

A.F.R.

Reserved on-29.11.2019
Delivered on-07.01.2020

1. **Case :-** SERVICE SINGLE No. - 6000 of 2019

Petitioner :- Alok Kumar And Another

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

Counsel for Petitioner :- Sudeep Seth,Onkar Singh Kushwaha

Counsel for Respondent :- C.S.C.,Ajay Kumar,Durga Prasad Shukla

2. **Case :-** SERVICE SINGLE No. - 6313 of 2019

Petitioner :- Aditya Kumar Pandey And 4 Ors.

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

Counsel for Petitioner :- Manoj Kumar Mishra,Atul Chander Dwivedi,Dr. L.P.Mishra

Counsel for Respondent :- C.S.C.,Ajay Kumar,Durga Prasad Shukla

3. **Case :-** SERVICE SINGLE No. - 6264 of 2019

Petitioner :- Saurabh Kumar Singh And 9 Ors.

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

Counsel for Petitioner :- Pramod Kumar Verma,Sameer Kalia

Counsel for Respondent :- C.S.C.,Ajay Kumar,Durga Prasad Shukla

4. **Case :-** SERVICE SINGLE No. - 6377 of 2019

Petitioner :- Pushpendra Kumar Yadav And 2 Ors.

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

Counsel for Petitioner :- Ishita Yadu

Counsel for Respondent :- C.S.C.,Ajay Kumar,Durga Prasad Shukla

5. **Case :-** SERVICE SINGLE No. - 11219 of 2019

Petitioner :- Avanish Kumar And Another

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

Counsel for Petitioner :- Manoj Kumar Mishra,Sandeep Dixit

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

6. **Case :-** SERVICE SINGLE No. - 11414 of 2019

Petitioner :- Manoj Kumari And 7 Ors.

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

Ors.

Counsel for Petitioner :- Pramod Kumar Pandey, Sanjay Kumar Verma, Shashi Prabha Arya

Counsel for Respondent :- C.S.C., Ajay Kumar, Durga Prasad Shukla

7. **Case :-** SERVICE SINGLE No. - 10927 of 2019

Petitioner :- Surendra Chauhan And 2 Ors.

Respondent :- State Of U.P. Thru Special Primary Edu. Lucknow And Ors.

Counsel for Petitioner :- Vivek Kumar Tripathi, Arvind Kumar Tripathi

Counsel for Respondent :- C.S.C., Ajay Kumar, D.P. Shukla

8. **Case :-** SERVICE SINGLE No. - 11306 of 2019

Petitioner :- Pawan Kumar And 308 Ors.

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

Counsel for Petitioner :- Avdhesh Shukla, Ashutosh

Counsel for Respondent :- C.S.C., Ajay Kumar, Durga Prasad Shukla

9. **Case :-** SERVICE SINGLE No. - 11534 of 2019

Petitioner :- Kuldeep Kumar And 79 Ors.

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

Counsel for Petitioner :- Dinesh Kumar, Ashutosh

Counsel for Respondent :- C.S.C., Ajay Kumar, Durga Prasad Shukla

10. **Case :-** SERVICE SINGLE No. - 11720 of 2019

Petitioner :- Sant Ram & Ors.

Respondent :- State Of U.P. Thru. Spl. Secy., Basic Education & Ors.

Counsel for Petitioner :- Dinesh Kumar Tripathi, Manish Nigam, Neelesh

Kumar

Counsel for Respondent :- C.S.C., Ajay Kumar, Durga Prasad Shukla

11. **Case :-** SERVICE SINGLE No. - 11722 of 2019

Petitioner :- Ved Prakash And 14 Ors.

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

Counsel for Petitioner :- Sukh Deo Singh, Paritosh Shukla

Counsel for Respondent :- C.S.C., Ajay Kumar, Durga Prasad Shukla

12. **Case :-** SERVICE SINGLE No. - 11903 of 2019

Petitioner :- Archana Singh And 13 Ors.

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

Counsel for Petitioner :- Rahul Kumar Singh

Counsel for Respondent :- C.S.C.,Ajay Kumar,Durga Prasad Shukla

13. **Case :-** SERVICE SINGLE No. - 11444 of 2019

Petitioner :- Chandra Shekhar Singh And 63 Ors.

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

Counsel for Petitioner :- Avdhesh Shukla,Ashutosh

Counsel for Respondent :- C.S.C.,Ajay Kumar,Durga Prasad Shukla

14. **Case :-** SERVICE SINGLE No. - 9007 of 2019

Petitioner :- Rajesh Kumar Ojha & Ors.

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

Counsel for Petitioner :- Rajesh Kumar Shukla,Prithvish Mishra,Ravi Mishra

Counsel for Respondent :- C.S.C.,Ajay Kumar,Durga Prasad Shukla

15. **Case :-** SERVICE SINGLE No. - 13144 of 2019

Petitioner :- Shushil Kumar Gupta And 74 Ors.

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

Counsel for Petitioner :- Dinesh Kumar,Ashutosh

Counsel for Respondent :- C.S.C.,Ajay Kumar,Durga Prasad Shukla

16. **Case :-** SERVICE SINGLE No. - 13399 of 2019

Petitioner :- Sanjay Kumar Pal And 61 Ors.

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

Counsel for Petitioner :- Onkar Singh Kushwaha,Pratima Singh

Counsel for Respondent :- C.S.C.,Ajay Kumar,Durga Prasad Shukla

17. **Case :-** SERVICE SINGLE No. - 10642 of 2019

Petitioner :- Somesh And Others

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

Counsel for Petitioner :- Pramod Kumar Pandey,Sanjay Kumar Verma,Shashi Prabha Arya

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

18. **Case :-** SERVICE SINGLE No. - 10741 of 2019

Petitioner :- Vijay Kumar And Ors.

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

Counsel for Petitioner :- Pramod Kumar Pandey,Sanjay Kumar Verma,Shashi Prabha Arya,Suryakant Singh

Counsel for Respondent :- C.S.C.,Ajay Yadav,Durga Prasad Shukla

19. **Case :-** SERVICE SINGLE No. - 7201 of 2019

Petitioner :- Amarendra Kumar Singh And 47 Ors.

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

Counsel for Petitioner :- Pramod Kumar Pandey,Sanjay Kumar Verma

Counsel for Respondent :- C.S.C.,Ajay Kumar,Durga Prasad Shukla

20. **Case :-** SERVICE SINGLE No. - 9224 of 2019

Petitioner :- Rakesh Kumar & Ors.

Respondent :- State Of U.P. Thru Prin. Secy. Primary Education & Ors.

Counsel for Petitioner :- Dinesh Kumar

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

21. **Case :-** SERVICE SINGLE No. - 8870 of 2019

Petitioner :- Gunjan Singh

Respondent :- State Of U.P. Thru. Spl. Secy., Basic Education & Ors.

Counsel for Petitioner :- Surya Kumar

Counsel for Respondent :- C.S.C.,Ajay Kumar,Durga Prasad Shukla

22. **Case :-** SERVICE SINGLE No. - 8326 of 2019

Petitioner :- Pawan Shukla

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

Counsel for Petitioner :- Surya Kant Singh

Counsel for Respondent :- C.S.C.,Ajay Kumar,Durga Prasad Shukla

23. **Case :-** SERVICE SINGLE No. - 8111 of 2019

Petitioner :- Rashmi Singh

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

Counsel for Petitioner :- Shobhit Saxena

Counsel for Respondent :- C.S.C.,Ajay Kumar,D.P. Shukla

24. **Case :-** SERVICE SINGLE No. - 11254 of 2019

Petitioner :- Abdul Shahrukh And 1384 Ors.

Respondent :- State Of U.P. Thru Special Basic Edu. Lucknow & Ors.

Counsel for Petitioner :- Onkar Singh Kushwaha

Counsel for Respondent :- C.S.C.,Ajay Kumar,Durga Prasad Shukla

25. **Case :-** SERVICE SINGLE No. - 12652 of 2019

Petitioner :- Virendra Kumar Rastogi And 311 Ors.

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

Counsel for Petitioner :- Ashutosh,Dinesh Kumar

Counsel for Respondent :- C.S.C.,Ajay Kumar,Durga Prasad Shukla

26. **Case :-** SERVICE SINGLE No. - 13341 of 2019

Petitioner :- Dinesh Kumar And 2 Ors.

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

Counsel for Petitioner :- Kalika Prasad Pandey,Shivendra Pratap Singh

Counsel for Respondent :- C.S.C.,Ajay Kumar,Durga Prasad Shukla

27. **Case :-** SERVICE SINGLE No. - 13408 of 2019

Petitioner :- Roop Singh And 7 Ors.

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

Counsel for Petitioner :- Manoj Kumar Mishra,Atul Chandra Dwivedi

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

28. **Case :-** SERVICE SINGLE No. - 13565 of 2019

Petitioner :- Ashok Kumar Tripathi And Another

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

Counsel for Petitioner :- Arun Kumar,Smt. Ranjana Tiwari

Counsel for Respondent :- C.S.C.,Ajay Kumar,D.P. Shukla

29. **Case :-** SERVICE SINGLE No. - 15749 of 2019

Petitioner :- Vivek Vikram Chauhan And 40 Ors.

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

Counsel for Petitioner :- Dinesh Kumar,Ajeet Singh,Ashutosh

Counsel for Respondent :- C.S.C.,Ajay Kumar,Durga Prasad Shukla

30. **Case :-** SERVICE SINGLE No. - 16360 of 2019

Petitioner :- Manuraj Singh And Another

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

Ors.

Counsel for Petitioner :- Saurabh Singh,Suryakant Singh

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

31. **Case :-** SERVICE SINGLE No. - 18369 of 2019

Petitioner :- Yashpal Singh And 8 Ors.

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

Counsel for Petitioner :- Onkar Singh Kushwaha

Counsel for Respondent :- C.S.C.,Ajay Kumar Yadav,D.P. Shukla

32. **Case :-** SERVICE SINGLE No. - 18456 of 2019

Petitioner :- Kranti Mohan Shukla And 52 Ors.

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

Counsel for Petitioner :- Dinesh Kumar

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

33. **Case :-** SERVICE SINGLE No. - 18285 of 2019

Petitioner :- Ved Prakash Kushwaha And 34 Ors.

