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Special Appeal No. 191 of 2026

A.F.R.

Reserved On 11.02.2026

Delivered On 20.02.2026



2026:AHC:38432-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**Special Appeal No. - 191 of 2026**

State of U.P. through Secretary, Department .....Appellants(s)  
of Basic Education, Government of U.P.  
Lucknow & others

Versus

Sakshi & Others .....Respondents(s)

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Counsel for Petitioners(s) : Ratan Deep Mishra  
Counsel for Respondent(s) : Alok Tripathi, Jahnavi Singh, Kauntey  
Singh, Ravindra Singh, Siddharth  
Khare

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**Along with**

1. SPLA-189 of 2026; State of U.P. & others Vs. Seema Yadav and others
2. SPLA-188 of 2026; State of Uttar Pradesh & Others Vs. Shalini & Others
3. SPLA- 186 of 2026; State of U.P. and 4 others Vs. Ruvendra Kumar and 45 others
4. SPLA-970 of 2024; State of UP & 4 others Vs. Deepak Kumar and 29 others

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5. SPLA-190 of 2026; State of U.P. and 2 others Vs. Mayank Yadav
6. SPLA-184 of 2026; State of U.P. and 4 others Vs. Satakshi Parasari and 45 others
7. SPLA-187 of 2026; State of U.P. and 5 others Vs. Km. Archana Shukla & 2 others
8. SPLA-185 of 2026; State of U.P. and 3 others Vs. Divya Dwivedi and others

**Court No. - 21**

**HON'BLE MAHESH CHANDRA TRIPATHI, J.**

**HON'BLE KUNAL RAVI SINGH, J.**

[1] Heard Sri Anoop Trivedi, learned Additional Advocate General assisted by Sri Ratan Deep Mishra for the State-appellants and Sri Ravindra Singh and Sri Kauntey Singh, learned counsels for the respondents-petitioners.

[2] The present Special Appeal along with other connected appeals arise out of the same controversy and as the facts and controversy are the same, they are being decided by a common judgment. For the purpose of deciding these appeals, the facts of Special Appeal No.191 of 2026 (State of U.P. and 32 others Vs. Sakshi and 77 others) are being treated as the leading case.

[3] In all the connected Special Appeals the appellants have asked for the following reliefs:

<b>Sl.</b>	<b>Petition number &amp; parties' name</b>	<b>Relief claimed</b>
<b>1.</b>	SPLA- 191 of 2026 State of U.P. & 32 Others vs. Sakshi & 77 Others	Set aside the Judgment and Order dated 06.07.2023
<b>2.</b>	SPLA-189 of 2026 State of U.P. & others vs. Seema Yadav and others	Set aside the Judgment and Order dated 23.08.2023

3.	SPLA-188 of 2026 State of Uttar Pradesh & Others vs. Shalini & Others	Set aside the Judgment and Order dated 07.07.2023
4.	SPLA- 186 of 2026 State of U.P. and 4 others vs. Ruvendra Kumar and 45 others	Set aside the Judgment and Order dated 07.07.2023
5.	SPLA-970 of 2024 State of UP & 4 others vs. Deepak Kumar and 29 others	Set aside the Judgment and Order dated 18.09.2023
6.	SPLA-190 of 2026 State of U.P. and 2 others vs. Mayank Yadav	Set aside the Judgment and Order dated 19.07.2023
7.	SPLA-184 of 2026 State of U.P. and 4 others vs. Satakshi Parasari and 45 others	Set aside the Judgment and Order dated 03.08.2023
8.	SPLA-187 of 2026 State of U.P. and 5 others vs. Km. Archana Shukla & 2 others	Set aside the Judgment and Order dated 06.09.2023
9.	SPLA-185 of 2026 State of U.P. and 3 others vs. Divya Dwivedi and others	Set aside the Judgment and Order dated 19.01.2024

**FACTS:**

[4] The respondents herein (petitioners in the writ petitions) are the students of Diploma in Elementary Education Course<sup>1</sup> of various batches across various Colleges offering the Diploma Course. The common feature with all the respondents herein is that all the respondents herein have failed in one subject three times, thereby cancelling their enrollment as students of the Diploma Course. Upon numerous representations being filed by such failed students before the Secretary, Examination Regulatory Authority, Prayagraj<sup>2</sup>, the Secretary issued an order dated 11.09.2021 by means of which one additional chance was provided to students, who had failed in one subject of their first semester

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<sup>1</sup>. Diploma Course

<sup>2</sup>. Secretary

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three times and who had represented to the Secretary for an additional chance to clear the course. The order gave one additional chance to students whose names figured in the list enclosed with the order dated 11.09.2021. Thereafter, another order dated 19.04.2022 was issued by the Secretary by which one additional chance was given to the students, who had failed in any subject three times in any of the semesters. The order was issued in respect of students, who had represented to the Secretary, and an additional chance was given to students whose names figured in the enclosed list. As the names of the respondents herein did not figure in the enclosed list of the two orders, the respondents herein preferred several writ petitions claiming that the actions of the State appellants in denying similar opportunity to the respondents were in violation of Article 14 of the Constitution of India. The respondents herein claimed to be similarly situated to the students, who were granted additional chances by the two orders of the Secretary. The respondents herein also claimed that their representations had remained pending, and as such, by adopting a pick-and-choose policy, the State appellants had allowed only selective students to appear in the examination. On the above averments, the respondents herein prayed that the State appellants be directed to permit the respondents herein to appear in the subject in which they had failed after granting them an additional chance in the Diploma Course of their respective year.

[5] The Learned Single Judge, while entertaining the petitions, on 03.05.2023, framed several issues which were required to be answered by the State appellants and National Council for Teacher Education<sup>3</sup>. The order dated 03.05.2023 is hereinafter reproduced below:

*“Shri Siddharth Khare, learned counsel for the petitioner, is present.*

*Shri Bharat Pratap Singh, learned counsel, has entered an appearance on behalf of the NCTE. The NCTE shall file counter affidavit disclosing all relevant facts, including the following:*

*A. The stand of the NCTE regarding the additional chance given by the State Government to D.El.Ed. candidates who had been admitted in the academic Sessions commencing from 2013, 2014, 2015, 2017 and 2018.*

*B. Whether the said decision is contrary to standards of the D.El.Ed. course determined by the NCTE?*

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<sup>3</sup>. NCTE

*C. Whether any prior permission was required and taken from the NCTE for relaxing the outer limit of D.El.Ed. examination?*

*The counter affidavit filed on behalf of the State is not satisfactory. The State shall file a fresh counter affidavit disclosing all relevant facts including:*

*A. Whether the relaxation granted is consistent with the standards for D.El.Ed. course set by the NCTE?*

*B. Whether the said standards are binding on the State Government? In case counter affidavits are not forthcoming on behalf of the State as well as NCTE respectively on the next date of listing, the Court may summon concerned officials in person. Name of Shri Bharat Pratap Singh, learned counsel shall be shown in the cause list as counsel for the respondent-NCTE whenever the matter is listed next. Put up this case on 25.05.2023 in the list of fresh cases.”*

[6] In pursuance of the queries of the Court, the State appellants and NCTE filed their respective affidavits, which were taken on record. In the affidavit filed by the State appellants, a Government Order dated 27.02.2004 was placed on record, which detailed certain powers given to the Secretary about the conduct of the examinations in the Diploma Course. The State appellants averred that relaxation/additional chance was only given to those students, who had represented to the Secretary before the date of issuance of the orders by the Secretary.

