
(1998) 10 AHC CK 0057

In the Allahabad High Court

Case No : C.M.W.P. No. 31115 of 1996 and other petitions and Special Appeals

Balak Singh Kushwaha

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 06-10-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act,
1982 — Section 10, 10(2), 11, 11(1), 16
Uttar Pradesh Secondary Education Services Commission Rules, 1995 — Rule 12,
12(1), 12(2), 12(3), 3(10)
Uttar Pradesh State Control Over Public Corporations Act, 1975 — Section 2

Citation : (1999) 1 AWC 252 : (1998) 3 UPLBEC 1989

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

Bench : Division Bench

Advocate : Vishnu Gupta, for the Appellant; S.C. and A.K. Yadav, for the Respondent

Final Decision : Disposed Of

Judgement

R.R.K. Trivedi, J.—Dispute in this bunch of cases, consisting of Special Appeals and Writ Petitions, pertains to selection of principals by U. P. Secondary Education Services Commission for various recognised private aided Intermediate College in the State of Uttar Pradesh. On the basis of the challenges raised and the reliefs sought in the cases, they may be put in different groups. The factual matrix of the cases is as under :

2. U. P. Secondary Education Services Commission (hereinafter referred to as the Commission) by advertisement dated 13.12.1995 invited applications for the post of Principal of private recognised and aided higher secondary Institutions in the State. In pursuance of the aforesaid advertisement, large number of applications were received by the Commission. The proceedings for selection of Principals with regard to institutions located in different regions of the State were initiated. The Commission finalised the selection, prepared the panel of the

selected candidates for respective regions. Separate notifications were Issued for each such region on 3.8.1996 and 30.8.1996. Ad hoc principals already functioning in the institutions filed large number of writ petitions challenging the selection and questioning the legality of the provisions of O. P. Secondary Education Service Commission Act, 1982 (hereinafter referred to as the Act) as amended from time to time and also the provisions of U. P. Secondary Education Services Commission Rules. 1995 [hereinafter referred to as the Rules). Besides the aforesaid legal challenges, the procedure and criteria adopted for selection by the Commission were also challenged on various grounds. Out of this group of petitions, in Writ Petition No. 31115 of 1996, learned single Judge passed order dated 25.9.1996 referring the following two questions for decision by a larger Bench :

1. Whether Rule 12 (3) of the U. P. Secondary Education Services Commission, 1995 is constitutionally valid?

2. Even if the Rule is held to be valid, what should be the operative criteria for selection of principals and teachers so that the best candidates irrespective of caste, community or creed are selected?

3. The learned single Judge also passed an interim order staying the appointment of the selected candidates. Similar interim orders were also passed in several other writ petitions belonging to this group of petitions. In some writ petitions, the interim orders were granted even prior to 25.9.1996.

4. Aggrieved by the aforesaid order of 25.9.1996, the Commission filed Special Appeal No. 180 of 1996 in which a Division Bench after hearing the parties directed that the Special Appeal along with Writ Petition No. 31115 of 1996 and other similar cases will be listed before appropriate bench on 6.11.1996 for disposal. The Bench also passed an interim order to the following effect :

"On interim measure, it is ordered that the candidates selected by the Commission who have Joined the post will be allowed to function as Principal of the Institutions and such candidates who have not joined on the post till date will not join the post without leave of this Court."

5. Separate special appeals were also filed by the selected candidates and in all of them, similar interim orders were passed by the Division Bench. Madhyamik Vidyalaya Prabandhak Association filed Writ Petition No. 33784 of 1996 challenging the selection proceedings pending before the Commission on various grounds. In this writ petition, learned single Judge passed another order on 17.10.1996 referring the case to a larger Bench. The learned single Judge also passed an interim order directing that the Commission may hold selection but the selected candidates for the post of Principals or teachers shall not join until decision by the larger Bench. The order dated 17.10.1996 was challenged in Special Appeal No. 814 of 1996 which was dismissed by the Division Bench on 6.11.1996. Special Appeal preferred from the interim orders passed in the aforesaid group of writ petitions thus shall hereinafter be referred to as cases of

group one and the writ petitions from which these appeals have arisen shall be referred to as cases of group two.

6. On 17.4.1997, the State Government issued a Notification in exercise of powers u/s 2 of the Uttar Pradesh State Control Over Public Corporations Act, 1975 (U. P. " Act No. XLI of 1975) directing the Commission not to take any steps to make selection by direct recruitment of candidates for being appointed as teachers which includes Principals and headmasters and shall not prepare any panel of candidates. Challenging the aforesaid notification dated 17.4.1997, issued by the State Government. Writ Petition No. 15834 of 1997 was filed by one Atma Ram. In this petition, it was also claimed that the notification Issued did not apply to the select list dated 15.4.1997. In this petition, an Interim order was passed on 13.5.1997. This petition and other petitions filed challenging the notification dated 17.4.1997 shall hereinafter be referred to as the cases of group three.

7. The fourth group of cases consists of writ petitions filed challenging the select list dated 15.4.1997. Out of these petitions those which have been referred to during arguments are Writ Petition Nos. 24897 of 1997. 18350 of 1997 and 35995 of 1997. Interim orders were also passed in these petitions.

8. Some of the candidates shown to have been selected for the post of Principal filed applications in Special Appeal No. 180 of 1996 seeking leave of the Court to Join the posts against which they were selected. The Division Bench after hearing the parties, passed the following order on 25.3.1998 :

"Heard S/Shrt R. N. Singh and Arun Tandon for applicants who have been selected by the Commission for posts of Principal and have sought leave of the Court to join on the said post and Shri Ashok Khare for contesting respondents. Perused the order dated October 16. 1996."

"The order dated October 16. 1996 is modified. The candidates selected by the Commission shall be permitted to Join on the post of Principal in accordance with the rules and law. However, their appointments shall be subject to the decision of this Court in Special Appeal No. 180 of 1996, Writ Petition No. 31115 of 1996 and other similar cases."

9. The aforesaid order of the Division Bench dated 25.3.1998 was challenged before the Supreme Court by filing special leave petitions which were heard together by Hon"ble Supreme Court and an interim order was passed on 1.5.1998 to the following effect ;

"Permission to file SLP is granted. Issue notice of special leave petitions, prayer for Interim relief and application for impleadment. In the meantime. there will be stay of the operation of the impugned Judgment.