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

Counsel for Petitioner :- Pramod Kumar Pandey,Sanjay Kumar Verma,Vishnu Pratap

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

34. **Case :-** SERVICE SINGLE No. - 18487 of 2019

Petitioner :- Yogendra Kumar And 53 Ors.

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

Counsel for Petitioner :- Ashutosh,Haridhwar Singh Kuswaha,Illegible

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

35. **Case :-** SERVICE SINGLE No. - 18724 of 2019

Petitioner :- Shiv Narayan Verma And 118 Ors.

Respondent :- State Of U.P. Thru Prin.Secy. Primary Edu. Lucknow & Ors.

Counsel for Petitioner :- Kaushal Kishore,Nandini Gupta

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

36. **Case :-** SERVICE SINGLE No. - 19069 of 2019

Petitioner :- Arvind Kumar Yadav And Ors.

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

Counsel for Petitioner :- Vimal Yadav,Sanjay Kumar Verma

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

37. **Case :-** SERVICE SINGLE No. - 20245 of 2019

Petitioner :- Archana Singh And Anr.

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

Counsel for Petitioner :- Manoj Kumar Mishra,Anubhav Awasthi

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

38. **Case :-** SERVICE SINGLE No. - 18399 of 2019

Petitioner :- Nisha Parveen And 34 Ors.

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

Counsel for Petitioner :- Yogeshwar Sharan Srivasta

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

39. **Case :-** SERVICE SINGLE No. - 20732 of 2019

Petitioner :- Nikhil Tomar And 13 Ors.

Respondent :- State Of U.P. Thru Special Secy. Basic Edu. Lukcnow & Ors.

Counsel for Petitioner :- Sanjay Kumar Verma,Iswar Lal

Choudhary,Sanjay Kumar,Umesh Pratap Yadav

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

40. **Case :-** SERVICE SINGLE No. - 21002 of 2019

Petitioner :- Zaki Ulla & Ors.

Respondent :- State Of U.P. Thru. Spl. Secy., Basic Education & Ors.

Counsel for Petitioner :- Onkar Singh Kushwaha

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

41. **Case :-** SERVICE SINGLE No. - 22928 of 2019

Petitioner :- Shiv Veer Singh & Ors.

Respondent :- State Of U.P. Thru. Special Secy., Basic Education & Ors.

Counsel for Petitioner :- Yogeshwar Sharan Srivasta

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

42. **Case :-** SERVICE SINGLE No. - 22612 of 2019

Petitioner :- Santosh Yadav And 3 Ors.

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

Counsel for Petitioner :- Anurag.S.'Kaalesh'

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

43. **Case :-** SERVICE SINGLE No. - 24581 of 2019

Petitioner :- Sanjay Kumar Singh & Others

Respondent :- State Of U.P. Thru. Spl. Secy. Basic Edu. Anubhag-4, Lko&Ors

Counsel for Petitioner :- Sanjay Kumar,Ishwar Lal

Chaudhary,Kamakhya Pratap Singh, Sanjay Kumar Verma

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

44. **Case :-** SERVICE SINGLE No. - 27788 of 2019

Petitioner :- Sandeep Pal & 30 Ors.

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

Counsel for Petitioner :- Ashutosh,Vishal Kumar Yadav

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

45. **Case :-** SERVICE SINGLE No. - 30370 of 2019

Petitioner :- Kumari Anupam

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

Counsel for Petitioner :- Onkar Nath Tiwari

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

46. **Case :-** SERVICE SINGLE No. - 30168 of 2019

Petitioner :- Dinesh Yadav And 3 Ors.

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

Counsel for Petitioner :- Rakesh Kumar Yadav,Mulayam Singh Yadav

Counsel for Respondent :- C.S.C.

47. **Case :-** SERVICE SINGLE No. - 11554 of 2019

Petitioner :- Amit Kumar Maurya (Roll No. 42441207700) And 7 Ors.

Respondent :- State Of U.P. Thru Secy.Basic Edu.Anubhag-5 Lko. & Ors.

Counsel for Petitioner :- Pradeep Singh Somvanshi

Counsel for Respondent :- C.S.C.,D.P. Shukla

48. **Case :-** SERVICE SINGLE No. - 30511 of 2019

Petitioner :- Naveen Kumar And 45 Ors.

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

Counsel for Petitioner :- Onkar Singh Kushwaha,Pratima Singh

Counsel for Respondent :- C.S.C.,Ajay Kumar,D.P. Shukla

49. **Case :-** SERVICE SINGLE No. - 31079 of 2019

Petitioner :- Akhil Kumar Yadav & 3 Ors.

Respondent :- State Of U.P.Thru Spcl.Secy. Shiksha Anubhag -Ii Lko & Ors.

Counsel for Petitioner :- Devendra Upadhyay

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

50. **Case :-** SERVICE SINGLE No. - 31274 of 2019

Petitioner :- Shiv Kumar & 112 Ors.

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

Counsel for Petitioner :- Ashutosh,Jayvind Singh Yadav,Vishal Kumar Yadav

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

51. **Case :-** SERVICE SINGLE No. - 30806 of 2019

Petitioner :- Shivendra Pratap Singh & 169 Ors.

Respondent :- State Of U.P.Thru Prin.Secy.Basic Education Deptt.Lko &Ors.

Counsel for Petitioner :- Ashutosh,Dinesh Kumar,Vijay Prakash Singh

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

52. **Case :-** SERVICE SINGLE No. - 31432 of 2019

Petitioner :- Rekha Devi & 261 Ors.

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

Counsel for Petitioner :- Onkar Singh Kushwaha

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

53. **Case :-** SERVICE SINGLE No. - 22426 of 2019

Petitioner :- Sahil Kumar And 58 Ors.

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

Counsel for Petitioner :- Ashutosh,Pawan Kumar Maurya,Saurabh Kumar Shukla,Vishal Kumar Yadav

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

54. **Case :-** SERVICE SINGLE No. - 32310 of 2019

Petitioner :- Pooja Saroj & 73 Ors.

Respondent :- State Of U.P.Thru Spcl.Secy.Basic Education Deptt. Lko & Ors

Counsel for Petitioner :- Atul Chander Dwivedi,Anand Mani Tripathi

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

55. **Case :-** SERVICE SINGLE No. - 32377 of 2019

Petitioner :- Avadhesh Kumar Verma & Ors.

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

Counsel for Petitioner :- Yogeshwar Sharan Srivasta

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

56. **Case :-** SERVICE SINGLE No. - 32644 of 2019

Petitioner :- Ajeet Kumar Chauhan And Ors.

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

Counsel for Petitioner :- Yogeshwar Sharan Srivasta

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

57. **Case :-** SERVICE SINGLE No. - 32586 of 2019

Petitioner :- Jawahir Kushwaha & 82 Ors.

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

Counsel for Petitioner :- Ashutosh,Gyan Prakash Gupta,Vishal Kumar Yadav

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

Hon'ble Abdul Moin,J.

1. Heard Sri S.K. Kalia, Senior Advocate, assisted by Sri Avdhesh Shukla and Sri Sameer Kalia, Sri Jai Deep Narain Mathur, Senior Advocate, assisted by Sri Devendra Upadhyay, Sri Sandeep Dixit, Senior Advocate, assisted by Sri Manoj Mishra, Sri Sudeep Seth, Senior Advocate, assisted by Sri Onkar Singh and Ms. Ishita Yadav, Dr. L.P. Mishra, Sri Y.S. Srivastava, learned counsel for the petitioners in this writ petition and other connected matters, Sri Kuldeep Pati Tripathi, learned Additional Advocate General, assisted by Sri Prafulla Yadav and Sri Pratyush Tripathi, learned Standing Counsel appearing for State-respondents and Sri Ajay Kumar,

learned counsel appearing for respondent no.3/Uttar Pradesh Basic Education Board.

2. There is consensus at the Bar between the counsel for the parties that as all the cases pertain to a common issue and these writ petitions have been heard together, as such they be decided by a common judgment. Accordingly, the facts of Writ Petition (S/S) No.6000 of 2019 are being considered for deciding this bunch of writ petitions.

3. By means of the present petition, the petitioners have prayed for quashing of the Government Order dated 20.2.2019, a copy of which is Annexure-1 to the writ petition. Further prayer is for a mandamus commanding the respondents to declare the result of the Assistant Teacher Recruitment Examination-2018 on the basis of Government Order dated 21.5.2018, a copy of which is Annexure-2 to the writ petition.

4. Brief facts as set forth by the petitioners are that a Government Order had been issued by the respondents giving guidelines for holding an examination, namely, Assistant Teacher Recruitment Examination-2018 (hereinafter referred to as the 2018 Recruitment), a copy of which is Annexure-4 to the writ petition. A notification was issued on 23.1.2018, a copy of which is Annexure-6 to the writ petition, giving the schedule for applying for the 2018 Recruitment by eligible candidates in terms of the guidelines dated 9.1.2018 and the Government Order dated 17.1.2018, a copy of which is Annexure-5 to the writ petition. The Government Order dated 17.1.2018, as has been referred to in the notification dated 23.1.2018, gave the schedule for issue of advertisement, dates of submission of

applications etc. Subsequent thereto, the respondents issued another time schedule dated 7.5.2018, a copy of which is Annexure S-1 to the supplementary affidavit, by which the last date fixed for receipt of applications was specified as 17.5.2018 and the candidates could make correction on-line in their application by 21.5.2018. The date of examination was also specified as 27.5.2018. It is contended that as per para 7 of the guidelines that were part of the Government order dated 9.1.2018, it was provided that the minimum marks to be obtained by a candidate, so far as they pertain to general and other backward category candidates, was 67 marks out of 150 marks i.e 45 percent while the minimum marks for Scheduled Caste/ Scheduled Tribe category was 60 marks out of 150 marks i.e 40 per cent. Even before the examination could be held on 27.5.2018, the respondents issued a Government Order dated 21.5.2018, a copy of which is Annexure-2 to the writ petition, by which the marks, so far as they pertained to general and other backward category candidates, were reduced to 33 percent while for other categories i.e. the reserved categories was reduced to 30 per cent.

