
(2003) 09 AHC CK 0178

In the Allahabad High Court

Case No : Special Appeal No. 159 of 2001 Alongwith Special Appeal Nos. 177 to 185, 188-89, 209, 239-40, 242 to 52, 255-56, 258 to 260, 263, 266 to 268, 272 to

Anand Narain Singh

APPELLANT

Vs

U.P.Secondary Education Services Selection Board,Allahabad
and Others

RESPONDENT

Date of Decision : 29-09-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 10, 12, 18, 33C(2)
Uttar Pradesh Secondary Education Services Commission and Selection Boards Rules,
1995 — Rule 12, 5

Citation : (2003) 09 AHC CK 0178

Hon'ble Judges : Tarun Chatterjee, CJ and R.K.Agrawal, J

Final Decision : Partly Allowed

Judgement

R.K. Agrawal, J.—All these special appeals have been filed against the judgment and order dated 14th February, 2001, passed by the learned Single Judge in Civil Misc. Writ Petition No. 31980 of 1998, Anand Narain Singh v. U.P. Secondary Education Services Selection Board, Allahabad and others, and other connected writ petitions, wherein challenge to the selection of the Head of Private High Schools (X Class) and Intermediate College (XII class) was made.

2. Brief facts are Prior to the enactment of the U.P. Secondary Education Service Commission and Selection Board Act, 1982 (hereinafter referred to as 'the principal Act?'), selection for the posts of Heads of the educational institutions and the teachers were governed by the provisions of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as 'the Intermediate Act?'). Under the Intermediate Act, as selection committee was constituted by the Committee of Management managing the institution. The appointment could be made only after the prior approval of the concerned District Inspector of Schools. After some time, the appointments were to be made on the basis of the

recommendations made by the selection committee consisting of experts nominated by the educational authorities. Minimum qualifications for the Head and the teachers in an institution have been prescribed in Appendix A to Regulation 1 of Chapter II framed under the Intermediate Act. However, with the coming into force of the principal Act, selections were entrusted to a Commission in order to ensure that good candidates may be appointed. Rules were framed by the State Government in the year 1983. However, the present selections have been held under the U.P. Secondary Education Service Commission and Selection Board Rules, 1998 (hereinafter referred to as 'the Rules'). The principal Act provided for setting up of a Commission for making appointment of the Head of an institution. In order to obviate the difficulty faced by the ad hoc teachers and the Principals/Heads of the institution, who have been continuing on the post for a long time and to bring an end to ad hocism, amendments were made in the principal Act, firstly, in the year 1985 by which Section 31A was inserted regularizing certain appointments. Another amendment was made in the principal Act in the year 1991, inserting Section 33A regularizing some more ad hoc appointments. It was enforced on 7th August, 1993. In the year 1993, by an amendment in the principal Act, constitution of four Regional Selection Boards was provided for making selections. It also introduced Section 33B regularizing certain more ad hoc appointments. However, in the year 1995, by way of an amendment in the principal Act, which was enforced with effect from 28th December, 1994, the four Regional Selection Boards, established by the 1993 amendment, were abolished and one Commission for the entire State was provided. Again, in the year 1998, an amendment was made in the principal Act, which was enforced with effect from 20th April, 1998. Now, the selection process has been entrusted to the U.P. Secondary Education Service Board (hereinafter referred to as 'the Board') in place of the Commission. It also inserted Section 33C in the principal Act by which ad hoc teachers and heads who were appointed not later than 6th August, 1993, were sought to be regularized.

3. The State Government framed the Rules which came into force on 8th August, 1998. The Board published advertisements on 12th August, 1998 and 24th December, 1999 inviting applications for direct recruitment to the posts of the teachers and the heads of the institution. The advertisement for the heads of the institution, unlike teachers, is regionwise. The candidates were to be considered regionwise and the results were also to be declared regionwise. Rule 12 of the Rules provides allocation of marks. Subrule (5) of Rule 12 provides the manner in which the Board shall allocate the marks in respect of the selection for the posts of the Headmasters and the Principals. It provides that 60% marks on the basis of quality point specified in Appendix D, 20% for having experience more than the required experience out of which 1 mark for each research paper published with a maximum of 4 marks and 2 marks for each year of such experience with a maximum of 16 marks and 10% for having doctorate degree. However, in the note subrule (5) it has been provided that for the purpose of calculating experience, the service rendered as Headmaster of a Junior High

School or as Assistant Teacher in a High School/Intermediate College shall be counted in the case of selection of Headmaster and for the selection of Principal, the service rendered as Headmaster of a High School or as a Lecturer shall only be counted. It further provided that the provision of subrule (4) of Rule 12 regarding certificate of experience shall mutatis mutandis apply.

4. The vacancies for the Heads of the institutions, i.e., Headmasters and Principals, are filled by direct recruitment. Any candidate having the minimum qualification can apply. He has to indicate the choice of the institution. Apart from these candidates applying directly, the Board is also required to consider the name of the two seniormost teachers of the institution concerned. These two seniormost teachers need not apply but they are considered for that institution. But they can apply for other institutions. Writ petitions were filed by the persons who were working as ad hoc Principals and the seniormost teachers on the ground that the cut off date, i.e. 6th August, 1993, fixed by the 1998 amendment, for regularizing the ad hoc Principals/teachers is arbitrary, discriminatory and violative of Article 14 of the Constitution of India, 1950. The further challenge is on the ground that the advertisements exclude the candidates entitled to be considered for selection and permits candidates not so entitled, as the advertisements were not in conformity with the Appendix A of Regulation 1 of Chapter II of the Regulations framed under the Intermediate Act. Another ground which was pressed for challenging the advertisements, was that the advertisement for the Heads of the institution, unlike the teachers, is regionwise and the declaration of the result is also regionwise, which is violative of Articles 14 and 16 of the Constitution. Validity of subrule (5) of Rule 12 was also challenged on the ground that it is unreasonable and discriminatory as it gives undue importance to educational qualifications and gives no importance to the service record. The manner of allocation of marks and the selection process were also challenged. Since the Act did not provide for any reservation for the post of the Head of the institution for backward class or scheduled caste or scheduled tribe candidates, the advertisement was also challenged on the ground of not providing for any reservation being contrary to the provisions and in violation of the U.P. Public Service (Reservation for Scheduled Caste, Scheduled Tribe and other Backward Class) Act, 1994 (hereinafter referred to as 'the Reservation Act').

5. The learned Single Judge formulated the following 15 points for determination :

(i) Reservation for backward for backward classes is provided for the post of teachers but not for the post of heads of the institutions. Should there be reservation for the post of heads of the institutions? Do heads of institutions form one cadre?

(ii) The 1998 amendment Act has substituted new Section 33C. It regularizes services of adhoc teachers and heads appointed not later than 6th August, 1993 (or prior to 78 1993, the date of the 1993 amendment Act) on certain conditions.

Is this cut off date arbitrary or discriminatory ? Is it liable to be struck down ? Should this cut off date be shifted to 20th April, 1998 the date of enforcement of the 1998 amendment Act?

(iii) What is minimum qualification for appointment as a head of an institution ? Is it the one defined in Appendix A of the Intermediate Regulations or has it been modified by the note to the Rule 12(5) Minimum qualification of experience prescribed in the two advertisements inviting applications are in conformity with note to the Rule 12(5) but not with Appendix A of the Intermediate Regulations. Are these advertisements legal ?

(iv) Should the vacancies be marked separately for every recruitment year and be filled separately ?

(v) Which law should apply for filling up the vacancies the one applicable at the time of occurrence of vacancies; or the one applicable at the time of advertisement; or the one at the time of Selection.

(vi) The Board has taken the total marks to be allotted under different heads as 500 and has allocated 10% of the same namely 50 marks for interview. Was it permissible for the Board to begin with total of 500 marks ? Should the Board allot marks from 100 so that interview can only be of 10 marks ?

(vii) Rule 12(5) (ii) of the Rules states that 20% of marks are to be given for having experience more than the required experience. Does it give any importance to service record ? Is it illegal, as no importance has been given to service records ?

(viii) The Board has adopted different procedure for allotting 20% under Rule 12(5) (ii) between the direct applicants and the two seniormost teachers. It has seen the service records of the two seniormost teachers, but not of the direct applicants. This has been done under the guidelines issued by the Board. Are these guidelines valid ? Was this procedure permissible ?

(ix) Rule 12(5) of the Rules explains how marks are to be allotted. 71% marks can be given on academic qualifications. Are they unreasonable on the ground that they give undue emphasis on academic qualifications ?

(x) Rule 12(4) explains how marks are to be allotted while selecting teachers allocates only 4% marks for doctorate degree in contrast to 10% marks or doctorate degree and further 4% marks for published research (total 14%) for the heads. Is Rule 12(5) illegal on this account ?

(xi) Many candidates have two post graduate degrees. Has the Board given benefit of two postgraduate degree to such candidates ?

(xii) Selection for head of institution has been made regionwise. The result is also so declared. Is it permissible to make selection regionwise ?

(xiii) Rule 12(5) (i) states that 60% marks are reserved on quality points to be

calculated on the basis of Appendix D of the Rules. The total marks were 500 and as such 300 marks could be allotted on quality points. The maximum marks that can be allotted under Appendix D of the Rules are less than 300. Has the Board rightly upscaled the quality points marks to 300?

(xiv) The Rules have been framed in Hindi. Their authoritative translation has also been published. At the time of selection, there was inconsistency between Appendixes of the two versions for calculating quality point marks under Rule 12(5)(i). The quality points marks have been allotted according to Hindi version. Was it correct ? Which version should have prevailed : the Hindi one or the English one ?

(xv) During arguments of these writ petitions, the State Government notified a "SHUDHI PATRA/corrigendum" dated 17 12001 correcting the English version of Appendixes of the Rules. Now the English version is same as the Hindi one. Has the State Government power to do so ? Now, can the results be set aside ?

6. So far as Point No. 1 is concerned, the learned Single Judge held that there is no illegality in not providing reservation on the post of head of the institutions as the State itself has treated each institution as different, providing reservation for teachers only. The heads of the institutions are neither in one cadre nor even so treated by the State Government. All heads of different institutions have different employers and are in different cadres. The State Government has rightly not provided any reservation amongst the heads. He further held that neither post of all the heads nor all posts of teachers in different institutions can be clubbed together. While holding so the learned Single Judge followed the Constitution Bench decision of the Hon'ble Supreme Court in the case of Post Graduate Institute of Medical Education and Research, Chandigarh v. Faculty Association and others, 2000(3) LBESR 572 (SC); (1998) 4 SCC 1.

7. So far as the Point No. 2 is concerned, the learned Single Judge held that the cut off date, i.e., 6th August, 1993, fixed for regularizing the services of ad hoc teachers and heads who have been appointed prior to 7th August, 1993, is valid. He held that the said date is not arbitrary.

8. So far as the Point No. 3 is concerned, the learned Single Judge has held that the advertisement is valid.

9. In respect of the Point No. 4, the learned Single Judge found that the vacancies are not required to be filled up yearwise and there is nothing in the Act or in the rules providing for filling up the vacancies yearwise.

10. In respect of the Point No. 5, the learned Single Judge held that the vacancies have to be filled up according to law applicable on the date of advertisement.

11. So far as the Point No. 6 is concerned, the learned Single Judge held that it was permissible to allot marks out of 500. According to the learned Single Judge, it was for the convenience that the Board had started with 500 marks so that on

different heads for interview proper marks could be given and decimal may be avoided and in any case marks can always be mathematically scaled down to 100. It does not make any difference.

12. So far as the Point No. 7 is concerned, the learned Single Judge held that the rules and guidelines are mixture of experience and academic qualification. It gives importance to both of them and it cannot be said that it is unreasonable. Further, it cannot be set aside on the ground that it does not give any importance to the service record. The learned Single Judge found that, in fact, it does not give importance to the service record.

13. So far as the Point No. 8 is concerned, the learned Single Judge found that different procedure adopted by the Board for allotting 20% marks under Rule 12(5)(ii) between the direct applicant and the two seniormost teachers, is not illegal. According to the learned Single Judge, the Board has framed guidelines under Section 9 of the principal Act to reconcile Rule 11(2)(b) and Rule 12(5)(ii) and the Board has indicated how 20% of the marks that are meant for experience under Rule 12(5) are to be awarded. This is done on the basis of the service record of the two seniormost teachers and this procedure has been adopted in order to reconcile the aforementioned two Rules for the seniormost teachers.

