

(1996) 11 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 17939 of 1996

Ajay Kumar

APPELLANT

Vs

Director of Higher Education and Others

RESPONDENT

Date of Decision : 28-11-1996

Acts Referred:

Uttar Pradesh Higher Education Services Commission (Amendment) Act, 1992 —
Section 13(2), 13(4)

Uttar Pradesh Higher Education Services Commission Act, 1980 — Section 11, 12,
13, 14, 15

Uttar Pradesh State Universities Act, 1973 — Section 31(3)

Citation : (1997) 1 UPLBEC 337

Hon'ble Judges : D.P. Mohapatra, C.J.; R.R.K. Trivedi, J.; R.A. Sharma, J

Bench : Full Bench

Advocate : R.N. Singh, for the Appellant; S. C., for the Respondent

Judgement

R.A. Sharma, J.—A Division Bench has referred the following question for decision by a Full Bench :

Whether the U. P. Higher Education Service Commission has jurisdiction/power to transfer a teacher from one Degree College to another?

2. Sri R. N. Singh, learned counsel for the petitioner has at the thresh hold submitted that the question, which has been referred to the Full Bench should be enlarged and reframed so as to include the question relating to the power of the Director, Higher Education, U. P. (hereinafter referred to as the Director) to transfer a teacher, because the petitioner in his writ petition has claimed relief for appropriate direction to both the Director and the U. P. Higher Education Service Commission (hereinafter referred to as the Commission) to transfer him from Shamli to Allahabad and even if the Commission is found to have no such jurisdiction the petitioner cannot get any relief even against the Director, because of the observations made in the order of reference to the effect that the Director also has no such power. Learned counsel for the respondents have no objection if

the question is reframed so as also to include the question relating to the power of the Director to transfer a teacher from one College to another. We have accordingly reframed the following question for decision by the Full Bench :

Whether the U. P. Higher Education Service Commission and/or the Director, Higher Education, U. P. have jurisdiction/power to transfer a teacher from one Degree College to another?

3. The relevant facts of this case are as follows :

The petitioner was appointed by a letter of appointment dated 19-1-1980 as lecturer (Agri. Engg.) in R. K. Degree College, Shamli, Muzaffarnagar (hereinafter referred to as the shamli College) on the recommendation of the Commission. Petitioner joined the Shamli College pursuant to the said appointment letter on 23-1-1990 and has been working as such in the said College since then. By an advertisement dated 12-7-1994 the Commission invited applications for the post of lecturer (Agri. Engg.) in Kulbhaskar Ashram Degree College, Allahabad (hereinafter referred to as the Allahabad College). Thereafter, the petitioner made an application dated 27-9-1995 before the Director for his transfer from Shamli College to Allahabad College. He also obtained no objection certificate from the management of his College. The Allahabad College also agreed for his transfer from Shamli to Allahabad subject to the approval of the Director. As there was no response from the Director, the petitioner sent fresh representation to him Another representation before the Commission was also submitted by the petitioner for his transfer. Getting no response from the Director and the Commission, the petitioner filed writ petition for writ of mandamus directing the Director and the Commission to transfer/post him as a lecturer in the Allahabad College and to decide his representation in connection therewith.

4. The submission of the learned counsel for the petitioner before the Division Bench, which heard the writ petition, was that the Commission has implied/ ancillary power to order for transfer of a teacher from one Degree College to another. In support of his contention the learned Counsel relied on decision of a Division Bench in Dr. Suman Agarwal v, U. P. Higher Education Service Commission and Ors. Writ Petition No. 16283 of 1989, decided on 11-9-1995, wherein it was held that Commission has the implied power to transfer a teacher from one College to another with the consent of the managements of both the Colleges. The Division Bench, which heard the writ petition, however, did not agree with the decision in the case of Dr. Suman Agarwal v. U. P. Higher Education Service Commission (supra) and has accordingly referred the question mentioned before for decision by a Full Bench.