5. The said Government Order was challenged by one Sri Diwakar Singh by filing Writ Petition No.20404 of 2018 before this Court. The basic ground to challenge the said Government Order was that once the selection process had commenced and the date of examination was fixed as 27.5.2018 then the respondents while issuing the Government Order dated 21.5.2018 could not have changed the selection criteria.

6. This Court vide order dated 24.7.2018 restrained the respondents from implementing the guidelines issued under the Government Order dated 21.5.2018 in the selection proceedings

initiated in pursuance to the Government order dated 9.1.2018 and the advertisement issued in pursuance thereto. Copy of the interim order dated 24.7.2018 is Annexure-10 to the writ petition.

7. Being aggrieved with the order dated 24.7.2018, a bunch of special appeals leading being Special Appeal No.432 of 2018 In re: Avnish Kumar and others vs. Shri Diwakar Singh and others was filed before this Court. This Court vide judgment and order dated 24.9.2018, a copy of which is Annexure-21 to the writ petition, remanded back the matter to the Hon'ble Single Judge to decide the same finally as early as possible. It is also contended that as the selection had proceeded, the State Government issued a Government order dated 08.08.2018, a copy of which is annexure 11 to the petition resolving to comply with the interim order dated 24.7.2018 and granting permission to prepare and declare the result as per the guidelines dated 9.1.2018. In pursuance thereof, the result was declared on 13.8.2018.

8. It has also been stated in paragraph 16 of the writ petition that out of 68500 vacant posts only 41556 candidates qualified as per the minimum qualifying marks prescribed as per the guidelines dated 9.1.2018. It has also been contended that the petitioners have not qualified as per the qualifying marks prescribed as per the guidelines dated 9.1.2018 but may qualify as per the lowered qualifying marks prescribed as per the Government order dated 21.5.2018.

9. Subsequent thereto, the respondents issued the impugned order dated 20.2.2019, a copy of which is Annexure-1 to the writ petition, by which the Government Order dated 21.5.2018 was made redundant. It is contended that through an order dated 28.2.2019

passed in a bunch of writ petitions the leading being Writ Petition (S/S) No.20404 of 2018, all of which had been filed challenging the order dated 21.5.2018, the said petitions were dismissed as infructuous keeping in view the order dated 20.2.2019 but it was left open to the affected parties to raise all pleas and grounds in the subsequent writ petition wherein the Government Order dated 20.2.2019 is under challenge, if any.

10. It is argued that the Government on 09.11.2017 has issued the Uttar Pradesh Basic Education (Teachers) Service (Twentieth Amendment) Rules, 2017 (hereinafter referred to as "Twentieth Amendment") to amend the Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as "Rules, 1981") which provide in Rule 2 (w) as under:-

"2(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.

11. Likewise Rule 2 (x) reads as under:-

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

12. The Rule 2 (y) reads as under:-

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

13. Placing reliance on Rule 2 (x) it is contended that qualifying marks of Assistant Teachers Recruitment Examination would mean such minimum marks as may be determined from time to time by the

Government and thus once such power is vested in the Government to determine the minimum marks consequently once the Government issued the Government order dated 21.05.2018 revising and lowering the marks, as such the same are deemed to have been issued by exercising the power vested in the Government in terms of Rule 2 (x) and thus validly no challenge could be raised to the same and once the marks had been determined, it could not be said that the same amounted to change in the rule of the game so as to cause any grievance to any of the candidates and thus the order dated 21.05.2018 having been validly issued, there was no occasion for the respondents to have withdrawn the said order through the impugned Government order dated 20.02.2019.

14. It is also argued that the process of recruitment would only start when the actual recruitment for Assistant Teachers is held i.e after the result of the qualifying examination i.e 2018 Recruitment and thus once no recruitment was involved in the qualifying examination that was held by the respondents, as such merely because the Government exercising the power vested in it under Rule 2 (x) of the Twentieth Amendment having validly exercised the said power and the 'game' was still to begin after the persons had qualified in the said examination and attained eligibility for the purpose of finally staking their claim for their appointment in terms of the recruitment still to be conducted, as such there was no occasion for this Court to have passed the interim order dated 24.07.2019 and thereafter there was no occasion for the Government to have withdrawn the same through the Government order dated 20.02.2019 based on the said interim order.

15. Another argument is that the interim order dated 24.07.2018 was passed on the basis of the judgment of the Apex Court in the case of **K.Manjusree Vs. State of Andhra Pradesh** reported in **(2008) 3 SCC 512** which itself has been held to be *per incuriam* in a subsequent judgment of the Apex Court in the case of **Tej Prakash Pathak and Anr Vs. Rajasthan High Court and Ors** reported in **(2013) 4 SCC 540** and the respondents while issuing the impugned order dated 20.02.2019 having passed the said order on the basis of the interim order which resulted in the respondents proceeding with the selection on the basis of the earlier Government order and declaring the result whereafter the Government order dated 21.05.2018 was made redundant meaning thereby that the very base of the order dated 20.02.2019 is the interim order of this Court dated 24.07.2018 which itself being based on a judgment of the Apex Court being held *per incuriam* meaning thereby that the order dated 20.02.2019 is itself vitiated in the eyes of law.

16. Placing reliance on the judgment of the Apex Court in the case of **Shree Chamundi Mopeds Ltd vs Church Or South India Trust Association** reported in **(1992) 3 SCC 1** it is contended that the order dated 24.07.2018 of this Court was only an interim order meaning thereby that the Court was still to pronounce on the validity of the Government order dated 21.05.2018 and thus merely because the Government order dated 21.05.2018 had been stayed by this Court, the same would not take away the effect of the Government order dated 21.05.2018 inasmuch as a distinction has to be made between quashing of an order and stay of operation of an order and thus by no stretch of imagination could the interim order of this Court dated 24.07.2018 have been taken as a final order by the respondents while proceeding to pass the impugned Government order dated

20.02.2019 in order to make redundant the Government order dated 21.05.2018 the validity of which was still to be tested by this Court in a bunch of petitions.

17. Placing reliance on **Tej Prakash Pathak (supra)** it is argued that it was not the eligibility condition which had been interfered with by the respondents with the issue of the Government order dated 21.05.2018 rather a conscious decision was taken by the Government while issuing the Government order dated 21.05.2018 to reduce the minimum marks which could validly be done by the Government taking into consideration Rule 2 (x) of the Twentieth Amendment.

18. It is also argued that no reasons are forthcoming in the impugned order dated 20.02.2019, apart from giving reference to the interim order of this Court, as to why the respondents thought it fit to make the Government order dated 21.05.2018 redundant and as such any reason that may be taken in the counter affidavit cannot be considered by this Court while going into the validity and veracity of the impugned order dated 20.02.2019.

19. It is further argued that even if the reduced marks would have resulted in a large number of candidates qualifying in the exam yet the merit of final selection for appointment would not be compromised as in terms of Rule 14 (1) (c) (3) (a) of the Twentieth Amendment in Rule, 1981, the name of the candidates in the list prepared under Sub Rule (2) in accordance with Clause (a) of Sub Rule (1) of Rule 14 has to be arranged in accordance with the quality points and weightage as specified in appendix (I). The appendix (I) prescribes quality points and weightage as per the percentage of

marks in the Assistant Teacher Recruitment Examination to be taken as 60 percent of marks in the examination i.e percentage of marks in the examination X 60/100. The percentage of marks in the examination of BTC training, Graduation Degree, Intermediate and High School have also been indicated. Thus, in case a candidate qualifies the Assistant Teacher Recruitment Examination with a lesser percentage, lesser quality points would contribute towards the selection of candidate as provided under the Twentieth Amendment whereby reducing his merit.

20. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in the case of **Yogesh Yadav Vs. Union of India** reported in **(2013) 14 SCC 623** to contend that bench mark could be fixed even after the examination has been held which would be permissible in the eyes of law and the same would not amount to change of the rule of the game after the examination commenced.

21. Learned counsel for the petitioners has also argued that once this Court was seized of the matter in Writ Petition (S/S) No.20404 of 2018 and other connected matters wherein the validity of the order dated 21.5.2018 had been raised, consequently the said order dated 21.5.2018 could not have been withdrawn by the respondents during pendency of the aforesaid writ petitions. In this regard, reliance has been placed upon the judgment of the Apex Court in the case of **Executive Officer, Arthanareswarar Temple vs. R. Sathyamoorthy and others** reported in **(1999)3 SCC 115**, **Kalabharati Advertising vs. Hemant Vimalnath Narichania and others** reported in **(2010)9 SCC 437** and **K.S. Bhoopathy and others vs. Kokila and others** reported in **(2000)5 SCC 458**.

22. Learned counsel for the petitioners also argue that once the Government Order dated 21.5.2018 had been issued lowering the qualifying marks from 45 to 33 percent for general and other backward category candidates and from 40 to 30 percent for other candidates i.e. reserved category candidates, as such the petitioners have acquired a legitimate right and expectation for being considered in terms of the modified qualifying marks. In this regard, reliance has been placed on the judgment of the Apex Court in the case of ***Union of India and another vs. Lieutenant Colonel P.K. Choudhary and others*** reported in **(2016)4 SCC 236**.

23. Another ground taken on behalf of the petitioners is that as approximately 27713 posts are still lying vacant, as such it would be equitable for this Court to direct the respondents to fill in the remaining vacancies with the relaxed qualifying marks i.e. as per the Government Order dated 21.5.2018 itself.

24. As regards the ground on which the interim order dated 24.7.2018 had been passed by this Court in Writ Petition (S/S) No.20404 of 2018 i.e. with the issue of the Government Order dated 21.5.2018 the rules of the game having been changed, reliance has been placed on the judgment of the Apex Court in the case of ***Rajya Sabha Secretariat and others vs. Subhash Baloda and others*** reported in **(2013)5 SCC 169** and ***Barot Vijaykumar Balakrishna and others vs. Modh Vinaykumar Dasrathlal and others*** reported in **(2011)7 SCC 308** to assert that amended or modified rules can be considered after the selection process has commenced.