14. The learned Single Judge took Point Nos. 9 and 10 together and held that if the inspiration is to come through academic experience then let it be. It is not irrelevant, and, thus, the rule cannot be termed unreasonable or arbitrary for this reason alone.

15. In respect of the Point No. 11, the learned Single Judge had held that the Board has not given the benefit of two post graduate degrees to a candidate but has in its wisdom taken percentage of that post graduate degree where higher marks were obtained, which is reasonable.

16. In respect of the Point No. 12, the learned Single Judge had held that declaring the result regionwise is not illegal. According to the learned Single Judge, there is no power in the principal Act or the Rules or the guidelines or the advertisement that the candidates of one region cannot apply for another region or they cannot submit more than one form for different region. The Board has framed guidelines under Section 9(a) of the principal Act contemplating declaration of a result for a division (or a region). The Board has considered the candidates regionwise only for convenience as the two seniormost teachers are to be considered for that institution and the Board has not prohibited any one from applying for any institution in any region of the State or for more than one region. Thus, there is no regionwise reservation and selection made regionwise is proper.

17. The learned Single Judge decided the Point Nos. 13 and 14 together. He held that declaring the result by calculating point marks according to Hindi version, was not permissible as it should be done according to the English version.

18. However, while deciding the Point No. 15, the learned Single Judge held that as the State Government had issued a corrigendum on 17th January, 2001 which has been published in the official Gazette on the same date by which the English version of the Appendices B, C and D of the Rules have been corrected and after the correction the English version is the same as the Hindi version, which is permissible. Thus, the result cannot be set aside on this ground.

19. We have heard Dr. R.G. Padia, Sri S.C. Misra, learned Advocate General, Sarvsri R.N. Singh, Ashok Khare, U.N. Sharma and R.P. Dubey, appearing for the respective parties.

20. The learned Advocate General raised a preliminary objections regarding the locus standi of the appellants to approach this Court and challenge the advertisement and the selection made by the Board on the ground that they had appeared in the interview held by the Board and having been unsuccessful, they have approached this Court under Article 226 of the Constitution of India, 1950. According to him, the appellants are the seniormost teachers who are officiating Principal of their respective institution. By virtue of Rule 11(2)(b) with regard to the post of the Principal and Head Master, the management shall also forward the names of two seniormost teachers for consideration to the post of the Principal of their institution. Since they have been called for interview and as such no injury is caused to the appellants. Most of the appellants have appeared in interview before the Board. Once a candidate has taken a chance by appearing in interview, it is not open for him to challenge the advertisement or to challenge the Rules. This Court as well as the Hon'ble Supreme Court have in various cases held that once a candidate has taken a chance of appearing before the Board at the time of selection then it is not open for him to challenge the selection proceedings or to challenge the Rules or advertisement under which he has appeared and as such the candidates have no locus standi.

21. He had placed reliance upon the following decisions :

(i) Balak Singh Kushwaha and others v. State of U.P. and others, 1999(1) LBESR 249 (All); 1998(3) ESC 1970 (All));

(ii) Madan Lal and others v. State of J and K and others, (1995) 3 SCC 486;

(iii) Om Prakash Shukla v. Akhilesh Kumar Shukla and others, 1986 (Supp) SCC 285; and

(iv) Union of India and another v. N. Chandrashekhara and others, 1998(1) LBESR 818 (SC); (1998) 3 SCC 694.

22. Dr. Padia, however, submitted that the appellants have challenged the vires of Section 33C of the principal Act and, therefore, the writ petition was maintainable. According to him, the learned Single Judge had rightly taken the view that since the vires of the provisions has been challenged very seriously, as such participation in the interview will have no significance. Moreover, the two seniormost teachers, in law, are not even required to apply and their cases are

liable to be considered in law on the basis of the statutory provisions and their service record.

He relied upon the following decisions :

(i) Raj Kumar and others v. Shakti Raj and others, 1997(1) LBESR 641 (SC); (1997) 9 SCC 527;

(ii) Deepak Sibal v. Punjab University and another, AIR 1989 SC 903;

(iii) Kamlesh Kumar Sharma v. Yogesh Kumar Gupta and others, 1998(2) LBESR 166 (SC); AIR 1998 SC 1021; and

(iv) Income Tax Officer, Alleppey v. I.M.C. Ponnose and others, AIR 1970 SC 385.

23. Having considered the rival submissions made by the learned counsel on the preliminary issue of the locus standi of the petitioners approaching this Court under Article 226 of the Constitution of India, 1950, we are of the considered opinion that even though all the seniormost teachers who are appellants before us, had appeared in the interview for the post of the Principal in their respective colleges and remained unsuccessful, since the vires of Section 33C of the principal Act has been challenged in the writ petitions filed before this Court, the writ petitions are maintainable. They cannot be ousted merely on the ground that having faced the selection committee and being unsuccessful, they are challenging the selection process. If their challenge to the validity of Section 33C is upheld then they would be entitled for regularization and selection on the post held by these officiating Principals would not arise at all. It is not necessary to deal with the various decisions cited at the Bar on this issue as it is well settled that the vires of a statutory provisions cannot be challenged before the authorities constituted under the said Act, as held by the Hon'ble Supreme Court in West Bengal Electricity Regulatory Commission v. CWSC Ltd., (2002) 8 SCC 715. In this view of the matter, the preliminary objection raised by the learned Advocate General cannot be accepted and we hold that writ petitions were maintainable.

24. Before entering into merits of the appeal, it may be mentioned here that Dr. Padia and all other learned counsel for the appellants did not press Point No. 11 decided by the learned Single Judge.

Point No. 1:

25. Dr. Padia, the learned Senior Counsel, submitted that the learned Single Judge was not correct in holding that there cannot be any reservation for the post of the Head of a High School or an Intermediate College. According to him, in all public appointments made by the Union Public Service Commission, New Delhi or the State Public Service Commission, Uttar Pradesh, reservations are always made in respect of the scheduled caste category and backward class category candidates in Union Services/State Services, as the case may be, and, thus, not providing for reservation for the scheduled caste category and

backward category, is per se violative of Article 16(4) of the Constitution of India, 1950. He further submitted that under the provisions of the Reservation Act in all appointments to be made in the State public service, the reservation provided in the aforementioned Act has to be provided, in the absence of which the advertisement is bad and is liable to be set aside. He relied upon a Division Bench decision in the case of Onkar Datt Sharma and others v. State of U.P. and others, (2001) 2 UPLBEC 1149, wherein the Division Bench has held that for the post of the head of the institution in degree/post graduate colleges throughout the State, the principle of reservation as provided under the Reservation Act will apply. According to him, the Reservation Act is a Special Act and it will prevail over the principal Act. He relied upon the observation made by the Court in the case of Onkar Datt Sharma (supra) wherein it has been held that the Reservation Act is a subsequent enactment in point of time and, therefore, shall prevail over the principal Act, which was enacted in the year 1982. According to Dr. Padia, the Division Bench had, in paragraphs 18 and 19 of the judgment, considered the judgment under appeal and had dissented from the view taken by the learned Single Judge. Thus, the judgment under appeal ought to be set aside, as the decision of the Division Bench is binding upon a coordinate Bench of the same strength.

26. He further submitted that the learned Single Judge was not right in holding that the decision of the Hon'ble Supreme Court in the case of the State of U.P. v. Dr. Dina Nath Shukla and another, JT 1997 (2) SC 467, is no longer a good law. According to him, the Hon'ble Supreme Court in the case of State of U.P. and others v. M.C. Chattopadhyaya and others, Civil Appeal No. 39 of 1998, decided on 27th February, 2002, has held that the very advertisement that was issued in the year 1995, which came up for consideration before this Court in the case of Dr. Dina Nath Shukla (supra), was the judgment which was under consideration before the Allahabad High Court in the impugned judgment. This Court in paragraph 16 having held that the law is declared and the Vice-Chancellor would work out the details and make a fresh advertisement and have the selection done in accordance with law and appointment made accordingly, we really fail to understand how anything survived for the High Court in the impugned judgment to give any direction contrary to the same. According to Dr. Padia, the Hon'ble Supreme Court had relied and followed its earlier decision in the case of Dr. Dina Nath Shukla (supra) and, thus, it is a good law. He, thus, submitted that even a single post of a Principal can be subjected to reservation.

27. He also relied upon a decision of the Hon'ble Supreme Court in the case of Dr. Suresh Chandra Verma and others v. The Chancellor, Nagpur University and others, AIR 1990 SC 2023, where the Hon'ble Supreme Court has held that if an advertisement had not been made notifying the reservation, the advertisement is bad.

28. The learned Advocate General submitted that the State Government had not

provided for any reservation for the post of the head of the institution of a High School or an Intermediate College. He submitted that the post of Principal is a single post and, therefore, the provisions of the Reservation Act shall not apply. According to him, the heads of all institutions are not treated as one cadre nor they belong to one cadre. Then employers are different, i.e., the respective Committee of Management. The Board only makes the selection of the head of the institution concerned whereas the appointment letter is issued by the Committee of Management. Thus, the Committee of Management is the employer and there cannot be any single cadre in respect of a post of which there are different employers. He submitted that even through the principal Act was enacted in the year 1982, yet in Section 10 of the said Act, the State Legislature, in its wisdom, applied the provisions of the Reservation Act only to the post of the teachers as it has not included the applicability of the Reservation Act in respect of the post of the head of the institution. Thus, he submitted that the reasoning given by the Division Bench of this Court in the case of Onkar Datt Sharma (supra) that the Reservation Act being a later Act, would prevail over the principal Act, is not correct. According to him, Article 16 of the Constitution is not attracted in the present case as the office of a Principal of a private college is not an office under the State. Article 16 of the Constitution of India, 1950 guarantees equality of opportunity in the matter relating to appointment to any office under the State and, if the office is not under the State, there cannot be any violation of Article 16 of the Constitution of India, 1950. He relied upon the following decision of the Hon"ble Supreme Court :

- (i) Post Graduate Institute of Medical Education and Research, Chandigarh v. Faculty Association and others, 2000(3) LBESR 572(SC) ; (1998) 4 SCC 1;
- (ii) Dr. Chakradhar Paswan v. State of Bihar and others, (1988) 2 SCC 214;
- (iii) Bhide Girls Education Society v. Education Officer, Zila Parishad, Nagpur and others, 1993 Supp. (3) SCC 527;
- (iv) Chetna Dilip Moghare (Smt.) v. Bhide Girls" Education Society, Nagpur and others, 1995 Supp. (1) SCC 157;
- (v) Ram Babu Lawaniya v. Basic Shiksha Parishad, U.P. and others, 1995 AWC 1089;
- (vi) Om Prakash Rana v. Swarup Singh Tomar, AIR 1986 SC 1672; and
- (vii) Ajay Kumar v. Director of Higher Education of U.P. Allahabad and others, 1997(1) LBESR 651 (All) (FB); (1997) 1 UPLBEC 337.

29. He further submitted that the Committee of Management of each school/college being the appointing authority of the respective head of the institution, is entitled/empowered to take disciplinary action against the Headmaster/Principal of their school/college and, thus, they cannot be equated with the State Government. Further, the post being a single post, the policy of reservation could not be applied as it would amount to 100% reservation, which is not permissible

under the law. So far as the decision of the Hon''ble Supreme Court in the case of M.C. Chattopadhyaya (supra) is concerned, he submitted that the Hon''ble Supreme Court was considering the advertisement made by the University of Allahabad in the year 1995 which had already been upheld with certain directions by the Hon''ble Supreme Court in case of Dr. Dina Nath Shukla and, therefore, the Hon''ble Supreme Court directed the authority to follow the said decision. According to the learned Advocate General, even in the case of M.C. Chattopadhyaya, the Supreme Court had reiterated that it has been unequivocally held in the Post Graduate Institute of Medical Education and Research (supra) by the Constitution Bench that there cannot be any reservation in respect of an isolated post and the judgment of this Court in Union of India v. Madhav S/o Sri Gajanan Chaubal and another, 1997(1) LBESR 17(SC); JT 1996 (9) SC 320, has been overruled on which judgment the Court had relied upon in the case of Dr. Dina Nath Shukla. The Hon''ble Supreme Court has further held that there cannot be a reservation on an isolated post. Thus, he submitted that the decision of the Hon''ble Supreme Court in the case of M.C. Chattopadhyaya would be of no assistance to the appellant.

