

3. By the impugned orders dated 05.11.2020 and 10.11.2020 the Secretary, Examination Regulatory Authority, U.P. Prayagraj, has rejected the representation of the petitioners preferred pursuant to the directions of this Court by its order dated 27.08.2020 passed in Writ Petition No.4609 of 2020.

4. It is the case of the writ petitioners that they possess the educational qualification of BA along with BTC (Distance Education) and have been working as Shiksha Mitra since the year 2006. The petitioners stood eligible for applying for the post of Assistant Teacher. Accordingly, the petitioners applied under the Assistant Teachers Recruitment Examination, 2019 under OBC category. The petitioners were declared successful having obtained 92 marks and 96 marks respectively as against the minimum qualifying marks of 90 prescribed for OBC/SC/ST candidates. The petitioners contend that they have not been awarded 25 marks as weightage in the selection for 69000 posts of Assistant Teachers as they mentioned BTC in place of BTC through distance education mode. The petitioners contended that they satisfy the eligibility condition for appointment as Assistant Teacher and their candidature could not be rejected simply on the ground that in the online application form BTC by distance education mode had not been disclosed. They contend that no distinction can be drawn between BTC an BTC (by distance education mode). The petitioners nevertheless made representation on 03.06.2020 for correction in the online application form and for grant of the weightage admissible to Shiksha Mitra but no action has been taken. Consequently, the petitioners approached this Court by means of Writ (A) No.4609 of 2020 which was

disposed by vide order dated 27.08.2020 with direction to decide the claim/representation of the petitioners.

5. The Secretary, Examination Regulatory Authority, U.P. Prayagraj, under the impugned orders has rejected the representations of the petitioners which are under challenge in the writ petition.

6. The main thrust of the argument of the learned counsel for the petitioners is that each of the petitioners fulfill the eligibility criteria for appointment of Assistant Teachers. They have obtained BTC qualification from distance education mode which is duly recognized by the respondents. Their candidature ought not to have been rejected on the ground that BTC had been mentioned in the online form instead of BTC (distance education). It is not the case that the petitioners are not eligible and in such view of the matter the writ petition is liable to be allowed and the petitioners candidature as Assistant Teacher pursuant to the Assistant Teacher Recruitment Examination, 2019 are liable to be considered. There is no difference between BTC and BTC (distance education mode) and in any case the mistake on the part of the petitioners cannot be said to be deliberate and intentional so as to derive any advantage. It is also argued that the respondents have adopted pick and choose policy in dealing with similarly circumstanced candidates, while the candidature of same of the equally circumstanced candidates have not been cancelled the candidates of the petitioners have been cancelled. Details of some candidates have been given in Para No.29 of the writ petition.

7. Per Contra, Sri P. D. Tripathi, learned counsel representing the

Respondent Nos.3 & 4 as also the learned Standing Counsel has supported the decision of the Secretary, Examination Regulatory Authority/ Respondent No.2 by submitting that the orders rejecting the claim of the petitioners is entirely justified and does not suffer from any infirmity warranting the interference of the Court.

8. Heard learned counsel for the parties and perused the record. From the perusal of the impugned orders dated 05.11.2020 and 10.11.2020 it is borne out that the representations of the petitioners have been rejected by verbatim reasoning. The Secretary, Examinations Regulatory Authority, U.P., Prayagraj, has heavily relied upon the Government Order dated 01.12.2018 laying down the modalities of filling up the online application form and the precautions that were required to be taken by the candidates particularly when it was clearly laid down that no amendment could be permitted. Much reliance is also placed upon the declaration submitted by the petitioners. Reliance has also been placed to clause 17 of the Government Order dated 01.12.2018 which gave the petitioners the opportunity to rectify any mistake made in their online application forms by submitting fresh online forms after depositing the requisite fee in respect thereof within the time provided. Reliance has also been placed upon decision dated 08.07.2020 of this Court rendered in *Writ Petition No.4677 of 2020 (Rekshar Khan Vs. State of U.P. & others)* and connected 17 writ petitions, decision dated 30.05.2013 passed in *Special Appeal No.834 of 2013 (Ram Manohar Yadav Vs. State of U.P. & others)* decision dated 30.05.2020 rendered in *Writ Petition No.4070 of 2020 (Ashutosh Kumar Srivastava and 60 others Vs. State of U.P. & others)* to reject the representation of the petitioners.