25. It is also argued on behalf of the petitioner that no valid reason is forthcoming in the order dated 20.02.2019 for withdrawal of

Government order dated 21.05.2018 inasmuch as the grounds indicated in the said order for making redundant the Government order dated 21.05.2018 are that in compliance with the interim order dated 24.07.2018, the Government order dated 08.08.2018 had been issued for adhering to the Government order dated 09.01.2018 which provided the eligibility marks of 45 percent and 40 percent for the General and Reserved Category candidates and for proceeding with the selection accordingly and that as the result has been declared subsequent thereto, as such the Government order dated 21.05.2018 has become redundant. It is contended that once the entire action of issue of the Government order dated 08.08.2018 has been taken in pursuance to the interim order dated 24.07.2018 and even the result declaration has taken place in pursuance to the Government order dated 08.08.2018 and ultimately Writ Petition No. 20404 (SS) of 2018 had been dismissed as infructuous meaning thereby that the entire action had been taken on the basis of the interim order and thus once the lis was already before this Court, consequently there was no occasion for the respondents to have passed the order dated 08.08.2018 and to have proceeded further with the selection and thus merely because the result has been declared would not make the Government order dated 21.05.2018 redundant as contended in the impugned order dated 20.02.2019. Thus, the grounds taken in the said order cannot be said to be sufficient and sustainable in the eyes of law.

26. Another ground which has been taken on behalf of the petitioners is that the Government order dated 09.01.2018 had been issued after the Twentieth Amendment in the Rules, 1981 which provided in Rule 2 (w) for an Assistant Teacher Recruitment Examination and further the academic qualification, so far as it

pertains to the post of Assistant Master and Assistant Mistresses of Junior Basic Schools provided the eligibility condition of a candidate as having passed the Assistant Teacher Recruitment Examination. An amendment was also made in Appendix I in the Rules, 1981 by way of the Twentieth Amendment which gave quality points for a candidate having passed the Assistant Teacher Recruitment Examination. By the 22nd Amendment dated 15.03.2018 made in the Rules, 1981, the academic qualification, as was introduced in Rule 8 by the Twentieth Amendment, was done away with so far as it pertains to a teacher passing the Assistant Teacher Recruitment Examination, however the said condition was added as Rule 14 (1) (b) by indicating that for every notified vacancy under Rule 14 (1) (a) of the Rules for Recruitment of Assistant Master or Assistant Mistresses of Junior Basic School, a separate Assistant Teacher Recruitment Examination shall be conducted by the Government. Rule 14 (1) (a) provides for determination of vacancies as also the number of vacancies to be reserved and applications to be invited from candidate possessing prescribed training qualification and having passed the Teacher eligibility test and Assistant Teacher Recruitment Examination conducted by the Government. It is thus argued that once condition in Rule 8 was done away with in terms of the 22nd Amendment, consequently the Government order reducing the eligibility marks for General and Reserved Category candidates was correctly issued and hence there could not be any occasion for the respondent to withdraw the said Government order.

27. Elaborating this, learned counsel for the petitioners submit that the Apex Court in the case of **State of U.P and Ors Vs. Anand Kumar Yadav** reported in **(2018) 13 SCC 560** in a matter pertaining to Shiksha Mitras has provided that as regularization of Shiksha

Mitras as teachers is not permissible but at the same time 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 advertisement for recruitment for next two consecutive recruitments by giving them suitable age relaxation and some weightage for their experience and considering this fact, the Government order dated 21.05.2018 had been issued reducing the marks and, as such there cannot be said to be any infirmity with the said Government order on this ground also.

28. Per contra, Sri Kuldeep Pati Tripathi, learned Additional Advocate General assisted by Sri Prafful Yadav, learned Standing counsel submits and argues on the grounds as raised by the petitioners as well as on the basis of the averments contained in the counter affidavit which has been filed in Writ Petition No. 6313 (SS) of 2019 and has been adopted in all other petitions that in terms of the Twentieth Amendment in Rules, 1981 which was introduced on 09.11.2017, Rule (2) (w), 2 (x) and 2 (y) were introduced. Rule 2 (w) for the very first time brought in the concept of Assistant Teacher Recruitment Examination for recruitment of a person in Junior Basic Schools. Rule 2 (x) gave the power to fix qualifying marks of Assistant Teacher Recruitment Examination to be determined from time to time by the Government and Rule 2 (y) gave the guidelines of Assistant Teacher Recruitment Examination as may be determined from time to time by the academic authority. The Twentieth Amendment to the Rules, 1981 also brought an amendment in Rule 8 of the Basic Education Service Rules which provided, so far as the academic qualification of Assistant Master and Assistant Mistresses of Junior Basic Schools was concerned, that they should have passed the Assistant Teacher Recruitment Examination conducted by the

Government. Appendix I which pertains to quality points and weightage for selection candidates was also substituted to bring in the quality points by introducing Assistant Teacher Recruitment Examination marks also within the ambit of quality points. Taking into consideration the aforesaid amendments, the Government order dated 09.01.2018 was issued giving the guidelines for the purpose of holding Assistant Teacher Recruitment Examination, 2018 for 68,500 vacancies. The said guidelines provided the procedure for submitting of applications by the candidates and Clause 7 of the guidelines prescribed the qualifying marks for the General and Reserved Category candidates which were 45 percent for the General and Other Backward Caste and 40 percent for the Scheduled Caste and Scheduled Tribe Candidates respectively i.e 87 out of 150 marks and 60 out of 150 marks respectively. In terms of the guidelines dated 09.01.2018 an advertisement for holding 2018 Recruitment was issued on 23.01.2018 giving the schedule of online registration from 25.01.2018. However, subsequently another Government order dated 07.05.2018 was issued by the Government giving the date of advertisement, the last date as to by when the eligible candidate could apply for appearing in the examination as well as the date by which they could correct any error in their application. In terms of the said order dated 07.05.2018, the date of issue of advertisement was fixed as 08.05.2018, the date for registration of online applications was fixed from 14.05.2018, while the last date fixed for receipt of applications was fixed as 17.05.2018. Those candidates who had applied and finding an error in their applications, could log in and correct any error in their applications by 21.05.2018. The examination was also notified to be held on 27.05.2018. After the last date fixed for receipt of application i.e 17.05.2018, Government

order dated 21.05.2018 was issued changing and reducing the qualifying marks as specified in Clause 7 of the guidelines issued vide Government order dated 09.01.2018 and fixing them at 33 percent for General Category and Other Backward Classes Candidate and 30 percent for Scheduled Caste and Scheduled Tribe Reserved Category candidates. A Writ Petition No. 20404 (SS) of 2018 was filed challenging the said Government order dated 21.05.2018 and a detailed interim order was passed by this Court staying the Government order dated 21.05.2018. After considering the entire facts and circumstances, the Government decided to proceed with the selection in terms of the guidelines dated 09.01.2018 and on the basis of the qualifying marks fixed in the said guidelines i.e 45 percent and 40 percent respectively. It is contended that the said Government order dated 08.08.2018 was issued not only in pursuance to the interim order of this Court but also after a conscious decision had been taken to proceed with the selection in terms of the Government order dated 09.01.2018 and cut off marks fixed therein. Thereafter, the result was declared on 13.08.2018 and the process of issue of the appointment letters to the selected candidates started w.e.f 05.09.2018. Subsequent thereto, as the selection had proceeded in pursuance to the order dated 08.08.2018 and the process of issue of appointment letter to the selected candidates had also started w.e.f 05.09.2018, as such the order dated 20.02.2019 was passed withdrawing the order dated 21.05.2018 which was again a conscious decision that had been taken by the respondents taking into consideration the developments that had taken place in the interregnum period.

29. Learned counsel appearing for the respondents further argues that once the petitioners had consciously applied in pursuance to the

Advertisement dated 23.01.2018 and 07.05.2018 by which applications were invited from eligible candidate for the 2018 Recruitment and it was specified that the same was being issued in pursuance to the Government order dated 09.01.2018 and 17.01.2018 whereby the cut off marks of 45 percent and 40 percent had been fixed and the last date fixed for receipt of applications was 17.05.2018 meaning thereby that they were perfectly satisfied with the cut off marks that had been fixed in terms of the Government order dated 09.01.2018, consequently, when the second Government order dated 22.05.2018 was issued reducing the cut off marks, it cannot be said that the petitioners were sought to be put in any disadvantageous position inasmuch as they had consciously chosen to participate on the basis of the cut off marks as specified in the Government order dated 09.01.2018 and hence reduction of marks through the subsequent Government order and thereafter withdrawal of the said Government order through the impugned order dated 20.02.2019 would not give them any right to assert to the contrary.

30. It is also contended that there has been no violation of any rights of the petitioners, inasmuch as they consciously offered to participate in the said examination in terms of the cut off marks issued through the order dated 09.01.2018 which had been fixed in consonance with the Twentieth Amendment in Rules, 1981 that had been introduced w.e.f 09.11.2017 and exercising the power in terms of Rule 2 (x).

31. So far as the order dated 20.02.2019 is concerned, it is contended that a perusal of the said order would itself indicate that the order was occasioned on account of the subsequent Government order dated 08.08.2018 which had been issued after conscious

decision had been taken by the respondents of proceeding with the selection on the basis of the cut off marks fixed through the Government order dated 09.01.2018 and the result having been declared thereafter and accordingly once such a conscious decision was taken, the impugned order dated 20.02.2019 cannot be challenged on the ground that it was only based on an interim order passed by this Court.

32. So far as the 21st and 22nd Amendments are concerned whereby Rule 8 and Rule 14 had been amended, it is argued that the said amendments being of a subsequent date would not affect the guidelines that had been issued on 09.01.2018 considering the Twentieth Amendment in the rules and it being a settled proposition of law that an advertisement is to be issued taking into consideration the prevalent rules and mere amendment in the rules subsequently would not render either the advertisement bad in the eyes of law or make out any claim for amendment of the said advertisement.