30. Sri R.N. Singh, the learned Senior Counsel, submitted that in view of the decision of the Hon''ble Supreme Court in the case of Post Graduate Institute of Medical Education and Research (supra), there cannot be any reservation on an isolated post. He further submitted that the Hon''ble Supreme Court in the case of Om Prakash Rana (supra) has held that 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 organization so that each Principal serves a different employer, therefore, on filling the office of a Principal in 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. According to him, there being no State level service to which a Principal can be appointed, there is no scope for making the reservation applicable for the post of a Principal in an institution. He further submitted that the Full Bench of this Court in the case of Ajay Kumar (supra) while following the decision of the Hon''ble Supreme Court in the case of Om Prakash Rana (supra), had held that there is no State level services of the teachers of degree colleges. Thus, according to him, if there is no State level service, the principle of reservation on a single post of a Principal in an institution cannot be applied, which vital fact has been overlooked by the Division Bench in the case of Onkar Datt Sharma (supra).

31. We have given our anxious consideration to the contention advanced by the learned counsel for the parties. We find that under Section 10 of the principal Act, the Legislature in its wisdom while making amendments and incorporating the requirements for the management to intimate the number of vacancies to be filled by way of selection by direct recruitment has provided for intimating the number of vacancies to be reserved for the candidates belonging to the scheduled caste, scheduled tribe and other backward class of citizens in

accordance with the Reservation Act, but has specifically excluded the post of the head of the institution. Thus, the legislative intent is clear that in respect of the head of the institution, the State Legislature did not think it proper to provide for any reservation under the Reservation Act. In the case of the Post Graduate Institute of Medical Education and Research (supra) the Hon''ble Supreme Court has held that if there is only one post in the cadre, there can be no reservation with reference to that post, either for recruitment at the initial stage or for filling up a future vacancy in respect of post. It further held that in a single post cadre, reservation at any point of time on account of rotation or roster is bound to bring a situation where such single post in the cadre shall be kept reserved for the members of the backward class and in total exclusion of the general members of the public. Such total exclusion of the general members of the public and cent per cent reservation of the backward class is not permissible within the constitutional framework. The decisions of this Court to this effect over the dictum been consistent. Hence, until there is a plurality of the post in the cadre, the question of reservation shall not arise. The Constitution Bench approved the view taken by the Apex Court in Dr. Chakradhar Paswan's case (supra) and did not approve the reasoning of Madhav's case (supra). The decision of the Apex Court in the case of Dr. Dina Nath Shukla (supra), relied upon by Dr. Padia, had followed the decision of the Apex Court in the case of Madhav's case which (Madhav's case) has been specifically disapproved by the Constitution Bench in the case of Post Graduate Institute of Medical Education and Research (supra). In the case of Dr. M.C. Chattopadhyaya (supra) the Hon''ble Supreme Court has followed the decision of Dr. Dina Nath Shukla's case on the ground that the advertisement of 1995 which is the subjectmatter of challenge, has already been upheld by it in Dr. Dina Nath's case. However, the Hon''ble Supreme Court had reiterated that there cannot be any reservation in respect of an isolated post. Thus, there cannot be any reservation in respect of a single post.

32. So far the decision of this Court in the case of Onkar Datt Sharma (supra) is concerned, the Division Bench was considering the question of reservation in respect of the post of the Principal in Government aided private degree college/post graduate college, affiliated or associated with the State Universities. It came to the conclusion that the post of Principal in Government aided private colleges cannot be treated to be an isolated single post cadre merely because there is only one post of Principal in each college. Equality of status, uniformity in service conditions, centralised State level forum of selection through a statutory body and appointment by the management pursuant to placement order issued by the Director, are the unifying elements necessary to constitute the cadre of Principal as a State level cadre with plurality of posts. It relied upon the U.P. Higher Education (GroupA) Service, as defined the U.P. Higher Education (Group A) Service Rules, 1985, wherein various categories of post falling in the U.P. Higher Education (Group A) Service are enumerated. The post of Director of Higher Education fall in category I, while the posts of the Principal of Post Graduate College, Joint Director of Higher Education and College Development Officer fall

in category II, the Principal in Degree College, the Regional Higher Education Officer and the Deputy Director of Higher Education come in category III while Professor, Assistant Professor and Assistant Director of Higher Education come in category IV and the post of the Head of Department comes in category V and while those of Senior Lecturer, Assistant Deputy Director of Higher Education and Lecturer come in category VI, but all the categories grouped together constitute the Higher Education (Group A) Service. Thus, the service of the Principal and that of teacher in affiliated/associated colleges together constitute one service, i.e., teaching service, albeit the cadre of Principal is distinct from that of teachers. It also referred to the Statutes made under the U.P. State Universities Act, 1973 prescribing different qualifications and different scale of pay admissible to the post of Principal and teachers. Thus, it concluded that the post of a Principal of a degree college while constitute one cadre, the post of a Principal of a post graduate college will form another cadre in the service. Further, Section 12(2) of the U.P. Higher Education Service Commission Act, 1980, required the management of a degree/post graduate college to intimate the existing vacancies and all the vacancies on the post of the Principal of the degree colleges and those in post graduate colleges are separately consolidated and panels are drawn in the like manner as provided in the U.P. Higher Education Service Commission (Procedure for Selection of Teachers) Regulations, 1983. Thus, there was no provision in the U.P. Higher Education Service Commission Act or the Rules framed thereunder analogous to Section 10 of the principal Act, which excluded the applicability of the Reservation Act to the post of the head of the institution. It may also be mentioned here that there is no analogous service rules regarding the secondary education as is in the case of the higher education service. It is admitted that the appointment on the post of the Principal in an intermediate college or a Head Master in the High School is made by the Committee of Management of the respective institution and the power to take disciplinary action rests with the Committee of Management, subject to certain restrictions, like prior approval. The appointing authority, in the present case, is not the State of Uttar Pradesh or any of its authority but the private Committee of Management. All the posts of the Principal in the Government aided/unaided intermediate colleges in the State of Uttar Pradesh cannot be clubbed together for treating it as one cadre.

33. Moreover, the U.P. Higher Education (Group A) Service Rules, 1985 does not apply to the Principal of aided/unaided degree colleges/post graduate colleges as under Rule 3(e) of the aforesaid Rules "degree college" has been defined to mean an affiliated or associated college maintained exclusively by the Government for imparting instructions upto first degree level, and under Rule 3(i) of the aforesaid Rules "post graduate college" has been defined to mean an affiliated or associated college maintained exclusively by the Government for imparting instructions for the post graduate level in one or more subjects or faculties. Thus, the service rules apply only in respect of degree colleges and post graduate colleges which are maintained exclusively by the Government or in

other words the Government degree college or Government post graduate college. It does not apply to aided or unaided degree colleges or post graduate college as they are not exclusively maintained by the Government. This vital aspect was not brought to the notice of the Division Bench while holding that the post of the principal in the degree colleges or post graduate colleges formed one cadre.

34. The Hon''ble Supreme Court, in the case of Om Prakash Rana (supra) has held that the Education Act envisages appointment of a Principal in relation to a specified college and to no other and each Principal serves with different employer under the college owned by different bodies or organisation and there is no State level service to which the Principals are appointed. The Full Bench of this Court in the case of Ajay Kumar (supra) has applied the law laid down by the Hon''ble Supreme Court in the case of Om Prakash Rana to the case arising under the U.P. Higher Education Service Commission Act, i.e., in respect of teachers of the degree college also as it has held that both the U.P. Higher Education Service Commission Act and the U.P. Secondary Education Service Commission and Selection Board Act, i.e., the principal Act, contained identical provision and have been enacted on the same pattern and with the same object. The law laid down by the Hon''ble Supreme Court in the case of Om Prakash Rana will, therefore, be applicable to the teachers of the degree colleges also. The Division Bench in the case of Onkar Datt Sharma has not noticed the Full Bench decision of this Court in the case of Ajay Kumar (supra) and, therefore, the said decision is per incuriam. In this view of the matter, it cannot be said that the post of the Principal/Head Master of the institution in the Government aided/unaided intermediate colleges/high schools fall in one cadre and, therefore, the provisions of the Reservation Act would apply. Since it is a single cadre post, the principle laid down by the Hon''ble Supreme Court in the case of the Post Graduate Institute of Medical Education and Research (supra), as reiterated by the Apex Court in the case of M.C. of M.C. Chattopadhyaya would apply and the Reservation Act will not be applicable.

Point No. 2 :

35. Dr. Padia submitted that the provisions under Section 33C, as inserted by the Amendment Act, is wholly arbitrary, illegal, discriminatory and violative of Articles 14 and 16 of the Constitution of India, 1950. According to him, even though the aforesaid provision (Section 33C) was enforced with effect from 20th April, 1998 but it only provides for regularization of such ad hoc Principals who had been appointed on or before 6th August, 1993. According to him, the cut off date, i.e. 6th August, 1993, is arbitrary and discriminatory as there is no nexus or relation with the object sought to be achieved, i.e., regularization of all ad hoc Principals, and it would exclude such ad hoc Principals who had been appointed after 6th August, 1993 and prior to 20th April, 1998. He referred to the provisions of regularization incorporated in the principal Act by the Amendment Acts of 1985 and 1991 by which all ad hoc Principals have been regularized who

have been working on the date of enforcement of those Amendment Acts whereas, in the present case, the cut off date fixed for regularization, i.e., 6th August, 1993, is much before the date of enforcement of the Amendment Act and a period of five years have been left between, which is wholly unreasonable. He relied upon a Division Bench decision of this Court in the case of *Jai Kishun and others v. U.P. Cooperative Bank Ltd. and others*, (1989) 2 UPLBEC 144, wherein this Court has struck down the cut off date fixed, viz., 1st May, 1983, under the U.P. Regularisation of Ad Hoc Appointment (On the Post within the Purview of the U.P. Cooperative Institutional Service Board) Regulations, 1985 which provides for regularization of these directly appointed employee on ad hoc basis in any co operative society on or before May 1, 1983 and continuing as such on the date when the Regulations came into force, as arbitrary and discriminatory being hit by Article 14 of the Constitution of India, 1950. He further relied upon a decision of the Hon'ble Supreme Court in the case of *Karnataka State Private Colleges Staff and Lawyers Association v. State of Karnataka and others*, 1992 SCC (LandS) 394, wherein the Hon'ble Supreme Court has directed that the services of such temporary teachers who have worked as such for three years, shall be absorbed as and when regular vacancies arise. He, thus, submitted that all those Principals who were working on ad hoc basis upto the date of enforcement of Section 33C, are entitled for regularization and the cut off date, i.e. 6th August, 1993, is liable to be struck down.

