



Ganesh Shanker Srivastava, Ashwani Kumar Yadav, Ashutosh Pandey and Praveen Kumar Mishra, learned advocates for petitioners, S/Sri K. Shahi, Anil Kumar Singh and Aakash Rai, learned advocates for UP Education Services Selection Commission, Sri Ashish Kumar Nagvanshi, Sri D.P. Singh and Sri Rajesh Kumar Tiwari, learned advocates appearing for State.

2. Number of petitioners in present bunch of writ petitions are in long drawn litigation and are waiting for outcome of their grievances which commenced when they have participated in a direct recruitment process initiated for appointment of numbers of Trained Graduate Teachers (T.G.T.) in different subjects in numbers of Non-Government Inter Colleges/High Schools in State of U.P. by Uttar Pradesh Secondary Education Services Selection Board (hereinafter referred to as "Board") through an Adv. No. 01/2013, in which they were declared successful.

3. Some of petitioners being aggrieved that since number of posts. so advertised, were reduced and due to that they were not allotted colleges, therefore, they filed a Writ A No. 22128 of 2018 (Sanjay Kumar and others vs. State of U.P. and others) that in terms of Rule 12 of U.P. Secondary Education Services Selection Board Act, 1982 read with Rules of 1998, the Board ought to have proposed a longer select panel (but not larger than 25%) in the said recruitment process.

4. The said writ petition was disposed of by an order dated 26.11.2018 and its relevant part is mentioned below :-

"The issue raised lies in a narrow ambit. The conduct of recruitment by the Board is regulated by the provisions of the U.P. Secondary Education Services Selection Board Act, 1982 read with Rules 1998. Rule 11 regulates determination of vacancy while Rule 12 provides for procedure for direct recruitment. Sub-Rule 8 of Rule 12 clearly provides that in the case of vacancy on the post of lecturer or teacher L.T. Grade. The select panel shall be larger (but not larger than 25%) of the number of vacancies. Rule 12(8) of the Rules 1998 is reproduced hereinafter:-

"The Board then, for each category of post, prepare panel of those found most suitable for appointment in order of merit as disclosed by the marks obtained by the after adding the marks obtained under sub-clause (4) or sub-clause (5) above, as the case may be, with the marks obtained in the interview. The panel for the post of Principal or Headmaster shall be prepared institution-wise after giving due regard to the preference given by a candidate, if any, for appointment in a particular institution whereas for the posts in the lecturers and trained graduates grade, it shall be prepared subject-wise and group-wise respectively. If two or more candidates obtain equal marks, the name of the candidate who has higher quality points shall be placed higher in the panel and if the marks obtained in the quality points are also equal, then the name of the candidate who is older in age shall be placed higher. In the panel for the post of Principal or

Headmaster, the number of names shall be three times of the number of the vacancy and for the post of teachers in the Lecturers and Trained graduate grade, it shall be larger (but not larger than twenty-five per cent) than the number of vacancies.

Practical exigencies like non-availability of notified vacancies would not justify the Board from adopting a procedure which is in derogation of what is laid down by the statutory scheme itself.

There is no discretion vested in the commission to provide a panel on the post of teachers in lecturer and L.T. Grade, which may be less than the number of vacancies. Vacancy itself has been defined under Rule 2(e) of the Rules 1998 in following words:-

"Vacancy" means a vacancy arising out as a result of death, retire- ment, resignation, termination, dismissal or removal of a teacher or creation of new post or appointment or promotion of the incumbent to any higher post in a substantive capacity."

Once the vacancy gets notified to the Board it would be possible for the Board not to draw a panel of candidates which is below the number of posts notified to it. The extend of discretion available to the Board is only to increase the number by making it larger than the notified vacancies up to the maximum limit of 25%. It is only to this extend that discretion can be exercised by the Board. However, the vacancy which have already been advertised cannot be reduced

by the Board so as to prepare a panel which may be less than the number of notified vacancies.

Law is otherwise settled that mere selection of a candidate does not confer indefeasible right to be appointed by virtue of law laid down by the Apex Court in *Shankarsan Dash vs Union Of India* 1991 AIR 1612.