33. Learned counsel for the respondents, in support of his submissions, has placed reliance on the following judgments:-

- (i) ***Union of India and others vs. S. Vinodh Kumar and others*** reported in ***(2007)8 SCC 100;***
- (ii) ***Shankarsan Dash vs. Union of India*** reported in ***(1991)3 SCC 47.***
- (iii) ***S.S. Balu and another vs. State of Kerala and others*** reported in ***(2009)2 SCC 479.***
- (iv) ***Union of India vs. Pushpa Rani and others*** reported in ***(2008)9 SCC 242.***
- (v) ***M.C. Mehta vs. Union of India and others*** reported in ***(1999)6 SCC 237.***

(vi) ***Ramesh Chandra Shah and others vs. Anil Joshi and others*** reported in ***(2013)11 SCC 309.***

(vii) ***Canara Bank vs. V.K. Awasthy*** reported in ***(2005)6 SCC 321.***

34. Heard learned counsel appearing for the contesting parties and perused the records.

35. From a perusal of records it comes out that the Twentieth Amendment in the Rules, 1981 was issued on 09.11.2017 amending Rule 8 of the Rules, 1981 and making passing of Assistant Teacher Recruitment Examination as an eligibility condition for being appointed on the post of Assistant Master and Assistant Mistress of Junior Basic School. For the said purpose, Rule 2 (w),(x) and (y) were also introduced of which Rule 2 (w) defines the “Assistant Teacher Recruitment Examination” as a written examination conducted by the Government for recruitment of a person in Junior Basic Schools, Rule 2 (x) defines “Qualify marks of Assistant Teacher Recruitment Examination” as such minimum marks as may be determined from time to time by the Government and Rule 2 (y) defines “Guidelines of Assistant Teacher Recruitment Examination” as such guidelines as may be determined from time to time by the academic authority with the approval of the Government. Subsequently, the Government order dated 09.01.2018 was issued giving guidelines for holding the Recruitment, 2018. Clause 7 of the said guidelines specified the essential marks which were to be obtained by the General and Other Backward Class candidates which were specified as 67 out of 150 marks or 45 percent and 60 out of 150 marks i.e 40 percent for Schedule Caste and Schedule Tribe category candidates so as to be declared as pass and issue of certificate in the Assistant Teacher Recruitment Examination. A

notification was issued on 23.01.2018 giving the schedule for applying for the Recruitment, 2018 by the eligible candidates in terms of the guidelines dated 09.01.2018 and 17.01.2018. Subsequently, another time schedule dated 07.05.2018 was issued by which the date of advertisement was specified as 08.05.2018, the date for submission of online applications was specified as 14.05.2018 and last date fixed for receipt of applications was specified as 17.05.2018. Those candidates who had applied in pursuance to the said advertisement and finding an error in their application could correct their applications online by 21.05.2018 while the examination was scheduled to be held on 27.05.2018. The effect of issue of notification dated 17.05.2018 was that the applications could be submitted by those candidates who were desirous of applying for Recruitment, 2018 knowing fully well the conditions as in the Government order dated 09.01.2018 including the eligibility marks that they had to obtain i.e 45 percent and 40 percent for the General/ Other Backward Class candidates and Reserved Category Candidate respectively. After the last date expired for submission of applications i.e 17.05.2018, the respondents issued the Government order dated 21.05.2018 by which the eligibility marks, as were specified in the guidelines dated 09.01.2018 i.e 45 percent and 40 percent for General/ Other Backward Candidates and Reserved Category Candidates respectively, were reduced to 33 percent and 30 percent respectively for the respective category. The said Government order dated 21.05.2018 was challenged by one Sri Diwakar Singh by filing Writ Petition No. 20404 (SS) of 2018 before this Court on the basic premise that once the selection process had commenced and the date of examination was fixed as 27.05.2018

then the respondents could not have changed the selection criteria while issuing the Government order dated 21.05.2018.

36. This Court considering the law laid down by the Hon'ble Supreme Court in the case of **K. Manjushree (supra)** and **Gopal Krushna Rath Vs. M.A.A.Baig (Dead) by Lrs and Ors** reported in **(1999) 1 SCC 544** directed that until further orders, the respondents are restrained to implement the guidelines issued under the Government order dated 21.05.2018 in the selection proceedings initiated in pursuance to the Government order dated 09.01.2018 and advertisement issued in pursuance thereto meaning thereby that the selection was to continue on the basis of the earlier guidelines dated 09.01.2018 whereby the eligibility marks had been prescribed to be 45 percent and 40 percent for the respective categories.

37. The aforesaid interim order dated 24.07.2018 was challenged before the Division Bench of this Court by certain candidates by filing Special Appeal in the case of **Avnish Kumar (supra)** and this Court vide judgment and order dated 24.09.2018 remanded the matter to the Hon'ble Single Judge to decide the same finally as early as possible. In the interregnum, the State Government had already issued the Government order dated 08.08.2018 resolving to comply with the interim order dated 24.07.2018 and granting permission to prepare and declare the result as per the guidelines dated 09.01.2018 and in pursuance thereof the result was also declared on 13.08.2018.

38. Even as the aforesaid petitions in the case of **Diwakar Singh (supra)** and others were pending, the Government issued the impugned order dated 20.02.2019, a copy of which is annexure 1 to the petition indicating that as in pursuance to the interim order dated

24.07.2018, a Government order dated 08.08.2018 had already been issued and in pursuance thereof the selection had proceeded and the result has also been declared, as such the Government order dated 21.05.2018 had become redundant and thus the same was withdrawn and the earlier Government order dated 09.01.2018 pertaining to the essential marks was directed to remain in force. Being aggrieved, the present petitions have been filed.

39. The facts of the case being now before this Court, the Court proceeds to consider the legality and validity of the action of the respondents.

40. The crux of the issue would be as to whether once the selection process which pertains to acquiring of eligibility prescribed for the post of Assistant Master and Assistant Mistress of Junior Basic Schools which had commenced with the issue of Advertisement dated 08.05.2018 taking into consideration the guidelines issued through the Government order dated 09.01.2018 fixing the eligibility marks to be obtained by the candidates belonging to respective categories could be permitted to be changed after the last date fixed for receipt of applications i.e after 17.05.2018 ?

41. The issue is no longer *res integra* having been settled beyond doubt by various judgments of the Apex Court which are being culled below.

42. In a judgment rendered by three Judges of the Hon'ble Apex Court namely **T. Nadu Computer SC B.Ed. G.T. Welf. Society vs. Higher Sec. Scl. Computer Tech. Assn. and Ors** reported in (2009) 14 SCC 517 which is a case squarely applicable in the facts of the present case, the Apex Court has held as under:-

"31. We have considered the aforesaid rival submissions of the counsel appearing for the parties in the light of the records placed before us. It is clearly established from the records that in order to give one time opportunity, a Special Recruitment Test was ordered to be held for selection and recruitment as also absorption of existing Computer Instructors. The said decision was taken on sympathetic consideration and with the intention of doing justice to those existing Computer Instructors, who were working in Government Schools for a very long time. Such a recruitment drive and test was held by laying down Rules of Recruitment thereby providing a level playing field for all concerned.

32. Prior to holding of the said Test guidelines were formulated through a policy decision laying down the criteria that the minimum qualifying marks in the said test would be at least 50%. The said guidelines of Recruitment as laid down through a policy decision was sacrosanct and was required to be followed for all practical purposes even if we accept that the Government could have filled up the said posts of Computer Instructors by holding a Special Recruitment Test of the aforesaid nature as one time exception.

33. We, however, cannot hold that the subsequent decision of the Government thereby changing qualifying norms by reducing the minimum qualifying marks from 50% to 35% after the holding the examination and at the time when the result of the examination was to be announced and thereby changing the said criteria at the verge of and towards the end of the game, as justified for we find the same as arbitrary and unjustified. This Court in Hemani Malhotra v. High Court of Delhi MANU/SC/1844/2008 : AIR2008SC2103 has held that in recruitment process changing rules of the game during selection process or when it is over are not permissible."

43. Likewise the Apex Court in the case of **State of Bihar and Ors. vs. Mithilesh Kumar** reported in **(2010) 13 SCC 467** has held as under:-

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

20. The decisions which have been cited on behalf of the Respondent have clearly explained the law with regard to the applicability of the Rules which are amended and/or altered during the selection process. They all say in one voice that the norms or Rules as existing on the date when the process of selection begins will control such selection and any alteration to such norms

would not affect the continuing process, unless specifically the same were given retrospective effect."

44. In the case of **Bhupinderpal Singh and Ors Vs. State of Punjab and Ors** reported in **(2000) 5 SCC 262** the Apex Court has held as under:-

*"13. Placing reliance on the decisions of this Court in *Ashok Kumar Sharma v. Chander Shekhar and Anr. MANU/SC/1130/1997* : (1997)ILLJ1160SC ; *A.P. Public Service Commission v. B. Sarat Chandra and Ors. MANU/SC/0447/1990* : (1990)ILLJ135SC ; *The Distt. Collector and Chairman, Vizianagaram (Social Welfare Residential School Society) Vizianagaram and Anr. v. M. Tripura Sundari Devi 1990* (4) SLR 237; *Mrs. Rekha Chaturvedi v. University of Rajasthan and Ors. MANU/SC/0838/1993* : (1993)ILLJ617SC ; *Dr. M.V. Nair v. Union of India and Ors. MANU/SC/0494/1993* : (1993)ILLJ347SC ; and *UP. Public Service Commission, U.P., Allahabad and Anr. v. Alpana* MANU/SC/0672/1994 : [1994]1SCR131" the High Court has held (i) that the cut off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with. However, there are certain special features of this case which need to be taken care of and justice done by invoking the jurisdiction under Article 142 of the Constitution vested in this Court so as to advance the cause of justice."*

45. In the case of **Ashok Kumar Sharma and Ors Vs. Chander Shekhar and Anr** reported in **(1997) 4 SCC 18**, the Apex Court has held as under:-

The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement of notification issued/published calling for application constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it.

46. The Apex Court in the case of **Bishnu Biswas and Ors. vs. Union of India (UOI) and Ors** reported in **(2014) 5 SCC 774** after

considering the aforesaid judgment of **T. Nadu Computer SC B.Ed. G.T. Welf. Society and Mithilesh Kumar (supra)** has held as under:-

"8. This Court has considered the issue involved herein in great detail in Ramesh Kumar v. High Court of Delhi and Anr. MANU/SC/0079/2010 : AIR 2010 SC 3714, and held as under:

11. In Shri Durgacharan Misra v. State of Orissa and Ors. MANU/SC/0627/1987 : AIR 1987 SC 2267, this Court considered the Orissa Judicial Service Rules which did not provide for prescribing the minimum cut-off marks in interview for the purpose of selection. This Court held that in absence of the enabling provision for fixation of minimum marks in interview would amount to amending the Rules itself. While deciding the said case, the Court placed reliance upon its earlier judgments in B.S. Yadav and Ors. v. State of Haryana and Ors. MANU/SC/0409/1980 : AIR 1981 SC 561, P.K. Ramachandra Iyer and Ors. v. Union of India and Ors. MANU/SC/0395/1983 : AIR 1984 SC 541 and Umesh Chandra Shukla v. Union of India and Ors. MANU/SC/0050/1985 : AIR 1985 SC 1351 wherein it had been held that there was no "inherent jurisdiction" of the Selection Committee/Authority to lay down such norms for selection in addition to the procedure prescribed by the Rules. Selection is to be made giving strict adherence to the statutory provisions and if such power i.e. "inherent jurisdiction" is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the Rules is likely to cause irreparable and irreversible harm.

