
(2009) 09 AHC CK 0124
In the Allahabad High Court
Case No : Special Appeal No. 1306 of 2009

Akhilesh Kumar Pandey and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 04-09-2009

Acts Referred:

Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Services of Teachers) Rules, 1978 — Rule 4(2)(b)

Citation : (2009) 09 AHC CK 0124

Hon'ble Judges : Chandramauli Kumar Prasad, CJ and A.P.Sahi, J

Final Decision : Dismissed

Judgement

1.This appeal questions the legality of the judgment and order of the learned Single Judge dated 12.8.09 whereby the learned Single Judge has allowed the writ petition and held that the appellant no.1 respondent Akhilesh Kumar Pandey, did not possess the minimum qualification for appointment as a Head Master of a Junior High School, as per provisions of U.P. Basic Education Act, 1972 read with the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules 1978 (hereinafter referred to as the Rules). Accordingly, his appointment has been quashed.

2. The issues raised in this special appeal for all intent and purposes, have been decided against the appellant by the two Division Bench decisions of this Court in the case of Smt. Madhu Bala Upadhyaya Vs. State of U.P. and other being Special Appeal No. 395 of 2007 decided on 19.1.2009 and in the case of Committee of Management Vs. State of U.P. and others reported in 2009(1) ADJ 331. However, since the same legal submissions have again been advanced before us, therefore, we are called upon to answer the dispute raised on the facts of the present case as well.

3. The dispute is with regard to the selection and appointment of the appellant no.1 Akhilish Kumar Pandey as Head Master in Shitla Devi Balika Vidyalaya, Junior High School Darangar (Kara) Kaushambi. There is no dispute that the said

institution is governed by the 1972 Act read with 1978 Rules referred to herein above. The post of Head Master of the Institution fell vacant on account of the retirement of the earlier incumbent on 30.6.95. The vacancy remained unfilled for a fairly long time with no permanent incumbent having been selected. Ultimately the Basic Education Officer, Kaushambi who is the authority competent under the aforesaid Rules, extended permission to the committee of management appellant no.2 to proceed to fill up the said vacancy through direct recruitment. It is alleged that the vacancy was advertised and a selection was held by a selection committee duly constituted under the provisions of the said Rules and the recommendations of the selection committee were ultimately approved by the Basic Education Officer dated 15.9.2005 whereby the appellant no.1 Akhilesh Kumar Pandey came to be appointed as Head Master of the Institution.

4. The respondent writ petitioner Smt. Gyanwati Devi claiming herself to be the senior most teacher of the institution and holding charge of Head Mistress contends that the then Manager of the Institution Devendra Kumar Shukla, who has also contested the matter before the learned Single Judge, appointed his own sister Smt. Urmila Devi on the said post inspite of the fact that it was the respondent writ petitioner who was entitled to hold charge. The said claim was decided by this court by a Division Bench in special appeal and the Basic Education Officer ultimately attested the signature of the respondent petitioner as the Head Mistress on 6.11.2003. On 7.11.2005 the said charge of the Head Mistress was forcibly taken from the writ petitioner and handed over to appellant no.1 Akhilesh Kumar Pandey who claimed regular appointment on the post in question. Aggrieved the respondent petitioner preferred the petition giving rise to this appeal, challenging the order of the Basic Education Officer dated 15.9.2005 whereby the appellant no.1 Akhilesh Kumar Pandey was approved as the Head of the Institution as well as the consequential order of appointment issued by the management on 19.9.2005.

5. The stand taken in the writ petition was that the petitioner had been functioning as the Head of the Institution and the respondent appellant had been appointed who did not even possess the minimum qualification as per rules. The matter was contested and ultimately the learned Single Judge after exchange of affidavits allowed the writ petition by the impugned judgment dated 12.8.2009.

6. We have heard Sri Ashok Khare learned senior counsel for the appellants and Dr. R.G. Padia learned senior counsel for the respondent no.4 as well as the learned standing counsel for the respondent nos. 1,2 and 3.