[7] In the affidavit filed by NCTE, it was stated that as per Clause 2.1 of Appendix-2 of the National Council for Teachers Education (Recognition Norms and Procedure) Regulation, 2014<sup>4</sup>, the Diploma Course shall be of two (2) years however the students shall be permitted to complete the course within a maximum period of three (3) years. Furthermore, it was averred that any decision of the State Government contrary to the norms and standards fixed by NCTE or any concession granted by the State Government for completing the Diploma Course would violate the Regulations 2014.

[8] The Learned Single Judge, after considering the replies of the State appellants and NCTE by means of judgment and order dated 06.07.2023, allowed the writ petitions and held that the respondents herein have been discriminated as they were not granted an additional chance to clear their course. A writ of mandamus was issued to the State appellants to provide one additional chance to the respondents herein to appear in the paper in which the respondents herein had failed in the

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<sup>4</sup>. Regulation, 2014

Course. However, the Learned Single Judge further directed that the judgment and order shall not be treated as a binding precedent in relation to those petitions which shall be filed after the date of the decision, and all arguments shall remain open for the State insofar as the factual background of such petitions would reflect. When several other petitions came to be filed relying upon the judgment and order dated 06.07.2023, the same were allowed in terms of the mandamus issued in Writ C No. 9773 of 2023. The present Special Appeal, along with other connected appeals have been filed challenging the judgment and order dated 06.7.2023 and other orders in the respective writ petitions by means of which the mandamus issued in Writ C No. 9773 of 2023 (Sakshi and 77 others vs. State of U.P. and 32 others) was extended.

**APPELLANTS SUBMISSION:**

[9] The State appellants have filed the present Special Appeals challenging the judgment and order dated 06.07.2023 and other orders extending the benefit of the judgment and order dated 06.07.2023 to the other writ petitions on the following grounds:-

(i) The course duration is of two (2) years, with a maximum of three (3) years being allowed to clear the Course. By the time the orders were issued by the Secretary, the course duration was over, and no further chances could be given to the respondents herein.

(ii) As per Clause 2.1 of Appendix-2 of the Regulation, 2014, the maximum duration of the Course is three years; no further relaxation could be given about the number of years required to clear the Course. The bar in the Regulations, 2014 has not been relaxed, and the orders issued by the Secretary could not extend the period of course completion, as the Regulations, 2014 of NCTE are binding upon the State authorities. Statutory Rules prevail over executive orders.

(iii) The power to make regulations is in light of Section 32 of the National Council for Teachers Education Act, 1993<sup>5</sup>, especially Section 32 (2) (d) (ii), which empowers the NCTE to lay down norms/ guidelines and standards in respect of the category of courses or training in Teacher

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<sup>5</sup>. Act, 1993

Education. The regulations made under the statutory duty are binding in nature, and their effect cannot be curtailed.

(iv) There is no violation of Article 14 of the Constitution as there cannot be any negative parity. Even though the orders of the Secretary gave benefits to some of the students, the same benefits cannot be given to the respondents herein, as the same would amount to an illegal act being done. Wrong consequences of the orders cannot be extended to the respondents herein.

(v) There cannot be any estoppel against the statute especially because the time limit for the course duration was not extended by NCTE; therefore, the orders of the Secretary would not amount to a valid exercise of jurisdiction, as any executive order/ government order could not dilute the Regulations which have been framed by NCTE and have binding force.

(vi) The Learned Single Judge has been swayed by the fact that some students were given benefits, but the respondents herein were denied the same, thus violating Article 14 of the Constitution. The respondents herein did not file their respective representations before the orders were passed by the Secretary, and as such, no benefits could have extended to the respondents herein.

(vii) The judgment of the learned Single Judge has overlooked the Regulations, 2014, while granting benefits to the respondents herein, which is completely arbitrary and illegal. No benefits contrary to the Regulations, 2014 could be given to the respondents herein. Learned Senior Advocate for the State appellants relied upon the following judgments in support of his arguments:

(a) **Employees' State Insurance Corporation vs. Union of India and others**<sup>6</sup>;

(b) **Jyotsana Mayee Mishra vs. State of Odisha and others**<sup>7</sup>;

(c) **State of Haryana vs. Ram Kumar Mann**<sup>8</sup>

(d) **Harshad Chima Lal Modi vs. DLF Universal Ltd**<sup>9</sup>

<sup>6</sup>. (2022) 11 SCC 392

<sup>7</sup>. SLP (C) 13984 of 2023

<sup>8</sup>. 1997 AIR SCW 1574

<sup>9</sup>. (2005) 7 SCC 791

**(e) Director of Elementary education vs. Pramod Kumar Sahu<sup>10</sup>****RESPONDENTS SUBMISSIONS:**

[10] The counsels for the respondents have refuted the stand of the State appellants and have contended the following:-

(i) The judgment of the learned Single Judge does not suffer from any illegality as the same has addressed an arbitrary action on the part of the respondents in giving benefits to only some of the students.

(ii) Since the representations filed by the petitioners were never addressed, the mandamus issued by the learned Single Judge does not need any interference.

(iii) There is no question of any negative parity as the power to issue executive orders by the Secretary was never questioned; the appellants stated that the orders were issued under special circumstances. Once there is no challenge to the orders, then there is no question of any negative parity, and the respondents herein are entitled to be treated on the same footing as that given to the other students whose names appeared in the two lists attached to the Orders dated 11.09.2021 and 19.04.2022.

(iv) The State cannot approbate and reprobate on the issue as the State has earlier taken the submission that the executive order was valid, and as such, the appellants were stopped from saying otherwise.

(v) The State respondents in the compliance affidavit filed in the contempt application had stated categorically that the State can conduct the examination, and necessary orders have been passed; therefore, now they cannot be permitted to resile from their admission.

**LEGISLATIVE MATRIX:**

[11] Before delving into the various issues and submissions advanced by the respective learned counsels, it is necessary to keep in mind the legislative provisions that are in play in the controversy at hand. By

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<sup>10</sup>. (2019) 10 SCC 674

means of Act no. 73 of 1993, the Parliament enacted the Act, 1993. The aims and objectives of the Act, 1993 are as follows:

*“An Act to provide for the establishment of a National Council for Teacher Education with a view to achieving planned and coordinated development of the teacher education system throughout the country, the regulation and proper maintenance of norms and standards in the teacher education system [including qualifications of school teachers] and for matters connected therewith.”*

The Act sought to provide statutory powers to the NCTE to determine, maintain, and coordinate standards in teacher education, laying down norms and guidelines for various courses, promotion of innovation in the said field and establishment of a suitable system of conducting education of teachers.