12. Similarly, in K. Manjusree v. State of A.P. MANU/SC/0925/2008 : AIR 2008 SC 1470, this Court held that selection criteria has to be adopted and declared at the time of commencement of the recruitment process. The rules of the game cannot be changed after the game is over. The competent authority, if the statutory rules do not restrain, is fully competent to prescribe the minimum qualifying marks for written examination as well as for interview. But such prescription must be done at the time of initiation of selection process. Change of criteria of selection in the midst of selection process is not permissible.

13. Thus, the law on the issue can be summarised to the effect that in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specify the minimum benchmarks for written test as well as for viva voce.

9. In Himani Malhotra v. High Court of Delhi MANU/SC/1844/2008 : AIR 2008 SC 2103, this Court has held that it was not permissible for the employer to change the criteria of selection in the midst of selection process. (See also: Tamil Nadu Computer Science B.ed. Graduate Teachers Welfare Society (1) v. Higher Secondary School Computer Teachers Association and Ors. MANU/SC/1158/2009 : (2009) 14 SCC 517; State of Bihar and Ors. v. Mithilesh Kumar MANU/SC/0630/2010 : (2010) 13 SCC 467; and Arunachal

Pradesh Public Service Commission and Anr. v. Tage Habung and Ors. MANU/SC/0450/2013 : AIR 2013 SC 1601).

10. In P. Mohanan Pillai v. State of Kerala and Ors. MANU/SC/7165/2007 : AIR 2007 SC 2840, this Court has held as under:

It is now well-settled that ordinarily rules which were prevailing at the time, when the vacancies arose would be adhered to. The qualification must be fixed at that time. The eligibility criteria as also the procedures as was prevailing on the date of vacancy should ordinarily be followed."

47. From the aforesaid judgments of **T. Nadu Computer SC B.Ed. G.T. Welf. Society, Mithilesh Kumar, Bhupinderpal Singh, Ashok Kumar Sharma and Bishnu Biswas (supra)** what can be summarized is that once the selection/recruitment process starts no change can be made in the eligibility conditions after the last date fixed either in terms of the advertisement or in absence thereto, the last date fixed for receipt of applications. The rules which are prevailing at the time of issue of advertisement/guidelines would be considered and amendment in the rules subsequently would not result in change in the eligibility conditions or change in the advertisement.

48. Thus, when the action of the respondents in issuing the revised Government order dated 21.05.2018 is seen in the context of the aforesaid principle of law, it clearly comes out that the said Government order dated 21.05.2018 could not have been issued lowering the qualifying marks, as was also sought to be done by the Government in the case of **T. Nadu Computer SC B.Ed. G.T. Welf. Society (supra)** and thus it is apparent that the respondents erred in proceeding to issue the aforesaid Government order reducing the eligibility marks for the respective category and rule of the game could not have been changed after last date fixed for receipt of applications. No doubt the respondents have also fixed the date of 21.05.2018 for

correction of application but the said correction in applications could only be done by those candidates who had applied in pursuance to the advertisement and the guidelines dated 09.01.2018 and thus for all practical purposes, the effective last date would be 17.05.2018 and the Government order dated 21.05.2018 reducing the eligibility marks having been issued subsequent thereto would be invalid.

49. No doubt the issue of change of rule of game has been referred to the larger Bench as is evident from the judgment in the case of **Tej Prakash Pathak (supra)** which referral is still pending but so long as it is not decided otherwise, this Court is bound by the legal authorities operating in the field and are presently law of the land.

50. Even otherwise, a perusal of the judgment of **Tej Prakash Pathak (supra)** would indicate that the Supreme Court was considering the matter that it is a salutary principle not to permit the State or its instrumentalities to tinker with the "rules of game" insofar as the prescription of eligibility criteria is concerned but whether such a principle should be applied in the context of the "rules of the game" stipulating the procedure for selection **more particularly when the change sought is to impose a more rigorous scrutiny for selection** has been referred for an authoritative pronouncement of a larger bench meaning thereby that where the change is to be imposed is of more rigorous scrutiny for selection, in the view of the Apex Court, requires the authoritative pronouncement by a larger bench. In the present case, the issue involved is not that the State respondents while issuing the Government order dated 21.05.2018 have imposed a more rigorous scrutiny for selection rather a liberalized or reduced marks were sought to be introduced and thus the principles of law as

enunciated by the Apex Court, and as referred to above, are being followed by this Court also.

51. Being armed with the aforesaid principles of law as crystallized by the Apex Court in a catena of judgments, the Court now proceeds with the other aspects of the matter.

52. Upon a challenge being raised to the Government order dated 21.05.2018 lowering the eligibility marks, once the last date had already lapsed, this Court through a detailed interim order dated 24.07.2018, after considering the Apex Court judgment in the case of **K. Manjushree and Gopal Krushna Rath (supra)** restrained the respondents from implementing the guidelines issued under the Government order dated 21.05.2018. The said interim order was not interfered with by the Division Bench in the special appeal filed by certain candidates against the said interim order. In the meanwhile, through the Government order dated 08.08.2018, the respondents resolved to comply with the interim order and granted permission to prepare and declare result as per the guidelines dated 09.01.2018 and in pursuance thereof the result was also declared on 13.08.2018 and even the process of issue of appointment letter to the selected candidates started w.e.f 05.09.2018. Considering the subsequent developments, the Government order dated 20.02.2019 was passed withdrawing the Government order dated 21.05.2018.

53. When the reasons contained in the Government order dated 20.02.2019 for withdrawing the Government order dated 21.05.2018 are tested on the touch stone of the aforesaid principles of law, as crystallized by the Apex Court, what the Court finds is that the respondents could not have validly issued the Government order dated 21.05.2018 particularly when the last date fixed for receipt of applications had lapsed on 17.05.2018 and thus the issue of the Government order dated 21.05.2018 revising and lowering the eligibility marks for the candidates was invalid.

Once this Court in the case of **Diwakar Singh (supra)** restrained the respondents from implementing the guidelines issued under the Government order dated 21.05.2018 and the selection process was also completed taking into consideration the eligibility marks as prescribed in the guidelines dated 09.01.2018 and the process of issue of appointment letters to the selected candidates also started w.e.f 05.09.2018, consequently it cannot be said that there was any error or infirmity or illegality or arbitrariness or malafides in the Government proceeding to issue the impugned Government order dated 20.02.2019 withdrawing the Government order dated 21.05.2018. Seen in this context, the reasons indicated by the Government in the order dated 20.02.2019 while withdrawing the Government order dated 21.05.2018 cannot be said to be legally unsustainable in the eyes of law, as has been argued by the learned counsels for the petitioners. Even otherwise the arguments raised on behalf of the petitioners are loaded with pregnant silence over this aspect of the matter that all the candidates including the petitioners had applied by the last date fixed i.e 17.05.2018 knowing fully well the eligibility marks fixed in the guidelines dated 09.01.2018 i.e 45 percent and 40 percent for the respective categories. The said marks were reduced subsequent to the last date fixed i.e 17.05.2018 to 33 percent and 30 percent respectively. Thus, no prejudice was caused to the petitioners and other candidates who had applied fully well knowing the marks as any such reduction subsequent to the last date fixed would obviously not govern the selection process which had already commenced. Thus, in this view of the matter also, it cannot be said that any prejudice was caused to the petitioners and other candidates with the withdrawal of the Government order dated 21.05.2018 reducing the lowered revised marks.

54. The grounds taken by the petitioners that no opportunity of hearing was afforded to them will not and cannot depart from the fact that once the selection process had commenced with the issue of the advertisement dated 08.05.2018 in terms of the guidelines dated 09.01.2018 and the last

date fixed for receipt of applications had already come to an end on 17.05.2018 then merely because some Government order was issued revising and lowering the eligibility marks and the said Government order was subsequently withdrawn through the Government order dated 20.02.2019 then whether this Court while exercising powers under Article 226 of Constitution of India is bound to declare the Government order dated 20.02.2019 being in breach of principle of natural justice as void simply on the ground that no opportunity of hearing was afforded to the petitioners, is an issue which is also no longer *res integra* more particularly when the facts of the instant case do not justify exercise of discretion by this Court to interfere and because of the fact that no prejudice has been shown. In this regard, suffice would be to place reliance on the Apex Court judgment in the case of **M.C.Mehta (supra)** wherein the Apex Court has held as under:-

“12. On the above submissions, the following points arise for consideration:

(1) Whether this Court, in exercise of powers under Article 32 (or the High courts, generally under Article 226) is bound to declare an order of government passed in breach of principles of natural justice as void or whether the court can refuse to grant relief on the ground that the facts of the case do not justify exercise of discretion to interfere or because de facto prejudice has not been shown?

(2) Whether the court is not bound under Article 32 (or High Courts under Article 226) to quash an order of government on ground of breach of natural justice if such an action will result in the restoration of an earlier order of government which was also passed in breach of natural justice or which was otherwise illegal?”

15. It is true that, whenever there is a clear violation of principles of natural justice, the Courts can be approached for a declaration that the order is void or for setting aside the same. Here the parties have approached this Court because the orders of the department were consequential to orders of this Court. Question however is whether the Court in exercise of its discretion under Article 32 or Article 226 can refuse to exercise discretion on facts or on the ground that no de facto prejudice is established. On the facts of this case, can this Court not take into consideration the fact that any such declaration regarding the 10.3.1999 order will restore an earlier order dated 30.7.1997 in favour of Bharat Petroleum Corporation which has also been passed without notice to HPCL and that if the order dated 10.3.1999 is set aside as being in breach of natural justice, Bharat Petroleum will be getting two plots rather

than one for which it has no right after the passing of the latter order of this Court dated 7.4.98?

