
(1998) 08 AHC CK 0137
In the Allahabad High Court
Case No : Special Appeal No. 948 of 1995

Ashika Prasad Shukla

APPELLANT

Vs

District Inspector of Schools, Allahabad and another

RESPONDENT

Date of Decision : 18-08-1998

Acts Referred:

Constitution of India, 1950 — Article 16, 16(1)
Uttar Pradesh Intermediate Education Act, 1921 — Section 16F(1)
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 16(2), 18, 33B

Citation : (1998) 3 AWC 2150 : (1998) 3 UPLBEC 1722

Hon'ble Judges : D.P. Mohapatra, C.J;S.R. Singh, J

Bench : Division Bench

Advocate : R.K. Ojha and Dinesh Dwivedi, for the Appellant; S.C. and S.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

S.R. Singh, J.—The appellant herein was appointed Assistant Teacher (L. T. Grade) in Krishak Inter College, Kasauta. district Allahabad (in short "the College") vide appointment letter dated 5.8.1992 pursuant to which he allegedly joined his duties on 6.8.1992. The writ petition giving rise to this appeal was filed for Issue of a writ, order or direction in the nature of mandamus commanding the respondents to pay him salary with effect from the date he was appointed. The learned single Judge dismissed the writ petition vide judgment and order under challenge herein, holding that the appointment was made without following the procedure prescribed under the U. P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981 (in short the "First Removal of Difficulties Order") ; there was nothing on the record to serve as a pointer to the fact that prior approval of the District Inspector of Schools was accorded before issuing the letter of appointment and. the appointment was made during the period the ban Imposed by the Government on appointment subsisted.

2. Admittedly, the appointment in question was made in a "short-term vacancy"

within the meaning of the term used in the Second Removal of Difficulties Order, paragraph 2 of which in so far as it is germane, to the controversy, is excepted below :

"2 (3) (i) The Management shall intimate the vacancies to the District Inspector of Schools and shall also immediately notify the same on the notice-board of the institution, requiring the candidates to apply to the Manager of the institution along with the particulars given in Appendix "B" to this order. The selection shall be made on the basis of quality point marks specified in the Appendix to the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981, issued with Notification No. Ma-1993/XV-7-1-(7)-1981. The compilation of quality point marks shall be done under the personal supervision of the head of the institution.

(ii) The names and particulars of the candidate selected and also of other candidates and the quality point marks allowed to them shall be forwarded by the Manager to the District Inspector of Schools for his prior approval.

(iii) The District Inspector of Schools shall communicate his decision within seven days of the date of receipt of particulars by him failing which the Inspector will be deemed to have given his approval.

(iv) On receipt of the approval of the District Inspector of Schools or as the case may be, on his failure, to communicate his decision within seven days of the receipt of papers by him from the Manager, the Management shall appoint the selected candidate and an order of appointment shall be issued under the signature of the Manager.

Explanation.--For the purpose of this paragraph-

(i)

(ii)

(iii) short-term vacancy shall mean a vacancy which is not substantive and is of a limited duration.

3. Sri Dinesh Dwivedi. learned counsel for the appellant strenuously canvassed that direct appointment against short-term vacancies made prior to Full Bench decision in Radha Raizada v. Committee of Management 1994 (3) UPLBEC 1551, would not detract from its validity merely because such appointments were made sans vacancies being advertised in two Newspapers of wide circulation in addition to Notification of the vacancies on the Notice-board of the Institution ; the validity of such appointments, proceeded the submission, should be assayed on the touch-stone of the provisions embodied in the U. P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981 (in short "the Second Removal of Difficulties Order")" as it stood prior to Radha Raizada in which it has been held that advertisement of short-term vacancy on the Notice-board of the Institution does not conform with the requirement of Article 16(1) of

the Constitution and procedure for advertisement of such vacancy should be of the same ilk as it is in respect of ad hoc appointment by direct recruitment under the First Removal of Difficulties Order. The rival contention of Sri Yatindra Singh, learned Additional Advocate General was that the view expressed in Radha Raizada that the procedure for notifying the short-term vacancy prescribed for direct recruitment of teachers on ad hoc basis under the Second Removal of Difficulties Order would be the same as laid down under the First Removal of Difficulties Order for direct recruitment in a substantive vacancy on ad hoc basis, has retroactive effect and hence, the learned single Judge has rightly placed reliance on Radha Raizada.

