for and they may not be selected getting quality point marks as per Appendix-I, but circumstances under which the aforesaid anomaly has been committed by the State Government has nowhere been explained in the counter affidavit or by way of argument.

.....

168. I also find favour in the submission of Sri U.N. Misra that it cannot be comprehended as to what is the object of enhancing minimum qualifying marks from 45% to 65% for Assistant Teacher Recruitment Examination when it is only a qualifying examination. Mr. U.N. Misra has rightly submitted that if the averment of the counter affidavit is believed to be correct, the said enhancement has been made to select the best available candidates, then who are the best candidates, as per State-respondent. Since the inclusion of B.E.d. candidates have been made in the present examination, therefore, it appears that the enhancement has been made to oust the Shiksha Mitras from the selection in question and to select the B.Ed. candidates. If it is the intention of the State-respondent to enhance the minimum qualifying marks, then it would be violative to the rules itself which categorically provides that the Shiksha Mitras would be getting 25 marks as weightage.

.....

178. Besides, the counsel for the State-respondent could not convince as to how the quality points marks of B.Ed. candidates would be determined / calculated as per

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Appendix – I when these B.Ed. candidates would not be getting any marks for item no.4 [marks of B.T.C] and item no.6 [weightage of 25 marks]. If these B.Ed. candidates are given quality point marks as per Appendix-II, they can easily get marks for all the items but quality points marks for this examination would be calculated as per Appendix- I.

179. This Court is unable to comprehend the rationale behind it but since this particular point has not been directly assailed, therefore, no order on this point needs to be issued.

180. However, it clearly reveals that neither the Board of Basic Education nor the State Government has carried out proper exercise before conducting selection in question permitting B.Ed. candidates in the present selection in question which increased the number of aspirants drastically without deciding the method for calculating their quality points marks, without determining the vacancies for them as B.Ed. candidates are different from B.T.C. candidates, enhancing the minimum qualifying marks for the Assistant Teacher Recruitment Examination-2019 by way of G.O. dated 07.01.2019 and conducting Assistant Teacher Recruitment Examination-2019 differently from Assistant Teacher Recruitment Examination-2018 whereas the State Government was to conduct two examinations in a same manner as per dictum of Hon'ble Apex Court. This unexplained anomaly may convince this Court to quash the entire selection process but keeping in view the fact that large number of candidates have already appeared in selection process, therefore, this Court is only examining/testing the fitness of Government Order dated 07.01.2019.”

22.2 It was concluded:-

“181. Considering the entire facts and circumstances of the issue and case law so cited by the learned counsel for the respective parties I am of the considered view that the Government Order dated 07.01.2019 is not sustainable in the eyes of law being arbitrary and violative of Article 14 of the Constitution of India as it makes an unreasonable classification by giving different treatment to two groups of

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identically situated persons appearing in two consecutive examinations and there is no valid reason and justification for drastically increasing minimum qualifying marks without having any nexus with the object sought to be achieved. It further appears that the Government Order dated 07.01.2019 is nullifying the beneficial direction of the Hon'ble Apex Court in re: Anand Kumar Yadav (supra), pursuant to which 25 marks of weightage has been prescribed under Rule 14(3)(a) of the Rules 1981 (22nd Amendment, 2018) purposely for practical experience which is an integral part of merit.”

23. On 14.06.2019, 25th Amendment to 1981 Rules was published. By this Amendment, Appendix I which was referable to Rule 14(3)(a) was amended as under:-

“APPENDIX-I

Quality points and weightage for selection of candidates

47

	Name of Examination /Degree	Quality points
1.	High School	Percentage of Marks in the examination x 10 100
2.	Intermediate	Percentage of Marks in the examination x 10 100
3.	Graduation Degree	Percentage of Marks in the examination x 10 100
4.	Training Qualifications of Rule	Percentage of Marks in the examination x 10 100
5.	Assistant Teacher Recruitment Examination	Percentage of Marks in the examination x 60 100

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6.	Weightage Teaching experiences as shikshamitra or as teacher working as such in junior basic schools run by Basic Shiksha Parishad	2.5 marks per completed teaching year, up to maximum 25 marks, which ever is less
----	--	---

Note:

1. If two or more candidates have equal quality points, the name of the candidate who is senior in age shall be placed higher in the list.
2. If two or more candidates have equal quality points and age, the name of the candidates shall be placed in the list in English alphabetical order.”