5. Sri R. N. Singh, learned counsel for the petitioner has made two submissions, namely, (i) the Commission and the Director have implied/ ancillary power to transfer a teacher from one Degree; College to another and Hi) the Director's power to transfer a teacher from one college to another can be inferred from Sub-sections (2) and (4) of Section 13 of the U. P. Higher Education Service

Commission Act, 1980 (hereinafter referred to as the Commission Act). Learned counsel for the respondents have disputed the said contentions.

6. Before the Commission Act was enacted the appointment of teachers in Degree Colleges affiliated to various Universities used to be made by the management of the colleges on the recommendation of the Selection Committee in accordance with the provisions of the U. P. State Universities Act, 1973 (hereinafter referred to as the Universities Act). After the enactment of the Commission Act, it is no more open to the college management to appoint a teacher except on the recommendation of the Commission. Section 12 of the Commission Act, being relevant in this connection, is reproduced below :

"12. Procedure for appointment of teachers.- (1) Every appointment as a teacher of any college shall be made by the management in accordance with the provisions of this Act and every appointment made in contravention thereof shall be void.

(2) The management shall intimate the existing vacancies and the vacancies, likely to be caused during the course of the ensuing academic year, to the Director at such time and in such manner, as may be prescribed.

Explanation.- The expression "academic year" means the period of 12 months commencing on July, 1.

(3) The Director shall notify to the Commission at such time and in such manner as may be prescribed a subject wise consolidated list of vacancies intimated to him from all colleges.

(4) The manner of selection of persons for appointment to the posts of teachers of a college shall be such, as may be determined by regulations :

Provided that the Commission shall with a view to inviting talented persons give wide publicity in the State to the vacancies notified to it under Sub-section (3):

Provided further that the candidates shall be required to indicate their order of preference for the various, colleges vacancies wherein have been advertised."

After receiving requisition from the Director the Commission commences the selection process by holding interview with or without written examination of the candidates and sends a list containing the names of the candidates found most suitable by it arranged in order of merit to the Director. The Director thereafter, having due regard to the order of preference indicated by the candidates, sends the names of the candidates from the list to the management of the colleges for appointment in the vacancies intimated to the commission. Section 13, which contains the relevant provisions in this connection is quoted below :

"13. Recommendation of Commission. - (1) The commission shall, as soon as possible, after the notification of vacancies to it under Sub-section (3) of Section 12 hold interview (with or without written examination) of the candidates and send to the Director a list recommending such number of names of candidates

found most suitable in each subject as may be, so far practicable, twenty-five per cent more than the number of vacancies in that subject. Such names shall be arranged in order of merit shown in the interview, or in the examination and interview if an examination is held.

(2) The list sent by the Commission shall be valid till the receipt of a new list from the commission.

(3) The Director shall having due regard in the prescribed manner, to the order of preference if any indicated by the candidates under the second proviso to Sub-section (4) of Section 12, intimate to the management to name of a candidate from the list referred to in Sub-section (1) for being appointed in the vacancy intimated under Sub-section (2) of Section 12.

(4) Where a vacancy occurs due to death, resignation or otherwise during the period of validity of the list referred to in Sub-section (2) and such vacancy has not been notified to the Commission under Sub-section (3) of Section 12, the Director may intimate to the management the name of a candidate from such list for appointment in such vacancy.

(5) Notwithstanding anything in the preceding provisions, where the abolition of any post of teacher in any college, services of the person substantively appointed to such post is terminated the State Government may make suitable order for his appointment in a suitable vacancy, whether notified under Sub-section (3) of Section 12 or not in any other college, and thereupon the Director shall intimate to the management accordingly.

(6) The Director shall send a copy of the intimation made under Sub-section (3) or Sub-section (4) or Sub-section (5) to the candidate concerned."

Section 14 imposes legal obligation on the management to appoint a candidate whose name has been intimated by the Director and if the management fails to make such an appointment, Director can take action u/s 15.