4. We have bestowed our anxious consideration to the submissions. made across the bar. According to Blackstonian Theory of Jurisprudence of Law, the Courts do not make law but only discover or find the true law. This theory recognised that if a subsequent decision changes the earlier one. the latter decision does not make law but only discovers the correct principle of law. In result, this theory is necessarily retroactive in operation. The other theory known to the American Jurisprudence is described as theory of "prospective overruling" as expounded by George F. Canfield, Robert Hill Freeman, John Henry Wigmore and Cardozo among other Jurists. The Blackstonian theory is, however, taken to have become a pass in that it is likely to work hardship to those who have acted on the basis of the law, which is subsequently found to be unsound. In *Great Northern Railway v. Subburst Oil and Ref. Co.* (1932) 287 US 358, it was contended before the Supreme Court of United States of America that a decision of a Court overruling earlier decision and not giving its ruling retroactivity in operation, infringed the due process clause of the 14th Amendment of the American Constitution. Rejecting the contention. Cardozo, an Associate Justice of the Supreme Court of United States of America held as under :

"This is not a case where a Court in overruling an earlier decision has come to the new ruling of retroactive dealing and thereby has made invalid what was followed in the doing. Even that may often be done though litigants not infrequently have argued to the contraryThis is a case where a Court has refused to make it s ruling retroactive, and the novel stand is taken that the Constitution of the United States is infringed by refusal. We think that the Federal Constitution has no voice upon the subject. A State in defining the elements of adherence to precedent may make a choice for it self between the principle of forward operation and that of relation backward. It may be so that the decision of the highest Courts, though later overruled, was law nonetheless for intermediate transactionsOn the other hand, it may hold to the ancient dogma that the law declared by its Courts had a platonic or ideal existence before the act of declaration, in which event, the discredited declaration will be viewed as if it had never been and to reconsider declaration as law from the beginning.....The choice of any other state may be determined by the juristic philosophy of the Judges of her Courts, their considerations of law, it s origin and nature."

5. In *Chicot County Drainage District v. Baxter State Bank* (1940) 308 US 371, the principle was stated by Hughes, C.J. thus : The law prior to the determination of unconstitutionality is an operative fact and may have consequences which cannot justly be Ignored. The past cannot always be erased by a new Judicial declaration." in *J. A. Wolf v. Peoples of the State of Colorado*(1949) 338 US 25 : 1993 Law Ed. 1782. a majority of the Supreme Court of U.S.A. held that in a prosecution in State Court for a state crime, the 14th Amendment did not forbid the admission of evidence obtained by an unreasonable search and seizure. But in *Mapp v. Ohio*. (1961) 367 US 643 : 6 Law Ed. 1081, *Wolf* was reversed and it was held that all evidence obtained by search and seizure in breach of 4th Amendment of the Federal Constitution was, by virtue of the due process clause of 14th Amendment guaranteeing the right to privacy free from unreasonable State intrusion. Inadmissible in a State Court. In *Linkletter v. Walker* 381 US 618, Mr. Justice Clarke speaking for the majority observed :

"We believe that existence of the *Wolf*, doctrine prior to *Mapp* is "an operative" fact and may have the consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration."

Considering the aforesaid observations made by Justice Clarke in *Linkletter u. Walker* (supra) and certain other decisions, the Supreme Court of India in *Babu Manmohan Das Shah and Others Vs. Bishun Das*, . observed as under :

"This case has reaffirmed the doctrine of prospective overruling and has taken a pragmatic approach in refusing to give it retroactivity. In short, in America, the doctrine of prospective overruling is now accepted in all branches of law including constitutional law. But the carving of the limits of retrospectivity of the new rule is left to Courts to be done, having regard to the requirements of justice."

6. Adverting to some of the objections to the doctrine of "prospective overruling", the Supreme Court in *Golak Nath* observed, in paragraph 47 of the I.C. *Golak Nath and Others Vs. State of Punjab and Another*, at p. 1668, as under :

"If a Court can overrule its earlier decision there cannot be any dispute now that the Court can do so there cannot be any valid reason why it should not restrict its ruling to the future and not to the past. Even if the party filing an appeal may not be benefited by it. In similar appeals which he may file after the change in the law he will have the benefit. The decision cannot be obiter for what the Court in effect does is to declare the law but on the basis of another doctrine restricts its scope. Stability in law does not mean that injustice shall be perpetuated."