16. Courts are not infrequently faced with a dilemma between breach of the rules of natural justice and the Court's discretion to refuse relief even though rules of natural justice have been breached, on the ground that no real prejudice is caused to the affected party.

17. We shall initially refer to two cases where discretion was exercised not to grant relief and the first one was a case where relief was refused even though there was breach of natural justice. The first one is Gadde Venkteswara Rao v. Government of Andhra Pradesh and Ors. MANU/SC/0020/1965 : [1966]2SCR172 . There the Panchayat Samithi, in exercise of its statutory powers passed a resolution on 25.8.1960 to locate a primary health center at Dharmajigudem. Later, it passed another resolution on 29.5.1961 to locate it at Lingapalem. On a representation by villagers of Dharmajigudem, government passed orders on 7.3.1962 setting aside the second resolution dated 29.5.1961 and thereby restoring the earlier resolution dated 25.8.1960. The result was that the health center would continue at Dharmajigudem. Before passing the orders dated 7.3.62, no notice was given to the Panchayat Samithi. This Court traced the said order of the government dated 7.3.1962 to Section 62 of the Act and if that were so, notice to the Samithi under Section 62(1) was mandatory. Later, upon a review petition being filed, government passed another order on 18.4.1963 cancelling its order dated 7.3.62 and accepting the shifting of the primary center to Lingapalem. This was passed without notice to the villagers of Dharmajigudem. This order of the government was challenged unsuccessfully by the villagers of Dharmajigudem in the High Court. On appeal by the said villagers to this Court, it was held that the latter order of the government dated 18.4.1963 suffered from two defects, it was issued by Government without prior show cause notice to the villagers of Dharmajigudem and government had no power of review in respect of government orders passed under Section 62(1). But that there were other facts which disentitled the quashing of the order dated 18.4.63 even though it was passed in breach of principles of natural justice. This Court noticed that the setting aside of the latter order dated 18.4.63 would restore the earlier order of Government dated 7.3.62 which was also passed without notice to the affected party, namely, the Panchayat Samithi. It would also result in the setting aside of a valid resolution dated 29.5.61 passed by the Panchayat Samithi. This Court refused relief and agreed that the High Court was right in not interfering under Article 226 even if there was violation of natural justice. Subba Rao, J (as he then was) observed (p. 189) as follows:

Both the orders of the government, namely, the order dated March 7, 1962 and that dated April 18, 1963, were not legally passed : the former, because it was made without giving notice to the Panchayat Samithi and the latter, because the Government had no power under Section 72 of the Act to review an Order made under Section 62 of the Act and also because it did not give notice to representatives of Dharmajigudem village.

His Lordship concluded as follows:

In those circumstances, was it a case for the High Court to interfere in its discretion and quash the order of the government dated April 18, 1963? If the High Court had quashed the said order, it would have restored an illegal order

it would have given the Health center to a village contrary to the valid resolutions passed by the Panchayat Samithi. The High Court, therefore, in our view, rightly refused to exercise its extraordinary discretionary power in the circumstances of the case.

18. The above case is clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of the natural justice. The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of principles of natural justice or is otherwise not in accordance with law”

55. Even otherwise, it is settled proposition of law that if on admitted or indisputable factual position, only one conclusion is possible the Court need not issue a writ merely because there is violation of principle of natural justice (**See M.C.Mehta (supra)**). In this regard, the Court may also consider the “Useless formality theory” as enunciated by the Apex Court wherein considering **M.C. Mehta (supra)** the Apex Court in the judgment of **Canara Bank (supra)** has held as under:-

"17. What is known as 'useless formality theory' has received consideration of this Court in M.C. Mehta v. Union of India MANU/SC/0982/1999 : [1999]3SCR1173. It was observed as under:

*"Before we go into the final aspect of this contention, we would like to state that case relating to breach of natural justice do also occur where all facts are not admitted or are not all beyond dispute. In the context of those cases there is a considerable case-law and literature as to whether relief can be refused even if the court thinks that the case of the applicant is not one of 'real substance' or that there is no substantial possibility of his success or that the result will not be different, even if natural justice is followed (See *Malloch v. Aberdeen Corporation*: (1971) 2 All ER 1278, HL) (per Lord Reid and Lord Wilberforce), *Glynn v. Keele University*: (1971) 2 All ER 89; *Cinnamons v. British Airports Authority*: (1980) 2 All ER 368, CA) and other cases where such a view has been held. The latest addition to this view is *R v. Ealing Magistrates' Court, ex p. Fannaran* (1996 (8) Admn. LR 351, 358) (See *de Smith, Suppl. P.89* (1998) where Straughton, L.J. held that there must be 'demonstrable beyond doubt' that the result would have been different. Lord Woolf in *Lloyd v. McMohan* (1987 (1) All ER 1118, CA) has also not disfavoured refusal of discretion in certain cases of breach of natural justice. The New Zealand Court in *McCarthy v. Grant* (1959 NZLR 1014) however goes halfway when it says that (as in the case of bias), it is sufficient for the applicant to show that there is 'real likelihood-not certainty- of prejudice'. On the other hand, *Garner Administrative Law* (8th Edn. 1996. pp.271-72) says that slight proof that the result would have been different is sufficient. On the other side of the argument, we have apart from *Ridge v. Baldwin*, *Megarry, J. in John v. Rees* (1969 (2) All ER 274) stating that there are always 'open and*

shut cases' and no absolute rule of proof of prejudice can be laid down. Merits are not for the court but for the authority to consider. Ackner, J has said that the 'useless formality theory' is a dangerous one and, however inconvenient, natural justice must be followed. His Lordship observed that 'convenience and justice are often not on speaking terms'. More recently, Lord Bingham has deprecated the 'useless formality theory' in R. v. Chief Constable of the Thames Valley Police Forces, ex p. Cotton (1990 IRLR 344) by giving six reasons (see also his article 'Should Public Law Remedies be Discretionary?' 1991 PL. p.64). A detailed and emphatic criticism of the 'useless formality theory' has been made much earlier in 'Natural Justice, Substance or Shadow' by Prof. D.H. Clark of Canada (see 1975 PL. pp.27-63) contending that Malloch (supra) and Glynn (supra) were wrongly decided. Fouke's (Administrative Law, 8th Edn. 1996, p.323), Craig (Administrative Law, 3rd Edn. P.596) and others say that the court cannot prejudge what is to be decided by the decision-making authority. De Smith (5th Edn. 1994, paras 10.031 to 10.036) says courts have not yet committed themselves to any one view though discretion is always with the court. Wade (Administrative Law, 5th Edn. 1994, pp.526-530) says that while futile writs may not be issued, a distinction has to be made according to the nature of the decision. Thus, in relation to cases other than those relating to admitted or indisputable facts, there is a considerable divergence of opinion whether the applicant can be compelled to prove that the outcome will be in his favour or he has to prove a case of substance or if he can prove a 'real likelihood' of success or if he is entitled to relief even if there is some remote chance of success. We may, however, point out that even in cases where the facts are not all admitted or beyond dispute, there is a considerable unanimity that the courts can, in exercise of their 'discretion', refuse certiorari, prohibition, mandamus or injunction even though natural justice is not followed. We may also state that there is yet another line of cases as in State Bank of Patiala v. S.K. Sharma MANU/SC/0438/1996 : (1996)IILLJ296SC, Rajendra Singh v. State of M.P. MANU/SC/0690/1996 : AIR1996SC2736 that even in relation to statutory provisions requiring notice, a distinction is to be made between cases where the provision is intended for individual benefit and where a provision is intended to protect public interest. In the former case, it can be waived while in the case of the latter, it cannot be waived.

We do not propose to express any opinion on the correctness or otherwise of the 'useless formality theory' and leave the matter for decision in an appropriate case, inasmuch as the case before us, 'admitted and indisputable' facts show that grant of a writ will be in vain as pointed by Chinnappa Reddy, J."

18. As was observed by this Court we need not to go into 'useless formality theory' in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the appellant unless failure of justice is occasioned or that it would not be in public interest to do so in particular case, this Court may refuse to grant relief to the concerned employee, (see Gadde. Venkateswara Rao v. Govt. of A.P. and Ors. MANU/SC/0020/1965 : [1966]2SCR172. It is to be noted that legal formulations cannot be divorced from the fact situation of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case post-decisional hearing can obliterate the procedural deficiency of a pre-decisional hearing. (See Charan Lal Sahu v. Union of India etc. MANU/SC/0285/1990 : AIR1990SC1480

56. The first argument raised on behalf of the petitioners is that as the interim order dated 24.07.2018 in the case of **Diwakar Singh (supra)** was passed considering the judgment of the Apex Court in the case of **K. Manjushree (supra)** which has been held to be *per incuriam* in the subsequent judgment of Apex Court in the case of **Tej Prakash Pathak (supra)** as such, any action which has been taken by the respondents on the basis of the said Government order including the issue of the Government order dated 20.02.2019 would be vitiated in the eyes of law.

57. The said argument, though attractive on the face of it merits to be rejected out rightly inasmuch as firstly the interim order dated 24.07.2018 was not based only on the judgment of the Apex Court in the case of **K. Manjushree (supra)** rather was also passed taking into consideration the judgment of the Apex Court in the case of **Gopal Krushna Rath (supra)** and it is not the case of the petitioners that even **Gopal Krushna Rath (supra)** has been declared to be *per incuriam*. Even otherwise the facts of the case, as have been culled out above, lead to the irresistible conclusion that the subsequent Government order dated 21.05.2018 could not have been validly issued by the respondents and thus once the respondents, considering the interim order of this Court dated 24.07.2018, proceeded with the selection process, declared the result and even appointment orders were issued to the selected candidates, as such there cannot be said to be any infirmity or illegality in the order dated 20.02.2019 by which the earlier Government order dated 21.05.2018 was withdrawn or any illegality in the process which was adopted by the respondents subsequent to the interim order dated 24.07.2018.