23.1 Appendix II, referable to Rule 14(3)(b) was omitted by the same Amendment.

23.2 Resultantly, Appendix I as it now stands after said Amendment, is the only and common Appendix for both the sources referred to in Rule 14.

24. Special Appeals arising from the judgment and order dated 29.03.2019 passed by the Single Judge, were allowed by the Division Bench of the High Court by its common judgment and order dated

06.05.2020. It must be stated that though 99 Writ Petitions were allowed by the Single Judge, appeals were preferred only in 24 matters. Therefore, many Shiksha

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Mitras who had succeeded before the Single Judge, were not parties before the Division Bench.

25. Two principal issues were considered by the Division Bench of the High Court; one relating to the fixation of 65-60% as minimum qualifying marks for ATRE-2019 and particularly after the holding of the examination; and the other concerning the eligibility of B.Ed. candidates for the posts of Assistant Teachers under 1981 Rules.

25.1 With regard to the first issue, the conclusions of the Division

Bench were:-

“71. In Anand Kumar Yadav (supra), the Hon’ble Supreme Court merely provided that the Shiksha Mitras shall be given an opportunity to participate in the selection process at hand in two consecutive selections, irrespective of age while being given benefit of age relaxation as determined by the State Government, in an open and transparent selection process along with other duly qualified candidates and it nowhere provided that the Shiksha Mitras shall constitute a homogeneous class apart from other duly qualified candidates participating in the selection process. The Hon’ble Supreme Court while keeping in mind the interest of the school children held that the regularization of unqualified Shiksha Mitras on the post of Assistant Teacher was illegal as the school children whose interests, though were not duly represented, had a right to obtain quality education from duly qualified teachers under the provisions of Right to Education Act and gave due importance to the merit of the candidates who are ultimately going to be appointed on the post of Assistant Teacher as the ultimate losers would be the small primary school children if the merit is compromised in the selection process.

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72. As a common parlance, qualifying marks are prescribed after the examination is conducted as the Recruiting Authority is in a position to assess how the candidates have performed and determine the benchmark keeping in mind the number of vacancies. The State Government rightly in the advertisement dated 1.12.2018 did not declare the cutoff marks for qualifying the ATRE – 2019.

73. Thus, the arguments of the writ petitioners and finding recorded by the learned Writ Court that the increase in cut- off marks from 45% and 40% to 65% and 60% by the Government Order dated 07.01.2019 is nullifying the beneficial direction of the

Hon'ble Supreme Court in Anand Kumar Yadav (supra) has no legs to stand, and is pre- mature as the benefit is available only at the time of recruitment, once they hold the prescribed minimum qualifications and their names are published in the merit list prepared under Rule 14(2) of the 1981 Rules.”

25.2 The issue regarding the eligibility of B.Ed. candidates was dealt with as under:-

“81. By virtue of the amendment in the NCTE notification dated 23.8.2010 on 28.6.2018, the appellants of Special Appeal No.165(D) of 2019 participated in the TET examination on 18.11.2018 and qualified the same and therefore becoming eligible for appearing in the ATRE 2019, the writ petitioners knowing well about the amendment in the notification dated 23.8.2010 by NCTE notification dated 28.6.2018, they never challenged the validity of the said notification and thus, the notification issued by the NCTE being under a Central Enactment which is referable to Entry 66 of list I of the Seventh Schedule is binding upon the State Government and even a legislative exercise done by the State in the matter of laying down of standards in education would have to yield to the notifications of the NCTE inasmuch as the exercise of power by the State Government is referable to Entry 25 of List III of the Seventh Schedule, which besides being in the concurrent list is, subject to Entry 63, 64, 65 and 66 of List – I. The State Government rightly followed the mandate

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issued by the NCTE and permitted the B.Ed. candidates to appear in the second ATRE - 2019.

.....

87. The educational qualifications fixed by the NCTE for appointment as Assistant Teachers are binding on the recruitment made by the State Governments. The participation of B.Ed. candidates was never challenged before the learned Writ Court and the observations made in the impugned order dated 29.3.2020 pertaining to participation of B.Ed. candidates in the selection process are merely the obiter dicta having no bearing on the issue raised before the learned Writ Court regarding the legality and validity of the Government Order dated 7.1.2019 whereby the minimum qualifying marks had been fixed for ATRE – 2019 examination.

.....