9. The Court has gone through the decisions relied upon by the Respondent No.2 while rejecting the representations of the petitioners by the impugned orders. The decisions are clearly distinguishable and the ratio laid down therein apply to the facts and circumstances akin to that case. In the opinion of the Court the ratio laid down are not applicable to the case of the writ petitioners herein inasmuch as the case of *Rukshar Khan (supra)* related to a case where the petitioner had omitted to mention in the online application form, a claim for a reservation category which the Court did not permit as it would introduce a new aspirant in the concerned reservation pool and in all probability may lead to displacement of a candidate already selected. The decision in the *Special Appeal No.834 of 2013, Ram Manohar Yadav (Supra)* related to filling up incorrectly the online application form which is not the case at hand. The third case of *Ashutosh Kumar Srivastava (Supra)* related to incorrectly filling up the online forms in respect of the marks obtained by the petitioners in the previous examinations which is also not be case at hand.

10. In the opinion of the Court the Respondent No.2, Secretary, Examination Regulatory Authority, has not dealt with the core issue as to whether the non-disclosure by the petitioners of their eligibility qualification BTC (by distance education) would dis-entitle them to the allotment of the district as per their choice as also to the weightage admissible to Shiksha Mitra. The candidates were required to disclose their training qualification acquired. The training qualifications acquired recognized were as follows:-

1. D. El. Ed. (BTC) from an institution recognized by NCTE and affiliated to the State Government.

2. *Shikshamitra (Trained through distance education method and graduate Shikshamitra passed two years BTC).*

3. *D. Ed. (Two Years Diploma in Education from NCTE recognized Institute).*

4. *D. Ed. Special Education (Rehabilitation Council of India (RCI) recognized Institute)*

5. *Specialized BTC (Operated in Uttar Pradesh Recognized by NCTE).*

6. *Two Year BTC Urdu Special Training (Operated in Uttar Pradesh)*

7. *B. El. Ed. (4-year Bachelor of Elementary Education)*

8. *B. Ed. - Bachelor of Education (from U.G.C./NCTE recognized institution)*

11. There are no instructions to the candidates that the candidates were required to fill the information corresponding to the serial numbers which were to be treated as the category code. The fact remains that the candidates were required to be BTC irrespective of wherefrom and by what mode they had obtained the training qualification.

12. The Court finds no substance in submission of the learned counsel for the respondents that the petitioner did not fill in the information that they were Shiksha Mitra having obtained the BTC qualification by distant education made in their online application form and on account of the said non disclosure the

software did not identify them as Shiksha Mitra and consequently, did not extend the weightage admissible to them. In the opinion of the Court, it is the faulty programming and the petitioners have satisfied the eligibility criteria could not be denied the appointment. However, the Court upholds the stand of the respondents that no correction could be made in the online form of the petitioners.

13. In view of the above, the writ petition is **allowed in part**. The impugned orders dated 05.11.2020 and 10.11.2020 (Annexure Nos.7 & 8) to the writ petition respectively) are quashed to the extent it denies the relief of including the names of the petitioners in the list of selected candidates for allotment of the District for appointment as Assistant Teachers. The impugned orders so far as it holds that no correction can be made in the online application forms are upheld. The respondents shall now proceed to include the names of the petitioners in the list of successful candidates for allotment of the Districts and allot the Districts as per their preference and quality point marks and issue the appointment letters accordingly. The entire exercise shall be done within a period of two months from the date of service of certified copy of the order of this Court upon the concerned respondents.

(2023) 5 ILRA 1537

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 29.03.2023

BEFORE

THE HON'BLE PRAKASH PADIA, J.

Writ-A No. 49679 of 2003

Mahendra Shukla

...Petitioner

Versus

State of U.P. & Ors.

...Respondents