[12] Under Section 2(l), Teacher Education is described as following:

*“(l) teacher education means programmes of education, research or training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools, and includes non-formal education, part-time education, adult education and correspondence education”*

[13] Under Section 12, the functions of the Council are described as follows:

*“12. Functions of the Council- It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and co-ordinated development of teacher education and for the determination and maintenance of standards for teacher education, and for the purposes of performing its functions under this Act, the Council may—*

*(e) lay down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum; .....*”

[14] Further Section 12-A grants power to the Council to determine minimum standards of education of school teachers: its reads as following :

*“12-A. Power of Council to determine minimum standards of education of school teachers.—For the purpose of maintaining standards of education in schools, the Council may, by regulations, determine the qualifications of persons for being recruited as teachers in any pre-primary, primary, upper primary, secondary, senior secondary or intermediate school or college, by whatever name called, established, run, aided or recognised by the Central Government or a State Government or a local or other authority:  
.....”*

[15] Section 27 of the Act, 1993 deals with the delegation of powers, which reads as follows:

*“27. Delegation of powers and functions. —The Council may, by general or special order in writing, delegate to the chairperson or to any other member or to any officer of the Regional Committee, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under section 32), as it may deem necessary.”*

[16] Section 32 of the Act, 1993 grants power to the Council to make regulations for the effective implementation of the provisions of the Act. The only limitation is that the Regulations cannot be inconsistent with the Act, 1993. It reads as follows:

*“32. Power to make regulations. — (1) The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, generally to carry out the provisions of this Act.*

*(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely: —*

*(d) the norms, guidelines and standards in respect of—*

*(ii) the specified category of courses or training in teacher education under clause (e) of section 12.”*

[17] In pursuance of the powers given under sub-section (2) of Section 32 of the Act, 1993, the Council promulgated Regulations, 2014 on 28.11.2014. As per Regulation 3, the Regulations shall be applicable to all matters relating to teachers' education programme for preparing norms and standards. The Regulations 2014 further lay down norms for Diploma in Elementary Education in Appendix-2. The preamble to Appendix 2 states as follows:

*“1.1. The Diploma in Elementary Education (D.El.Ed) is a two-year professional programme of teacher education. It aims to prepare teachers for the elementary stage of education, i.e. classes I to VUI. Elementary education aims to fulfil the basic learning needs of all children in an inclusive school environment, bridging social and gender gaps with the active participation of the community.*

*1.2. The elementary teacher education programme carries different nomenclatures such as BTC, J.B.T, D.Ed. and (Diploma in Education). Henceforth, the nomenclature of the programme shall be the same across all states and it shall be referred to as the 'Diploma in Elementary Education'(D.El.Ed).”*

Furthermore, the course duration is prescribed in Regulation 2 to the appendix which reads as follows:

*“2. The D.El.Ed. programme shall be of a duration of two academic years. However, the students shall be permitted to complete the programme within a maximum period of three years from the date of admission to the programme.”*

[18] The State Government in pursuance of the Right of Children to Free and Compulsory Education Act, 2009<sup>11</sup> enacted the Uttar Pradesh Right of Children to Free and Compulsory Education Rules, 2011<sup>12</sup>. Part VII of the Rule 2011 provides as follows:

*“Part-VII (1) For Section 29 the State Council of Educational Research and Training shall lay down the curriculum and evaluation procedure for elementary education.*

*(2) The State Council of Education Research and Training, while laying down the curriculum and evaluation procedure, shall perform the following functions: (a) Formulate the relevant and age-appropriate syllabus and textbooks and other learning material;*

*(b) Develop in-service teacher training design; and*

*(c) Prepare guidelines for putting into practice continuous and comprehensive evaluation.”*

[19] In light of the above, the Curriculum for Diploma Course was prepared by the District Institute of Education & Training<sup>13</sup> working under the State Council for Educational Research and Training<sup>14</sup>. As per the curriculum prepared by DIET, it is provided that a student will have three attempts to clear any failed subject otherwise, his candidature for training shall come to an end.

Clause-19 of the Rules of Training provides a condition for cancellation of candidature, which is as follows:

"प्रशिक्षु यदि अधिकतम किन्हीं दो विषयों की लिखित परीक्षा में अनुत्तीर्ण होता है तो उसे आगे आने वाले सेमेस्टर में पुनः लिखित परीक्षा में सम्मिलित होने की अनुमति दी जायेगी, किन्तु यदि दो से अधिक विषयों में अनुत्तीर्ण होता है तो उसे पूरा सेमेस्टर दोबारा करना होगा।"

Furthermore, Clause 20 provides for a representation of candidates whose candidature has been cancelled. Clause 20 provides as follows:

"अभ्यर्थन निरस्त होने पर / बी०टी०सी० प्रमाण पत्र रद्द किये जाने पर प्रशिक्षु द्वारा अपीलीय प्राधिकारी के समक्ष आदेश जारी होने की तिथि से तीस दिन के अंदर अपील प्रस्तुत की जा सकती है। अपील के निस्तारण के पूर्व प्रशिक्षु को सुनवाई का अवसर दिया जाएगा। अपीलीय प्राधिकारी, निदेशक, राज्य शैक्षिक अनुसंधान एवं प्रशिक्षण परिषद, उ०प्र० लखनऊ तथा उनके द्वारा अधिकृत प्राधिकारी होंगे। अपीलीय अधिकारी का निर्णय अन्तिम होगा"

Thus, from the aforesaid, it is clear that it is for those candidates, whose candidature has been cancelled, to file an Appeal before the Appellate Authority, which is to be decided after giving a proper opportunity of hearing. The Appellate Authority is the Director, SCERT or an officer authorized by him.

<sup>11</sup>. Act, 2009

<sup>12</sup>. Rules, 2011

<sup>13</sup>. DIET

<sup>14</sup>. SCERT

[20] As per the Government Order dated 27.02.2004, Examination Regulatory Authority, U.P. Prayagraj was created, and the Secretary of the said Authority was vested with powers to conduct examinations and the same was made applicable to SCERT and Director, Basic Education.

“प्रेषक,

हरिराज किशोर,

सचिव,

उ०प्र० शासन।

सेवा में,

(1) निदेशक,

राज्य शैक्षिक अनुसंधान और प्रशिक्षण परिषद्,

उ०प्र०, लखनऊ।

(2) निदेशक,

बेसिक शिक्षा,

उ०प्र०, लखनऊ।

शिक्षा अनुभाग-II

लखनऊ: दिनांक: 27 फरवरी, 2004.

विषय:- परीक्षा नियामक प्राधिकारी के गठन के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक निदेशक, राज्य शैक्षिक अनुसंधान और प्रशिक्षण परिषद्, उ०प्र० शा. पत्रांक../18150/2003-2004, दिनांक 8-1-2004 के सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि राज्यपाल महोदय ने तात्कालिक प्रभाव से रजिस्ट्रार विभागीय परीक्षाएं, उ०प्र०, इलाहाबाद द्वारा विभिन्न प्रकार की परीक्षाओं से सम्बन्धित कार्यों को अधिक प्रभावी बनाते हुए अधिक प्राधिकार दिये जाने और व्यवस्था को सुदृढ़ किये जाने के लिए रजिस्ट्रार विभागीय परीक्षाएं, उ०प्र०, इलाहाबाद के कार्यालय को परीक्षा नियामक प्राधिकारी, उ०प्र० के रूप में गठित किये जाने की निम्नवत् स्वीकृति प्रदान कर दी है:-