89. The Apex Court in the case of State of U.P. vs. Shiv Kumar Pathak (supra), has held that the eligibility conditions for appointment of Assistant Teachers as laid down by the NCTE are binding on the State Government as the NCTE is the competent authority for fixing such educational qualifications and therefore, the B.Ed. candidates had been included by the State Government in clause 4 (2) of statutory guidelines dated 1.12.2018. In the aforesaid clause, it is very categorically stated that the notification dated 28.6.2018 issued by the NCTE whereby B.Ed. candidates were made eligible for appointment as Teacher in Primary Schools for teaching classes I to V provided the person so appointed as an Assistant Teacher shall mandatorily

undergo six months' Bridge Course in Elementary Education recognised by the NCTE within two years after such appointment as Assistant Teachers.

.....

92. Thus, we are of the view that once the B.Ed. candidates were made eligible to be considered for appointment to the post of Assistant Teacher, subject to them acquiring the minimum qualification, the State Government was bound to permit them to participate in the ARTE – 2019 passing which is the minimum qualification to be considered for appointment to the post of Assistant Teacher. Accordingly,

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“18. From a perusal of the said clause it is noticed that though under the very clause there are no cut-off marks specified, Clause 25 would, however, provide the full discretion to DSSSB to fix the minimum qualifying marks for selection. In the instant case, keeping in view that the recruitment was for the post of Assistant Teacher (Primary) and also taking note of the orders passed by the High Court in an earlier petition requiring the maintenance of minimum standards, DSSSB while preparing the select list had stopped the selection at a point which was indicated as the cut-off percentage. In a circumstance where Clause 25 was depicted in Advertisement No. 1/2006, when the private respondents herein and the other petitioners before the High Court were responding to the said advertisement, if at all they had a grievance that the clause is arbitrary and might affect their right ultimately since no minimum marks that is to be obtained have been indicated therein, they were required to assail the same at that stage. On the other hand, despite being aware of the clause providing discretion to DSSSB to fix the minimum qualifying marks, they have participated in the selection process by appearing for the qualifying examination without raising any protest. In that circumstance, the principle of approbate and reprobate would apply and the private respondents herein or any other candidate who participated in the process cannot be heard to complain in that regard.

19. It is no doubt true that the select list was concluded at the particular cut-off point wherein the last selected candidate under the unreserved category had obtained 89.25%. The said decision had been taken by DSSSB to ensure the minimum standard of the teachers that would be recruited and the appellant herein being the recruiting agency in any event, did not have objection. In any event, it is not the case of the petitioners that they had obtained higher marks than the candidate who was shown as the last candidate in the merit list. If that was the position and when it is noticed that the appellant and the other writ petitioners had secured lesser percentage of marks than the last candidate included in the merit list, there could not have been any further consideration whatsoever in the course of judicial review. To that extent, the learned Single Judge, from the observations as noticed above has kept in view all aspects of the matter and in that light had arrived at the

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conclusion that no error was committed either by DSSSB or the appellant herein.”

(Emphasis supplied)

J] In ***Jharkhand Public Service Commission vs. Manoj Kumar Gupta and another***¹⁴, the cut off in respect of Paper III was fixed after the examination. Reversing the decision of the High Court, a bench of two Judges of this Court observed:-

“7. A perusal of Clause 4.1 of the scheme clearly indicates that the moderation committee has been constituted only for the purpose of deciding the cut-off marks in each subject for declaring the result. The advertisement clearly indicates that only those candidates who obtained 50% marks in Paper I and II would be eligible to take the test in Paper III. The minimum qualifying marks in case of General/OBC candidates was 50%. At this stage, there was no need to fix the qualifying marks for Paper III. That need will arise only when the moderation committee meets and decides what should be the level of competence expected from the people who are to be considered for appointment as Lecturers. It is for the moderation committee to decide what should be the cut-off marks. There could be the subject where all the people who qualified Paper I and II get very low marks in Paper III and the moderation committee may be justified in lowering the standards and prescribing lower qualifying standards. On the other hand, there may be a subject where there are many candidates who do extremely well in Paper III and the moderation committee may decide to fix a higher minimum standard. The constitution of a moderation committee is normally done only to do this sort of moderation.

8. As far as the finding of the High Court that the rules of the game were changed after the selection process had started, we are of the considered view that this is not the case as far as the present case is concerned. There were no minimum marks provided for Paper III in the

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advertisement. This could be done by the moderation committee even at a later stage. This is not a change brought about but an additional aspect brought in while determining the merit of the candidates who are found fit to be eligible for consideration for appointment of Lecturers.”