Reply to be filed within six weeks, rejoinder within two weeks thereafter. List thereafter."

10. On 20.7.1998 Hon"ble Supreme Court passed another order, directing expeditious disposal of cases to the following effect :

"Reply to be filed within four weeks. Rejoinder to be filed within two weeks thereafter. List the case after ten weeks. Counsel for the petitioner submits that the writ petition which is pending in the High Court had been heard on merits on two occasions but the case was not finally decided. We do hope that before the next date of hearing the writ petition will be heard by the High Court and disposed of specially in view of the fact that the question relates to the appointment of Principals of various educational institutions and it is not in the public interest that the matter remains undecided for a long time."

11. It is in the aforesaid circumstances that this bunch of cases has come up for hearing before this Bench. Balak Singh Kushwaha v. State of U. P. and others, Civil Misc. Writ Petition No. 31115 of 1996. will be the leading case.

12. We have heard Shri Ashok Khare. Shri Vinai Khare and Shri R. O. B. S. Chauhan for petitioners. Shri S. C. Budhwar, Senior Advocate, appearing for petitioners in Writ Petition No. 15834 of 1997 falling in Group III, Shri R. N. Singh, Senior Advocate. appearing for the respondents in the writ petitions, Shri A. K. Yadav, learned counsel appearing for the Commission in the first group belonging to Special Appeals, Shri S. C. Dwivedi. learned counsel appearing in Special Appeal No. 875 of 1996 and Special Appeal No. 877 of 1996 and Shri V. P. Singh. learned counsel appearing for the Board (which has replaced the Commission).

13. After hearing the submissions made by the learned counsel for the parties and after perusing the orders dated 25.9.1996 and 17.10.1996 referring the cases for disposal by the larger Bench and on perusal of the material on record, in our opinion, the following questions require determination by this Bench for disposal of the cases :

QUESTIONS FOR DETERMINATION :

(1) Whether Sections 9, 10 and 11 of U. P. Act No. V of 1982 as amended by U. P. Act No, XV of 1995, suffer from vice of excessive allegation of legislative functions and are also violative of Article 14 of the Constitution as they conferred arbitrary and unguided powers on Commission in matter of selection of teachers including head of the institutions?

(2) Whether the provisions contained in Rule 12 of U. P. Secondary Education Services Commission Rules, 1995 particularly sub-rule 3 of Rule 12 are unconstitutional and ultra vires of Section 10 (2) of the Act, as they fail to carry out the legislative intent?

(3) Whether the procedure and method adopted by the Commission for selection of candidates for the post of Principal totally based on viva voce is illegal, arbitrary and violative of Article 14 of the Constitution?

(4) Whether the notification dated 17.04.1997 issued by State Government u/s 2 of U. P. State Control Over Public Corporation Act. 1975. is illegal, without authority and beyond the scope of Section 2 of the said Act? and in any view of the matter it does not affect the select list dated 15.4.1997 notified by Commission?

(5) Whether the select list dated 15.4.1997 is illegal and without authority having been issued and published after the notification dated 17.4.1997 by the State Government u/s 2 of U. P. State Control Over Public Corporation Act, 1975, and could not be acted upon.

(6) Whether the officiating ad hoc Principals appointed before 6.4.1991 stood automatically regularised on their respective posts by operation of law u/s 33A (1A) of the Act and there being no vacancy, the selection made against such posts is illegal and liable to be quashed?

(7) Whether the selection of the candidates for the posts of Principal, which were occupied by officiating ad hoc Principals appointed prior to 7.8.1993 and those who have been found entitled for regularisation by the Screening Committee u/s 33C (1) (a) (ii), Inserted in the Act by U. P. Ordinance No. 3 of 1998 with effect from 20.4.1998, is also illegal and cannot be enforced?

(8) Whether the candidates selected "for the post of Principal by the Commission cannot be now appointed in view of the prohibition contained in Section 16 of the Act, as amended by Y. P. Ordinance No. 3 of 1998 and U. P. Act No. XXV of 1998 as the aforesaid sections are not by the Board and have not been saved or preserved by any provision in the Principal Act or in the amending Ordinance of the Act of 1998?

(9) Whether the entire selection of the candidates for the post of Principal made by the Commission, stands vitiated on account of non-consideration of the claim of two senior-most teachers of respective institutions as provided in the Rules?

(10) Whether the entire selection proceedings suffer from arbitrariness and are farcical in nature as factors of caste and money played. They are also bad as the candidates who did not possess requisite qualifications prescribed under law have been selected for appointment. The entire selected proceedings are liable to be quashed?

14. Question Nos. 1. 2 and 3 pertain to legal challenges against Sections 9, 10 and 11 of the Act and Rule 12 of the Rules. 1995. hence they can be taken together for consideration. Before entering into this exercise it may also be mentioned that the provisions of U. P. Act No. V of 1982 including Sections 9, 10 and 11 have been drastically amended by U. P. Act No. XXV of 1998 with retrospective effect from 20th April, 1988. Similarly in place of U. P. Secondary Education Services Commission Rules. 1995 (hereinafter referred to as Rules), the U. P. Secondary Education Services Selection Board Rules. 1998 have been framed (hereinafter referred to as Rules of 1998). Rule 12 of the Rules of 1998 is

also entirely different from the erstwhile Rule 12 of Rules. 1995. Provisions of U. P. Act No. V of 1982 as amended by U. P. Act No. XXV of 1998 and Rules of 1998 have not been challenged before us. However, as the selections of the candidates for the post of principals by the Commission made in the year of 1996 and 1997, which are subject-matter of dispute in present cases, were governed by unamended provisions of Act and Rule, the challenges made against the Sections 9, 10 and 13 of the Act and Rules of the Rules of 1995 survive and have to be examined.