7. Section 11 of the Commission Act, which has enumerated the powers and duties of the commission is also reproduced below :

"11. Powers and duties. - The commission shall have the following powers and duties, namely,-

(a) to prepare guidelines on matter relating to the method of recruitment of teachers in colleges;

(b) to conduct examinations where considered necessary, hold interviews and make selection of candidates for being appointed as such teachers;

(c) to select and invite experts and to appoint examiners for the purposes specified in Clause (b);

(d) to make recommendation to the management regarding the appointment of selected candidates;

(e) to obtain periodical returns or other information from colleges regarding strength of the teaching staff and the appointment, dismissal, removal, termination or reduction in rank of teachers therein;

(f) to fix the employments and travelling and other allowance of the experts and examiners;

(g) to administer the funds placed at the disposal of the Commission;

(h) to perform such other duties and exercise such other powers as may be prescribed or as may be incidental or conducive to the discharge of the above functions.

8. Analysis of the provisions of the Act clearly indicates that power of the Commission is merely to select the most suitable candidates for appointment in vacancies intimated to it u/s 12 and to send to the Director a list containing the names of the selected candidates arranged in order of merit. After the Commission has sent the list containing the names of the selected candidates, its function is over. It does not have any power express or implied to appoint a teacher in a college or to transfer him from one college to another. Even Section 11 which has defined the powers and duties of the Commission does not contain any such power. The incidental power referred to in Section 11 (h) is the power which is incidental or conducive to the powers/functions mentioned in other clauses of the said section. It neither expressly nor by necessary implication confers any power on the Commission to appoint a teacher in a college or to transfer him from one college to another. After the selected candidate is appointed in a college by its management he becomes employee of the college. The law does not give any power to the Commission or even to the director to interfere with the working of the teacher so appointed.

9. As regards the implied power Supreme Court in Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd., has laid down as under :

"It is well established rule of construction that power to do something essential for the proper and effectual performance of the work which the statute has in contemplation may be implied. See C. Raies on Statute law (5th Edition) p. 105."

Rule 19-A of the U. P. General Clauses Act, 1904, which contains the similar provision is also reproduced below :

"19-A. Ancillary powers. - Where by any Uttar Pradesh Act, a power is given to a person, officer or functionary to do or enforce the doing of any act or thing, all such powers shall be deemed also to be given as are necessary to enable that person, officer or functionary to do or enforce the doing of the act or thing "

Therefore, only such a power, which is necessary to effectuate a power expressly granted can be implied or inferred. The power expressly conferred by the Commission Act on the Commission is the power of selection of the teacher on

the requisition of the Director. For exercising such a power of selection the power to transfer is neither necessary nor is relevant. The question of transferring a teacher from one Degree College to another arises only after he has joined the college on the recommendation of the Commission. After making the recommendation the Commission becomes functus officio. Therefore, the Commission does not have any express or implied/ancillary power to transfer a teacher from one Degree College to another. The decision of the Division Bench of this Court in *Dr. Suman Agarwal v. U. P, Higher Education Service Commission and other* (supra), which has held that the Commission has implied power to transfer a teacher from one college to another does not lay down correct law and is, therefore, overruled.

10. Even the Director does not have any power to transfer a teacher from one college to another. The Director has very limited powers, functions under the Commission Act. Sub-section (3) of Section 12 requires the Director to notify to the Commission subject wise consolidated list of vacancies intimated to him under Sub-section (2) of Section 12. After the Director receives the list containing the names of the selected candidates from the Commission he has to intimate the names of the selected candidates to the management of the colleges for appointment in the vacancies intimated under Sub-section (2) of Section 12. It is the management, which appoints the teacher, whose name is intimated by the Director. The Director himself cannot appoint a teacher. If a candidate, whose name is intimated by the Director to the management is not appointed, the Director can take appropriate action against such management u/s 15. Section 15, which gives the power to the Director to enforce his order, is as follows :

15. Inquiry Director. - (1) Where any person is entitled to be appointed as a teacher in any college in accordance with Sections 12 to 14, but he is not so appointed by the management within the time provided therefore, he may apply to the Director for a direction under Sub-section (2).

(2) On receipt of an application under Sub-section (1) the Director may hold an inquiry, and if he is satisfied that the management has failed to appoint the applicant as a teacher in contravention of the provisions of this Act he may by order require-

(a) the management to appoint The applicant as a teacher forthwith and to pay him salary from the date specified in the order and

(b) the principal of the college concerned to take work from him as a teacher ;

(3) The amount of salary, if any, due to such teacher shall, on a certificate issued by the director, be recovered by the Collector as arrears of land revenue."