And further :

"It is a modern doctrine suitable for a fast moving society. It does not do away with the doctrine of *stare decisis*, but confines it to past transactions. It is true that in one sense the Court only declares the law, either customary or statutory

or personal law. While in strict theory it may be said that the doctrine involves making of law, what the Court really does is to declare the law but refuses to give retroactivity to it. It is really a pragmatic solution reconciling the two conflicting doctrines, namely that a Court finds law and that it does not make law. It finds law but restricts its operation to the future. It enables the Court to bring about a smooth transition by correcting its errors without disturbing the impact of those errors on the past transactions. It is left to the discretion of the Court to prescribe the limits of the retrospectivity and thereby it enables it to mould the relief to meet the ends of justice."

7. It would be pertinent to observe that *Golak Nath* was overruled in *Keshwanand Bharti v. State of Kerala*. AIR 1973 SC 461, but the principle laid down in *Golak Nath* in respect of prospective overruling has not been touched in *Keshwanand Bharti* rather in its subsequent decisions, the Supreme Court has reiterated the principle of prospective overruling as laid down in *Golak Nath*. In *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, para 73, it was held as under :

"As a matter of constitutional law retrospective operation of overruling decision is neither required nor prohibited by the Constitution but is one of judicial attitude depending on the facts and circumstances in each case, the nature and purpose of the particular overruling decision seeks to serve. The Court would look into the justifiable reliance on the overruled case by the administration ; ability to effectuate the new rule adopted in the overruling case without doing injustice ; likelihood of its operation whether substantially burdens the administration of justice or retard the purpose.....This Court would adopt retroactive or non-retroactive effect of a decision not as a matter of policy determined in each case after evaluating the merits and demerits of the particular case by looking to the prior history of the rule in question, its purpose and effect and whether retroactive operation will accelerate or retard its operation. The reliance on the old rule and the cost of the burden of the administration are equally germane to give effect to prospective or retrospective operation."

8. In *Atam Prakash Vs. State of Haryana and Others*, the question raised before the Supreme Court was as to the validity of Punjab Pre-emption Act, 1913. The Apex Court while holding the relevant provisions of the Act ultra vires the Constitution, gave a direction that suits and appeals which were pending in various Courts will be disposed of in accordance with the declaration made in the said decision. But in respect of decrees which had become final, it was directed that they would be binding inter-parties and declaration granted by the Court with regard to the validity of the provisions of the Act would be of no avail to the parties to such decrees. In *Orissa Cement Ltd. etc. etc. v. State of Orissa and others, etc. etc.* (1991) Suppl 1 SCC 430, the question involved was about the validity of the royalty and related charges for mining leases. The Apex Court, albeit, held that the levy was Invalid since its inception but directed that the finding regarding invalidity of the levy, need not automatically result in direction

for refund of collection made earlier. In *K N. Dwivedi v. District Inspector of Schools*, 1994 (1) UPLBEC 461, it was held by a learned single Judge of this Court for the first time that the expression "shall also immediately notify the same on the Notice-board of the Institution" occurring in paragraph 2 (3) (i) of the Second Removal of Difficulties Order violated the fundamental right to equal opportunity of citizens enshrined in Article 16(1) of the Constitution. In other words, it was held that appointment in short-term vacancy sans any public notice, would be repugnant to and militating against Article 16(1) of the Constitution and further that, it would also overreach the object sought to be achieved by U. P. Act No. 5 of 1982. The same view, i.e., "the procedure for notifying the short-term vacancy should be the same as it is for ad hoc appointment by direct recruitment in a substantive vacancy under the First Removal of Difficulties Order" has been taken by the Full Bench in *Radha Raizada*.