15. The trust of the submissions of Shri Ashok Khare, learned counsel appearing for the petitioners against Sections 9, 10 and 11 of the Act is that the essential legislative functions have been illegally delegated to the other authorities. While enacting Sections 9, 10 and 11 of the Act, the Legislature ought to have laid down the criterion for selecting suitable candidates for the posts of head of the institutions which is a pivotal post for running the academic institutions and for bringing up the academic excellence. The submissions is that the such essential legislative functions could not be legally left to be determined by the selecting body. In another word, the Commission constituted under the Act. Learned counsel has further submitted that by U. P. Act No. XV of 1995 the provisions of U. P. Act No. V of 1982 were amended with regard to the composition of the Commission and also with regard to the method of selection of the suitable candidates. It was left to the Commission to prepare guidelines on matter of recruitment and promotion of teachers. Selection was left to be totally based on interview without having reference to the academic qualification or necessary teaching or administrative experience. The provisions thus suffered from serious vice of excessive delegation of legislative functions. The provisions contained in Rule 12 of the Rules of 1995 with special reference to the Rule 3 of sub-rule (10) has been challenged on the ground that It failed to carry out the legislative intent as no other criterion has been laid down for selecting the most suitable candidates except the oral interview. This unguided power to select the candidates on the basis of oral interview can be used in arbitrary manner and has been actually used in selecting candidates on the basis of the factors extraneous for such selections. The provisions of Rule 12 are thus unconstitutional and violative of Article 14 of the Constitution. In support of his submissions, learned counsel for the petitioners has placed reliance on number of cases decided by Hon"ble Supreme Court which are being mentioned below :

"In re : Delhi Laws Act (1912) etc.. AIR 1951 SC 332 , State of Mysore Vs. S.R. Jayaram, . Harkesh Chandra Ratan Chandra v. Union of India. AIR 1970 SC 1478 . The State of Punjab and Another Vs. Khan Chand, , AIR India Vs. Nergesh Meerza and Others, . A.N. Parasuraman Etc. Vs. State of Tamil Nadu, . P. K. Ram Chandra v. Union of India. AIR 1984 SC 534 . Umesh Chandra Shukla Vs. Union of India (UOI) and Others, . Durgacharan Misra Vs. State of Orissa and Others, and Dr. Krushna Chandra Sahu and others Vs. State of Orissa and others, .

16. Sri R. N. Singh and Sri. S. C. Budhwar. on the other hand, submitted that the

validity of the entire U. P. Act No. V of 1982 has been already considered and examined by a Division Bench of this Court in case of *Indra Raj Singh Yadav v. U. P. Madhyamik Shiksha Seva Ayog*. 1984 UPLBEC 510 . Before the Division Bench, the similar challenge that provisions of the Act suffer from vice of excessive delegation of legislative function was raised but was negatived. The judgment of the Division Bench was challenged before Hon"ble Supreme Court in Special Leave to Appeal No. 6367 of 1984 which was dismissed on 17.8.1984 on merits. The judgment of Division Bench in *Indra Raj* was upheld. It has been submitted that the aforesaid Judgment of Division Bench in *Indra Raj* case held the field for the last 14 years and it is not open to the petitioners to question the validity of the provisions of the Act on the same grounds. It is also submitted that the judgment of the Division Bench which was confirmed by Hon"ble Supreme Court is binding as held in case of *Oriental Insurance Co. Ltd. and Others Vs. Verda Ram and Others*, . Learned counsel have further submitted that selection on the basis of the interview only is an approved and recognised method of selection and the selections made by the Commission on the basis of interview cannot be challenged on this ground. It has been submitted that the statutory provisions can be annulled only when it is discriminatory. It cannot be annulled only on the allegation that it is arbitrary. It has also been submitted that the provisions of Statute cannot be declared ultra vires merely because it is capable of being misused. In such situation only resultant action can be challenged. Reliance has been placed in cases of *State of Bihar and others, etc. etc. Vs. Bihar Distillery Ltd., etc., , State of Andhra Pradesh and others v. Modowel and Co. and others*. JT 1996 3. 679. With reference to Rule 12. it has been submitted that provisions contained in Rule 12 of the Rules of 1995 fully complied with the legislative intent. It is neither arbitrary nor does it suffer from any illegality. It has been submitted that before interview screening was done on the basis of quality point marks as provided in Appendix B. C and D of the Rules and thereafter the candidates were called for Interview. Thus, procedure provided and adopted by the Commission did not suffer from any illegality. Even after amendment of the Act and the Rules in 1995 no major changes were made in provisions of the Act and Rule and substantially they remained same.

17. We have thoroughly considered the rival submissions of the learned counsel for the parties. The object and reasons for enacting U. P. Act No. V of 1982 appended to the Bill reads as follows ;

"The appointment of teachers in secondary institutions recognised by the Board of High School and Intermediate Education was governed by Intermediate Education Act, 1921 and Regulations made thereunder. It was felt that the selection of teachers under the provisions of the said Act and the Regulations was sometimes not free and fair. Besides the field of selection was also very much restricted. This adversely affected the availability of suitable teachers and standard of education. 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. and B.T.C. grade for such Institutions."

18. It is assumed that the Legislature is the best body/authority to know the evil prevailing in a particular field of society and also the cure for it. From the object and reasons mentioned above, it is clear that the Legislature felt that the selections of teachers under the provisions of U. P. Intermediate Education Act, 1921 and the Regulations made thereunder were not free and fair and the field of selection was also very much restricted. With this shortcoming in mind, Legislature in Section 4 provided for composition of the Commission consisting of Chairman and not more than eight other members to be appointed by the State Government. The composition of Commission provided in Section 4 that a member shall be a person who occupies or has occupied a position of eminence in Judicial Service two eminent persons shall be from the State Education Services, remaining three members could be appointed with teaching experience as Professor of University, Principal of any college affiliated to the University and the Principal of any Institution recognised by the U. P. Intermediate Education Act, 1921. The Commission consisting of such eminent persons could be trusted for holding free and fair selection. In Section 10, it was further provided that the Commission shall with a view to inviting talented persons give wide publicity in the State to the vacancies notified to it under subsection 1. In Sections 9 (a), (b) and (c), it was provided that the Commission shall have power to prepare guidelines on matters relating to the method of recruitment and promotion of teachers. It shall have power to conduct examinations where considered necessary, hold interviews and make selection of candidates for being appointed as teachers. It could select and invite experts to be appointed as examiners for the purposes specified in clause (b) of Section 9. In Section 10 (2), it has been provided that procedure for selection of candidates for appointment to the post of such teachers shall be such as may be prescribed. In Section 11 (1), it was provided that the Commission shall as soon as possible after the notification of the vacancies u/s 10 hold interviews (with or without examination) of the candidates and prepare a panel of those found most suitable for the appointment. The Division Bench of this Court in case of Indra Raj Singh Yadav examined these provisions and repelled the contentions raised before it that the essential legislative functions have been delegated. After examining some of the judgments of Hon''ble Supreme Court cited before us, the Division Bench expressed its opinion in para 17 of the judgment in following words :