7. Shri Khare advancing his submissions has urged that the appellant no.1 fulfils the qualification as required for the appointment of the Head Master by way of direct recruitment in a Junior High School. He contends that such qualification is also acknowledged by the National Council for Teacher Education as contained in 2001 Regulations a copy whereof has been filed along with the affidavit filed in support of the memo of appeal. He further submits that the said qualifications

were already included under Rule 4 of the 1978 Rules which he described as illustrative and not exhaustive, and the qualification possessed by the appellant no.1 namely that of B. Ed. which was not specifically mentioned in the aforesaid rules, now stands incorporated by way of an amendment enforced by the publication of the amended rules on 12.6. 2008. He further submits that the qualification of B.Ed., which was implicit in the rules as existing at the time of the appointment of the appellant no.1, has now been expressly provided by way of an amendment which clearly discloses the intention of the legislature. He further contends that an anomalous situation has arisen on account of the view taken by the learned Single Judge inasmuch as in the same district Kaushambi and in other places of the State of U.P., there are a large number of teachers and Head Masters who continue to be engaged and appointed who possess the qualification of B.Ed. whereas the petitioner is being nonsuited. He contends that B.Ed. is a higher qualification than B.T.C. and in such a situation, there is absolutely no illegality in the appointment of the appellant no.1. He further contends that the decision with which the appellant no.1 is confronted with, had been erroneously decided keeping in view the U.P. Basic Education (Teachers) Service Rules, 1981 and, therefore, the ratio of the said decision do not in any way create any legal impediment in the continuance of the appellant no.1 on the basis of qualification possessed by him. He further submits that B.Ed is treated to be sufficient qualification for teachers who are similarly situated and not only this, the teachers appointed under the U.P. Intermediate Education Act the said qualification of B.Ed has been treated and recognised as sufficient training qualification.

8. Dr. Padia on the other hand contends that the qualification of B.Ed which is stated to be possessed by the appellant no.1 is not a qualification which makes the appellant no.1 eligible and in the absence of any training certificate of B.T.C. possessed by the appellant no.1 he could not have been appointed as the Head of the Institution. Dr. Padia relying on the decision in the case of Committee of Management Vs. State of U.P. and others reported in 2009(1) ADJ 331 (supra) contends that the aforesaid issue has already been answered and the arguments advanced on behalf of the appellants, by trying to compare the qualification of the teachers appointed under the 1981 Rules and the U.P. Intermediate Education Act 1921, have all been answered in the negative, and as such the same submission advanced, deserves to be rejected. He further submits that the recruitment under the 1978 Rules is through publication of an advertisement in at least two news papers, which was not done and the alleged advertisement was made in a totally insignificant news paper and as such the selection held on the basis of such advertisement is invalid. He further submits that the advertisement having been made only in one news paper is admitted to the appellants and in view the admitted position the order of the Basic Education Officer dated 15.9.2005 approving the selection is invalid and has been rightly quashed by the learned Single Judge.

9. Learned standing counsel submits that the matter has already been

considered by the decisions that have been cited at Bar and therefore the matter may be disposed of keeping in view the law laid down in the judgments referred to herein above.

10. Having heard learned counsel for the parties, we had called upon Sri Ashok Khare learned senior counsel to advance his submission keeping in view the law laid down by this Court in the Division Bench Judgment of Smt. Madhu Bala Upadhaya (supra). Sri Khare has urged that even though the issues raised, have been answered in the aforesaid decision as also in the decision relied upon by the learned counsel for the respondent petitioner in the case of Committee of Management Versus State of U.P. (supra), yet he would again submit that the law laid down in the said decisions proceeds on an incorrect appreciation of the legal issues raised, and since, according to his submission the law having not been laid down correctly the same deserves to be reconsidered and the matter deserves to be referred to a Larger Bench for fresh consideration.

11. For this, he contends that once the National Council for Teacher Education has acknowledged the qualification of B.Ed as a requisite training qualification for teachers of Basic Schools and the amendments were to be brought about within three years of the promulgation of the 2001 Regulation, then on the expiry of the period of three years as provided for therein, it can be safely presumed that the qualification of B.Ed is an accepted training qualification. He contends that the said qualification is a higher qualification and recognising the status of the qualification of the B.Ed., the government brought about amendments as is evident from the same and enforced w.e.f. 12.6.2008. He further contends that the ratio of the decision of the learned Single Judge in Dharamveer Singh's case reported in 2001 (42) ALR 252 which has been consistently referred to in later Division Bench judgments proceeds on an incorrect interpretation of the word "such" appearing in Rule 4(2)(b) of the 1978 Rules and such incorrect interpretation has crept in, on account of an erroneous comparison drawn with the 1981 Rules. According to him the decision in the case of Dharamveer Singh's case (supra) and the ratio of the decision therein, has been erroneously perpetuated in the later Division Bench judgments.