11. The Director u/s 15 has the power to force the management to appoint a candidate recommended by the Commission. But inspite of the said provisions the Director does not have power to transfer a teacher. The Commission Act and the rules and regulations framed there-under do not confer any such power on

the Director. Such a power cannot also be inferred or implied, because it is not at all necessary and relevant for exercising the powers and discharging the functions conferred on the director by the said Act.

12. Under the Commission Act, Commission has the power of selection of teachers and the teachers so selected are to be appointed by the management of colleges. In this State different managing committees are managing different colleges. Even in the instant case two colleges at Shamli and Allahabad are being managed by two different Committees of Managements. After a teacher is appointed in the College by its management, he becomes an employee of that college. There is no provision in the Commission Act or rules and regulations framed thereunder providing for transfer of a teacher from one college to another. Even the Universities Act does not confer any power on the commission and/or the Director to transfer a teacher from one college to another. There is also no State level service of the teachers of degree colleges. In such situation transfer of a teacher from one college to another results in cessation of his employment in the former college and new appointment in the latter college. Such a power is not conferred by the law on the Director and/or the Commission.

13. In this State, apart from degree colleges, there are large number of Intermediate colleges also, which are governed by U. P. Intermediate Education Act, 1921 and Regulations framed thereunder. The said Act and the Regulations also contain provisions for regulating the manner of appointment of teachers and the conditions of their service including their transfer from one college to another. In 1982 the State enacted an Act known as U. P. Secondary Education Service Commission and the Selection Board Act, 1982, which prohibits the management of the Intermediate colleges from appointing any teacher except on the recommendation of the Secondary Education Service Commission. This Act also contains provisions regarding intimation of vacancies by the college for selection of suitable candidates, sending of the names of selected candidates by the commission to the appropriate authority and the appointments of the selected candidates by the management of the college. Supreme Court in *Om Prakash Rana Vs. Swarup Singh Tomar and Others*, has laid down that after the enactment of the Secondary Education Service Commission Act, a teacher of an Intermediate College cannot be transferred from one college to another in spite of the specific provisions for transfer contained in the Intermediate Education Act and the Regulations framed thereunder. Relevant extracts from the said judgment of the Supreme Court are reproduced below :

"The scheme under the Education Act envisages the appointment of a Principal in relation to a specific College. The appointment is in relation to that College and to no other. Moreover, different Colleges may be owned by different bodies or organisations so that each Principal serves a different employer. Therefore, on filling the office of a Principal to a College a new contract of employment with a particular employer comes into existence. There is no state-level service to which the Principals are appointed. Had that been so, it would have been possible to

say that when a principal is transferred from one college to another no fresh appointment is involved. But when a Principal is appointed in respect of a particular college and is thereafter transferred as a Principal of another College it can hardly be doubted that a new appointment comes into existence. Although the process of transfer may be governed by considerations and move through a machinery different from the considerations governing the appointment of a person a bini to as Principal, the nature of the transaction is the same, namely, that of appointment, and that is so whether the appointment be through direct recruitment, through promotion from the teaching staff of the same institution or by transfer from another institution.

x x x x x x We have already explained that in its essential nature the transfer of a teacher from one institution to another implies the cessation of his appointment in the former institution and his appointment to the latter."

14. In the aforesaid case Supreme Court has held that the Secondary Education Service Commission Act contemplates the appointment of teacher on the recommendation of the Commission in relation to a specific College and after the teacher joins the College he becomes the employee of that College and if he is transferred, it amounts to cessation of his employment in the former College and a new appointment in the new College. It was accordingly held that a teacher of an intermediate College cannot be transferred from one College to another in spite of the specific provisions contained in the Intermediate Education Act and the Regulations framed thereunder conferring such a power of transfer.