"We find no merit in the above contention. There is no dispute so far as the principle of delegation of powers is concerned it is true that if the Legislature abdicates its essential legislative function to the delegatee the statute would be liable to be struck down as suffering from the vice of delegation of essential legislative functions. In the present case, however, we find that Section 9 (A) and (B) do not suffer from that vice. The Commission has been empowered and charged with the duty of making selection after holding examination were

considered necessary or on the basis of interviews and thereafter make selection of the candidates for being appointed as teachers or head of institutions. The legislative policy behind the enactment as discernible from itself varies, namely that of choosing the most suitable candidates after holding interviews or examination, were considered necessary, from amongst the candidates, possessing the minimum qualification having been clearly indicated by the various provisions of the Act. the duty to prepare the guidelines on matters relating to method of recruitment and promotion and to conduct examination or to hold the interviews for the purpose cannot be regarded as delegation of essential legislative functions. The Commission is composed of eminent members of Judicial service and eminent and experienced academic men such as Professor of a University or a Principal of a college affiliated to a University having an experience of not less than 10 years or a Principal of an Intermediate College having an experience of not less than 15 years. Consequently, leaving the preparation of guidelines or methods relating to the method of recruitment and promotion or the duty to hold Interviews and make selection on that basis can by no stretch be regarded as essential legislative function. In the present case, we find that the entire procedure for holding selection has been laid down in the rules framed by the State Government itself. It is only the allocation of marks under the different heads at the interview as well as the criteria for interview test etc. which have been left to be determined by Commission, obviously these are not essential legislative functions but are matters of detail to be worked out by a high powered Commission which alone, we do venture to think, is the best agency for preparation of guidelines on these matters."

19. The Division Bench clearly held that preparation of guidelines on matters relating to the matter of recruitment and promotion or the duty to hold interviews and make selection on its basis cannot be regarded as essential legislative functions. They are simply matters of detail to be worked out by the Commission which is the best agency for preparation of guidelines on these matters. The aforesaid finding of the Division Bench was confirmed by Hon''ble Supreme Court. We are in respectful agreement with the view taken by the Division Bench in case of *Indra Raj Singh Yadav v. U. P. Madhyamik Shiksha Seva Ayog*, (supra). The learned counsel for the petitioners, however, submitted that the provisions of U. P. Act No. V of 1982 have been drastically changed by U. P. Act No. XV of 1995 and fresh rules were framed known as U. P. Secondary Education Services Commission Rules, 1995 and, therefore, validity of the provisions of the Act and the Rules require a reconsideration. We have considered provisions of the Act as amended by U. P. Act No. XV of 1995 and the Rules of 1995, however, we do not find any substantial change in legislative policy or major departure with regard to the mode of selection. The composition of Commission under the amended Act is provided in Section 4, which reads as under :

Composition of the Commission.--(1) The Commission shall consist of a Chairman and not more than six other members who shall subject to sub-section

(2), be appointed by the State Government.

(2) The Chairman and members shall be appointed from amongst the persons who have-

(a) been in the opinion of the State Government, an eminent educationist or have made valuable contributions in the field of education : or

(b) worked as a Professor in any University established by law in Uttar Pradesh or as a Principal of any College recognised by or affiliated to such University for a period of not less than ten years ; or

(c) worked as a senior officer in the Judicial, Administrative or Education Service of the State for a period of not less than ten years ; or

(d) worked as a Principal of any institution for a period of not less than fifteen years.

20. From the aforesaid, it is clear that there is no major change in composition of the Commission. Similarly Sections 9, 10 and 11 of the Act contain almost similar provisions with slight variations which are not of any significance. In our opinion, the view expressed by the Division Bench of this Court in Indra Raj Singh's case is squarely applicable and the submissions of the learned counsel for the petitioners cannot be accepted.

21. While challenging the validity of the provisions of the Act and the Rules of 1995, the serious challenge raised was against the method of selection based on the Interview only. We have seriously considered the validity of the selections made by the Commission with this angle also, however, we do not find any substance. Before the enactment of U. P. Act No. V of 1982, the selection of teachers and head of institutions was governed by the provisions of Intermediate Education Act, 1921, and the Regulations framed thereunder. The selection committees constituted under the provisions of the Act and the Regulations framed thereunder selected the candidates for appointment as teachers and head of the institutions on the basis of the Interview only. It was not disputed before us that at no point of time the written examinations were held for selection of the candidates as teachers and head of the institutions. Similarly under U. P. Act No. V of 1982 also even before its amendment in 1995, the selections were made solely on the basis of interview though it was left open to the Commission to hold examinations also if necessary but the Commission never resorted to this method. The only change brought about by amendment introduced by U. P- Act No, XV of 1995 which can be said to be of some significance was that in Section 11 (1) of the words "with or without examination" were left out. Similarly in Section 9 (b) words "to conduct examination where considered necessary" were also left out. The effect of the aforesaid changes in Sections 9 and 11 was that after amendment, the Commission could select candidates only on the basis of interview. But as already mentioned above, even under unamended provision which empowered Commission to hold examination necessary, the Commission

never opted to hold examinations for selection of the candidates. Thus. It cannot be said that any major change or departure in method of selection was at all aimed at or brought by the Legislature by amending the Act in 1995. Legislature in its wisdom would have thought it proper to delete some of the superfluous words in Sections 9 and 11 of the Act. In this connection, much of the criticism was raised against Rule 12 and it was submitted that it conferred arbitrary powers on Commission to select candidates for the post of principal only on the basis of interview without there being any reference to academic qualifications. teaching and administrative experience. In the order dated 25.9.1996 also question No. 1 referred to the larger Bench relates to Rule 12 of the Rules of 1995. For convenience, Rule 12 of the Rules of 1995 is being reproduced below :

"Rule 12. Procedure for direct recruitment.--(1) The Commission shall, in respect of the vacancies to be filled by direct recruitment, advertise the vacancies including those reserved for candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens in at least two daily newspapers, having wide circulation in the State and call for the applications for being considered for selection in the proforma published in the advertisement. For the post of Principal of an Intermediate College or the Headmaster of a High School the name of place of the institution shall also be mentioned in the advertisement and the candidates shall be required to give the choice of not more than three institutions in order of preference and if he wished to be considered for any particular institution or institutions and for no other Institution, he may mention the fact In his application.