Court is also not impressed by the argument of Sri P.N. Saxena that a fresh exercise has been got conducted by the Board to ascertain the vacancy for recruitment to the post of teacher in Hindi. At this stage when the examinations have already been got conducted and only a select is to be prepared by the commission, at its own level, it would not be justified in revising the vacancy by calling upon the District Inspector of Schools to submit a fresh report. In case this is allowed to happen the process itself would be rendered unworkable, inasmuch as the recruitment itself would not be concluded for various reasons, including subsequent reports which may contradict the earlier vacancy position already notified to the Board. In the facts and circumstances noticed above, I am of the considered opinion that the Board is under an obligation to draw a select panel against the advertised vacancy, which could be larger than the total number of vacancies already advertised subject to a maximum of 25% over and above it. A mandamus accordingly is issued to the Board to draw a revised select panel in accordance with Rule 12(8), with in a period of 4 weeks' from the date

of presentation of the certified copy of this order. The concern of the Board otherwise stands protected inasmuch as the appointment to selected candidates would be restricted to the actual number of posts which are available for being filled up and mere drawing of select panel would not pose any difficulty. The Board is also expected to act further in accordance with law for the purposes of filling of existing vacancies.”

5. The Board has approached a Division Bench of this Court against above referred order by way of filing a Special Appeal (D) No. 354/2019 and the Division Bench has dismissed it vide order dated 15.10.2019. For reference, relevant part of said judgment is quoted below :-

“It is not the case of the appellant that the total number of actual substantive vacancies has been reduced and those are required to be excluded from the process of selection. The only submission is that the request has been received for preparing a panel of selected incumbents in less number being the vacancies concerned occupied by ad-hoc appointees or by the persons regularized in service. Under the scheme of Rules of 1998, a process of selection is required to be made against the substantive vacancies. The determination of vacancies is required to be made by excluding factitious vacancies such as ad-hoc appointment or the appointment made contrary to the Rules.

The Board had recommendation for substantive vacancies and if those are intact, no reason is available to reduce the strength of panel. The preparation of panel of persons less than the substantive vacancies available is apparently bad. It would also be appropriate that the direction given by learned single Bench is only to the extent of preparing a panel in accordance with the provisions of sub-Rule (8) of Rule 12 of the Rules of 1998 with liberty to the appointing authority to make appointment only against the existing substantive vacancies.

The direction given by the learned single Bench as such is in consonance to the Rules of 1998 and that does not require any interference in appellate jurisdiction.”

6. In pursuance of above judgment, a select list was published in 2018 and according to all petitioners, they fell within the said select list and within declared number of posts also at the stage of advertisement issued in the year 2013.

7. According to petitioners, still they were not allotted colleges and when nothing happened in contempt petitions, they were constrained to approach this Court in the year 2024 i.e. after awaiting for about 5 years.

8. Pleadings were exchanged and present cases mainly have two issues, i.e. firstly whether explanation given by Board/State, that vacancies were not correctly identified as well as none of juniors were appointed, would be a plausible explanation for reducing

vacancies and secondly whether any timeline could to be fixed for a recruitment process since it was considered in the year 2013 and now we are in 2025?

9. Learned advocates for petitioners have stressed upon a judgment passed in earlier round of litigation that no option was left with the Board not to offer appointment to petitioners since they fell within subsequent select list and any explanation being vague is liable to be rejected.

10. Learned advocate for respondents have referred documents that number of posts were not verified and wrongly included in the list of vacancies and such error came into light later on after careful scrutiny and accordingly, appointments were made against clear, vacant and subsequent vacancy only.

11. Heard learned counsel for parties and perused the records.

12. As referred above, it is now much under dispute that number of posts were advertised, result was declared for reduced number of posts and on basis of above referred judgment of this Court, another select list was published and petitioners being despite fell within it, were not allotted schools.