- (1). परीक्षा नियामक प्राधिकारी का कार्यालयाध्यक्ष सचिव, परीक्षा नियामक प्राधिकारी, उ०प्र० के नाम से जाना जायेगा।
- (2). रजिस्ट्रार विभागीय परीक्षाएं, उ०प्र०, इलाहाबाद के कार्यालय को परीक्षा नियामक प्राधिकारी, उ०प्र० के नाम से जाना जायेगा तथा इसे रजिस्ट्रार विभागीय परीक्षाएं के कार्यालय में ही स्थापित रखा जायेगा।
- (3). सचिव, माध्यमिक शिक्षा परिषद् की भांति सचिव, परीक्षा नियामक प्राधिकारी का विभिन्न प्रकार की परीक्षाओं के आयोजन का पूर्ण दायित्व होगा।
- (4). परीक्षा नियामक प्राधिकारी निम्नांकित चार सदस्यीय समिति के माध्यम से अपने प्रशासनिक दायित्वों का निर्वहन करेगी:-
 

(क). सचिव, परीक्षा नियामक प्राधिकारी, उ०प्र०	-अध्यक्ष
(ख). प्राचार्य, राज्य शिक्षा संस्थान, उ०प्र०, इलाहाबाद,	-सदस्य
(ग). प्राचार्य, ... शिक्षा और प्रशिक्षण संस्थान निदेशक	
(घ). रजिस्ट्रार विभागीय परीक्षाएं, उ०प्र०	- सदस्य, सचिव।
- (5). परीक्षा नियामक प्राधिकारी को किसी भी प्रकार की परीक्षाओं के आयोजन से सम्बन्धित विभिन्न गतिविधियों के सम्बन्ध में निर्णय लेने एवं उसे क्रियान्वित कराने का अधिकार होगा। परीक्षा की तिथियों को निर्धारित करना, परीक्षा केन्द्रों को अन्तिम रूप देना, केन्द्र व्यवस्थापकों तथा कक्ष निरीक्षकों एवं परिवीक्षकों के नियंत्रण आदि के सम्बन्ध में निर्देश देना, निर्धारित समय-सारिणी के अनुसार परीक्षाओं के आयोजन, उत्तर पुस्तिकाओं का संकलन, उनका मूल्यांकन, परीक्षाफल को तैयार तथा परीक्षाफल को घोषित करना (प्रवेश परीक्षा/मुख्य परीक्षा) और आदेशानुसार प्रवेश एवं अपेक्षित अंकपत्रों/प्रमाणपत्रों के निर्गत करने से सम्बन्धित निर्णय उक्त समिति द्वारा लिया जायेगा।

(6). प्रश्न-पत्रों की गोपनीयता को बनाये रखते हुए प्रश्न-पत्रों के संरचना, उनका मुद्रण, परीक्षा केन्द्रों पर पहुंचाने आदि से सम्बन्धित समस्त कार्यवाही का उत्तरदायित्व सचिव, परीक्षा नियामक प्राधिकारी, उ०प्र० का होगा।

परीक्षा नियामक प्राधिकारी तत्काल प्रभाव से सभी अपेक्षित कार्यवाही आरम्भ कर दें और इस सम्बन्ध में शासन को भी सूचित किया जाय।

भवदीय,

(हरिराज किशोर)

सचिव,

बेसिक शिक्षा।”

[21] In pursuance of such powers, the Secretary issued the order dated 11.09.2021, which is as follows:

"प्रेषक,

सेवा में,

सचिव,

परीक्षानियामक प्राधिकारी,

उत्तर प्रदेश, प्रयागराज

उपशिक्षा निदेशक / प्राचार्य, जिला शिक्षा एवं प्रशिक्षण संस्थान उत्तर प्रदेश।

पत्रांक: गोप०/डी०एल०एस०/ 2446-52/2021-22 दिनांक 11 सितम्बर 2021

विषय- डी०एल०एड० (बी०टी०सी०) के विभिन्न बैचों की परीक्षा में अनुत्तीर्ण अभ्यर्थियों द्वारा परिषद कार्यालय में उपलब्ध कराये गये प्रत्यावेदनों के क्रम में एक अन्तिम अतिरिक्त अवसर प्रदान किये गये अभ्यर्थियों की प्रथम सेमेस्टर की परीक्षा में सम्मिलित कराये जाने के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक अवगत कराना है कि परिषद कार्यालय के पत्र संख्या रा०शै० डी०एल०एड०/17524/2021-22, दिनांक 09.09.2021 एवं पत्र संख्या: रा०शै०/डी०एल०एड०/17535/2021-22, दिनांक 09.09.2021 द्वारा डी०एल०एड० (बी०टी०सी०) के विभिन्न बैचों की परीक्षा में अनुत्तीर्ण अभ्यर्थियों द्वारा उपलब्ध कराये गये प्रत्यावेदनों के क्रम में, सूची संलग्न करते हुए ऐसे अभ्यर्थियों जो किसी सेमेस्टर के एक विषय में तीन बार अनुत्तीर्ण हैं तथा उनके द्वारा शेष अन्य सेमेस्टर उत्तीर्ण कर लिया गया है को एक अन्तिम अतिरिक्त अवसर प्रदान किये जाने के निर्देश दिये गये हैं।

तदक्रम परिषद कार्यालय के पत्र दिनांक 09 सितंबर 2021 के साथ संलग्न सूची का परीक्षण कराते हुए डी०एल०एड० (बी०टी०सी०) प्रशिक्षण बैच 2013, 2014, 2015, 2017, 2018 प्रथम सेमेस्टर के ऐसे परीक्षार्थी जो एक विषय में तीन बार अनुत्तीर्ण हैं तथा उनके द्वारा शेष अन्य सेमेस्टर उत्तीर्ण कर लिये गये हैं, को एक अन्तिम अतिरिक्त अवसर प्रदान करते हुए प्रवेश पत्र व नामावली सूची बैचवार निर्धारित वेवसाइट/डायट के ई-मेल पर प्रेषित की गयी है।

उक्त के क्रम में मुझे यह कहने का निर्देश हुआ है कि परिषद कार्यालय के पत्र दिनांक 09 सितंबर 2021, के साथ संलग्न सूची के ऐसे अभ्यर्थी जो प्रथम सेमेस्टर के एक विषय में तीन बार अनुत्तीर्ण हैं तथा उनके द्वारा शेष अन्य सेमेस्टर उत्तीर्ण कर चुके हैं, उनके प्रवेश पत्र सम्बन्धित परीक्षार्थी को प्राप्त कराने तथा नामावली सूची सम्बन्धित परीक्षा केन्द्र को प्राप्त कराते हुए कार्यालय के पत्रांक: गोप०/डी.एल.एड./2101-2179/2021-22 दिनांक 06 सितम्बर 2021 में दिये गये निर्देश के अनुसार डी.एल.एड (बी०टी०सी०) प्रथम सेमेस्टर परीक्षा वर्ष 2021 की दिनांक 12.09.2021 से प्रारम्भ होने वाली परीक्षा में परीक्षार्थियों को सम्मिलित कराने हेतु अपने स्तर से प्रभावी कार्यवाही करने का कष्ट करें।

भवदीय

ह०अप०/11.09.2021

कृते सचिव  
रजिस्ट्रारपरीक्षा नियामक प्राधिकारी  
उत्तर-प्रदेश प्रयागराज।"

(22) Thereafter another order was issued by the Secretary on 19.04.2022, which is as follows:

“प्रेषक,

सचिव, परीक्षा नियामक प्राधिकारी, उत्तर प्रदेश, प्रयागराज  
सेवा में,

01 समस्त उपशिक्षा निदेशक/ प्राचार्य जिला शिक्षा एवं प्रशिक्षण संस्थान, उ०प्र०।

02 समस्त प्राचार्य निजी डी०एल०एड० संस्थान उ०प्र०।

पत्रांक: गोप०/परीक्षा/274-371/2022-23 दिनांक 19.04.2022

विषय- डी०एल०एड० (बी०टी०सी०) प्रशिक्षण के अन्तर्गत विभिन्न बैचों के अनुत्तीर्ण अभ्यर्थियों द्वारा परिषद कार्यालय में उपलब्ध कराये गये प्रत्यावेदन के सापेक्ष निदेशक राज्य शैक्षिक अनुसंधान एवं प्रशिक्षण परिषद, लखनऊ महोदय द्वारा प्रदान की गयी क्रम में-अर्ह पाये गये परीक्षार्थियों के तथा अंकानुसंधान एवं आंतरिक गयी अनुमति के मूल्यांकन के अंक पूरित कराये जाने के उपरान्त अर्ह प्रशिक्षुओं के परीक्षा आवेदन पूरित कराये जाने के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक अवगत कराना है कि परिषद कार्यालय के पत्र संख्या रा०शै०/2597/2022-23 दिनांक 12 अप्रैल 2022 एवं बैच संख्या रा०शै०/3290/2022-23 दिनांक 18 अप्रैल 2022 द्वारा डी०एल०एड० (बी०टी०सी०) प्रशिक्षण के विभिन्न बैचों में अनुत्तीर्ण अभ्यर्थियों द्वारा परिषद कार्यालय में उपलब्ध कराये गये प्रत्यावेदन के सापेक्ष सूची संलग्न करते हुए ऐसे अभ्यर्थी जो किसी सेमेस्टर के एक विषय में तीन बार अनुत्तीर्ण हैं तथा उनके द्वारा शेष अन्य सेमेस्टर उत्तीर्ण कर लिये गये हैं का एक अन्तिम अतिरिक्त अवसर प्रदान करते हुए वर्तमान वर्ष-2023 की परीक्षा में सम्मिलित कराये जाने के निर्णय लिये गये हैं। इसके साथ ही अंकानुसंधान का परीक्षाफल अंकित किये जाने तथा आंतरिक मूल्यांकन के अंक पूरित कराये जाने के उपरान्त घोषित परीक्षाफल के ऐसे परीक्षार्थी, जो आगामी सेमेस्टर की परीक्षा हेतु अर्ह पाये गये हैं उनके भी परीक्षा आवेदन पूरित कराते हुए परीक्षा वर्ष 2022 में सम्मिलित कराया जाना है।

उक्त के आलोक में परिषद कार्यालय के पत्र दिनांक 12 अप्रैल 2022 एवं पत्र दिनांक 18.04.2022 के साथ संलग्न सूची के ऐसे अभ्यर्थी जो किसी सेमेस्टर के एक विषय में तीन बार अनुत्तीर्ण हैं तथा शेष अन्य सेमेस्टर उत्तीर्ण किये जा चुके हैं, उनको परीक्षा वर्ष-2022 में सम्मिलित कराये जाने हेतु तथा अनुसंधान एवं आंतरिक मूल्यांकन के अंक पूरित कराये जाने के उपरान्त अर्ह प्रशिक्षुओं के परीक्षा आवेदन निम्नवत कार्यक्रम के अनुसार पूरित कराये जायेंगे।

प्रशिक्षण संस्थान द्वारा बैचवार निर्धारित वेबसाइट पर प्रदर्शित अभ्यर्थी के आवेदन पूरित किया जाना।	दिनांक 20.04.2022 को समय प्रातः 8.00 बजे से दिनांक 22.04.2022 को समय सांय 3.00 बजे
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सम्बन्धित डायट द्वारा संस्थानों द्वारा पूरित आवेदन स्वीकृत/अस्वीकृत किया जाना।	दिनांक 20.04.2022 को समय प्रातः 8.00 बजे से दिनांक 22.04.2022 को समय सांय 7.00 बजे
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उक्तानुसार निर्धारित समयावधि में बेवसाइट पर प्रदर्शित अभ्यर्थियों के आवेदन पूरित किये जाने एवं प्रशिक्षुओं को अपने स्तर से सूचित करने हेतु प्रभावी कार्यवाही अपने स्तर से कराना सुनिश्चित करें, यदि उक्त निर्धारित अवधि में आवेदन पूरित / स्वीकृत नहीं किये जाते हैं तो सम्पूर्ण उत्तरदायित्व सम्बन्धित प्रशिक्षण संस्थान एवं सम्बन्धित जनपद के प्राचार्य, जिला शिक्षा एवं प्रशिक्षण संस्थान का होगा।

भवदीय  
ह० अप०  
सचिव  
रजिस्ट्रार  
परीक्षा नियामक प्राधिकारी  
उत्तर-प्रदेश प्रयागराज।"

[23] The Constitution of India was amended by the Parliament by means of enactment of the 86th Amendment Act in 2002. Article 21-A was added which provided as follows:

*"21A: The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."*

[24] In pursuance of the 86th Amendment, the Parliament enacted Act No.35 of 2009 i.e. The Right of Children to Free and Compulsory Education Act, 2009. The Act, 2009, sought to provide for free and compulsory education to all children of the ages of six to fourteen years. One of the aims of the Act, 2009 is to ensure good quality elementary education conforming to the standards and norms specified in the Schedule of the Act, 2009. The overall purpose of the Act, 2009 is to ensure compliance of Article 21A and to ensure that children of formative years get a good quality education by Teachers, who are fully qualified and trained to teach the young minds.

**POINTS OF DETERMINATION:**

[25] Heard rival submissions and perused the records of the Special Appeals. To adjudicate the controversy in the present Special Appeal, the

following points of determination are framed whose decision would effectively determine the issues at hand:

- (I) Whether the NCTE regulations with regard to Diploma in Elementary Education are binding and mandatory on the State appellants?
- (II) Whether the non-extension of time period to complete the course within 3 years as per Regulation 2.1 of Appendix-2 to the Regulations, 2014 would invalidate the order dated 11.09.2021 and 19.04.2022 passed by the Secretary?
- (III) Whether the respondents herein are entitled to one additional chance as given to students whose name figured in the lists enclosed with orders dated 11.09.2021 and 19.04.2022?
- (IV) Whether there is any violation of Article 14 of the Constitution of India?

#### **DISCUSSIONS:**

[26] The Act 1993 was enacted to ensure that there is a planned and coordinated development of teachers' education system throughout the country and the regulation and proper maintenance of norms and standards in the teacher education system. The aim and purpose of the Act was to ensure that a uniform development took place in teacher training so that the best-trained teacher could be employed to teach the future generation of the country. To further the provisions of the Act, 1993 the power was given to frame regulations to ensure quality training and education. Under Section 32 of the Act, 1993, the Council had the power to frame regulations on a variety of topics as stated in Section 32 (2). The power to make regulations to carry out the aims and objects of the Act, 1993 is also clear from Section 12-A of the Act, 1993. Section 12-A gives the power to make regulations for determining the minimum standards of education of school teachers.