(2) The Commission shall scrutinise the applications and prepare lists for each category of posts on the basis of quality points specified in Appendix B, C and D, as the case may be, and having regard to the need for securing due representation of the candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens in respect of the post of teacher in lecturers and trained graduates (L.T.) grade, call for interview such candidates who have secured the maximum quality points in such manner that the number of candidates shall not be less than five times of the number of vacancies.

(3) The Commission shall hold interview of the candidates and, for each category of post prepare panel of those found suitable for appointment in order of merit as disclosed by the marks obtained by them in the interview. The panel, for the post of Principal or Headmaster shall be prepared institutionwise after giving due regard to the preference given by a candidate, if any. for appointment in a particular institution whereas for the posts in the lecturers and trained graduates (L.T.) grade, It shall be prepared subjectwise and groupwise. respectively. If two or more candidates obtain equal marks in interview, the name if the candidate who has higher quality points shall be placed higher in the panel and if the marks obtained in the Interview as well as the qualify points of two or more candidates are equal, the name of the candidate who is older in age shall be placed higher. In the panel for the post of Principal or Headmaster, the number of names shall

be three times of the number of the vacancy and for the post of teachers in the lecturers, and trained graduates (L.T.) grade, it shall be larger (but not larger than twenty five per cent) than the number of vacancies.

Explanation.--For the purposes of this sub-rule the word group-wise means in accordance with the groups specified in the Explanation to sub-rule (2) of Rule 11.

(4) At the time of interview of candidates, for the post of teachers in lecturers and trained graduates (L.T.) grade the Commission shall, after showing the list of the Institutions which have notified the vacancy to it, require the candidates to give, if he so desires, the choice of not more than five such institutions not situated in his home district in order of preference, where, if selected, he may wish to be appointed.

(5) The Commission shall after preparing the panel in accordance with sub-rule (3). allocate the institutions to the selected candidates in respect of the posts of teachers in lecturers and trained graduates (L.T.) grade in such that the candidate whose name appears at the top of the panel shall be allocated the institution of his first preference given in accordance with sub-rule (4). Where a selected candidate cannot be allocated any of the institutions of his preference on the ground that the candidates placed higher in the panel have already been allocated such institutions and there remains no vacancy in the Commission may allocate any institution to him as it may deem fit :

Provided that no candidate shall be allocated the institution of his home district.

(6) The Commission shall forward the panel prepared under sub-rule (3) along with the name of the institutions allocated to selected candidates in accordance with sub-rule (5) to the Inspector with a copy thereof so the Deputy Director and also notify them on its notice board.

22. A close scrutiny of Rule 12 shows that under sub-rule (1) of Rule 12. Commission is required to advertise the vacancies including those reserved for candidates belonging to the reserved categories in at least two daily newspapers having wide circulation in the State and call for applications for being considered for selection in the proforma published in the advertisement itself. It also provides that for the post of Principal of an Intermediate College or headmaster of High School, the name and place of Institution shall also be mentioned in the advertisement and the candidates shall be required to give the choice of not more than three institutions in order of preference and if he wished to be considered for any particular institution or institutions and for no other institution, he may mention the fact in his application. Sub-rule (2) of the Rule 12 provides for scrutiny of the applications on the basis of the qualify points specified in Appendix-13, C and D and to call for Interview such candidates who have secured the maximum qualify points in such manners that the number of candidates shall not be less than the five times of the number of vacancies. Appendix-D of the rules provides for qualify points for selection of Principals

headmasters. In SI. Nos. 1 to 4 of Appendix-D qualify points are assessed with regard to the academic qualifications. Serial number 5 provides for training. Serial No. 6 provides for administrative experience. Note appended at the bottom provides that two marks for each year and the maximum 15 marks shall be allocated for the administrative experience. Thus, at the screening stage, the academic qualification, training and administrative experience is taken into consideration and only those are called for interview who are able to secure the maximum qualify points. Thus, it cannot said that the academic qualifications and other necessary qualifications for the post of Principal are altogether ignored. After screening for interview, only such candidates are left which are best among the applicants. The most suitable for the job out of them are selected on the basis of interview.

23. In our opinion, the aforesaid procedure provided u/s 12 cannot be termed as unconstitutional. The best authority to Judge and to determine the method of selection is the Legislature or the Commission. Court cannot interfere in their discharge of aforesaid functions unless it is established that the procedure provided violates any provision of the Constitution or it is against the policy laid down under the Act itself. We are unable to find any such infirmity in provisions of Rule 12. The procedure provided may not be very Ideal but even if it is satisfactory and is in consonance with the provisions contained in the Act, it cannot be interfered with by this Court under Article 226 of the Constitution of India. We have already mentioned that the practice in this State throughout has been to select candidates as teachers and head of the institutions on the basis of the interview, which preceded the initial screening on the basis of the qualify point marks. Large number of cases were cited from both the sides in support of their rival contentions but we do not think it necessary to overburden this Judgment by mentioning them in the judgment specially in view of the fact that the validity of the provisions of the Act was already upheld by a Division Bench of this Court in Indra Rqj Singh's case which was approved by Hon"ble Supreme Court. Thus, our opinion is that the provisions of the Act do not suffer from the vice of excessive delegation of legislative functions. They also do not violate Article 14 of the Constitution of India. The provisions of Rule 12 are not unconstitutional nor are they ultra vires of Section 10 (2) "of the Act.

24. Question Nos. 4 and & relate to the effect of notification dated 17th April, 1997 issued by the Government u/s 2 of the U. P. State Control Over Public Corporation Act, 1975, on the panel prepared by the Commission on 15th April. 1997.