36. The learned Advocate General submitted that Section 33C of the principal Act, which regularizes appointment of teachers and heads appointed not later than 6th August, 1993, is valid and it is neither arbitrary nor discriminatory. According to him, the cut off date, 6th August, 1993, has been fixed for the reasons that Section 16 of the principal Act has been substituted by the 1993 Amendment Act and was enforced from 7th August, 1993 and it prohibited appointments of all teachers and heads of the institutions except on the recommendations of the Commission (now the Board). Section 18 of the principal Act permitted ad hoc appointments by the management. Section 16 of the Act prohibits appointment by the management except on the recommendations of the Commission/Board. The 1993 Amendment Act also deleted Section 18 that permitted ad hoc appointments. All sections of the 1993 Amendment Act were enforced from 7th August, 1993. The 1995 Amendment Act has amended Section 16 and reintroduced Section 18. Section 16 now is subject to Section 18. He submitted that the State Legislature has taken 6th August, 1993 as the cut off date as Section 16 as substituted in the 1993 Amendment Act, was enforced on that day. After the said date, appointments could be made on the post of teachers and heads of the institution on the recommendations of the Commission only subject to subsection (1) and not of Section 18 that permitted ad hoc appointments. He submitted that Section 18 was again substituted and Section 16 was amended to include Section 18 by the 1995 Amendment Act. Yet, if the Legislature has chosen not to regularize the appointments prior to enforcement of the 1993 Amendment Act then it cannot be said that it chose a date which has

been picked out from a hat or is whimsical. The reason for fixing a cut off date in the matter of regularization is to adjust the claims of persons claiming direct appointment and person appointed on ad hoc basis. It is not between ad hoc appointee prior to cut off date and one appointed after the cut off date on which date the 1993 Amendment Act was enforced substituting Section 16 and deleting reference to Section 18. This date cannot be said to be arbitrary and as such it should not be struck down. He submitted that Section 33C (1)(a)(ii) provides for those ad hoc Principal and teachers who were appointed on or after 31st July, 1988 and not later than 6th August, 1993 against the substantive vacancy in accordance with Section 18 of the principal Act, shall be regularized subject to the condition provided in clause C that he has been continuously serving the institution from the date of such appointment upto the date of commencement of 1998 Amending Act. Further, according to clause (D), if he has been found suitable for appointment in a substantive capacity by a selection committee. Section 33C (6) further provides that a teacher will not be entitled to substantive appointment if on the date of commencement of the Ordinance, referred to in clause C of sub section (i), such vacancy had already been filled or selection for such vacancies has already been made in accordance with the principal Act. He submitted that the appellants had challenged the fixing of the cut off date, i.e., 6th August, 1993, for regularization on the post of the Principal on the ground that the aforesaid cut off date is arbitrary, has no nexus with the object sought to be achieved by the provisions and the same is violative of Articles 14 and 16 of the Constitution of India, 1950. He submitted that the aforesaid contention of the appellants is wholly misconceived and is liable to be rejected because the cut off date i.e., 6th August, 1993, has been fixed for the reasons that Section 18 of the principal Act regarding ad hoc appointment of teachers and Principals had been omitted by the U.P. Act No. 1 of 1993, which came into force with effect from 7th August 1993, therefore, the persons who had been appointed on ad hoc basis upto 6th August, 1993 against substantive vacancies under Section 18 of the principal Act, have been regularized and the fixing of the aforesaid cut off date is just and reasonable.

37. In support of this aforesaid submissions, he placed reliance on the following decisions :

- (i) Union of India and another v. M/s. Parmeshwaran Match Works etc., AIR 1974 SC 2349;
- (ii) Dr. (Mrs.) Sushma Sharma v. State of Rajasthan and others, 1985 (Supp) SCC 45;
- (iii) State of Bihar and others v. Ramjee Prasad and others, AIR 1990 SC 1300;
- (iv) Union of India and another v. Sudhir Kumar Jaiswal, (1994) 4 SCC 212;
- (v) Union of India and another v. M. Bhaskar and others, 1996(2) LBESR 720 (SC); (1996) 3 UPLBEC 2071;

(vi) Uttar Pradesh Mahavidyalaya Tadarth Shikshak Niyamtikaran Abhiyan Samiti, Varanasi v. State of U.P. and others, 1987 UPLBEC 264;

(vii) Radha Raizada and others v. Committee of Management, Vidyawati Darbari Girls Inter College and others, (1994) 3 UPLBEC 1551.

38. He further submitted that the decision of this Court in the case of Jai Kishun (supra) is not applicable in the present case inasmuch as in the aforesaid case the Court while holding that the cut off date, i.e., 1st May, 1983, mentioned in Regulation 4 providing for regularization of ad hoc appointments, made on or before 1st May, 1983, is arbitrary, has held that nothing has been shown on behalf of the State to establish the rational principle and the object which was sought to be achieved by classifying the ad hoc appointment by fixing a particular date, namely, 1st May, 1983, and making the benefit of regularization rules available to those who were appointed prior to 1st May, 1983 and not extending the benefit to the employees appointed thereafter. In paragraph 3 of the said judgment, the Court had taken notice of the fact that the State of U.P. was impleaded as a party in both the writ petition and the notice on its behalf was also accepted by the Chief Standing Counsel but the State chose not to file any counteraffidavit or to contest the case. No reasons had been indicated for fixing 1st May, 1983 as the cut off date and even during the course of arguments, the State Counsel was directed to produce the statement of objects and reasons for framing the Regulations of 1985 or to produce some relevant material to find out the reasons of fixing the cut off date but nothing has been done. In this background, this Court has held that the State has failed to established the rational principle and the object sought to be achieved by fixing a particular cut off date for regularizing the ad hoc appointees.

39. Having given serious consideration to the rival submissions made by the learned counsel for the parties, we find that it is not in dispute that Section 33C of the principal Act was inserted by the U.P. Act No. 25 of 1998 with effect from 20th April, 1998 providing for the regularisation of the Principals who have been appointed by promotion on or after 31st July, 1988 but not later than 6th August, 1993 in accordance with Section 18 of the principal Act. It may be mentioned here that Section 16 of the principal Act was substituted by the 1993 Amendment Act and was enforced with effect from 7th August, 1993. It prohibited appointment of all teachers and heads of the institution except on the recommendation of the Commission. The 1993 Amendment Act also deleted Section 18 of the principal Act which permitted ad hoc appointment. However, we find that by Section 1(2) of the 1993 Amendment Act, the date of enforcement of the Amendment Act was left to the State Government to be made by notification and different dates may be appointed for different provisions vide notification No. 3517/XV71(262)91, dated 7th August, 1993, the State Government appointed 7th August, 1993 as the date on which the Amendment Act except Section 13 thereof came into force. By Section 13 of the Amendment Act, Section 18 of the principal Act had been omitted. This fact has also been noticed by the Full Bench

of this Court in the case of *Radha Raizada* (supra). Even though Section 18 was reintroduced by the 1995 Amendment Act with certain conditions, the State Legislature in its wisdom had fixed 6th August, 1993 as the cut off date as the State Government had decided to make regular selections and the Commission had initiated steps in that behalf. Thus, it cannot be said that fixing 6th August, 1993 as the cut off date for regularisation is arbitrary or whimsical. The decision of the Division Bench of this Court in *Jai Kishun* (supra) holding that the cut off date, i.e., 1st May, 1983, mentioned in Regulation 4, providing for regularisation of the ad hoc appointment in the cooperative societies, was invalid and arbitrary, proceeded on the basis that the State in spite of being a party and having been granted time, did not bring any material to justify the fixation of the said cut off date. However, in the present case, we find that the State has placed the material before the Court on the basis of which it can reasonably be inferred that the cut off date i.e., 6th August, 1993, has been fixed to achieve an object, i.e., regularising all those appointments which have been made upto 6th August, 1993.

40. In the case of the *Union of India v. M/s. Parameswaran Match Works* (supra) the Hon'ble Supreme Court has held that "the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. It was further pointed out that where a point or line has to be, there is no mathematical or logical way of fixing it precisely, and so, the decision of the Legislature or its delegate must be accepted unless it can be said that it is very wide of any reasonable mark."

41. The Hon'ble Supreme Court in the case of the *Union of India v. Sudhir Kumar Jaiswal* (supra) had held that "when a Court is called upon to decide such a matter, where errors are not subject to correction in exercise of power of judicial review, it is only its palpable, (sic) arbitrary exercise which can be declared to be void, as stated in *Metropolis Theater Co. v. City of Chicago*, 57 Ed 730 (1912) : 228 US 61, in which Justice McKenna observed as follows:

"It may seem unjust and oppressive, yet be free from judicial interference. The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void...."

The aforesaid view was noted by this Court in *Sushma Sharma v. State of Rajasthan*, AIR 1985 SC 1367, in which case also reasonability of fixation of a date for a particular purpose had come up for examination."

42. The Hon'ble Supreme Court in the case of *Uttar Pradesh Mahavidyalaya Tadarth Shikshak Niyamatikaran Abhiyan Samiti* (supra) has upheld the validity

of the cut off date, i.e., 3rd January, 1984, provided under Section 31B for regularisation of ad hoc teachers appointed under the U.P. Higher Education Service Commission Act, 1980.

43. Thus, we are of the opinion that the cut off date fixed for regularisation of all those person who have been appointed on or before 6th August, 1993 cannot be said to be one picked out from a hat and, therefore, it is not arbitrary.

Point No. 3:

44. Dr. Padia submitted that under Rule 5 of the Rules, the qualifications prescribed under Regulation 1 of Chapter II of the Regulations framed under the Intermediate Act have been adopted. According to the said Regulation, the minimum qualifications have been stated in Appendix A, under which experience of teaching in Classes IX, X, XI and XII are treated similarly and, in fact, higher classes have been defined as including classes IX to XII in the said Appendix. However, the advertisement which is impugned, in a very large number of cases, relying on a Note to Rule 12(5) it has been provided that the experience only of Classes XI and XII will be counted for the post of the Principals. Thus, whereas the rules provide for consideration of experience even of Class IX and X but in the Note, which is the basis of the impugned advertisement, the experience of Classes IX and X has been illegally excluded. He further submitted that the Note to Rule 12(5) cannot have the effect of altering Rule 5 itself which is to be read alongwith Appendix A and in case of conflicts between the Note and Rule 5, the Note should be ignored for the purpose of treating the two provisions harmoniously. Thus, since a very large number of candidates have been excluded from consideration by denying their experience of Classes IX and X so the entire selections are per se illegal and void and are liable to be struck down. Note cannot prevail over the substantive provisions, viz., Rule 5.

45. Sri Ashok Khare, learned senior counsel, submitted that the qualifications mentioned in the advertisement is not in consonance with Appendix A which prescribes qualifications for the heads of the institution which had been adopted by Rule 5 under the Rules and the Note to subrule (5) of Rule 12 of the Rules does not override or restrict the provisos of Rule 5. It is only applicable to Rule 12 and since all the advertisements in question have been published in accordance with the Note to Rule 12(5) of the Rules, all the advertisements are invalid as they do not conform to the provisions of Rule 5 and Appendix A.

46. The learned Advocate General submitted that the essential minimum qualification for teacher including the heads of the institutions of Intermediate and High School under the Intermediate Act are prescribed in Appendix A. The minimum age prescribed in Appendix A is 30 years. The dispute is regarding the nature of experience. Under Appendix A, a candidate should have four years" experience of teaching Class IX to XII. Under the Government Order, heads of the institutions are required to take some classes in the institution and they should have necessary experience of teaching Classes XI to XII. The

advertisement indicates the minimum qualification for the post of the head of the institution. Rule 5 of the Rules is headed as 'Academic Qualification'. It states that a candidate for appointment for the post of teacher must possess qualification specified in Regulation 1 of Chapter II of the Regulations framed under the Intermediate Act. Rule 12 of the Rules is headed as 'Procedure for Direct Recruitment'. Rule 12(5) (ii) talks about 20% marks are to be given for experience. Note to Rule 12(5) states that for calculating experience, the service rendered as Head Master of Junior High School or Assistant Teacher only, shall be counted for the Head Master of a High School and for calculating experience for Principal of Intermediate College, service rendered as Head Master of High School or as a Lecturer shall only be counted. He further submitted that it is correct that Rule 5 of the Rules adopts the qualification specified in Appendix A but this Rule is headed as 'Academic Qualification'. He also submitted that it is also correct that the Note appearing in Rule 12(5) is for the purposes of calculating experience more than the required experience. Marks can only be awarded by experience more than the required experience. For the post of heads of the institution, the Note to Rule 12(5) of the Rules has modified the conditions of qualifying experience mentioned in Appendix. Section 32 of the principal Act, as amended by the U.P. Act No. 25 of 1998, provides that the provisions of the Intermediate Act and the Regulations made thereunder, will continue in case they are not inconsistent with the principal Act and the Rules, Note to Rule 12(5) prescribes experience for the post that is different from Appendix A. The nature of experience mentioned in Appendix A is inconsistent with the Note to Rule 12(5) and, thus, it no longer continues and as such it stands modified by the Note to this extent. He submitted that it is wrong to say that any person who has essential qualification, has been excluded from consideration or any person who ought not to be considered, has been considered for the selection. Thus, the selection procedure is not vitiated. The Assistant Teachers teach in Classes IX and X, they do not teach Classes XI and XII. The State could legitimately exclude the Assistant Teachers from being considered as head of an Intermediate institution (upto Class XII). There is neither any illegality nor any discrimination and this Note to Rule 12(5) cannot be struck down. He further submitted that the appellants who are one of the two seniormost teachers, have no grievance as they have been automatically called for interview in view of Rule 11(2)(b) and its Explanation. Rule 11(2)(b) states that with regard to the post of the Principal and Head Master, the management shall also forward the names of two seniormost teachers for consideration and selection to the post of the Principal of the institution and 'seniormost teachers' means the seniormost teachers in the post of higher grade in the institution irrespective of total service put in the institution. It is further submitted that no Lecturer (direct applicant) has challenged the advertisement. Thus, the seniormost teachers have no grievance in this regard. He, therefore, submitted that the advertisement issued by the Board is valid and the learned Single Judge has rightly held that the advertisement is valid.