[27] In furtherance of the said powers, the Council framed the Regulations 2014, which covered qualifications for teachers and provided various criteria for different diploma qualifications. Regulation 2.1 to Appendix-2 of the Regulations, 2014 stated the time period for

obtaining a diploma in Elementary Education. The candidates were required to complete the course in two years' time, subject to a maximum time of three years. In short, the diploma has to be obtained by any candidate in a maximum of three years. No further extension is allowed.

[28] The question with regard to the binding nature of the Act, 1993 and the Regulations that were framed in pursuance of Section 32(2) is no longer res-integra. This Court in the Full Bench judgment of *Shiv Kumar Sharma and others vs. State of U.P. and others*<sup>15</sup>, has clearly held that there is a binding effect of the Act, 1993 and the Regulations framed thereunder. The Court held that after insertion of Section 12-A in the Act, 1993 there is no doubt any more with regard to the authority of the NCTE to fix norms and qualifications that are to be possessed by teachers of all categories of institutions including elementary education. Though in the present case, the question of the qualifications of the teachers is not under consideration but the norms fixed by the Regulations as framed under Section 32(2) of the Act have binding and mandatory effect.

[29] In *Ram Surat Yadav and others vs. State of U.P. Through Secretary and others*<sup>16</sup>, the Full Bench of this Court held that NCTE is duly empowered to prescribe the minimum qualifications for persons who are recruited as teachers from the pre-primary to the intermediate of college level. The Court relied upon *Shiv Kumar Sharma (supra)* to reiterate the binding effect of the provision and Regulations framed under the Act, 1993. Even though the Full Bench was dealing with recruitment process prior to the amending Act of 2011 yet the Full Bench held the binding nature of the provisions and the regulations framed thereunder.

[30] In *Syed Shakeb Ashraf and 3 others vs. State of U.P. Through Principal Secretary, Department of Basic Education, Lucknow and others*.<sup>17</sup>; the Court reiterated the binding and mandatory effect of the provisions and Regulations framed under the Act, 1993. The Court relied

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<sup>15</sup>. 2013(6)ADJ 310 (FB)

<sup>16</sup>. 2013 SCC Online ALL 14351

<sup>17</sup>. AIR ONLINE 2019 ALL 1069

upon ***Shiv Kumar Sharma*** (*supra*) and ***Ram Surat Yadav*** (*supra*) to hold the NCTE Act and its Regulations have binding effect.

[31] Furthermore in ***State of U.P. And others vs, Shiv Kumar Pathak and others***<sup>18</sup>; the Supreme Court held that the State Government was under an obligation to act in accordance with the notification issued by NCTE and cannot give effect to any contrary rule.

[32] Thus, from the above precedents, it is clear that the NCTE Act and the Regulations framed in pursuance of the powers given in Section 32 have binding effect in relation to norms and qualifications of teachers. Thus, it is patently obvious that the norms laid down in Regulation 2 to Appendix-2 of Regulations 2014 have a binding effect, and the time period prescribed under Regulation 2 of Appendix-2 is binding and mandatory in nature leading to the irresistible conclusion that the maximum time limit for passing a Diploma in Elementary Education course is three years.

[33] A question now that needs to be answered is whether there is any power to the State to relax the norms as imposed by the Regulations, 2014. Under Section 27 of the Act, 1993 the Council may by general or special order in writing delegate to the Chairperson or any other member or to any officer of the Regional Committee subject to such terms and conditions and limitations as may be specified in the said order, such powers or functions as it may deem necessary but the section has specifically excluded the power to make regulations meaning thereby the power to make a regulation prescribing norms and qualifications vests absolutely in the Council. The delegated power to the Regional Committee (the Secretary in the present case) cannot override the norms prescribed in the Regulations. Thus, Regulation 2 of Appendix-2 of the Regulations, 2014 cannot be changed under any power under Section 27. Once no power exists in the Secretary to modify the Regulations then the time period to complete the Diploma Course is fixed at three years maximum as per the Regulations 2014.

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<sup>18</sup>. 2017 INSC 666

[34] The Government order dated 27.02.2004 gives powers to the Examination Regulatory Authority to deal with issues arising out of the conduct of examinations. The powers given under Clause (5) relates to fixation of examination dates, finalization of examination centers, the directions to be issued to the examiners and the center supervisors, holding of examination with the time schedule, collection of the examination booklets, the valuation of the examination booklets, preparation of result and its declaration and the issuance of mark sheets and other certificates. Under Clause (6), the Secretary shall be responsible for secrecy of the examination papers and their safe travel to the examination centers. Thus, the power to issue executive orders is with the Secretary to deal with situations as contemplated under Clause (5) and (6) of the Government order dated 27.02.2004.

[35] In *Ram Kishore Yadav Vs. M.P. Board of Secondary Education*<sup>19</sup>; as well as in *Poonam Pattaya and others vs. Board of Secondary Education and others*<sup>20</sup>; the M.P. High Court while dealing with the power to issue executive orders, held that the Board (in this case, the Examination Regulatory Authority) has the power to issue executive directions but the Board could not issue any such executive directions that are covered by the regulations. In the above-noted cases, the M.P. High Court was dealing with a situation when the National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2009 in Regulation 2 of Appendix-2 did not prescribe any maximum number of years to clear the diploma course and in light of such lacuna the M.P. Secondary Board had issued orders limiting the number of chances available to clear the exams. Though the Court upheld the executive order, however it held that the executive order was valid as the Regulations were silent on the maximum time period required to clear the course. Regulations, 2009 merely stated that the course duration would be of two years only. But in the Regulations,

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<sup>19</sup>. 2016 (4) MPLJ 658

<sup>20</sup>. 2017 (3) MPLJ 711

2014, the Council prescribed the maximum time period for completion of the Course i.e. three years.

[36] The orders dated 11.09.2021 and 19.04.2022 are only executive orders. They are subordinate to the Regulations, 2014. The executive order would not in any way override the Regulations having statutory force [vide *Employees' State Insurance Corporation (supra)*]. Thus, in light of what has been observed above, it is clear that the Examination Regulatory Authority would have powers to issue executive orders to deal with issues as described in the Government order dated 27.02.2004, but the Authority could not issue any executive order that transgressed upon the norms and qualifications imposed by the Regulations, 2014. As long as the Executive orders covered matters which were not specifically stated in the Regulations, 2014, there is no conflict, but if the Executive order transgressed the Regulations, 2014, then the Executive order would be in violation of the Regulations, 2014 and would lose its efficacy to that extent. In simpler terms, the Council has the power to issue a policy in the form of Regulations and the Secretary (Examination Regulatory Authority) has the power to enforce the policy as laid out in the Regulations.

[37] Thus, the finding given by the learned Single Judge that the executive order (Circulars/ Office Memorandum) would have the force of law does not appear to be correct. The Executive orders are supplementary in nature and cannot in any manner erode the norms prescribed by the Regulations, 2014 [vide *Vijay Singh and others v. State of U.P. and others*<sup>21</sup>, *Ram Ganesh Tripathi v. State of U.P.*<sup>22</sup>. By means of the executive order, the Secretary would not have the power to supplant the maximum time period granted to clear the course. Furthermore, as per the syllabus of the Diploma Course, the number of attempts had already been exhausted. Therefore, without corresponding changes in the essential conditions of the syllabus as prescribed by SECRET, no additional chance could be given. In our considered opinion,

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<sup>21</sup>. 2004 SCC OnLine All 1656

<sup>22</sup>. AIR 1997 SC 1446

the finding of the learned Single Judge that the Secretary had the power to give one additional chance is incorrect. Also, the finding that the benefit of the executive orders should be extended to the petitioners is also incorrect.