25. Petitioner's contention is that the impact of notification dated 17th April, 1997 was that the panel of selected candidates prepared by the Commission on 15th April. 1997 could not be given effect as it could not be termed an action completed until it was communicated to the authorities for being implemented. It has been further submitted that the said panel dated 15th April. 1997 was communicated to the Deputy Director of Education on 20th April, 1997 for being

given effect. This action on the part of the Commission was wholly unauthorised. The learned counsel for the respondents on the other hand submitted that the alleged notification dated 17th April, 1997 issued by the State Government prohibiting Commission from taking any step to make selection by direct recruitment of the candidates for being appointed as teachers which includes Principals and Headmasters and not to prepare any panel of the candidates was illegal and without authority being beyond the scope of Section 2 of the U. P. State Control Over Public Corporation Act, 1975. Learned counsel has further submitted that the panel already finalised on 15th April, 1997 could not be affected by the notification dated 17th April, 1997 as the direction issued was only prospective. It has also been submitted that the list dated 15th April, 1997 of the candidates selected for the post of Principals could be legally Implemented as there was no legal impediment against making appointment of the candidates mentioned in the list. Learned counsel for the respondents have placed reliance in a Division Bench Judgment of this Court dated 3rd September, 1998 in Ram Gopal and others v. State of U. P. and others. Civil Misc. Writ Petition No. 20726 of 1977. in which the similar notification dated 11th April, 1997 issued by the State Government directing U. P. Higher Education Services Commission not to take any steps to make selection of candidates by direct recruitment for appointment in the substantive vacancies of the post of Principal due between 2-5 April, 1997 and not to prepare any panel of candidates has been held to be illegal and without authority. Sri Sabha Jeet Yadav, learned standing counsel on the other hand submitted that as the State Government had already undertaken the exercise to amend the U. P. Secondary Education Services Commission Rules, 1995. the notification dated 17th April, 1997 was issued by the Government temporarily suspending the activities of the Commission. The action taken by the State Government was certainly with regard to the policy matter to prevent the Commission from discharging its powers and duties during intervening period until the new rules came in force. Learned standing counsel submitted that a similar action of the State Government by issuing the order dated 17th April, 1981 directing the committees of management of private recognised and aided institutions of the State not to appoint teachers and head of the institutions before enacting U. P. Act No. V of 1992 was upheld by a Division Bench of this Court and by Hon"ble Supreme Court in case of Dr. Ram Jee Dwtvedl v. State of U. P., 1983 UPLBEC 426 (SC). After hearing the submissions of the learned counsel for the parties, in our opinion, it is not necessary for us in the facts of the instant case to examine the legality of the notification dated 17th April, 1997 Issued u/s 2 of the U. P. State Control Over Public Corporation Act, 1975. as it is not the case of the parties that Commission after the notification dated 17th April, 1997 had taken any step to make selection by direct recruitment of candidates for being appointed as teachers which Includes Principals and Headmasters and had prepared any panel of candidates. The facts of the case before the Division Bench in Ram Gopal's case were entirely different as U. P. Higher Education Services Commission continued its activities even after the notification dated 11th April, 1997 and even in writing asserted its right to

continue the selection proceeding. The short question for our consideration in the present case is, whether the panel already finalised on 15th April, 1997 could be forwarded to the authorities of the Education Department for being implemented. To appreciate the controversy in hand, it would be appropriate to reproduce the notification dated 17th April. 1997 which reads as under :

Notification Order

No. 227/15.7.1(17)/1996

Dated : Lucknow, 17th April. 1997

WHEREAS the State Government has taken a decision to amend the Uttar Pradesh Secondary Education Services Commission Rules, 1995 :

AND WHEREAS it is expedient that no selection of candidates be made by the Uttar Pradesh Secondary Education Services Commission on the post of teachers which includes Principals and Headmasters :

NOW, THEREFORE, in exercise of the powers u/s 2 of the Uttar Pradesh State Control Over Public Corporation Act. 1975 (U. P. Act No. XL1 of 1975). the Governor is pleased to direct that with effect from the date of this notification, the said Commission shall, without previous approval of the State Government in writing, take no steps to make selection by direct recruitment, of candidates for being appointed as teachers which includes Principals and Headmasters and shall not prepare any panel of candidates.

By Order Sd./- (P. Umashankar) Secretary (Secondary)

26. From perusal of the notification mentioned above, it is clear that the Commission without previous approval of the State Government could not take any step to make any selection by direct recruitment of candidates for being appointed as teachers and principals and consequently could also not prepare any panel of candidates. The prohibition contained therein was with effect from the date of the notification. In our opinion, the preparation of panel mentioned in the notification contemplated only a consequential step which could follow the exercise of selection made by the Commission. The notification could not affect in any way the panel dated 15th April. 1997 already prepared by the Commission before the notification dated 17th April, 1997 was Issued. The State Government nowhere in the notification has said that even the panel already prepared or existing shall not be given effect. The submission of Sri Ashok Khare that the preparation of the panel by the Commission on 15th April. 1997 could not be termed as a completed action, cannot be accepted in the facts of present case. The submission of the learned counsel was based on analogy that an order issued by an authority cannot take effect until it is communicated as it is liable to be changed and modified. But that principle applicable to orders cannot be extended to a panel prepared by Commission as the preparation of panel by the Commission is a series of steps taken by the Commission right from the date of the advertisement upto the date of Interview of the candidates under the

provisions of the Act and the Rules framed thereunder. The panel so prepared in exercise of the statutory duties and functions became final and its finality could not be dependent on its communication which is ministerial act for implementation of the panel. We do not see any legal impediment in giving effect to the said panel even after 17th April, 1997 on which date the notification was Issued. In this connection, learned counsel also submitted that the panel was ante-dated and it was not correctly prepared and was not communicated to the appropriate authority. This factual aspect of the case is highly disputed. The learned counsel appearing for the Commission strongly contended that the panel was prepared on 15th April, 1997 and it was notified on the notice board and copy was forwarded to the Deputy Director of Education, Meerut region same day. In para 21 of the Civil Misc. Writ Petition No. 15834 of 1997, it has been averred that the result of the said selection was declared on the notice board of the Commission on 15th April, 1997 and a copy of the notification to that effect was also forwarded to the Deputy Director of Education, Meerut region under Letter No. 78/97-98 dated 15th April, 1997. A copy of the letter dated 15th April, 1997 has been filed as Annexure-4. In our opinion, it is difficult for this Court in the present proceeding to determine this question of fact. However, from the material available on record it is clear that the Commission had finalised the panel on 15th April, 1997. Under sub-rule (6) of Rule 12 of Rules, 1995, Commission is required to forward the panel to the Inspector with a copy thereof to the Deputy Director and also notify them on the notice board. The learned counsel argued that the panel was directly sent to the Deputy Director of Education and not to the Inspector as provided in sub-rule (6) of Rule 12. However, even assuming that the submission made on behalf of the petitioners is correct, this breach of sub-rule (6) of Rule 12 by itself cannot affect the legality of the panel prepared by the Commission. The contention of the learned counsel for the petitioners assailing the panel dated 15th April, 1997 cannot be accepted for the reasons mentioned above. Question Nos. 4 and 5 are thus decided accordingly.