59. Having set out relevant portions from the decisions of this Court, the answer to the second question will depend upon whether the present case is fully covered by the principles laid down in ***K. Manjusree***¹². If the case is so covered, in keeping with the Orders of reference in ***Tej Prakash Pathak***²⁸, ***Salam Samarjeet Singh***³⁰ and ***Sivanandam***³¹, the instant matter must either be referred to a larger Bench to be heard along with those matters or must await the decision in the reference to the larger Bench.

60. In terms of Rule 2(1)(x) of 1981 Rules, qualifying marks of ATRE are such minimum marks as may be determined ‘*from time to time*’ by the Government. Clause (C) of Rule 14 of 1981 Rules lays down that a

candidate must have '*passed Assistant Teacher Recruitment Examination conducted by the Government*'. Thus, one of the basic requirements for being considered to be appointed as an Assistant Teacher under 1981 Rules is passing of ATRE with such minimum marks as may be determined by the Government. Unlike para 7 of the Guidelines for ATRE-2018 which had spelt out that a candidate must secure minimum of 45% or 40% marks

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(for 'general' and 'reserved' categories respectively) for passing ATRE-2018, no such stipulation was available in G.O. dated 01.12.2018 notifying ATRE-2019. Though, the minimum qualifying marks were set out in the Guidelines for ATRE-2018, it is not the requirement of 1981 Rules that such stipulation must be part of the instrument notifying ATRE. By very nature of entrustment, the Government is empowered to lay down minimum marks '*from time to time*'. If this power is taken to be conditioned with the requirement that the stipulation must be part of the instrument notifying the examination, then there was no such stipulation for ATRE-2019. Such reading of the rules will lead to somewhat illogical consequences. On one hand, the relevant Rule requires passing of ATRE while, on the other hand, there would be no minimum qualifying marks prescribed. A reasonable construction on the relevant rules would therefore imply that the Government must be said to be having power to lay down such minimum qualifying marks not exactly alongside instrument notifying the examination but at such other reasonable time as well. In that case, the further question would be at what stage can such minimum qualifying marks be determined and whether by necessity such minimum qualifying marks must be declared well before the examination.

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61. ***K. Manjusree***¹² and ***Hemani Malhotra***²⁷ were the cases which pertained to selections undertaken to fill up posts in judicial service. In these cases, no minimum qualifying marks in interview were required and the merit list was to be determined going by the aggregate of marks secured by a candidate in the written examination and the oral examination. By virtue of stipulation of minimum qualifying marks for interview, certain candidates, who otherwise, going by their aggregate would have been in zone of selection, found themselves to be disqualified. The stipulation of minimum qualifying marks having come

for the first time and after the selection process was underway or through, this Court found such exercise to be impermissible.

These were cases where, to begin with, there was no stipulation of any minimum qualifying marks for interview. On the other hand, in the present case, the requirement in terms of Rule 2(1)(x) read with Rule 14 is that the minimum qualifying marks as stipulated by the Government must be obtained by a candidate to be considered eligible for selection as Assistant Teacher. It was thus always contemplated that there would be some minimum qualifying marks. What was done by the Government by virtue of its orders dated 07.01.2019 was to fix the quantum or number of

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such minimum qualifying marks. Therefore, unlike the cases covered by the decision of this Court in *K. Manjusree*¹², where a candidate could reasonably assume that there was no stipulation regarding minimum qualifying marks for interview, and that the aggregate of marks in written and oral examination must constitute the basis on which merit would be determined, no such situation was present in the instant case. The candidate had to pass ATRE-2019 and he must be taken to have known that there would be fixation of some minimum qualifying marks for clearing ATRE-2019.

Therefore, there is fundamental distinction between the principle laid down in *K. Manjusree*¹² and followed in *Hemani Malhotra*²⁷ on one hand and the situation in the present case on the other.

62. We are then left with the question whether prescription of such minimum qualifying marks by order dated 07.01.2019 must be set aside merely because such prescription was done after the examination was conducted. At this juncture, it may be relevant to note that the basic prayer made in the leading Writ Petition before the single Judge was to set aside the order dated 07.01.2019. What could then entail as a consequence is that there would be no minimum qualifying marks for ATRE-2019, which

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would run counter to the mandate of Rule 2(1)(x) read with Clause (C) of Rule 14. It is precisely for this reason that what was submitted was that the same norm as was available for ATRE-2018 must be adopted for

ATRE-2019. In order to lend force to this submission, it was argued that Shiksha Mitras who appeared in ATRE-2018 and ATRE-2019 formed a homogeneous class and, therefore, the norm that was available in ATRE- 2018 must be applied. This argument, on the basis of homogeneity, has already been dealt with and rejected.