[38] As to the challenge to the Government order dated 27.02.2004, suffice to say that the Examination Regulatory Authority by means of executive orders lay down conditions with regard to the conduct of examinations. But the Authority would not have any power to supersede any Regulation as Section 27 of the Act, 1993 does not give such a power. Thus, even though executive orders dated 11.09.2021 and 19.04.2002 have been issued, the same would be in violation of the Regulations, 2014, as the authority does not vest with the power to change any norms given in Regulations, 2014.

[39] Nothing has been brought on record to show that NCTE by means of any other Regulation had increased the time period given in the Regulations, 2014 to clear the diploma course. It is not the case of the respondents herein that NCTE in its wisdom had amended the Regulations, 2014 and thereby the executive orders were justified. Rather it has always been the case of NCTE that the course duration remained for two years with one additional year given to complete the course. Thus, in total three years were given to complete the two years diploma course.

[40] In the order dated 03.05.2023, the Court had framed query "C" for NCTE with regard to any prior permission required to be taken from NCTE to relax the outer limit of the D.El.Ed Course. Although there is no specific finding given by the learned Single Judge with regard to this query, the answer to the said query is in Section 27 of the Act, 1993. Section 27 allows for delegation of powers on such terms and conditions as the order may deem fit but there is no power to make any Regulation under Section 32. Thus, the other powers of the Council may be delegated upon a specific reason being provided but the Regulation making power only vests with the Council and Council alone. Once the power to make Regulations is not delegated, then by necessary implication the power to relax norms of maximum time period as

prescribed in the Regulations could also not be delegated. Thus, in our considered opinion, without answering query “C” in the order dated 03.05.2023, the executive orders could not have been held to have force of law.

[41] The respondents herein claimed benefit of Article 14 of the Constitution of India to claim parity with the students whose names figured in the list enclosed with the orders dated 11.09.2021 and 19.04.2022. The argument being that the State appellants had adopted a pick and choose policy while granting one additional chance and as such, they were discriminated.

[42] Article 14 of the Constitution of India guarantees equal protection to similarly situated persons. The intention of the Article is in a positive sense as it seeks to eliminate discrimination between persons who are similarly situated. There are authoritative judgments on this point of law which need not be reiterated. Suffice to say that there is no arguments with regard to the positive enforcement of Article 14. Article 14 protects the rights in a positive manner meaning thereby that any rights based on an illegality cannot be claimed under Article 14.

(43). Moreover, the petitioners (respondents herein) have admittedly not filed any representation before the Secretary. Therefore, even otherwise, they cannot claim any parity with the candidates, who have filed representations before the Secretary and consequently, their names were found placed in all the lists issued thereafter by the Secretary.

[44] In *Chandigarh Administration vs. Jagjit Singh*<sup>23</sup>; the Supreme Court held that before any mandamus can be issued in favour of any person who seeks parity with another person on the basis of some order, the validity of the order has to be seen. If the order is found to be illegal then such an illegal order cannot be the basis for issuance of a writ. In *State of Odisha Vs. Anup Kumar Senapati*<sup>24</sup>; the Supreme Court held that there is no concept of negative equality under Article 14. The Supreme Court further held that negative equality when the right does not exist, cannot be claimed. In *R. Muthukumar vs. The Chairman and Managing Director TANGEDCO*<sup>25</sup>, the Supreme Court again upheld the

<sup>23</sup>. (1995) 1 SCC 745

<sup>24</sup>. (2019) 19 SCC 626

<sup>25</sup>. 2022 INSC 157

concept that Article 14 does not envisage negative equality. The Court further held that if some similarly situated persons have been granted some benefits inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief. In *Rajasthan Public Service Commission, Ajmer vs. Yati Jain and others*<sup>26</sup>; the Supreme Court again reiterated the above principles and held that some illegality committed by the State cannot be made a basis for seeking the same benefit.

[45] As has been held above, the executive orders were in violation of Regulations, 2014 with regard to giving one additional chance over and above the time period prescribed for clearing the Course under the Regulations. Since the time limit was not increased by the Council by means of any Regulations, the executive orders would be in contradiction to the Regulations and such would be invalid. Once it is the opinion of this Court that the executive orders dated 11.09.2021 and 19.04.2022 were in contravention of the Regulations, 2014, then there would be no question with regard to granting a similar benefit to the respondents herein, as no rights can be claimed based on the illegal orders. In the considered opinion of the Court, the findings recorded by the learned Single Judge that Article 14 would be applicable and similar benefits could be granted is incorrect. The respondents herein cannot claim a parity which is based upon an illegal exercise of power.

[46] Learned counsels for the respondents have laid great emphasis on the compliance affidavit filed in Contempt Application (Civil) No.2851 of 2024 (Sheetal vs. Smt. Sarita Tiwari, Director, State Council of Education Research and Training), wherein the State appellants had issued an order directing the holding of the exam. On the basis of the said order, the Counsels contend that the State cannot now challenge the impugned orders as they have now implicitly accepted the judgment and order dated 06.07.2023 passed by the learned Single Judge. In *Mahendra Dev vs. Radhey Shaym Pandey*<sup>27</sup> as well as *The State of U.P. and others vs. Association of Retired Supreme Court and High*

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<sup>26</sup>. 2026 INSC 64

<sup>27</sup>. Special Leave to Appeal (C) No. 2713 of 2025

*Court Judges at Allahabad and others*<sup>28</sup> held that contempt proceedings cannot be used to obstruct parties or their counsel from availing legal remedies. Even though the order may have been issued by the Director but the issuance of an order cannot come in the way of challenging the judgment by means of filing an appeal. Suffice to say that the decision in the contempt application would depend upon the fate of the appeal and not vice versa.

**ANSWERS TO THE POINTS OF DETERMINATION:**

**(47).** The respondents herein cannot possibly claim any benefit from the order of the State Government as contained in the Contempt Application (Civil) No.2851 of 2024 for holding the examination. It is well settled that any illegal order passed by the State Authority (contemnor) under the pressure and duress of contempt proceeding will not create a vested right in favour of the applicants (respondents herein).

**[48]** Regarding issue no.1 i.e. Whether the NCTE regulations with regard to Diploma in Elementary Education are binding and mandatory on the State appellants, the issue is answered in the affirmative holding that the Regulations are binding and mandatory.

**[49]** Regarding issue no.2 i.e. whether the non-extension of time period to complete the course within 3 years as per Regulation 2.1 of Appendix-2 to the Regulations, 2014 would invalidate the order dated 11.09.2021 and 19.04.2022 passed by the Secretary, the issue is answered in affirmative holding that there is illegal exercise of power in issuing the two executive orders dated 11.09.2021 and 19.04.2022 without any corresponding increase in the time period mandated under the Regulations, 2014.

**[50]** Regarding issue no. 3 i.e. whether the petitioners are entitled to one additional chance as given to students whose name figured in the lists enclosed with orders dated 11.09.2021 and 19.04.2022, the issue is answered in the negative and against the petitioners.