58. The other argument on behalf of the petitioners that in terms of Rule 2 (x) the Government possessed the power to determine the minimum marks from time to time and thus even though the selection process had commenced with the issue of the Advertisement dated 08.05.2018 in terms of the guidelines dated 09.01.2018 and despite the last date for receipt of applications having expired on 17.05.2018, the Government order dated 21.05.2018 determining the eligibility marks and lowering them was validly issued in terms of Rule 2 (x) of the Rules 1981, is an argument which is patently fallacious and also merits to be rejected out rightly, the reason being that even though the Government was possessed of such power to determine from time to time the minimum marks yet there has to be cessation to the said powers when the selection process had commenced with the issue of the Advertisement dated 08.05.2018 in terms of the guidelines dated 09.01.2018 whereby the minimum marks had already been **determined** and the last date fixed for receipt of applications had already lapsed. What the petitioners are trying to argue is that the Government has unfettered power to determine the minimum marks from time to time, which if interpreted in the manner the petitioners have sought to argue, would lead to complete chaos as there would be no final determination of the marks at any time whatsoever. Thus, the said argument is also rejected.

59. Another argument on behalf of the petitioners is that the actual process of recruitment would only start after the result of qualifying examination i.e Recruitment, 2018 is declared and once no recruitment was involved, as such it could not be said that once the “Game” had begun, the rules of the game could not be changed. Again the Court is constrained to hold that the said argument is

fallacious inasmuch as in terms of the Twentieth Amendment to the Rules, 1981 the Assistant Teacher Recruitment Examination has been brought in for the first time with Rule 2 (w), Rule 2 (x) and Rule 2 (y) being introduced and making passing of Assistant Teacher Recruitment Examination an academic qualification for being appointed on the post of Assistant Master and Assistant Mistress of Junior Basic Schools. Thus, the “Game” which had in fact begun with the issue of the Advertisement dated 08.05.2018 in terms of the guidelines dated 09.01.2018 was with respect to acquisition of the eligibility qualification so as to be declared fit for appointment as Assistant Master and Assistant Mistress of Junior Basic School. Thus, the said argument is also rejected.

60. As regards, the judgment of **Shree Chamundi Mopeds Ltd (supra)** that as this Court had only passed an interim order dated 24.07.2018 and the validity of the Government order dated 21.05.2018 was still to be tested, suffice to state that taking into consideration the factual position which has painstakingly been considered by this Court above, there was no justification for the issue of the Government order dated 21.05.2018 taking into consideration the settled proposition of law in this regard and as such, taking into consideration the “Useless formality theory”, this Court does not find any infirmity in the Government order dated 20.02.2019 being issued to withdraw the Government order dated 21.05.2018..

61. The arguments on behalf of the petitioners that the reduced marks have resulted in large number of candidates having qualified and that the selection would not be compromised in terms of Rule 14 (1) (c) (3) (a) of the Twentieth Amendment in Rule, 1981 as in any

view of the matter the candidate in the list prepared under Sub Rule (2) in accordance with Clause (a) of Sub Rule (1) of Rule 14 has to be arranged in accordance with the quality points and weightage, again the Court holds that the said argument is patently misconceived for the said large number of candidates could be said to have qualified only by following the Government order dated 21.05.2018 which was issued subsequent to the last date fixed for receipt of applications and taking into consideration the settled proposition of law in this regard, no such orders could have been issued changing the rules of the game after the game had begun considering the last date fixed for receipt of applications i.e 17.05.2018, thus even the said argument is patent fallacious and is rejected.

62. As regards, the judgment of Apex Court in the case of **Yogesh Yadav (supra)** that bench mark could be fixed even after examination has been held, suffice to state that in the case of **Yogesh Yadav (supra)** there was no stipulation with regard to fixation of bench mark in the advertisement which was fixed subsequently.

63. In the present case, as already indicated above, the eligibility marks had been prescribed in the Government order dated 09.01.2018 in pursuance to which the Advertisement dated 08.05.2018 had been issued and thus there could not be any change in the eligibility marks subsequent to “Game” having begun.

64. Another ground taken by the petitioners is that once this Court was seized of matter in the case of **Diwakar Singh (supra)** and other connected matters pertaining to the validity of order dated 21.05.2018 the same could not have been withdrawn and in this regard, reliance has been placed on the judgment of the Apex Court

in the case of **R. Sathyamoorthy and Hemant Vimalnath Narichania and K.S.Bhoopathy (supra)**. Suffice to state that once the Government order dated 21.05.2018 was issued lowering the marks which was against the settled principle of law as crystallized by the Apex Court **subsequent** to the Advertisement dated 08.05.2018 in terms of the guidelines dated 09.01.2018 fixing the eligibility marks for the said selection and acquisition of eligibility condition, there could not be any justification for the respondents to have issued the aforesaid Government order dated 21.05.2018. Also, considering the subsequent developments that transpired with the order dated 21.05.2018 being stayed by this Court and the respondents having proceeded with the selection on the basis of the eligibility marks as fixed in the Government order dated 09.01.2018 and having declared the result and having already commenced the process of issue of appointment orders to those persons who have acquired the eligibility of Recruitment, 2018, as such the respondents, taking into consideration the said subsequent developments, were well within their power of withdrawing the order dated 21.05.2018 through the Government order dated 20.02.2019. As such, the judgments of in the case of **R. Sathyamoorthy and Hemant Vimalnath Narichania and K.S.Bhoopathy (supra)** are thus distinguishable and would not be applicable in the facts of the present case.

65. As regards, the argument of legitimate expectation of the candidates consequent to lowering of the eligibility marks, the said argument though again attractive on the face of it yet merits to be rejected and is rejected, the reason being that whenever the question of legitimate expectation arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other

more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant (**See:- Food Corporation of India Vs. Kamdhenu Cattle Field Industry (1993) 1 SCC 71**). Likewise, however, earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence and that such expectation should be justifiably legitimate and protectable (**See:- Union of India Vs. Hindustan Development Corporation (1993) 3 SCC 499**).

66. Thus, it is apparent that for a case to be made out on the principle of legitimate expectation, the legitimacy of expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure. In the present case, this Court has held that issue of the Government order dated 21.05.2018 lowering the eligibility marks would run against the settled proposition of law as laid down by the Apex Court and thus there cannot be said to be any sanction of law to the issue of the aforesaid Government order dated 21.05.2018 as also there is no custom by the Government to reduce the eligibility marks after the game had begun neither there is any established procedure followed in regular and natural sequence of the Government lowering the marks after the game had begun. Accordingly, when the arguments of legitimate expectation are tested on the touch stone of the aforesaid principle of law, it clearly comes out that the said argument is patently misconceived and merits to be rejected and is accordingly rejected.

67. A feeble argument raised on behalf of the petitioners is that there are approximately 27713 posts still lying vacant and it would be equitable for this Court to direct the respondents to fill in the remaining vacancies with the relaxed qualifying marks. However, it is settled proposition of law that no mandamus can be issued by the Courts of law to the Government to fill in unfilled vacancies and as such, even the said argument is rejected.

68. Another argument is that in the case of **Rajya Sabha Secretariat and Barot Vijaykumar Balakrishna (supra)** amended modified rules can be considered after the selection process has commenced. In the case of **Barot Vijaykumar Balakrishna (supra)** the cut off marks for viva voice were not specified in the advertisement and in this view of the matter the Apex Court held that there were only two courses open i.e to either carry on with the selection and to complete it without fixing any cut off marks for the viva voice which would be clearly wrong and the other course was to fix the cut off marks for the viva voice and to notify the candidates, which course was followed by the Commission and which did not cause prejudice to any of the candidates. However, in the instant case, the eligibility marks were already fixed at the time when the Recruitment, 2018 commenced and, as such, the said case is distinguishable and would not be applicable in the facts of the present case.

69. As regards the judgment of **Rajya Sabha Secretariat (supra)**, the same was a case in which there was splitting of marks in the interview which had not been communicated to the candidates in advance. The Apex Court held that the Rajya Sabha Secretariat had advertised that the certificates were desirable and the candidates

were also required to bring the certificate at the time of the personal interview and that the credit for the same was to be given only if the certificate was accompanied by a declaration by the Institute concerned that the Course done by the candidate was recognized by AICTE or DOEACC. The Apex Court held that once the credit was to be given to those certificates as a part of interview, as such the candidates could not say that splitting of marks in the interview was not communicated to them in advance. Again, the said judgment is distinguishable as the guidelines dated 09.01.2018 clearly specified the eligibility marks for the Recruitment, 2018.

70. As regards the argument on behalf of the petitioners that no valid reasons are forthcoming in the order dated 20.02.2019 to make redundant the Government Order dated 21.05.2018, suffice to state that the order dated 20.02.2019 clearly spells out the reasons as to why the Government Order dated 21.05.2018 is being withdrawn. The Court finds the said reasons to be satisfactory and even otherwise once this Court has itself gone in painstaking details of the facts of the case and even if for the sake of argument it could be said that one or the other reason indicated in the impugned order dated 20.02.2019 is not satisfactory or valid even then considering the ‘Useless Formality Theory’ enunciated by the Apex Court in the case of **M.C. Mehtra (supra)** as well as **Canara Bank (supra)**, there is no occasion for this Court to interfere with the impugned order dated 20.02.2019 taking into consideration the detailed reasons already set forth above.

71. Another argument on behalf of the petitioners that in terms of 22nd amendment in the Rules, 1981, the academic qualification as introduced in Rule 8 by 20th amendment of passing the Assistant

Teacher Recruitment Examination was done away with and considering the judgment of the Apex Court in the case of **Anand Kumar Yadav (supra)** for adjustment of Shiksha Mitras by giving them suitable age relaxation and weight-age, the Government order dated 21.05.2018 reducing the eligibility marks was validly issued. Suffice to state that it is settled proposition of law that where a selection process starts on the basis of existing rules and an advertisement has been issued on the basis thereof, it is those rules which will govern the selection notwithstanding the amendment in the rules (**See-Mohd. Raisul Islam and others Vs. Gokul Mohan Hazarika and others (2010) 7 Supreme Court Cases 560**). Hence, the said argument is also rejected.

72. Accordingly, taking into consideration the aforesaid discussion, no case for interference is made out. All the writ petitions are dismissed.

Order Date :- 07.01.2020

Pachhere/-

(Abdul Moin, J.)