12. We have carefully perused the rules applicable and the judgments which have been cited at the Bar and referred to herein above.

Rule 4 of the 1978 Rules is quoted below for ready reference:

"4. Minimum qualification (1) The minimum qualifications for the post of assistant Teacher of a recognised school shall be Intermediate Examination of the Board of High School and Intermediate Education, Uttar Pradesh or equivalent examination (with Hindi and a teacher's training course recognised by the State Government or the Board such as Hindustani Teaching Certificate, Junior Teaching Certificate, Basic Teaching Certificate, or Certificate of Training).

(2) The minimum qualifications for the appointment to the post of Headmaster of a recognised school shall be as follows:

- (a) A degree from a recognised University or an equivalent examination recognised as such;
- (b) A teacher's training course recognised by the State Government or the Board, such as Hindustani Teaching Certificate, Junior Teaching Certificate, Certificate of Training or Basic Teaching Certificate; and
- (C) Three years teaching experience in a recognised school."

13. We would like to put on record that the amended Rules 2008 would not be applicable in the present controversy as the appointment of the appellant no.1 in question was admittedly made in the year 2005 when the unamended rule was in existence. The said rule clearly prescribes that the candidate should possess a teacher training course recognised by the State Government and the same has been illustrated by the words "such as" Hindustani Teaching Certificate, Junior Teaching Certificate, Certificate of Training or the Basic Teaching Certificate. The aforesaid qualification according to Shri Khare is illustrative and not exhaustive and B.Ed being recognised as a training course which is of a higher status, also stands included in the said rules. The aforesaid aspect of the matter has been dealt with in the case of Smt. Madhu Bala Upadhaya (supra) as follows:

"We have given due consideration to the contentions advanced by the learned counsel for the appellant and have considered the material on the record. The contention that analogy of the qualifications under the 1981 Rules cannot be drawn in respect of the qualifications under the 1978 Rules as the two sets of Rules are different even though both of the same applicable to junior high schools was considered by a Division Bench of this Court in Sanjay Kumar Tyagi Vs. State of U.P. and others 2005(1) A.W.C. 824. The contention that Rule 4 of the 1978 Rules is merely illustrative of the training qualifications was also advanced before the Division Bench in Sanjay Kumar Tyagi's case. The Division Bench turned down the contention and held that B.Ed. Cannot be considered as a recognised teachers training course for the purpose of minimum qualification under the 1978 Rules. The Division Bench has considered the matter in great detail and it is not necessary for us to repeat the reasoning adopted by the Division Bench which is binding upon us."

14. We have given our thoughtful consideration to the same and we find that the same view has been expressed in the decision of the Committee of Management Vs. State of U.P. reported in 2009(1) ADJ 331 (supra). Paras 26 to 32 of the aforesaid decision are quoted below:

"26. All the four respondents i.e. respondents No. 6 to 9, therefore, do not possess the training qualification of B.T.C., JTC, HTC or CT, which is one of the minimum qualification prescribed in Rule 4 and in the absence whereof vide Rule 5 of the Recruitment Rules, 1978 no appointment could have been made in a recognised junior high school. It has not been brought on record that any other training qualification was recognised by State Government as contemplated in Rule 4 of Recruitment Rules, 1978 which is possessed by the said respondents

and thus they do not satisfy the requirement of Rule 4.

27. So far as the Government Order dated 6.9.1994 is concerned, suffice it to mention that the same would not prevail over the statutory rules which do not contemplate any relaxation in the matter of minimum qualification. Moreover the learned Standing Counsel informs that the same applies to those cases where appointments were made before enforcement of Recruitment Rules, 1978

28. In these admitted facts and circumstances showing that the respondents No.6 to 9 lack minimum qualification by not possessing any certificate in respect to the recognised training course i.e. BTC, JTC, HTC or CT, in our view, the appointment of respondents was a nullity being in violation of Rules 4 and 5 of the Recruitment Rules, 1978.

29. Appointment of a person who does not possess requisite qualification prescribed in the rules is illegal since its inception. It does not confer a right upon such person to hold the post and, therefore, would not result in any advantage to such appointee. Such an appointment is nonest. Moreover, in the light of the mandate of Rule 5 of Recruitment Rules, 1978 we have no hesitation in holding that an appointment in breach of Rule 4 is prohibited and if made it is nonest.