47. For a proper appreciation of the rival submissions made by the learned counsel for the parties, it is necessary to reproduced the relevant rules and the relevant portion of Appendix A of Regulation 1 of Chapter II of the Intermediate Act :

?Rules

5. Academic qualification.A candidate for appointment to a post of a teacher must possess qualifications specified in Regulation 1 of Chapter II, of the Regulations made under the Intermediate Education Act, 1921.?

?12. Procedure for direct recruitment.

.... ..

(5) The Board shall, in respect to the selection for the post of Headmaster and Principal, allot the marks in the following manner

(i) 60 per cent marks on the basis of quality points specified in Appendix "D";

(ii) 20 per cent marks for having experience more than the required experience, 1 mark for each research paper published with a maximum of 4 marks and 2 marks for each year of such experience with a maximum of 16 marks; and

(iii) 10 per cent marks for having doctorate degree.

Note.For the purposes of calculating experience, the service rendered as Headmaster of Junior High School or as assistant teacher in a High School/ Intermediate College shall be counted in the case of selection of Headmaster and for selection of Principal, the service rendered as Headmaster of a High School or as a Lecturer shall only be counted. The provision of subrule (4) of Rule 12 regarding the certificate of experience shall mutatis mutandis apply.?

?Appendix A

1. Head of the institutions

(1) Trained M.A. or M. Supreme Court or M. Com or M. Sc. (Agri) or any equivalent post graduate or any other degree which is awarded by corporate body specified in above mentioned para one and should have at least teaching experience of four years in class 9 to 12 in any training institute or in any institution or University specified in above mentioned para one or in any degree college affiliated to such University or institution, recognized by Board or any institution affiliated from Boards of other States or such other institutions whose examinations are recognized by the Board, or should the conditions is also that he/she should not be below 30 years of age.?

48. From a reading of the aforesaid provisions, it is clear that under Rule 5 of the Rules, the Board has adopted the qualifications mentioned in Serial No. (1) of Appendix A for the post of the head of the institution. It requires a post graduate degree with 4 years" teaching experience of Class IX to XII. The Note to Rule

12(5) prescribes that for calculating experience, the service rendered as Head Master of a High School or as a Lecturer shall be counted for the selection of a Principal. Thus, it excludes the taking into consideration of teaching experience of Class IX and X as the Lecturers do not teach Class IX and X. Inviting applications and prescribing minimum qualification is one thing and awarding marks on the basis of teaching experience for selection of Principal is another. By prescribing higher teaching experience of a Lecturer or of a Head Master of a High School for selection on the post of the Principal, the Board has, in fact, restricted making of application from all those eligible candidates who do not possess teaching experience of a Lecturer or a Head Master of a High School. Thus, those persons who have only teaching experience of Class IX and X and are otherwise fulfilling the minimum qualification prescribed in Appendix A, have been excluded from the zone of consideration. It may just be possible that there may be cases where a person who has a teaching experience of more than four years of Class IX and X, may have excellent academic record, a doctorate degree and published research work also and in accordance with Rule 12(5) may be able to secure higher marks than those persons who have teaching experience of a Lecturer or a Head Master of a High School. Thus, the advertisement which restricts the applications from only those persons who had teaching experience of 4 years as a Lecturer or a Head Master of a High School, is contrary to the minimum qualification prescribed in Appendix A and adopted by Rule 5 and is wholly illegal and cannot be sustained.

49. Even though the State Government has taken care of by making provision under Rule 12(6) of the Rules for shortlisting of candidates who may be called for interview for the post of the Principal/Headmaster, which provides that for the post of the Principal/Headmaster, the Board call for interview such candidates who have secured maximum marks under Rule 12(5) in such manner that the number of the candidates shall not be less than three and not more than five times of the number of vacancies. The emphasis is on the maximum marks obtained by a candidate as provided in Rule 12(5). Subrule (5) does not lay down the minimum qualification but provides for allocation of marks under various heads. Thus, the Note to subrule (5) of Rule 12 cannot be construed to empower the Board to prescribe a different teaching experience as the eligibility condition for the post of the Principal of an Intermediate college.

50. The submission made by the learned Advocate General that the Board is free to prescribe a higher qualification of teaching experience while inviting applications for the post of the Principal in view of the provisions of Section 32 of the principal Act, is misconceived for the reason that by Rule 5 the State Government has adopted the minimum qualification prescribed in Appendix A relating to the Principal or the head of the institution. Further, the Note to Rule 12(5) only prescribes the method of awarding marks to the teaching experience. Even though it does not provide any marks for teaching experience of Class IX and X but it also does not exclude the provision of Rule 5 of the Rules. Thus, there is no conflict in the two provisions which heed to be construed

harmoniously.

51. In the advertisement No. 1 of 1998 published by the U.P. Secondary Education Service Selection Board, Allahabad, the following educational qualifications and experience was provided for the post of the head of the institution:

?(3) SHAIKSHANIK YOGYATA:AA? SANSTHA PRADHAN KISHI VISHAY ME SNATAKOTTAR UPADHI (U.G.S. SE MANYA VISHWAVIDYALAYA SE PRAPTA) KE SATH SNATOKATTAR PRASHIKSHAN/DIPLOMA YA UTTAR PRADESH ME SHIKSHA ADHINIYAM 1921 KE ADHIN BANE VINIYAMO KE ADHYAYA DO KE VINIYAM EK KE PARISHISTA KA? ME VARNIT PRASHIKSHAN YOGYATA BHI MANYA HOGI....?

?4. ANUBHAV:PRADHANADHYAPAK KE CHAYAN KE LIYE JUNIOR HIGH SCHOOL KE PRADHNAADHYAPAK KE RUP ME YA HIGH SCHOOL/INTERMEDIATE COLLEGE ME SAHAYAK ADHYAPAK KE RUP ME KI GAYI SEWA AUR INTER COLLEGE PRADHANACHARYA KE LIYE KISI HIGH SCHOOL KE PRADHANADHYAPAK YA PRAWAKTA KE RUP ME KI GAYI SEWA KA KUM SE KUM CHAR VARASH KA ANUBHAV AWASHYAK HOGA.....? (Emphasis supplied)

52. The advertisement prescribing different experience for the post of the Principal cannot be saved by applying the principle laid down by the Hon"ble Supreme Court in the cases of Government of Andhra Pradesh v. P. Dilip Kumar and another, (1993) 2 SCC 310; T.R. Kothandaraman and others v. Tamil Nadu Water Supply and Drainage Board and others, (1994) 6 SCC 282; Union of India and another v. T. Sundaranaman and others, (1997) 4 SCC 664 and Mohd. Riazul Usman Gani and others v. District and Sessions Judge, Nagpur and others, (2000) 2 SCC 606, wherein the Hon"ble Supreme Court had upheld the action of selecting body in applying the principle to shortlist a large number of candidates, as in the present case, the Board has not laid down any criteria except in Rule 12(6), for shortlisting the candidates after the applications have been received but, on the other hand, in the advertisement itself it had excluded all those applicants who possessed the minimum qualification prescribed in Appendix A but do not have teaching experience of 4 years as a Lecturer in an Intermediate College or as a Headmaster of a High School.

53. In the case of Sri Durgacharan Misra v. State of Orissa and others, AIR 1987 SC 2267, the Hon"ble Supreme Court has held that where the rules have been framed under the proviso to Article 309 read with Article 234 of the Constitution of India, 1950 providing for appointment of person other than the District Judge to the Judicial service of the State shall be made by the Governor of the State, it should be in accordance with the rules made by the Governor in that behalf, after consultation with the State Service Commission and with the State High Court. The Commission which has been constituted under the rules must, therefore, faithfully follow the rules. It must select candidates in accordance with the rules. It cannot prescribe additional requirement for selection either as to eligibility or as to suitability and the decision of the Commission to prescribe minimum marks

to be secured at the viva voce test was held to be illegal and without authority.

54. In the case of *Umesh Chandra Shukla v. Union of India and others*, AIR 1985 SC 1351, the Hon''ble Supreme Court has held that the selection committee has no power to prescribe the minimum marks which candidate should obtain in aggregate different from the minimum already prescribed by the rules in its Appendix. The Hon''ble Supreme Court held that the exclusion of the names of certain candidates who had not secured 600 marks in the aggregate including marks obtained at the viva voce test from the list prepared under Rule 18 of the Rules is not legal and quashed the list prepared by the selection committee.

55. In the case of *Dr. Krushna Chandra Sahu and others v. State of Orissa and others*, AIR 1996 SC 352, the Hon''ble Supreme Court has held that if the Rules have been made but they are silent on any subject or point in issue the omission can be supplied and the rules can be supplemented by the executive instructions. However, in the case in hand before the Hon''ble Supreme Court, the Apex Court found that the Government neither issued any administrative instructions nor it supplied the omission with regard to the criteria on the basis of which the suitability of the candidate was to be determined. The member of the selection board on their own decided to adopt the confidential character roll of the candidates who were already employed as Homeopathic Medical Officer as the basis for determining their suitability. It held that the Board or for that matter or any other committee do not have jurisdiction to lay down the criteria for selection unless they are authorized specifically in that regard by the rules made under Article 309. It is basically the function of the rule making authority to provide for the basis for the selection. The selection committee does not even have the inherent jurisdiction to lay down the norms for selection nor such power can be assumed by necessary implications.

56. Applying the principle laid down by the Hon''ble Supreme Court to the facts of the present case we find that the State Government had specifically framed the Rules and under subrule (5) of Rule 12 of the Rules, the qualifications laid down in Appendix A of Regulation 1 of Chapter II of the Intermediate Act has been adopted for appointment on the post of teachers which includes Principal. For the post of Principal, it provides 4 years'' teaching experience of Class IX to XII. It does not provide teaching experience of 4 years as a Lecturer only. Thus, the Board which had provided 4 years'' teaching experience as a Lecturer in the advertisement has exceeded its jurisdiction and the same is contrary to the law. We are, therefore, of the opinion that the learned Single Judge was not correct in holding that the advertisement is valid.

Points No. 4 and 5:

57. Dr. Padia submitted that under Section 10 of the principal Act vacancies are to be notified in respect of each year of recruitment which has been defined under Section 2(1) as a period of 12 months commencing from 1st July each year upto 30th June next, if all the vacancies are clubbed together, then the

basic purpose of notifying the vacancies every year according to the year of recruitment as provided under Section 10 will be frustrated and there will be ex facie violation of Section 10. The provisions of Section 10 regarding notification of vacancies according to each recruitment year cannot be ignored. Since vacancies are to be notified each year, it necessarily means that they are also to be filled up separately each year from amongst the eligible candidates available in respect of that recruitment year. Thus, the person who became eligible subsequently could not be considered in respect of vacancies accruing earlier regarding an earlier recruitment year. The object of Section 10 in notifying the vacancies yearwise can only be that the eligible candidates throughout the State in respect of that recruitment year should alone be considered. Moreover, under Rule 11 also, it is expressly stated that the statement regarding notification of vacancies is to be made as per year of recruitment and detailed schedule is given in respect of particular dates in each recruitment year by which the notifications are to be intimated. It will also necessarily mean that the law is to be applied in respect of the date of occurrence of vacancies and subsequent amendments in the Rules after the date of occurrence of vacancies will not be applied. Thus, regarding such vacancies of the Principals which occurred prior to the enforcement of the Act, viz., 20th April, 1998, will have to be filled up according to the law then applicable, namely, for Principals 45 marks for interview and 30 marks by way of modulation for consideration of service record. However, the Board has clubbed all such vacancies by resort to Rule 11(2)(a), second proviso. It is wellsettled that no rule can override the statutory provisions contained in Section 10.