9. However, the question of legal nicety that arises for consideration is as to whether the direct appointment made in a short-term vacancy prior to *K. N. Dwivedi* or the Full Bench decision in *Radha Raizada* by notifying the vacancy only on the Notice-board of the Institution and without following the procedure of notifying the vacancy as prescribed in the First Removal of Difficulties Order would be void? in *K. N. Dwivedi*. a learned single Judge holding the provisions providing for ad hoc appointment by direct recruitment by merely notifying the vacancy on the Notice-board of the Institution to be repugnant to the fundamental right guaranteed by Article 16 of the Constitution gave prospectivity to his judgment and saved the direct appointments already made against short-term vacancies by merely notifying the same on the Notice-board of the Institution. This question, however, was neither raised nor decided by the Full Bench in *Radha Raizada* and *Radha Raizada* has not overruled any previous decision of the Court on the question as to whether the appointment of a teacher by direct recruitment in a short-term vacancy made by notifying the vacancy on the Notice-board of the Institution sans any public notification would be void. Rather, some words have been read in the Statute (Second Removal of Difficulties Order) both in *K. N. Dwivedi* and *Radha Raizada* and the decisions therein are tantamount to amending the Statute by reading therein the requirement of giving public notice of the vacancy in addition to its notice on the Notice-board of the Institution with a view to saving the statute from being struck down as violative of Article 16(1) of the Constitution on one hand and advancing the object of the Act on the other. It cannot be repudiated that addition of words in the Statute by aid of judicial interpretation is permissible in certain situations, viz.. where it is considered necessary to do so in order to give effect to the intention of the Legislature or to avoid the particular provision being struck down as violative of any provisions of the Constitution. In a situation where addition of words is made in the Statute by Court, the "doctrine of overruling" in its strict sense is not attracted. Instead, the Statute stands altered and/or modified as per the verdict of the Court. We are, therefore, of the considered view that the principle governing interpretation of legislative

enactments vis-a-vis retroactivity. would apply to a situation where the Statute is altered by judicial verdict and the principle is that the change so brought about, would not project on the past events or transaction so as to affect vested rights unless the judicial verdict wreaking changes in the Statute by "reading in" or "reading down" is itself given retroactive operation.

10. As noticed above. K. N. Dwivedi (decided earlier in point of time than Radha Raizada. directed in no uncertain language that the decision would be prospective in operation. Rodha Raizada was completely reticent on the point and we are of the considered view that Radha Raizada would not affect ad hoc appointments of teachers by direct recruitment in short-term vacancies approved or deemed to have been approved by the District Inspector of Schools in terms of paragraph 2 (3) (iii) of the Second Removal of Difficulties Order, for once the District Inspector of Schools approves, or is deemed to have approved, of the selection, the selected acquires the status of an ad hoc teacher upon joining the post and a right to continue as per statutory stipulations. The appointee would not be automatically denuded/stripped of the status and right so accruing merely because of the subsequent change of law, not given retrospective effect expressly or by necessary implication. In other words, ad hoc appointments of teachers by direct recruitment made in short-term vacancies by notifying the same on the Notice-board of the Institution without giving any public notice through advertisement in Newspapers having wide circulation if already approved or deemed to have been approved, would not be invalidated on the strength of Radha Raizada. We accordingly subscribe to the view taken in K. N. Dwivedi.

11. Sri Yatindra Singh placed reliance on Sanjeev Kumar v. District Inspector of Schools, Ghaziabad 1997 All LJ 33, in which one of us (S. R. Singh, J.) repelled the argument that Radha Raizada should not be made retrospective so as to Impinge upon prior appointments in the following words :

"What has been held by Full Bench in Radha Raizada"s case about the procedure to be following by direct recruitment in case of ad hoc appointment u/s 18 would be deemed to be enshrined therein from the very inception of Section 18 of the Act No. V of 1982, The doctrine of prospective application as pronounced by the Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., , is not intended for application to the construction of what has been laid down by the Full Bench in Radha Raizada"s case, (supra) particularly because any previous decision of this Court has not been adverted to my knowledge, articulating a contrary view nor Sri Sinha has brought any such decision to my notice in the course of arguments."

12. The view taken in Sanjeev Kumar finds reinforcement from the decision of the Supreme Court in Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others, , wherein it was held :

"It is unnecessary to point out that when the Court decides that the interpretation of a particular provision as given earlier was not legal, it in effect

declares that the law as it stood from the beginning was as per its decision, and that it was never the law otherwise. This being the case. since the Full Bench and now this Court have taken the view that the interpretation placed on the provisions of law by the Division Bench in Bhakare's case (supra), was erroneous, it will have to be held that the appointments made by the University on March 30, 1985 pursuant to the law laid down in Bhakare's case (supra), were not according to law. Hence, the termination of the services of the appellants were in compliance with the provisions of Section 57"(5) of the Act."