30. If there is a provision in the statute which empowers the authorities to relax the qualification prescribed in the statute and the authority exercising such power made appointment or, depending upon the language of the statute, if appointing authority has made appointment in anticipation of relaxation of qualification prescribed in the rules where power of relaxation is vested elsewhere and ultimately such relaxation is granted, the position may be different but when the statute does not talk of any such relaxation and there is no such power, yet if any appointment is made in violation of the rules or statute prescribing a particular qualification for appointment to a particular post, such appointment would be a nullity.

31. The Apex Court in *Pramod Kumar (supra)* has clearly said in para 16 and 18 of the judgment as under:

"16. The qualifications for holding a post have been laid down under a statute. Any appointment in violation thereof would be a nullity.

18. If the essential educational qualification for recruitment to a post is not satisfied, ordinarily the same cannot be condoned. Such an act cannot be ratified. An appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularised, particularly, when the statute in no unmistakable term says so. Only an irregularity can be".

32. Earlier also a similar controversy came up before the Apex Court in *Mohd. Sartaj and another v. State of U.P. and others*, 2006(2)SCC 315 and in paragraphs 11, 19 and 21 of the judgment the Court held as under:

"11.....Thus under the Rules, the basic qualification for the post of Assistant teacher, apart .from the educational qualification, was the training qualification of the basic Teacher's Certificate or Hindustani Teacher's Certificate or Junior Teacher's Certificate or Certificate of Teaching or equivalent training course recognised by the State Government. It is an admitted position by both the parties that these qualifications are required for appointment to the post of Assistant Teacher. It is also not the case of the appellants that the academic qualifications were amended at the time of their appointment. Thus admittedly on the date of appointment, the appellants did not hold the training qualification to be appointed to the post of Assistant Teachers as prescribed under Rule 8.

19. in the present case, the appellants' case fall within the exception laid down in S.L. Kapoor's case (supra) and other supporting cases,as admittedly, the appellants were not qualified and they did not possess the B.T.C. Or Hindustani Teacher's Certificate or Junior Teacher's Certificate or Certificate of Teaching or certificate of any other training course recognised by the State Government as equivalent thereto at the time of their initial appointment. In view of the basic lack of qualifications, they could not have been appointed nor their appointment could have been continued. Hence the appellants did not hold any right over the post and therefore no hearing was required before the cancellation of their services.

21. It is settled law that the qualification should have been seen which the candidate possessed on the date of recruitment and not at a later stage unless rules to that regard permit it. The minimum qualification prescribed under Rule 8 should be fulfilled on the date of recruitment. Equivalence of degree of MoallimeUrdu, Jamia Urdu Aligarh with that of B.T.C. In the year 1994 would not entail the benefit to the appellants on the date they were appointed."

15. The submission of Sri Khare that B.Ed. being a higher training qualification cannot be discarded and it will be presumed to have been included in the 1978 Rules existing then also deserves to be rejected inasmuch as this Court after considering the Supreme Court decision, came to the conclusion that B.Ed. is a different qualification than a training qualification which stands indicated in para 51 of the decision in the Committee of Management Vs. State of U.P. (supra) which is quoted below:

"51. There is a faint argument that B.Ed. Is a higher qualification than BTC, JTC, HTC, CT etc. and, therefore, the respondents No.6 to 9cannot be said to lack requisite qualification but the said submission is noticed to be rejected for the reason that B.Ed. is a different qualification than a training qualification required for teaching of primary classes i.e. BTC, JTC, HTC or CT. This issue has been settled by the Apex Court in Yogesh Kumar and others Vs. Government of NCT Delhi and others,AIR 2003 SC 1241; P.M. Lata V. State of Karela, 2003(3) SCC 541 and Dilip Kumar Ghosh and others v. Chairman and others, 2005 AIR SCW 4500."