QUESTION NO. 6 :

27. The next submission of the learned counsel for the petitioners was that officiating/ad hoc principals appointed before 6th April, 1991 stood automatically regularised on their respective posts by operation of law under sub-section (1A) of Section 33A of the Act and there being no vacancy, the selection made by the Commission against such posts is illegal and is liable to be quashed. Sub-section (1A) was inserted in Section 33A of the Act by U. P. Secondary Education Services Commission and Selection Board (Amendment Act), 1991 (The U. P. Act No. VI of 1991) with effect from 6.4.1991. Sub-section (1A) provides that every teacher appointed by promotion, on ad hoc basis against a substantive vacancy in accordance with paragraph 2 of the U. P. Secondary Education Services Commission (Removal of Difficulties Order), 1981 and who possesses the qualification prescribed shall be deemed to have been appointed in substantive capacity provided such teacher has been continuously serving the institution

from the date of such ad hoc appointment to the date of such commencement. Subject-matter of dispute in the present petitions is regarding selections made by the Commission in 1996 and 1997. In all probabilities, the claims of the teachers who were serving on the basis of promotion as ad hoc principals must have been settled under sub-section (1A) of Section 33A of the Act long before as the cut of date provided was 6th April, 1991. On the basis of the general submissions made by the learned counsel for the petitioners, selection already made by the Commission cannot be held to be illegal. However, if any dispute with regard to any individual claim against the vacancy on the basis of provision of sub-section (1A) of Section 33A of the Act is pending before any authority or in any proceeding before the Court, that shall not be affected by this judgment. Such individual's claim shall be decided on its own merits on the basis of the material available. So far this Bench is concerned, it is not necessary to enter into the controversy raised while examining the legality of the provisions of the Act and Rules.

QUESTION NO. 7 :

28. On behalf of the officiating/ ad hoc Principals appointed prior to 7.8.1993. it has been submitted that those who have been found entitled for regularisation by the screening committee u/s 33C (1) (a; (U) inserted in the Act by the U. P. Ordinance No. 3 of 1998 with effect from 20th April, 1998, the selection made by the Commission against the posts occupied by such officiating/ad hoc Principals is also illegal and cannot be enforced. We have considered the submissions of the learned counsel for the petitioners however, we do not find any merit in the claim. It cannot be disputed that the impugned selections of candidates in 1996 and 1997 for the post of Principals in the present writ petitions are with regard to the vacancies already intimated to the Commission long back. The provisions of Section 33C came into force on 20th April. 1998, i.e., long after the vacancies were notified to the Commission and selections were completed. Sub-section (6) of Section 33C contains complete answer to the question raised by the learned counsel for the petitioners which is being reproduced below :

"Section 33C (6).--Nothing in this section shall be construed to entitle any teacher to substantive appointment, if on the date of the commencement of the Ordinance referred to in clause (c) of subsection (1), such vacancy had already been filled or selection for such vacancy has already been made in accordance with this Act."

From perusal of sub-section (6), it is clear that the claim of only such teachers will survive who occupied the post, in respect of which the appointment has not yet been made or the candidate was not selected by the Commission in accordance with the provisions of the Act. Thus, on the basis of the claim based on Section 33C (1) (a) (a), the selections already made by the Commissions cannot be disputed. The contention raised deserves outright rejection.

QUESTION NO. 8 ;

29. Shri Ashok Khare, learned counsel for the petitioners also submitted that the candidates selected for the post of Principals by the Commission in 1996-97 cannot be now appointed in view of the prohibition contained in Section 16 of the Act as amended by U. P. Ordinance No. 3 of 1998 and U. P. Act No. V of 1998. The basis for the aforesaid contention is that such candidates having not been selected by the Board and u/s 16 as amended in 1998 only candidates selected by the Board can be appointed. It has also been submitted that the selections made by the Commission before amendment have not been saved or preserved in the Principal Act or in the Ordinance No. 3 of 1998 or U. P. Act No. V of 1998. In this regard, learned counsel has also submitted that selection of the candidates made by the Commission cannot be saved u/s 6 of the U. P. General Clauses Act as the Principal Act has not been repealed but has been only amended. We have considered the submission of the learned counsel for the petitioners, however, we do not find any substance. By Section 6 of U. P. Act No. XXV of 1998, Chapter II containing Sections 3 to 11 of the Principal Act has been substituted by a new Chapter containing Sections 3 to 11. Section 3 falling in Chapter II newly substituted provides that State Government may by notification establish a Board to be called U. P. Secondary Education Services Selection Board. Sub-section (3) of Section 3 abovementioned provides for dissolution of the Commission and also provides consequences following dissolution of the Commission in clauses A. B. C and D of sub-section (3) of Section 3. Clause D which is relevant for this controversy reads as under :

"Any matter pending before that Commission under this Act as it stood immediately before the establishment of the board under sub-section (1) shall stand transferred to the board."

30. In our opinion the phrase used "any matter pending before that Commission" is wide enough to include the panel of selected candidates which was to be implemented by the Commission and such panel after the establishment of the Board shall stand transferred to the Board for being implemented. The legislative intent is very clear that the existing panel of selected candidates shall be dealt with by the Board which replaced the Commission. There is yet another reason for not accepting the contention of the learned counsel for the petitioners. The implementation of the panel prepared by the Commission of selected candidates could not be done on account of interim orders passed by this Court in several writ petitions. If the writ petitions ultimately fail, the candidates already selected cannot be put to disadvantage and they shall be entitled for appointment on the basis of the selection already made by the Commission. The interest of such candidates shall be protected under the doctrine of "actus curiae neminem grauat", Le., the Act of the Court shall prejudice no man. But for the interim orders passed by this Court and pendency of these petitions in this Court, the candidates would have been appointed on the basis of the selection made by the Commission. For the above reasons, we do not find any merit in this submission too.