13. Neither Sanjeev Kumar nor Suresh Chandra Verma (supra), are attracted for application to the facts of the present case. Sanjeev Kumar was a case of ad hoc appointment by direct recruitment in a substantive vacancy "under Section 18 of the U. P. Secondary Education Service Commission Act, 1982. which, as it then stood, by it self did not provide any procedure for direct appointment on ad hoc basis and it was propounded in Radha Raizada that the procedure visualised by the First Removal of Difficulties Order, would govern ad hoc appointment by direct recruitment u/s 18 of the Act as well. The procedure as provided in Clause 5 of the First Removal of Difficulties Order, visualises that the Management would, as soon as may be, inform the District Inspector of Schools about the details of the vacancies and provisions therein enjoin upon the Inspector a duty to invite applications from local Employment Exchange and also through public advertisement in at least two Newspapers having adequate circulation in Uttar Pradesh. The procedure further visualises that the District Inspector of Schools would cause the best candidate selected on the basis of quality point specified in Appendix and forward the names of the selected candidates to the concerned institution. The Management has no role except to Intimate the vacancy to the Inspector in the matter of selection of candidates for direct recruitment in substantive vacancy under the First Removal of Difficulties Order and unlike the provisions contained in the Second Removal of Difficulties Order, there is no provision of deemed approval under the former. The procedure of direct appointment in short-term vacancy on the other hand visualises that entire exercise of selection would be done by the Management after notifying the vacancy on the Notice-board. It is after the selection that the papers are forwarded to District Inspector of Schools for approval. The provisions contained in Second Removal of Difficulties Order visualise that approval would be deemed to have been accorded on fulfillment of conditions stipulated therein. In Sanjeev Kumar, the District Inspector of Schools declined, vide Order dated 21.2.1994. to lend approbation to the appointment made by the Committee of Management and concededly, the procedure prescribed for direct recruitment was not gone through. There was no question of Sanjeev Kumar, having acquired the status of a teacher and right to the post. In this view of the matter, the case of Sanjeev Kumar, is distinguishable and in fact in paragraph 9 of the 1997 ALJ 33, it has been held as under :

"It may be observed that the decision in Radha Raizada's case 1994 (3) UPLBEC 1551 (FB), does not serve to erode any vested right or substantive right of a

person. It has only expatiated on Section 18 of the U. P. Act No. V of 1982 and held that though Section 18 does not prescribe the procedure for ad hoc appointment, the one laid down in the Removal of Difficulties Order Issued under the Act, would be applicable by implication qua the purpose of the Act. Since the petitioner was not appointed in the manner laid down by/or under U. P. Act No. V of 1982. his ad hoc appointment was void and therefore, non est by virtue of Section 16 (2) of the Act. I, therefore, do not feel persuaded to interfere into the matter."

K.N. Dwivedi was a case like the one on hand, of ad hoc appointment under the provisions of Second Removal of Difficulties Order in a short-term vacancy. The requirement of advertising the vacancy in Newspapers, as a condition precedent to direct appointment, was not a requirement of the law under Second Removal of Difficulties Order as it stood prior to K. N. Dwivedi. Advertisement in Newspapers became an imperative condition of a valid appointment in a short-term vacancy only as a result of the decision dated 13.1.1994 in K. N. Dwivedi's case which finds its echo in Radha Raizada decided on 12.7.1994. Appointment in a short-term vacancy by simply notifying it on the Notice-board of the Institution was permissible prior to K. N. Dwivedi. The relevant clause of the Second Removal of Difficulties Order albeit it held arbitrary and repugnant to Article 16(1) of the Constitution was "law nonetheless for intermediate transactions". The law as it stood prior to determination of unconstitutionality was an "operative fact" resulting in "consequences which cannot justly be ignored". Many such appointees came to be regularised by legislation on such vacancy being subsequently converted into substantive vacancy in terms of Section 33B of the Act. The past cannot, therefore, be erased by judicial declaration in Radha Raizada. In the circumstances, keeping in view equity and good conscience, we hold that Sanjeev Kumar has no application to a case of appointment in short-term vacancy under the Second Removal of Difficulties Order. The present case being one of the ad hoc appointment by direct recruitment in a short-term vacancy made prior to K. N. Dwivedi and Radha Raizada would not be invalidated merely because the vacancy was not notified in two Newspapers of wide circulation in addition to notice on the Notice-board of the Institution and since appointment was not cancelled nor was the deemed approval withdrawn by the District Inspector of Schools, the decision of the Supreme Court in Suresh Chandra Verma. too would not apply.