58. He relied upon the following cases :

- (i) Union of India and others v. N.R. Banerjee and others, (1997) 9 SCC 287;
- (ii) Harjinder Singh Sodhi v. State of Punjab and others, 1996 SCC (IandS) 1996;
- (iii) B.L. Gupta and another v. M.C.D., JT 1998 (7) SC 225;
- (iv) Unreported judgment in Civil Misc. Writ Petition No. 12079 of 1999, Sharat Kumar Singh and others v. Gomti Gramin Bank, Jaunpur and another, decided on 21st April, 1999;
- (v) State of Rajasthan v. R. Dayal and others, (1997) 10 SCC 419;
- (vi) P. Ganeshwar Rao and others v. State of Andhra Pradesh and others, 1988 (Supp) SCC 740;
- (vii) Y.V. Rangaiah and others v. J. Sreenivasa Rao and others, (1983) 3 SCC 284.

59. He submitted that the law is fairly settled down not only in the cases of promotion but also in respect of selection/recruitment and the learned Single Judge had wrongly distinguished the Supreme Court cases on the ground that they are not applicable in respect of selection and they are applicable only in respect of promotion. According to him, it is well known that the promotion are a

mode of selection or appointment and, thus, the distinction drawn by the learned Single Judge cannot be sustained.

60. The learned Advocate General submitted that Section 10 of the principal Act, as amended by the U.P. Act No. 25 of 1998, deals, with the procedure for selection by direct recruitment. Under Section 10 it is provided that for the purposes of making appointment of a teacher by direct recruitment, the management shall determine the number of vacancies existing or likely to fall vacant during the year of recruitment and in the case of a post other than the post of head of the institution, also the number of vacancies to be reserved for the candidates belonging to the scheduled caste, scheduled tribes and other backward classes in accordance with the Reservation Act, 1994 and notify the vacancies to the Board in such manner and through such officer or authority as may be prescribed. Rule 11 of the Rules deals with the determination and notification of vacancies. According to Rule 11(1), for the purposes of direct recruitment to the post of teacher, the management shall determine the number of vacancies in accordance with subsection (1) of Section 10 and notify the vacancies through the Inspector to the Board. According to Rule 11(2)(a), the statement of vacancies of each category to arise due to retirement on the last day of the year of recruitment, shall be sent by the management to the Inspector by July 15 of the year of recruitment and the Inspector shall after verification from the records of his office, prepare a consolidated statement of vacancies of the district subjectwise in respect of the vacancies of Lecturer grade, and groupwise in respect of vacancies of trained graduate grade and the same be sent by the Inspector to the Board by July 31 with a copy thereof the Joint Director, provided that if the State Government has satisfied that it is expedient so to do, it may, by order in writing, fix other dates for notification of vacancies to the Board in respect of any particular year of recruitment; provided further that in respect of vacancies existing on the date of the commencement of the Rules as well as the vacancies that are likely to arise on June 30, 1998, the management shall unless some other dates are fixed under the preceding proviso, sent the statement of vacancies by July 20, 1998 to the Inspector and the Inspector shall sent the consolidated statement in accordance with the subrule to the Board by July 25, 1998. According to Rule 11(2)(b) with regard to the post of the Principal and Head Master, the management shall also forward the names of two seniormost teachers. According to Rule 11(4) where for any year of recruitment the management does not notify the vacancies by the date specified in subrule (2) of Rule 11 or fails to notify them in accordance with the said subrule, the Inspector shall, on the basis of the records of his office, determine the vacancies in such institution in accordance with Section 10(1) of the principal Act and notify them to the Board. He submitted that it is clear from Section 10 and and Rule 11(2)(a) and its proviso that there is nothing in, the abovementioned provisions to show that the selection has to be held annually and appointments are to be made yearwise and in case appointments could not be made yearwise then all these vacancies have to be allotted to that particular

year. It was submitted that the second proviso of Rule 11(2)(a) clearly speaks that in respect of the vacancies existing on the date of the commencement of the Rules as well as the vacancies that are likely to arise on June 30, 1998, the Management shall send the statement of vacancies to the Inspector and the Inspector shall send the consolidated statement to the Board. Thus, the vacancies existing on the date of commencement of the Rules the management shall send the statement of vacancies to the Inspector and as such before commencement of the Rules. It covered all the vacancies existing on the date of commencement of the Rules. He submitted that in view of Rule 11(2)(a) and the second proviso and in view of the judgment of the Hon'ble Supreme Court, the vacancies are not required to be filled up yearwise. He further submitted that the cases cited by the appellants related with the promotion and the facts of the present case are different than the cases cited by the appellants. The posts in question are to be filled up by direct recruitment and as such the cases cited by the appellants are not applicable in the circumstances of the present case. Thus, the Board has rightly advertised the vacancies and the vacancies have to be filled up according to law applicable on the date of advertisement and the learned Single Judge has rightly held that it is not necessary to allocate the vacancies yearwise and for this purpose to fill up these vacancies according to law applicable on the date of advertisement.

61. He relied upon a decision of the Hon'ble Supreme Court in Chandra Prakash Tiwari and others v. Shakuntala Shukla, (2002) 6 SCC 127, wherein it has been held that the issue of selection and clubbing while in the normal circumstances the same ought to be adhered to but in the event of there being no such assessment or selection, it would not render the subsequent selection void and thus it cannot be treated to be void and can be cured.

62. Having considered the rival submissions we are of the considered opinion that so far as the question regarding the applicability of the rules and procedure for recruitment in respect of the vacancies occurring in a particular year is concerned, it may be mentioned here that all the decisions relied upon by Dr. Padia relate to the case of promotion. It is well settled that the vacancies which are liable to be filled up by way of promotion are governed by the Rules existing at the time when such a vacancy occurs, but in respect of vacancies which are to be filled up by way of direct recruitment, the applicants cannot claim any vested right to be governed by the Rules and procedure which existed at the time when the vacancy occurred. The rules which are existing at the time when the application is invited, would be applicable.

63. Rule 11(2)(a) of the rules clearly provides that in respect of the vacancies existing on the date of the commencement of the Rules as well as the vacancies that are likely to arise on June 30, 1998, the management shall send the statement of vacancies to the Inspector who shall, send the consolidated statement to the Board. Therefore, all vacancies existing on the date of commencement of the Rules uptill 30th June, 1998 are to be filled up by the

Board and the Rules and procedure provided on the date of inviting applications would alone be applicable in terms of the advertisement.

64. Thus, we are of the opinion that the vacancies are not required to be filled up yearwise.

Point No. 6:

65. Dr. Padia submitted that under Rule 12(5) at some places marks are shown by way of percentage and at some places marks are shown without any percentage and are actual marks. The said Rule indicates that an aggregate of 100 marks are to be considered, out of 60% marks are reserved for quality points, 20% marks for experience and research papers, 10% marks are reserved for doctorate degree and under Rule 12(7), 10% marks are reserved for interview. Thus, an aggregate of 100 should have been taken as index by the Board but the Board allegedly for its convenience has taken 500 marks at random as aggregate marks. He submitted that whether it is 100 marks in aggregate or 500 marks in aggregate, so far as fixed percentage of marks is concerned, there will be no difference whatsoever since a multiple of five will be applied to all such marks and, thus, no candidate will be affected by raising his aggregate marks from 100 to 500. He further submitted that in so far as award of the discretionary marks under the head "interview" are concerned, it will make serious difference and will result in total arbitrariness. Thus, if interview marks are kept at 10 out of 100, then the Board can only award marks between 001 and, thus there cannot be any difference of more than 10 in between any two candidates. However, if interview marks are raised to 50 by applying the multiple of five, it will mean that the Board will have the jurisdiction and discretion to award discretionary marks between 050. Thus, a very good candidate can be given very less and an ordinary candidate may be given nearing 50 marks and, thus, the range of difference between the two may be about 45 or 46 instead of 7 or 8. Thus, by having an aggregate of 500 marks, there is an illegal enhancement in the award of discretionary marks regarding interview and it is bound to affect the entire result. He also submitted that since at several places, the word "marks" has been used in Rule 12(5), then the rule being statutory in nature, the said word "marks" could not be enhanced artificially by the Board by making its own guidelines and by converting the word "marks" into percentage of "marks". It cannot be defended by any purposive interpretation as held by the learned Single Judge.

66. The learned Advocate General submitted that allotting marks out of 500 is not illegal. According to him, Rule 12 prescribes the procedure for direct recruitment. Rule 12(5) indicates that how the marks in selection of the head of the institution are to be allotted and 100% marks are divided. Rule 12 or any other rule does not state that the total marks for selection will be 100. Marks to be allotted under subrule (4), (5) and (7) of Rule 12 are shown in percentage. These subrules use the word "percentage" and as such this shows that their purpose is not to fix absolute limits for different categories but to indicate their

relative importance and as such it cannot be said that the marks to begin must have to be 100. The Board has, for convenience, started with 500 marks so that on different heads for interview, proper marks could be given and decimal may be avoided and as such it does not make any difference and, thus, it cannot be said that it is arbitrary and illegal.

He relied upon the following decisions :

(i) *Km. Suman Upadhyaya and another v. ViceChancellor, Bir Bahadur Singh Purvanchal University, Jaunpur and others*, 2000 (2) AWC 1216;

(ii) *Kiran Gupta and others v. State of U.P. and others*, (2000) 7 SCC 719.

67. It is no doubt true that under Rule 12(5) of the Rules, at places marks are shown by way of percentage and at some place actual marks. From a reading of subrules (5) and (7) of Rule 12 it is clear that the marks are to be calculated from 100% as 60% marks have been allocated on the basis of quality points specified in Appendix D; 20% marks for having experience etc. and 10% marks for having a doctorate degree and 10% marks for interview. Even in the interview, break up of 10% marks to be allocated under the various heads has been given in the proviso to subrule (7) of Rule 12. Thus, if the Board has taken 500 marks as aggregate, the allocation of marks as percentage would not make any difference while determining the merits. It may be mentioned here that the Hon'ble Supreme Court, in the case of *Kiran Gupta* (supra), had already upheld the validity of Rule 12(3) of the 1995 Rules framed by the State Government providing for selection of suitable candidates based on their performance in interview to the posts of the Principals/Headmasters. Thus, it cannot be said that merely because at some place percentage has been mentioned whereas at some place marks have been mentioned, makes any difference in the process of selection.

Points No. 7 and 8:

68. Dr. Padia submitted that right since 1983 statutory rules in respect of selection to the post of the Principals, the names of two seniormost teacher of every institution were required by law to be sent to the Board for their consideration. Thus, such two seniormost teachers had not to apply for the post of Principal but it was the statutory duty of the management to forward their names alongwith their service record and other necessary particulars including character roll to the Board. The Board was found to consider their service record including character roll. In the earlier guidelines, as fully considered and held by this Court, there were 75 aggregate marks for consideration for the post of the Principal by way of interview. Thus, every applicant was awarded marks on the basis of his performance against the aggregate of 75 marks. However, in the case of two seniormost teachers of an institution, in fact, rescheduling of marks was done and 45 marks were kept for interview and 30 marks were kept reserved for their service record. Thus, if the service record was satisfactory, then under the guidelines such candidates took the maximum advantage and

that is why earlier all such candidates were duly selected as regular Principals. Even in the amended Act of 1998 the same system is followed and the management is bound to forward the names of two seniormost teachers alongwith the copies of their service record including the character roll and these two teachers are entitled to be called for interview even without making any application. However, amended Rules of 1998 are totally silent the award of marks to these two seniormost teachers and a perusal of Rule 12(5) would indicate that there is nothing special stated about the marking of the service record of these two seniormost teachers. He submitted that it was argued before the learned Single Judge that the perusal of service record must have some meaning and that necessarily implies that the earlier guidelines should be applied and similarly, the total marks should be modulated for consideration of the service record of these two teachers and since no marks have been prescribed for such service record, the entire selection would be per se illegal. The learned Single Judge has, however, held that under Rule 12(5), 20% marks have been allocated for experience and the same will be considered as against these two seniormost teachers. It has been held in the impugned judgment that in respect of all applicants there are 16 marks for experience and 4 marks for research papers, but in respect of the two seniormost teachers, since, they do not do any research work as such instead of 16 marks, 20 marks have been allocated to them by the Board in respect of their experience. Thus, according to the learned Single Judge, 4 extra marks out of 100 should be regarded as sufficient consideration for allocation to service record of the two seniormost teachers and, thus, guidelines are valid guidelines. He submitted that the learned Single Judge has wrongly held that since two seniormost teachers generally do not do any research work, as such 4 marks reserved for research papers can be diverted for their service record, as has been done by the Board in their new guidelines. Such new guidelines cannot alter the statutory provision contained in Rule 12(5). Secondly, in respect of any direct candidates, service records are not to be produced and in accordance with their length of service, marks are given to them for their experience, but in the case of two seniormost teachers, it is the quality of service record that is seen and if the service record is not satisfactory, then marks will not be given. Dr. Padia submitted that it is totally discriminatory and service record cannot be seen for the purpose of assessing the merit of the two seniormost teachers. He submitted that the guidelines framed by the Board are being traced to Section 9 of the principal Act. Section 9 is general in nature and the guidelines framed thereunder cannot have statutory character so as to prevail upon Rule 12(5). In fact, in terms of Section 35, the State Government has framed the Rules including Rule 12(5) which cannot be superceded by the guidelines framed by the Board. In the case of conflict between the Rules framed by the State Government under Section 35 and the guidelines of the Board, the Rules framed by the State Government will prevail. Dr. Padia submitted that under Section 34 of the principal Act, the Board can make regulations but the same will be subordinate to the Rules framed by the State Government under Section 35 of the Act. If the regulations of the Board are subordinate to the