15. The above decision of the Supreme Court has been followed in General Officer Commanding-in-Chief and Another Vs. Dr. Subhash Chandra Yadav and Another, wherein Supreme Court held that the employee of one Cantonment Board cannot be transferred to another Cantonment Board inasmuch as service in the Cantonment Board is not the centralised service or the service at the state-level.

16. Both the U. P. Higher Education Service Commission Act and the U. P. Secondary Education Service Commission Act contained identical provisions and have been enacted on the same pattern and with the same object. The law laid down by the Supreme Court in Om Prakash Rana v. Swaroop Singh Tomar (supra) will, therefore, be applicable to the teachers of Degree Colleges also.

17. In this connection, it may also be mentioned that the U. P. Secondary Education Service Commission and Selection Board Act has also been amended in 1992 adding the following proviso to Section 16 :

"Provided further that the appointment of a teacher by transfer from one institution to another, may be made in accordance with the regulations made under clause "c" of Sub-section (2) of Section 16-G of the Intermediate Education Act, 1921."

In view of the said amendment now a teacher of an Intermediate College can be

transferred from one College to another in accordance with the provisions contained in the Intermediate Education Act and the Regulations framed thereunder. But no such provision, providing for transfer of teachers from one Degree College to another has been made in the Commission Act. In absence of any such provisions conferring the power of transfer, it is not open to the Director or the Commission to transfer a teacher from one College to another. The first contention of the learned counsel for the petitioner is, therefore, rejected.

18. The second point raised by the learned counsel for the petitioner relates to the power of the Director under Sub-section (4) of Section 13 of the Commission Act to transfer a teacher from one College to another. Elaborating this point, the learned counsel submitted that as the list sent by the Commission to the Director remains valid in view of Section 13 (2) till the new list is received from the Commission, it is open to the Director to direct the management of any college under Sub-section (4) of Section 13 to appoint a candidate from the list in a vacancy occurring "due to death, resignation or otherwise" even after said candidate has been appointed as a teacher in another college. In this connection, learned counsel contended that the name of the selected candidate continues to remain in the list even after his appointment in a college pursuant to the intimation of the Director. It is pointed out that if it is held that after a candidate from the select list is appointed in a college, his name stands removed from the list, it will cause great hardship and injustice to those candidates, who are appointed temporarily because thereafter they cannot be appointed in substantive vacancies, in support of his argument that temporary appointments are also to be made from the list sent by the Commission, the learned counsel relies upon two aspects, namely, (i) after the amendment of the Commission Act by the U. P. Higher Education Service Commission (Amendment) Act, 1992, the Act contains no provision providing for temporary appointment even though temporary appointments have got to be made in various contingencies, and (ii) the words "or otherwise" in phrase "where vacancy occurs due to death resignation or otherwise" u/s 13 (4) contemplate a temporary/officiating vacancy. It is not possible to agree with the learned counsel.

19. When the Commission Act was enacted in 1980, it contained provisions in Section 16 enabling the management to appoint teachers on ad hoc basis if the Commission does not recommend the names of suitable candidates within specified time. That apart, the Government of U. P. Has issued u/s 31-A first Removal of Difficulties Order, 1982 empowering the management to appoint teachers on ad hoc basis in vacancies mentioned therein. This Order was valid only for one year and, therefore, expired in January, 1983 in which month second Removal of Difficulties Order, 1983 was issued by the Government enabling the management to make ad hoc appointments of teachers. That Order was also valid for one year and has expired in January, 1984. Thereafter only Section 16 remained under which the management could appoint a teacher on ad hoc basis. Section 16 has also now been deleted by the Amendment Act of 1992. The position, therefore, at present is that the Commission Act does not provide

for and deals with the appointment of teachers on temporary/officiating basis. When by the Amendment Act the provisions enabling the temporary appointment of teachers have been deleted, it is not proper to infer such a power from another provision unless such a power is conferred expressly or has to be inferred by necessary implication. But that is not the position here. It is admitted that the Act does not contain any provision providing for temporary appointment, but what is contended is that the power to appoint a teacher temporarily has to be inferred from Sub-section (4) of Section 13 as a matter of necessity, because temporary appointments have to be made from time to time in various contingencies, such as, leave vacancy. This submission is unacceptable. Section 31 (3) (a) of the Universities Act, which is quoted below, enables the management to make temporary/ officiating appointment of teachers in the college.