14. The next question that falls for consideration is whether the appointment of the petitioner-appellant could still stand invalidated on the ground that it was made without prior approval of the District Inspector of Schools. Sri Yatindra Singh placed reliance on a Division Bench decision of this Court in A. K. Pathshala v. Smt. M. D. Agnihotri 1971 All LJ 983, wherein it was held, on construction of Section 16F (1) of the U. P. Intermediate Education Act, 1921, that appointment without prior approval by the Competent Authority would, in the eye of law, be no appointment. The ratio of the said decision as held by a subsequent Division Bench in Lalit Mohan Misra v. District Inspector of Schools. 1979 All LJ 1025, is

that a "person gets the status of a teacher when requisite formality is completed." The relevant observations are as under :

"Without approval the person does not get the status of a teacher even though the approval is to be followed by formal letter but in the absence of formal letter the person gets the status of a teacher after approval to the appointment is given by the District Inspector of Schools. The appointment of a person as a teacher becomes effective only from the date approval is given and even if a person is allowed to work before that the same has no recognition under the U. P. Intermediate Education Act."

15. Paragraph 2 (3) (iv) of the Second Removal of Difficulties Order is not phrased in a prohibitory language as was the language used in Section 16F (1) of the U. P. Intermediate Education Act, 1921. The words "prior approval" have been used in sub-clause (ii) of paragraph 2 (3) of the Second Removal of Difficulties Order and a conjoint reading of sub-clauses (it), (Hi) and (iv) of clause (3) of paragraph 2. no doubt, leads to an inescapable conclusion that the appointment would be issued under the signature of the Manager only on the approval having been communicated by the District Inspector of Schools within seven days of the receipt of the papers or where the approval is deemed to have been accorded as visualised by sub-clause (Hi) of clause (3) of paragraph 2 of the Second Removal of Difficulties Order. However, appointment, if made prior to approval or deemed approval, would become effective from the date of approval or deemed approval as held by the Division Bench of this Court in Lalit Mohan Misra (supra). There is nothing on the record to connote that pre-requisite conditions attracting deemed approval were not satisfied in the instant case. The learned single Judge has also not addressed himself to this facet of the matter and the Judgment under appeal on this score too cannot be sustained.

16. The last question that emerges for determination is whether the learned single Judge was justified in non-suiting the petitioner on the ground that the appointment was made during the subsistence of ban imposed by the Government on appointments. In the counter-affidavit filed on behalf of the District Inspector of Schools, it has been stated in para 4 that due to promotion of Sri S. P. Tripathi. a L. T. grade teacher, a vacancy occurred in the L.T. grade for short duration but "due to Imposition of ban on the appointment of teachers vide G. O. No. 3440/15-7-2-(6) 1992 dated 16th July. 1992". the Management had no power to appoint any person. The said G. O. has not been brought on record and from the judgment of the learned single Judge, it is not clear whether the ban on appointment imposed by the Government vide G.O. aforesaid, was applicable in respect of appointment on short-term vacancy as well. This aspect, in our opinion, too needs to be thrashed out and considered before abnegating the claim of the petitioner-appellant, This question as also the question as to whether the prerequisite conditions attracting deemed approval were satisfied or not. are questions of fact for the determination of which writ is not the proper forum and with a view to doing justice in the case, we are of the considered view

that the District Inspector of Schools, Allahabad should be directed to examine the questions aforesaid and take a decision in the matter in accordance with law and in the light of the observations made in the judgment. The grant of reliefs regarding payment of salary, etc. as claimed in the writ petition would depend upon the decision of the District Inspector of Schools to be taken in accordance with this Judgment.

17. Accordingly, the appeal succeeds and is allowed. The Impugned judgment dated 31.10.1995 of the learned single Judge is set aside and the writ petition is disposed of with the direction that in case the petitioner-appellant files a representation, the District Inspector of Schools, Allahabad shall dispose of the same in accordance with law, keeping in view the observations made in this judgment.