Rules, then necessary the guidelines framed by the Board will be subordinate to the statutory rules. Thus, the guidelines of the Board, in conflict with the provisions contained in Rule 12(5) regarding the change of allocation of marks in respect of the two seniormost teachers, are wholly illegal and ultra vires. Dr. Padia further submitted that it is not known as to how, why and in what way such new guidelines have been framed by the Board by which the entire emphasis given earlier to the service record of the two seniormost teachers, has been done away with. Formerly, there were 30 marks out of total 75 regarding the service record of the two seniormost teachers and that is why in most of the cases such seniormost teachers were selected as regular Principals and there was hardly any litigation. But, in the new guidelines framed by the Board, there are only 4 marks out of 100 and that also in lieu of research papers, allocated to the service, record of the two seniormost teachers, is ridiculous. Thus, the guidelines are not only contrary to the statutory rules, namely Rule 12(5), but also wholly arbitrary, unjust, illegal and violative of Articles 14 and 16 of the Constitution of India, 1950. The impact is that under the new guidelines hardly any seniormost teacher is selected as Principal and that is why about 400 writ petitions have been filed. The learned Single Judge has wrongly held such guidelines to be valid and not arbitrary and as not violating the provisions of Rule 12(5). He submitted that in the present case, however, the service record of the direct recruits are not be seen at all and the service records in respect of only the two seniormost teachers are to be seen for the limited purpose of awarding them 4 other marks out of 100. But, in respect of direct recruits where the service record is good or bad or indifferent, marks are to be given without even examining those records and this is wholly arbitrary, unjust, illegal as well as totally discriminatory and violative of Articles 14 and 16 of the Constitution of India, 1950.

69. He relied upon the decision of the Hon'ble Supreme Court in the case of Janki Prasad Parimoo and others v. State of J and K and others, AIR 1973 SC 930, wherein the Hon'ble Supreme Court has held that for appointment on the post of the Principal in an educational institution, the service records of all the eligible candidates must be considered.

70. The learned Advocate General submitted that the Board has adopted the procedure for awarding marks on experience for direct recruits and for the two seniormost teachers. Rule 12(5) (ii) of the Rules contemplates awarding marks on experience for more than the required one and, for this purpose, 20% of marks have been divided. The Board has applied the aforesaid procedure for direct recruits. 16% marks have been allotted on the basis of the experience. Note to Rule 12(5) of the Rules indicates that the provisions of Rule 12(4) regarding certificate of experience will apply to Rule 12(5) also. Note to Rule 12(4) states that the certificate of experience should state the date of appointment, date of joining and scale of pay. It should be duly signed by the Principal/Head Master and countersigned by the District Inspector of School or District Basic Shiksha Adhikari, as the case may be. This is the only way the service records of the direct recruits are scrutinized. Regarding the two,

seniormost teachers, the Board has framed guidelines under the provisions of the principal Act, as amended by the U.P. Act No. 25 of 1998. Under the guidelines, the Board will award marks to the two seniormost teachers for their service record received and on the basis of the quality point marks awarded, separate Board will be constituted to complete the proceedings before preparation of final panel. For award of the quality point, the total procedure will be that same as has been adopted for direct recruits. On the basis of the service records of the two seniormost teachers obtained from the management, for the entries, such as "excellent", "very good", "good", and "satisfactory", of each year, have been awarded 2 marks for each year and maximum 20 marks will be awarded. Thus, so far as two seniormost teachers are concerned their service records are seen directly and maximum 20% marks will be given for experience more than the requisite experience of 4 years. In case of adverse entry, the service for the particular will not be accepted. He submitted that earlier also the State Government had framed the rules in 1995 regarding selection. The aforesaid rules were challenged before this Court and a Division Bench of this Court, in the leading case of Balak Singh Kushwaha, had dismissed the writ petitions. The matter went up to the Hon"ble Supreme Court in the case of Kiran Gupta (supra), and the Hon"ble Supreme Court has held that there is no illegality in Rule 12(3) of the 1995 Rules providing for selection of suitable candidates based on their performance in the interview for appointment to the post of the Principal and Head Master. The Hon"ble Supreme Court has further held that the Board was not obliged to subdivide the marks and selection could not be said to be arbitrary in the absence of such subdivision.

71. The learned Advocate General submitted that so far as the case of Janki Prasad Parimoo (supra) is concerned, the employer for the direct recruits is different than the employer in the aforesaid case. Here selection is not based on interview alone. The records of the two seniormost teachers who are under one employer, and, if selected, will continue to be under the same employer, have been seen. Experience for direct recruits under different employers has not been totally ignored and also the length of service is also seen. Thus, the position in Janki Prasad Parimoo case (supra) was different. He, thus, submitted that the Board has framed the guidelines under the principal Act, as amended by the U.P. Act No. 25 of 1998 to reconcile Rule 11 (2) (b) and Rule 12 (5) (ii). The Board has indicated that how 20% of marks that are meant for experience under Rule 12 (5) (ii), are to be awarded. This is done on the basis of the service records of the two seniormost teachers. This procedure has been adopted to reconcile Rules 11 (2) (b) and 12 (5) (ii) for the two seniormost teachers and as such the learned Single Judge has rightly held that there is no justification to set aside these guidelines or to reduce the marks allotted to the two seniormost teachers on the basis of the guidelines.

72. So far as consideration of the service record of the two seniormost teachers and awarding of only 4 marks out of 100 as provided in Rule 12 (5) of the Rules is concerned, it may be mentioned here that the guidelines framed by the Board

allocating 20% marks for experience and taking into consideration 4 marks provided for research papers under (sic) of subrule (5) of Rule 12 of the Rules in (sic) the two seniormost teacher, the same cannot be (sic) illegal as the marks which have been allocated for research paper have been given to the seniormost teacher for their experience. The contention of Dr. Padia that in respect of direct recruit the service records are not produced and their marks are given only on the basis of experience, suffice it to mention that in respect of all other matters except experience and interview, the quality points marks have been fixed both in respect of direct recruits and the two seniormost teachers. In respect of experience part, clause (ii) of Rule 12 (5) of the Rules allocates the marks under various heads except for the marks allocated for research work, which a direct recruit may be entitled. However, the Board taking into consideration that the seniormost teachers may not be having any research work, have allocated these 4 marks for their teaching experience in addition to the marks already provided for experience. Thus, there is no discrimination nor any arbitrary fixation of allocation of marks. The guidelines also do not supersede the provision of Rule 12 (5) of the Rules. The decision relied upon by Dr. Padia in the case of Janki Prasad Parimoo (supra) wherein the Hon'ble Supreme Court has held that the service record of all eligible candidates must be considered while making appointment on the post of the Principal is of no help as in the present case the Board is making the selection in accordance with the Rules framed by the State Government wherein specific allocation of marks have been provided under different heads under subrules (5) and (7) of Rule 12 of the Rules. Even though no emphasis has been given on the service record but the experience and academic qualification as also performance in the interview has been provided for selecting a candidate. Therefore, the selection made on the basis of the provisions of subrules (5) and (7) of Rule 12 of the Rules cannot be said to be illegal.

Points No. 9 and 10:

73. Dr. Padia submitted that Rule 12 (5) read with Appendix D are wholly arbitrary, unjust and illegal insofar as allocation of marks are concerned. He submitted that it is basically a policy matter but no policy can be sustained if it is ex facie illegal or arbitrary or unjust. Thus, for a person having a Ph. D. Degree like B. Ed., etc. and having a first division, 24 marks are given by way a quality points. This is totally destructive of academic achievement and it wholly unjustifiable. A mere training course of about 10 months cannot have any overriding importance over a person having a doctorate degree which takes several years and is an ultimate academic distinction. Under Rule 12 (5) experience of 4 years is not to be counted, but thereafter only a maximum of 8 years experience is counted to make it a total of 16 marks by way of 2 marks for each year's experience. Thus, however long a seniormost teacher may be working in an institution, may be for 30 or 35 years, but his entire experience is wiped out and is not to be considered beyond 12 years. In many cases one of two seniormost teachers is already working as ad hoc Principal in view of his very

long experience as teacher. Under Rule 12 (5), absolutely nothing is being allocated whatsoever in respect of administrative experience whereas 60% marks are allocated for academic matter. The basic job of the Principal is administrative in nature, but not even a single mark is assigned for considering his administrative ability or his actual experience as officiating Principal. He submitted that in view of Janki Prasad Parimoo case (supra) administrative experience is a vital point for a Principal and, for that reason, it was held that the service record of every candidate must be considered. Thus, the policy of totally ignoring the administrative experience cannot be regarded valid or correct policy and ex facie it is totally discriminatory and violative of Articles 14 and 16 of the Constitution of India, 1950.

74. The learned Advocate General submitted that the marks are allotted under different categories under Rule 12 (5) of the Rules which gives importance to the academic qualification. According to Rule 12 (5)(i), 60% marks are on the basis of quality point mentioned in Appendix D of the Rules. This is on the basis of the educational qualification in different public examinations. Under Rule 12 (5) (ii), maximum of 4% marks be given on the basis of published research papers and 10% marks are to be given on the basis of doctorate degree under Rule 12 (5) (iii) of the Rules and as such 74% marks can be awarded on the basis of academic qualifications whereas the maximum of 16% marks could be awarded on experience under Rule 12 (5) (ii) for direct recruits and 20% marks be awarded to the two seniormost teachers on the basis of the service records under the Rules and the guidelines framed by the Board and as such it cannot be said that the Rules and the guidelines are arbitrary and unreasonable. It is further submitted here that Rule 12 (4) where 90% of marks are to be allotted in selection of teachers. Rule 12 (4), allocates only 4% marks for doctorate degree in contrast of 10% in selection of the head of an institution (Principal). Rule 12 (4) does not award any other marks for published research papers. Thus, it cannot be said that the Rule is discriminatory or arbitrary. He further submitted that, according to the petitioner, the Board has given marks for the post graduate twice in respect of those candidates who have got two post graduate degree and as such it is illegal. Many candidates have got two post graduate degree. The Board has mentioned percentage of the Board's degrees but has taken the percentage of that post graduate degree where marks obtained were higher and it has not given the benefit of both the degree. But the procedure to take into account that post graduate degree where percentage of marks obtained by the candidates is higher, is reasonable and, thus, there is no illegality as benefit of only one degree is given.

75. So far as the question of not providing for adequate marks for the academic qualification and experience is concerned, it may be mentioned here that the State Government in its wisdom has allocated marks under the different heads while framing subrules (5) and (7) of Rule 12 of the Rules. A person having a doctorate degree has been adequately taken care of by providing 10% marks for the doctorate degree. Thus, a total of 74% marks have been provided for the

academic qualifications. The administrative skill of a person has been taken care of in the proviso to sub rule (7) of Rule 12 wherein the allocation of 3% marks has been made out of a total of 10% marks provided for the interview. Thus, the submission that there is no consideration for the academic qualification and experience does not stand the test of scrutiny.