**[51]** Regarding issue no. 4 i.e. whether there is any violation of Article 14 of the Constitution of India, the issue is answered in the negative,

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<sup>28</sup>. 2024 INSC 4

holding that negative parity cannot be claimed by the petitioners.

[52] Before we conclude, there is yet another issue at hand that needs to be dealt with. The issue is whether the right to appear for an additional chance in the examination of the Diploma course would supersede the fundamental right of children as enshrined under Article 21-A of the Constitution of India and the protection given by the Act 2009?. It is to be kept in mind that the Act, 2009, has been enacted in furtherance of the 86<sup>th</sup> Amendment Act of the year 2002 with the sole purpose of providing free and compulsory education to children. Further, for the purpose of maintaining standards of education to the children, Section 12A was incorporated in the Act of 1993 w.e.f. 01.06.2012 through the Act No.18 of 2011. The power to lay down norms and qualifications by Regulations is to ensure quality education to the children of age 6-14 years. These young formative minds will shape the future of the country, therefore the persons to be recruited as teachers should be of utmost quality and standards.

(53) The role of quality teachers as educators of young minds does not need much elaboration. Recently, this Court in the case of *Shailendra Kumar vs. State of U.P. And others*<sup>29</sup>; has very elaborately dealt with the fundamental rights guaranteed to the children under Article 21A of the Constitution of India vis-a-vis the teachers. The Court while relying upon *Avinash Nagra v. Navodaya Vidyalaya Samiti and others*<sup>30</sup> (with regard to the place of teachers in students life); *State of Maharashtra v. Vikas Sahebrao Roundale and others*<sup>31</sup> (declining to lower teacher training standards); *Ram Sharan Maurya and others v. State of U.P. and others*<sup>32</sup> (right to quality education vis-a-vis prescription of high examination levels) and *Devesh Sharma v. Union of India and others*<sup>33</sup>, (recruitment of best qualified teachers for providing quality education) held that fundamental right to education envisages quality education for all children. The Court further stated that quality education is possible

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<sup>29</sup>. 2025 (4) ADJ 462

<sup>30</sup>. (1997) 2 SCC 534

<sup>31</sup>. (1992) 4 SCC 435

<sup>32</sup>. (2021) 15 SCC 401

<sup>33</sup>. (2023) 18 SCC 339

only if the appointment of the most meritorious teachers is ensured. The Court, keeping in mind the interplay of various provisions and the fundamental rights, held that Article 21A of the Constitution has made education an irrevocable feature of the constitutional conscience. Article 21A vests the fundamental right to education in all children and the Right to Education Act, 2009 provides a detailed mechanism for implementation of the aforesaid right.

[54] In *Sharda v. Dharmpal*<sup>34</sup> the Supreme Court held that where there is a conflict between fundamental rights between two parties, the right which would advance public morality or public interest would prevail. The same view has been taken by the Supreme Court in *Modern Dental College & Research Centre and others v. State of M.P. and others*<sup>35</sup>.

[55] Keeping in mind the above observations and the fact that the Constitutional Court owe a duty to protect the rights of the children, it would be apt to reinforce that the actions of the State must align with the constitutional guarantees provided to the children, keeping in mind the directive principles as enshrined in Article 45 of the Constitution of India. The Constitution has cast a permanent obligation on the State to fulfill the right to education of children. Besides this the State under the Constitution and various statutes is also a guarantor of rights and guardian of the children therefore before taking any executive action, the State must ensure that any order/direction/circular issued by the State or any authorized officer under any delegation of power under the Act, 2009 must be in compliance with the constitutional guarantees towards the children. If such orders/directions/circulars are not in consonance with the constitutional guarantees then the same are certainly amenable to judicial scrutiny.

### **CONCLUSIONS:**

[56] In light of the findings and the opinion given above, the Special Appeal is allowed. The order of the learned Single Judge dated 06.07.2023 is set aside. There shall be no order as to cost.

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<sup>34</sup>. (2003) 4 SCC 493

<sup>35</sup>. (2016) 7 SCC 353

**Order in SPLA-189 of 2026; State of U.P. & others vs. Seema Yadav and others:**

As the judgment dated 23.08.2023 was passed in light of the benefits granted in Writ C No. 9773 of 2023, Sakshi and 77 others vs. State of U.P. and others, therefore, in light of the above observations and findings, the appeal is also allowed. Order dated 23.08.2023 is set aside. There is no order as to cost

**Order in SPLA-188 of 2026; State of Uttar Pradesh & Others vs. Shalini & Others:**

As the judgment dated 07.07.2023 was passed in light of the benefits granted in Writ C No. 9773 of 2023, Sakshi and 77 others vs. State of U.P. and others, therefore, in light of the above observations and findings, the appeal is also allowed. Order dated 07.07.2023 is set aside. There is no order as to cost

**Order in SPLA- 186 of 2026; State of U.P. and 4 others vs. Ruvendra Kumar and 45 others**

As the judgment dated 07.07.2023 was passed in light of the benefits granted in Writ C No. 9773 of 2023, Sakshi and 77 others vs. State of U.P. and others, therefore, in light of the above observations and findings, the appeal is also allowed. Order dated 07.07.2023 is set aside. There is no order as to cost

**Order in SPLA-970 of 2024 State of UP & 4 others vs. Deepak Kumar and 29 others**

As the judgment dated 18.09.2023 was passed in light of the benefits granted in Writ C No. 9773 of 2023, Sakshi and 77 others vs. State of U.P. and others, therefore, in light of the above observations and findings, the appeal is also allowed. Order dated 18.09.2023 is set aside. There is no order as to cost

**Order in SPLA-190 of 2026 State of U.P. and 2 others vs. Mayank Yadav**

As the judgment dated 19.07.2023 was passed in light of the benefits granted in Writ C No. 9773 of 2023, Sakshi and 77 others vs. State of U.P. and others, therefore, in light of the above observations and

findings, the appeal is also allowed. Order dated 19.07.2023 is set aside. There is no order as to cost.

**Order in SPLA-184 of 2026 State of U.P. and 4 others vs. Satakshi Parasari and 45 others**

As the judgment dated 03.08.2023 was passed in light of the benefits granted in Writ C No. 9773 of 2023, Sakshi and 77 others vs. State of U.P. and others, therefore, in light of the above observations and findings, the appeal is also allowed. Order dated 03.08.2023 is set aside. There is no order as to cost.

**Order in SPLA-187 of 2026 State of U.P. and 5 others vs. Km. Archana Shukla & 2 others-**

As the judgment dated 06.09.2023 was passed in light of the benefits granted in Writ C No. 9773 of 2023, Sakshi and 77 others vs. State of U.P. and others, therefore, in light of the above observations and findings, the appeal is also allowed. Order dated 06.09.2023 is set aside. There is no order as to cost.

**Order in SPLA-185 of 2026; State of U.P. and 3 others vs. Divya Dwivedi and others:**

As the two Executive order (circulars) have been held to be transgressing the Regulations, 2014 with regard to providing additional chances to clear exams, therefore in light of the observations and findings the appeal is allowed. The order dated 19.01.2024 is set aside. There is no order as to costs.

**(Kunal Ravi Singh, J.) (Mahesh Chandra Tripathi, J.)**

**Dated 20<sup>th</sup> February, 2026**

Sumit S