16. There is yet another submission advanced by Sri Khare to this effect that in view of the amended rules, 2008 it is clearly evident that the said amendment is merely clarificatory, and as a matter of fact, B.Ed. was the qualification included in the rules as existing then. The aforesaid submission has been answered by the Division Bench in the case of Smt. Madhu Bala Upadhya which is to the following effect:

"In our opinion the contention that the amendment is clarificatory does not have any merit. Substantial change in the qualification of teachers has been made by the amendment. Under Rule 4(1) as it originally existed the minimum educational qualification provided was intermediate or equivalent (with Hindi). Under the amended Rule 4(1) the minimum educational qualification provided is a Bachelors degree. Under the unamended rule a list of training qualifications recognised by two bodies the State Government or by the Basic Education Board was given. Under the amended rule the training qualifications listed in the rule maybe recognized by any of the three bodies the State government or the University Grants Commission or the Basic Education Board. Two additional training qualifications have been included in the amended rules, namely, teaching certificate and B.Ed. We also find that amendments have been made in the Rule 4(2) relating to the qualifications for appointment on the post of head master and in Rule 8 relating to the minimum age of appointment of assistant teachers and of head master. Under the unamended Rule 8 the minimum age provided for appointment as an assistant teacher was 18 years whereas under the amended provision the minimum age provided is 21 years. It thus appears that substantial changes were made by the amendment in the educational qualifications as well as in the training qualifications of assistant teachers. The amendment, therefore, dos not appear to be clarificatory. The decisions in the case of Punjab Traders and others Vs. State of Punjab and others (supra) and Chaman Singh and another Vs. Smt. Jai Kaur (supra) relate to other enactment and do not help us in interpreting the amendment of Rule 4."

17. The other submission of Sri Khare is that the National Council for Teachers Education had already provided for B.Ed. to be one of the recognised training qualifications, has been answered after considering the submissions advanced which are to the same effect as advanced before us, in the following manner:

"It was then contended that the National Council for Teachers Education has also provided the standard training qualifications for appointment for upper primary teacher (middle school) and B.Ed. is one of the recognized qualifications and, therefore, B.Ed should also be taken as a recognized qualifications under Rule 4(1). In our opinion, this contention also does not have any merit. The appointment of assistant teachers in junior high schools recognized under the 1978 Rules is governed by the 1978 Rules, which have been framed under the Basic Education Act. In view of the specific qualifications for appointment of assistant teaches in respect of junior high schools provided under the 1978 Rules these Rules would be applicable. In Basic Education Board Vs. Upendra Rai and

others (2008) 3 SCC 432 the apex court has considered the question of the applicability of the National Council for Teacher Education Act in the context of the qualification of Rule 8 of the U.P. Basic Education Teachers Service Rules, 1981. The apex court held that the National Council for Teacher Education Act deals with the teachers training institutions while U.P. Basic Education Act deals with the ordinary primary schools in U.P. Paragraph 19 of the report of the said decision is quoted below:

(1) ordinary educational institutions like primary schools, high schools, intermediate colleges and universities and (2) teachers' training institutes. The NCTE Act only deals with the second category of institutions viz Teachers' training institutes. It has nothing to do with the ordinary educational institutions like the primary school, cannot be prescribed under the NCTE Act, and the essential qualifications are prescribed by the local Acts and Rules in each State. In U.P. the essential qualification for appointment as a primary school teacher in a junior basic school is prescribed by Rule 8 of the U.P. Basic Education (Teachers) Service Rules, 1981 which have been framed under the U.P. Basic Education Act 1972. A person who does not have the qualification mentioned in Rule 8 of the aforesaid Rules cannot validly be appointed as an Assistant Master Mistress in a junior basic school."

18. It would be worth noting that in the case of Mohd. Sartaz and others vs. State of U.P. reported in 2006(2) SCC 315 which was a matter relating to the 1981 Rules it had been held that B.Ed is not a recognised training qualification for an assistant teacher. Further the aforesaid Division Bench in the case of Smt. Madhu Bala Upadhyaya has relied on the reasoning given in the decision of Sanjay Kumar Tiwagi reported in 2005 (1) AWC 824 which is to the same effect.

19. Having given a thoughtful consideration to the same we find no good reason to differ from the views taken therein as Sri Khare has been unable to advance any new submission which may warrant a reconsideration of the issues raised.