Point No. 12:

76. Dr. Padia submitted that in respect of selection as well as declaration of results to the post of Lecturers and L.T. grade teachers, the entire State has been treated as one unit and thus the results have been prepared Statewise and selections have also been made Statewise, but wholly artificially and illegally and without there being any legal sanction, the selections and declaration of results in respect of the Principals of the institutions has been made regionwise and the State has been divided into 13 regions. Thus, 13 different result regarding 13 regions have been separately declared and selections have also been made regarding Principals qua 13 regions separately. This is wholly illegal, unconstitutional and leads necessarily to the classification of the candidates regionwise. Thus, in one region, the selected candidates may have lower qualification and in the other region, they may have higher qualification and merit and yet may not be selected. This is ex facie unconstitutional and violative of Articles 14 and 16 of the Constitution of India, 1950. He further submitted that under Section 10 of the principal Act, no such discrimination is permissible regarding a Principal and Head, on the one hand, and the Lecturer and L.T. grade teachers on the other hand. Ex facie, the number of candidates as well as number of posts regarding Lecturers and L.T. grade teachers is higher than the number of posts of principal and if there is no administrative difficulty regarding Statewise selections for Lecturers and L.T. grade teachers, then there could be no such difficulty regarding Principals. He also submitted that under Section 11, a panel is to be made the most suitable candidates and this contemplates only one panel for the principals and not 13 panels in 13 regions. Under Section 11, the words used are 'a panel'. Wherever the intention was to make selections regionwise then it has been expressly stated. Thus, under Section 12, selections by way of promotion are to be made regionwise but there is no such provision regarding direct selections. The statement of objects and reasons of the principal Act clearly stated that: 'It was, therefore, considered necessary to constitute Secondary Education Service Commission at the State level, to select Principals, Lecturers, Headmasters and L.T. Grade Teachers, and Secondary Education Selection Board at the regional level, to select and make available suitable candidates for comparatively lower posts in C.T./J.T.C. grades for such institutions.' He submitted that under Section 16 read with Section 21G, appointments can be made by way transfer even of a Principal and, thus, the entire State is treated as unit. But, in respect of selections in question, 13 different regions have been artificially created and 13 different merits panels have been created without there being any legislative sanction or statutory rules and that too only regarding Principals. The basic idea is clear, viz., to select the

Principals at different regions according to the own convenience of the Board and that is wholly illegal, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India, 1950.

77. He relied upon the following decisions:

(i) Radhey Shyam Singh and others v. Union of India and others, 1997 SCC (L and S) 136;

(ii) Minor P. Rajendran and others v. State of Madras and others, AIR 1968 SC 1012;

(iii) Minor A. Peeriakaruppan v. State of Tamil Nadu and others, (1971) 1 SCC 38; and

(iv) Nidamarti Mahesh Kumar v. State of Maharashtra and others, (1986) 2 SCC 534.

78. The learned Advocate General submitted that the State has been divided into 13 regions for educational purposes. One Joint Director of Education has been made in charge of a region and this has been done for the public administration. The Board has advertised the vacancies, considered the candidates and declared the results regionwise for the head of the institution and Statewise for the teachers. In this regard, the principal Act was enacted in 1982. This regionwise procedure for heads of the institutions had been followed since its inception. It is for two reasons (i) seniormost teachers of each institutions have to be considered for that institution, and (ii) the Joint Director of Education is in charge of a region and he can well administer it. The vacancies for the heads of the institution are advertised regionwise, mentioning name of the institution in that region and as such the vacancies have been indicated in the advertisement. A direct applicant has to indicate his choice of the institution and the name of the region where he is applying. There is no prohibition for applying for any institution situated in any region or for institution of different regions. The only condition is that he has to submit different forms for different regions and indicate the region in the form. All candidates are also required to give their choice of their institution and mention the region. There is no bar in the principal Act or in the Rules or in the guidelines or in the advertisement that the candidates of one region cannot apply for another region or they cannot submit more than one form for different regions. The Board is considering the candidates regionwise for convenience as the two seniormost teachers of an institution are to be considered for that institution. The seniormost teachers can also apply directly in any region or in any institution of their choice. There is no regionwise reservation. Referring to the case of Radhey Shyam Singh (supra) relied upon by Dr. Padia, he submitted that in that case there were 15 zones and the candidates were eligible to appear only in one zone out of the 15 zones. Since the vacancies were not indicated, the counsel submitted before the Hon"ble Supreme Court that they were denied opportunity to appear at the competitive examination from a center of a zone where the number of vacancies

were large and there were more and better choice of selection and as such they were denied opportunity of competing with the candidates of other centres. The learned Advocate General submitted that in the present case the position is different. Here the advertisement has been made institutionwise and in the advertisement the name of the institution is mentioned and as such the vacancies available has been indicated and shown in the advertisement. The direct recruit can apply for any region or for any institution and apart from the direct recruits, two seniormost teachers of the institution can also be considered for that particular institution. In the present case, there is no unitwise allocation of post for the head of the institution. Thus, the case of Radhey Shyam Singh (supra) is not applicable and the learned Single Judge has rightly held that these cases were not applicable as regionwise reservation has not been made and anyone can apply in any region and as such there is no illegality in declaring the regionwise results.

79. The contention of Dr. Padia that selection for the post of the Principal regionwise is arbitrary and illegal is devoid of any merit. It is an admitted case that no restriction has been placed upon a person from applying for any institution in any region. He may apply in all the regions and his application would be considered in accordance with the Rules. Thus, he has been provided full opportunity to apply for the post of the Principal in each region and declaration of result regionwise cannot be said to be illegal. No assistance can be drawn from the decision of the Hon"ble Supreme Court, relied upon by the learned counsel for the appellants in this behalf as in the present case the candidates have not been denied any opportunity from applying from other regions. In the case of Radhey Shyam Singh (supra) the candidates were not given option to apply from all the zones. There were 15 zones and the candidates were eligible to appear at any one out of those 15 zones. In this background, the Hon"ble Supreme Court has held that the purpose and object behind holding a recruitment and examination is to select suitable and best candidate out of a lot and such object can be achieved by making a common select list of the successful candidates belonging to all the zones. On the other hand, if zonewise selection is made then various candidates who appeared in some of the zones and secured more marks than those who were selected from other zones, would be deprived of their selection, resulting in grave injustice and consequent discrimination. Thus, there can be said to exist no nexus between the aforesaid process of zonewise selection and the object to be achieved, i.e., the selection of the best candidates and it would lead to discriminatory result because adopting the said process of zonewise selection would result in the devaluation of marks at the selection/examination by selecting a candidate having lesser marks than the meritorious candidates who have secured more marks and consequently rule of equal chance for equal marks would be violated and such a process would not be only against the principle enunciated in Articles 14 and 16 of the Constitution of India, 1950 but would also result in heart burning and frustration amongst the young men of the country. In the present case, the candidates have not been

restricted in respect of applying for one region only. They were free to apply for all the regions, therefore, the merit of each candidate is not affected at all from the result of the other regions. Similar view was taken by the Hon"ble Supreme Court in the case of Minor P. Rajendran (*supra*) and Nidamarti Maheshkumar (*supra*).

Points No. 13, 14 and 15:

80. Dr. Padia submitted that there was difference in the Hindi version and the English version in Appendix D of the Rules on the basis of which quality points was to be calculated. According to him, in the Hindi version weightage to the percentage of marks in the High School, Intermediate, Graduate and Post Graduate degree was in the ratio of 1, 2, 4 and 8 whereas in the English version it was only 1, 2, 3 and 4. In case Hindi version is followed then maximum marks that could be awarded as calculated under Appendix D is 174 and in case English version is followed then it came to only 124. The Board has scaled it upto 300 by multiplying the quality points mark of the candidate by $300/174$ as the total marks out of which the merit was to be declared has been taken as 500 and 60% of it comes to 300. This was down by following the Hindi version. However, in case the English version was to be followed, the quality points marks have to be calculated after giving due weightage for graduate and post graduate degree and also it was to be scaled upto 300 by multiplying the quality points marks by $300/124$ and not by $300/174$, which would result in some difference. However, the State Government issued a corrigendum on 17th January, 2001. The English version of the Appendices B, C and D of the Rules have been corrected. The authorized English translation of the corrigendum was published on 31st January, 2001. After its publication the English version is the same as the Hindi version. The learned counsel submitted that the Appendix D is a part of the Rules which have been framed by the State Government under Section 35 of the principal Act and cannot be amended with retrospective effect and further Appendices cannot be retrospectively amended so as to validate the result.

81. The learned Advocate General submitted that the State Government is empowered under Section 35 of the principal Act to make rules for carrying out the purposes of the Act. The Rules have been framed in 1998 in Hindi and have been published. Hindi is the official language of the State, The Hon"ble Governor has also published English translation of the aforesaid Rules. The quality point marks have been allotted under Rule 12 (5) prescribed in Appendix D of the Rules. This indicates relative importance to be given to the percentage of marks at different public examination. There was some difference between the Hindi and the English version of Appendix D of the Rules. In Hindi version, weightage to the percentage of marks in High School, Intermediate, Graduate and Post Graduate Degree was in a proportion of 1, 2, 4 and 8. In the English version, it was only 1, 2, 3, and 4. The question is which one to be followed the Hindi one or the English one. He submitted that Article 348 of Constitution of India, 1950 prescribes the language to be used in the Supreme Court and in the High Court

and for the Act. Article 348 (2) permits the Governor of a State to use Hindi or any other language for official purposes of the State and this can be done only with the prior approval of the President. The State of U.P. has adopted Hindi as official language for official purposes. Article 348 (3) states that in case the official language is other than English, then the Governor of the State will publish a translation in English language under his authority. That would be deemed to be the authoritative text. This Court in various decisions has held that in case there is any ambiguity or doubt in the English version, Hindi version can be looked into but here there is neither there is any ambiguity in the English version nor in the Hindi one. Both the versions are clear and the Full Bench of this Court held that the English version will prevail. He submitted that the difference between the Hindi and the English versions is not of translation but of numbers. It may be a printing mistake or probably an obvious error. It is submitted case that the quality point marks were calculated according to Hindi version and thereafter results were declared. The State Government had issued a corrigendum and the English version of Appendices B, C and D of the Rules has been corrected and after correction the English version is the same as the Hindi version. It is submitted that the rules have not been amended by correcting the English version of the Appendix because there was a mistake and the mistake was of number printing in the authorized translation of the Rules and this has been only corrected. The State Government by correcting the authorized text has not made any new Rule but has merely corrected the official translation and as such it cannot be said that the State Government has framed any new Rule. The Board had calculated the quality point marks according to the Appendix D of the Rules and now present it is the same in both the versions. The State Government has power to make correction and as such there is no illegality in making the correction and on the basis of the same the results cannot be set aside. He submitted that the correction made cannot be termed as retrospective amendment, as argued by the learned counsel for the appellants.

82. The submission made by the learned counsel for the appellants is misconceived in as much as the State Government had issued a corrigendum correcting the English version of Appendices B, C and D which had some typographical/numerical errors. The State Government had framed the Rules under Section 35 of the principal Act and by way of correcting the numerical mistake in Appendices B, C and D it cannot be said that the State Government had amended the said Appendices retrospectively. It is well settled that typographical mistake or any error which has crept in, can be rectified by issuing corrigendum and it takes effect from the date when the original test was published or came into force.

83. In view of the foregoing discussions, we are of the considered opinion that the advertisement issued by the Board prescribing teaching experience of 4 years as Lecturer for the post of the Principal of an Intermediate College, was contrary to the academic qualifications prescribed in Appendix A of Regulation 1 of Chapter II of the Intermediate Act, as adopted under Rule 5 of the Rules. As

the advertisement has been challenged by two persons who are only Assistant Teachers and not Lecturers and who do not possess the teaching experience of Class XI and XII but otherwise possess the minimum qualification as prescribed in Appendix A in Regulation I of Chapter II of the Regulations framed under the Intermediate Act and have been denied the opportunity to apply for the post of the Principal, we are left with no other option but set aside the advertisements in question insofar as it relates to the selection on the post of Principal. The selections made pursuant to the said advertisement cannot be sustained and are hereby set aside.

84. In the result, all the special appeals succeed in part.

Appeals partly allowed.