"31 (3) (a) In the case of teacher of the University other than Professor, the Vice-chancellor in consultation with the Dean of the Faculty and Head of the Department concerned and an expert nominated by the Chancellor in that behalf and in the case of a teacher of an affiliated or associated college, the Management in consultation with an expert nominated by the Vice-Chancellor in that behalf may make officiating appointment in a vacancy caused by the grant of leave to incumbent for a period not exceeding ten months without reference to the Selection Committee ; but shall not fill in other vacancy or post likely to last for more than six months without reference."

It is true that Section 30 of the Commission Act, which is reproduced below, gives overriding effect to the said Act.

"30. The Act to have overriding effect,-The provisions of this Act shall have effect notwithstanding to the contrary contained in Uttar Pradesh State Universities Act, 1973 or the Statutes or Ordinances made thereunder."

But Section 2 (a) of the Commission Act the appointments made under Sub-section (3) of Section 31 of the Universities Act have been excluded from the purview of the Commission Act. The said Section 2 (a) is as under:

"2. Definitions. - In this Act-

(a) "appointment" in relation to a teacher does not include an appointment under Sub-section (3) of Section 31 of the Uttar Pradesh Universities Act, 1973."

It is therefore open to the management to appoint teachers on temporary/officiating basis u/s 31 (3) (a) of the Universities Act. When Legislature has itself provided for the temporary appointments of the teachers, it will not be justified on the part of the Court to infer such a power from another provision by implication.

20. The words "or otherwise" in the phrase "where a vacancy occurs due to death, resignation or otherwise" cannot be construed so as to include a temporary vacancy. These words are liable to be construed ejusdem generis and,

therefore, they have to be limited to the same kind of vacancies as those specified. A vacancy, which occurs due to death or resignation is a permanent/substantive vacancy. Therefore, the words "or otherwise" have to be mean the permanent/substantive vacancies, whatever may be the cause of their origin. As illustration, it maybe mentioned that a vacancy, which may arise on account of the dismissal, or removal of a teacher from service will be covered by Sub-section (4) of Section 13 although not expressly referred to therein, because of the words "or otherwise". Such a construction is necessary because the Commission Act does not provides for temporary appointments after its amendment in 1992 by which Section 13, as it now stands, has also been substituted. When the Act itself does not deal with the temporary appointment, it is not open to the Court to infer the power to make temporary appointment from Section 13 (4) because such an interpretation will be contrary to the object and the scope of the Commission Act.

21. In this connection, it may be mentioned that the Courts while interpreting the word "otherwise" have in cases, applied the rule ejusdem generis ; but in some other cases, the rule of contextual interpretation has been adopted when construction of the said word ejusdem generis will run counter to the purpose and scope of the Act. For example in *George Da Costa Vs. Controller of Estate Duty in Mysore, Bangalore*, , the word "otherwise" in the phrase "by contract or otherwise" was construed by the Supreme Court ejusdem generis by holding as under :

"In the context of the section the word "otherwise" should, in our opinion, be construed ejusdem generis and it must be interpreted to mean some kind of legal obligation or some transaction enforceable at law or in equity which, though not in the form of a contract, may confer a benefit on the donor."

But in *S. Prakasha Rao and another Vs. Commissioner of Commercial Taxes and others*, , the rule of contextual interpretation was preferred. Relevant extracts from the said judgment, in this connection, are reproduced below :