20. No novel argument was advanced as compared to the submissions raised in Smt. Madhubala's case (supra) so as to persuade us to invoke our discretion of dissent. Nothing new has been offered by way of submissions that may reflect a different position of law which might enable us to take a view contrary to what has been said in the judgments already holding the field. Existence of a separate qualification, without acknowledging a higher qualification to be either equivalent or more appropriate by the rules, cannot allow us to read into the rules more than what exists on any sound rule of interpretation. Equivalence of a qualification is a matter of expertise where the hands of the court are not free enough to be extended. On the facts of this case and the rules applicable there is nothing which may compel us in law to grant equivalence to the qualification of the appellant at par with as contained in the 1978 Rules. Academic excellence and acquisition of appropriate qualification is in the realm of expert bodies entrusted with such tasks to be supplemented by acceptance of the rule making authority. The court cannot enhance or minimise the eligibility qualifications prescribed

merely because some other qualification in its opinion is more apt. It is not open for the court to locate different qualifications, which might appear to it equivalent or a higher qualification, from that which has been mentioned in the rules framed by the employer unless permitted by the rules or under any valid supposition of law.

21. We find support for our view aforesaid from the ratio in the decision of Mohd. Shujat Ali Vs. Union of India reported in 1975 (3) SCC 76 Para 13 which is to the following effect:

".....It must be noted that the question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence, would not lightly disturb the decision of the Government. It is only where the decision of the Government is shown to be based on extraneous or irrelevant considerations or actuated by mala fides or irrational and perverse or manifestly wrong that the Court would reach out its lethal arm and strike down the decision of the Government..."

22. The words "such as" occurring in Rule 4 (2)(b) of the 1978 Rules appears at first flush to be illustrative but they are ultimately exhaustive in the sense that they do not contemplate admitting any other qualification which is genetically different in exactitude from the ones contained therein. Qualitatively B.Ed might be a teachers training qualification but it is not considered or accepted as the equivalent or alternative qualification as described under the Rules. B.Ed was not one of the qualifications mentioned and it is for this reason that the legislature later on amended the rules in 2008 to include B.Ed also as one of the recognised qualifications. This further strengthens the basis that B.Ed was not a recognised qualification prior to the amendment and as such no retrospective existence of the qualification can be presumed by fiction or interpretation.

23. The subsequent amendment in 2008 cannot be, in the given circumstances of the present case, construed to have been intended to be included previously. The intention of the rule making authority is not spell out to that extent in any form upon a plain reading of the rule. The words "such as" do not indicate the inclusion of any future intendment and relate to the then existing qualification only.

24. We may put on record that the Full Bench of our Court in the case of Rana Pratap Singh Vs. State of U.P. reported in 1995 ACJ 200 has laid down the law that a decision need not to be referred to a Larger Bench by a coordinate bench merely because the matter was badly argued and there was some fallacy in the reasoning adopted by the earlier decision. The exceptions to this rule were also

laid down that the remedy is to assail the judgment in a higher court of appeal and not by way of a reference. We are bound by the observations of the aforesaid Full Bench decision of this court as contained in. Paras 16 and 17 which are quoted below:

"16. On this aspect another relevant judicial pronouncement comes in *Ambika Prasad V. State of U.P.* (AIR 1980 SC 1762). There, in the context of the U.P. Imposition of Ceilings on Land Holdings Act, 1961, while dealing with the question as to when reconsideration of a judicial precedent is permissible, Krishna Iyer, J. so aptly put it " Every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent.

17. Further, "It is wise to remember that fatal flaws silenced by earlier rulings cannot survive after death because a decision does not lose its authority "merely because it was badly argued, inadequately considered and fallaciously reasoned" (*Salmond Jurisprudence*, page 215, 11th Edition)."

25. Therefore, keeping in view the law laid down therein and the issue involved in the present controversy, we do not find any error which may warrant a reference of the Division Bench judgments in the case of *Smt. Madhu Bala Upadhyaya* (supra), the decision in the case of *Committee of Management Vs. State of U.P.* (supra) or the judgment in the case of *S.K. Tiyaagi Vs. State of U.P.* (supra). Judicial discipline therefore compels us not to deviate for the sake of unreasoned dissatisfaction. The urge is repetitive and nothing new.

26. On the facts of the present case we find that the learned Single Judge has taken notice of the rules and the law laid down by this Court in respect thereto and has arrived at a conclusion on a consideration of the matter which in our opinion does not call for any interference by this Court in the exercise of our jurisdiction under Chapter VIII Rule 5 of the Allahabad High Court Rules.

27. The special appeal is devoid of merits and is accordingly dismissed.