63. If the Government has the power to fix minimum qualifying marks 'from time to time', there is nothing in the Rules which can detract from the exercise of such power even after the examination is over, provided the exercise of such power is not actuated by any malice or ill will and is in furtherance of the object of finding the best available talent.

In that respect, the instant matter is fully covered by the decisions of this Court in *Municipal Corporation of Delhi vs. Surender Singh*³² and *Jharkhand Public Service Commission vs. Manoj Kumar Gupta and another*¹⁴. In the first case, the power entrusted under Clause 25 of the advertisement also provided similar discretion to the Selection Board to fix minimum qualifying marks for each category of vacancies. While

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construing the exercise of such power, it was found by this Court that it was done 'to ensure the minimum standard of the teachers that would be recruited'. Similarly, in *Jharkhand Public Service Commission*¹⁴, the exercise of power after the examination in paper III was over, was found to be correct and justified.

64. If the ultimate object is to select the best available talent and there is a power to fix the minimum qualifying marks, in keeping with the law laid down by this Court in *State of Haryana vs. Subash Chander Marwaha and Others*²¹, *State of U.P. vs. Rafiquddin and Others*²², *Municipal Corporation of Delhi vs. Surender Singh*³² and *Jharkhand Public Service Commission vs. Manoj Kumar Gupta and another*¹⁴, we do not find any illegality or impropriety in fixation of cut off at 65-60% vide order dated 07.01.2019. The facts on record indicate that even with this cut off the number of qualified candidates is more than twice the number of vacancies available.

It must be accepted that after considering the nature and difficulty level of examination, the number of candidates who appeared, the concerned authorities have the requisite power to select a criteria which

may enable getting the best available teachers. Such endeavour will certainly be consistent with the objectives under the RTE Act.

65. In the circumstances, we affirm the view taken by the Division Bench of the High Court and conclude that in the present case, the fixation of cut off at 65-60%, even after the examination was over, cannot be said to be impermissible. In our considered view, the Government was well within its rights to fix such cut off.

66. Consequently, the challenge at the instance of Shiksha Mitras in all these matters, specifically referred to in Para 27 hereinabove, is negated and the appeals preferred by Shiksha Mitras are dismissed.

The appeal arising out of SLP(C) No.6846 of 2020 preferred by the Association of Shiksha Mitras also prayed for absorption of Shiksha Mitras. Such a prayer cannot be granted in view of the pronouncement of the decision of this Court in *Anand Kumar Yadav*². Said appeal is, therefore, dismissed.

67. Though we have rejected the challenge on behalf of the Shiksha Mitras and dismissed their appeals, we hope that in keeping with the submissions made on behalf of the State, as recorded in paragraph 34

hereinabove, one more opportunity shall be afforded to Shiksha Mitras to compete in the next selection. We leave it to the discretion of the State Government to consider the manner and the modalities in which such opportunity can be availed of. Needless to say, the matter in that behalf is entirely left to the discretion of the State Government.

68. In the appeals preferred by ex-servicemen or persons with disability, it was submitted that as against the vacancies earmarked for these categories, very few candidates had applied and at 65-60% cut off the number of qualified candidates was far lesser. The cut off at 65-60% having been held valid and justified, these appeals are also dismissed. If there are less number of candidates against the vacancies for these categories, such vacancies shall be subject to the Rules in that behalf. If

the vacancies cannot be carried forward, the same shall and must enure to the advantage of the candidates in the present selection.

Similarly, Writ Petition (Civil)No.703 of 2020 and appeals arising out of petitions preferred by B.Ed./B.T.C. candidates as well as Contempt Petition (Civil)No.413 of 2020 and all Intervention Applications also stand disposed of in same terms. No costs.

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69. The State Government shall now be entitled to fill up all the concerned posts in terms of the result declared on 12.05.2020 and in accordance with law.

New Delhi; November 18, 2020.

.....J. [Uday Umesh Lalit]

.....J. [Mohan M. Shantanagoudar]