"Para 2 (e) indicates that President himself may create a local cadre instead of inquiring the State Government to organic local cadre. For instance. Para 3 (6) empowered the President to create local cadre for the city of Hyderabad. Similarly, under proviso to para 3 (1) the President may require the State Government to create a local cadre within a zone. So the phrase "or constituted otherwise" cannot be understood dehors the scheme of the Presidential order. No doubt in common parlance, the word "otherwise" is of "wide" amplitude. This Court in *Kavalappara Kottarathil Kochuni and Others Vs. The State of Madras and Others*, . Subba Rao, J., as he then was, speaking per majority in paragraph 50 while construing the word "otherwise" held it must be confined to things analogous to right or contract such as lost grant, immemorial user etc. The word "otherwise" in the context only mean whatever may be the origin of the receipt of maintenance. The ratio thereunder cannot be extended in the contextual circumstances obtainable on the facts in this case This contextual

interpretation to the words "or otherwise" was given by this Court. Therefore, the phrase "constituted otherwise" is to be understood in that context" and purpose which Article 371-D and the Presidential Order seek to achieve. If the interpretation given by the appellants is given acceptance it amounts to giving blanket power to the State Government to create local cadres at its will tending to defeat the object of Article 371-D and the Presidential Order. Accordingly, we have no hesitation to reject the interpretation of wider connotation. The ratio in these decisions does not render any assistance to the appellants."

22. In the present case, if the words "or otherwise" are construed to include the appointment in temporary/officiating capacity also, that will be contrary to the purpose and scope of the Commission Act, because the said Act is confined to selection of teachers by the Commission for substantive appointments and the matter in connection therewith. Under Sub-section (2) of Section 12, managements are required to "intimate the existing vacancies and the vacancies likely to be caused during the course of the ensuing academic year to the Director" and the Director under Sub-section (3) of said Section notifies to the Commission subject wise consolidated list of vacancies intimated to him from all the colleges. The vacancies, which are intimated by the management to the Director and which are notified by the latter to the Commission are the permanent vacancies. The Commission Act and the rules and regulations framed thereunder have laid down elaborate procedure for the selection and appointment of the teachers in the colleges on permanent basis ; but so far as the temporary appointments are concerned, no procedure was laid down and the selection and appointment of a teacher temporarily was left to the management of the colleges, Section 16, which has been deleted in 1992, empowered the management to appoint a teacher on ad hoc basis if the Commission failed to recommend the name of suitable- candidate within specified time. The said section did not provide any procedure for selection. Similarly the two Removal of Difficulties Orders issued in 1982 and 1983 {which had already lapsed} also did not lay down any procedure for selection of a teacher for appointment on ad hoc basis excepting that the management has to make such appointment in consultation with an expert, nominated by the Vice-Chancellor of the University to which the concerned college is affiliated. Therefore the Commission selects candidates for their appointment in permanent vacancies. The Commission thereafter sends the list containing the names of the selected candidates for their appointment in permanent vacancies. The management has to appoint selected candidates in the substantive vacancies which have been intimated by it to the Director u/s 12 (2). The whole exercise u/s 13 by various functionaries mentioned therein is related to the selection and the appointment in permanent/substantive vacancies.

23. Whichever rule of interpretation is applied in the present case, the result remains the same. If the words "or otherwise" are construed ejusdem generis they have to be confined to the same type of vacancies as those specified. The vacancies which occur due to death or resignation are the vacancies of

permanent nature. Therefore, these words have to be construed so as to mean permanent vacancies only. If contextual interpretation is given to these words, they have to be understood and construed with reference to the context and the purpose of the Commission Act. As mentioned earlier, the scope and purpose of the Act is the appointment of the teachers in permanent vacancies in Degree Colleges on the recommendation of the Commission. In that view of the matter these words have to be construed so as to include permanent vacancies only. Therefore, the Director u/s 13 (4) of the Commission Act can intimate the name of the selected candidate from the list for this appointment in permanent vacancy only.

24. It has already been mentioned hereinbefore that after a candidate from the list is appointed in a college he becomes an employee of the college and there comes into existence relationship of Master and Servant between the candidate so appointed and the college and neither the Commission nor the Director has the power to interfere with the working of the teacher so appointed in the said college. Therefore, the candidate, who has already been appointed as a teacher in a college is no more available for being appointed/posted in another college. For the reasons given above the submissions made by the learned counsel for the petitioner cannot be accepted.

25. Our answer to the question as re-framed is as under :

26. The U. P. Higher Education Service Commission and/or the Director, Higher Education, U. P., have no jurisdiction/power to transfer a teacher from one Degree College to another.