13. Now the Court has to consider whether explanation given by the respondents that number of posts earlier advertised remained unverified due to various reasons assigned in detail in a long list (subject and institution wise) has substance. A brief chart being part of a communication dated 28.01.2023 (from Secretary, Secondary Education Selection

Board to Director, Education (Secondary)), being relevant is extracted hereinafter :-

क्र०सं०	विज्ञापित विषय	विज्ञापित पदों की संख्या	सत्यापित पदों की संख्या	असत्यापित पदों की संख्या
1.	हिन्दी	909	720	189
2.	संस्कृत	472	369	103
3.	सामाजिक विज्ञान	806	656	150
4.	जीव विज्ञान	239	187	52
5.	शारीरिक शिक्षा	194	170	24
6.	गृह विज्ञान	135	113	22
7.	उर्दू	35	27	08
8.	कला	267	243	24
9.	विज्ञान	929	713	216
10.	अंग्रेजी	848	676	172
11.	गणित	1036	805	231
12.	वाणिज्य	45	36	09

14. As referred above, total number of verified posts are 4715 and number of unverified posts are 1200 and specific details are also provided in subject wise list annexed with personal affidavit such as चयन बोर्ड द्वारा चयनित, सत्यापन का कारण अंकित नहीं, पद भरा हुआ, पद दो बार अधियाचित है, सत्यापित/असत्यापित सूचना अप्राप्त, स्थानान्तरण हो चुका है, सामान्य जाति का कोटा पूर्ण, दोबारा अंकित हो गया, नवीन जनशक्ति में पद समाप्त या पद कम, मृतक आश्रित कोटे से पद भरा इत्यादि. Such details being part of a personal affidavit and without any contrary material could not be considered to be false. It is true that such exercise ought to be undertaken when initially number of posts were advertised. It appears that it were advertised in haste without proper verification of clear and vacant posts.

15. There is no material to dispute reasons assigned in the chart and details referred above and once there are no vacant posts, claim of petitioners cannot be accepted.

16. The Supreme Court has reiterated in **Sudesh Kumar Goyal vs. State of Haryana and others, 2023 INSC 842 : (2023) 10 SCC 54** that even a selected candidate has no indefeasible right of appointment and there must be a timeline to conclude a process and in present case, recruitment process was initially initiated in 2013 i.e. about 12 years ago and last supplementary select list was published in 2018 i.e. 7 years ago and to continue such process after so many years could not be reasonable. Relevant paragraph of Sudesh Kumar (supra) is quoted below :-

“18. In view of the reasoning given by the respondents for appointing only 13 selected candidates leaving the appellant who was at Sl. No. 14, we are of the opinion that the respondents have justified the appointments and have not acted in an arbitrary manner. The respondents have acted fairly and logically without any malice against the appellant. Thus, on the touchstone of the decision cited on behalf of the appellant himself, we do not find any arbitrariness on the part of the respondents. Therefore, the decision of the Division Bench of the High Court is not liable to be disturbed on the above count, more particularly when the appellant has not acquired any indefeasible right to be appointed because he qualified in the selection process.

20. This apart, as may be noticed that the procedure for selection of superior/higher judicial service officers by direct recruitment from the Bar was initiated by the Punjab and Haryana High Court way back in the year 2007 and now we are in the year 2023 meaning thereby that 16 years have passed by in between. It would be a travesty of justice to keep open the selection process for such a long time and to direct at this stage to make any appointment on the basis of a selection process initiated so far back. For this additional reason also, we do not deem it proper to interfere with the impugned judgment and order [Sudesh Kumar Goyal v. State of Haryana, CWP No. 16211 of 2009 sub nom Keshav Kaushik v. State of Haryana, 2010 SCC OnLine P&H 5043] of the High Court.”

17. Accordingly, present bunch of writ petitions are **dismissed**.

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**(2025) 3 ILRA 913**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: ALLAHABAD 26.03.2012**

**BEFORE**

**THE HON'BLE ASHWANI KUMAR MISHRA, J.**  
**THE HON'BLE JAYANT BANERJI, J.**

Writ C No. 15023 of 2024

**M/S Anandeshwar Agro Foods Pvt. Ltd.**  
**...Petitioner**

**Versus**  
**The State of U.P. & Ors. ...Respondents**

**Counsel for the Petitioner:**