QUESTION NOS. 9 AND 10 :

31. Petitioners have also challenged the selections made by Commission on the ground that the claim of two senior-most teachers of respective institutions for which candidates were selected for the post of Principals were not considered as provided in the rules. It has also been contended that the entire selection proceedings suffered from arbitrariness and are farcical in nature as factors of caste and money played. The selections have also been alleged to be bad on the ground that the candidates who did not possess requisite qualification prescribed under law have been selected for appointment as Principals. On the aforesaid submission, it has been prayed that the entire selection proceedings be quashed. The learned counsel for the respondents on the other hand submitted that the present petitions have been filed by such persons who are occupying the post of Principals on officiating or ad hoc basis for the last several years. They being seniormost teachers, as required under the rules, their names were forwarded to the Commission along with their service record. They were actually called for interview. their claims for appointment as regular Principal have been considered but they have not been found suitable. It has been submitted that after participating in the selection proceeding. It is not open for them to challenge the selection on the aforesaid grounds. We have examined the averments made in the Writ Petition Nos. 26994 of 1996, 31115 of 1996. 24897 of 1997 and Writ Petition No. 18350 of 1997. In all the aforesaid petitions, it is the admitted case of the petitioners that they were called for the interview and they actually appeared before the Commission at the time of selection. their service record was also forwarded for consideration of the Commission but they remained unsuccessful. Civil Misc. Writ Petition No. 34071 of 1996 and Writ Petition No. 33784 of 1996 have been filed by the Committee of Management and the registered societies respectively. They cannot be said to have any grievance so far as the claim of two seniormost teachers of the respective institutions is concerned. Civil Misc. Writ Petition No. 39902 of 1997 has been filed by the Committee of Management, Sanatan Dharm Inter College. Daulatpur and one Shiv Kumar Singh who claims himself to be appointed as L. T. grade teacher with effect from 1.1.1997. In this petition also, it does not appear that the dispute with regard to the non-consideration of the claim of two seniormost teachers was involved. In view of the factual position narrated above, we do not find any merit in the contentions that claims of the two seniormost teachers of the respective Institutions was not considered by the Commission at the time of selection. We also find force in the submissions of the learned counsel for the respondents that the petitioners cannot be allowed to challenge the selection proceedings once they have taken the chance of appearing before the Commission at the time of selection but remained unsuccessful.

32. The selections made by the Commission have also been challenged on the ground that candidates who did not possess the requisite qualification as prescribed under the law have been selected by the Commission. Serious challenge in this regard has been made in Civil Misc. Writ Petition No. 18350 of

1997. In paragraph 34, it has been said that the respondent Nos. 6 to 36 were candidates before the Commission and they have been selected by the Commission. Their names find place in the select list and in the panel notified by the Commission on 15th April, 1997. In respect of some of the respondents, allegations have been made that they did not possess the requisite qualification. However, it is difficult for this Court to enter into the investigation of such allegations in present proceeding under Article 226 of the Constitution of India. However, we leave this question open for the authorities of the education department, namely, Director or Deputy Director of Education to enquire into the facts as to whether the candidates recommended by the Commission for appointment as principals in respect of the institutions concerned possess requisite qualification or not. If they come to conclusion after giving him opportunity of hearing that a particular candidate does not possess requisite qualification for the post of Principal of the Intermediate College or Headmaster of the High School, it shall be open to them to send back the recommendation made by the Commission with their report and in such a case, the Board which has replaced the Commission shall consider the recommendation which shall be confined to the question as to whether the candidate did possess the requisite qualification on the date of selection. If the Board comes to the conclusion that the candidate did not possess the requisite qualification on the date of selection, it may remove his name from the panel prepared by the Commission and for this limited purpose, the matter shall be deemed to be pending before the Board under the provisions of subsection (6) of Section 3 of the Act as amended by U. P. Act No. XXV of 1998.

33. The last challenge against the selections made by the Commission is that the selection proceedings suffered from arbitrariness and it was farcical in nature as factors of caste and money played. There is no allegations in the writ petition in respect of payment of money by any candidate. Hence this question is out of consideration. However, in Civil Misc. Writ Petition No. 31115 of 1996 and Writ Petition No. 26994 of 1996 allegations have been made that the selections were based on caste considerations and the candidates belonging to a particular community have been given undue favour. The learned counsel for the Commission placed before us the original record of the panel of selected candidates dated 3rd August, 1996. The selection proceedings were held by the Commission between the dates 24th May, 1996 to 26th June, 1996 on various dates. It appears that total eighty one candidates were selected. Out of total eighty one candidates, eleven candidates belong to the community in respect of which it has been alleged that undue favour was shown by the members of the Commission, The percentage of candidates selected of the said community comes to 8.91 per cent. If the whole selection is judged with the above angle, it does not appear that any undue favour was given to a particular community. The eighty one candidates selected belong to all the communities and, in our opinion, the allegations that alarming situation has been created by the Commission by giving undue favour to a community was not correct. We have examined the

other allegations made in paragraphs 28 to 37. In para 29, it has been alleged that the candidate recommended by the Commission in respect of Code Nos. 56 and 62, has been shown undue favour as he was related to the Cabinet Minister of the Central Government. From perusal of the record, it shows that the candidate secured 73.5 marks in the interview and he has been shown second in the merit list. On the basis of his high merit, he might have been recommended for appointment in respect of more than one institutions according to his choice mentioned in the application form in order of preference. This particular candidate mentioned in the paragraph 29 was interviewed by the Board consisting of members of the Commission, namely, Sri Bhishm Pal Kushwaha and Sri Sukh Lal Adarsh. Both did not belong to his community. In the aforesaid circumstances, it is difficult to accept the allegation that the selection has been made on the basis of caste of the candidate and on account of the fact that he was related to Cabinet Minister of the Union of India. Similar allegations have been made in other paragraphs, relationship has been alleged on the basis of the community but the actual relationship has not been specified. On close scrutiny of the record produced before us, we do not find sufficient material on which basis the entire panel notified on 3rd August, 1996 may be quashed on such unfounded allegations. The allegations made are thus rejected.

34. In the referring order dated 25th September, 1996. the learned single Judge in question No. 2 also recommended that even if the Rule 12 (3) is held to be valid, the larger Bench may give its opinion about the objective criteria for selection of Principals and teachers so that the best candidate irrespective of caste, community or creed may be selected. We do not think that any such exercise is necessary by this Court as the Legislature has already intervened and the provisions of the Act have been amended by U. P. Secondary Education Services Commission (Amendment Act), 1998 (i.e., U. P. Act No. XXV of 1998). In pursuance of the amended provisions of the Act, the U. P. Secondary Education Services Selection Board Rules. 1998 have also been framed u/s 35 of the Act. The procedure provided in Rule 12 of the Rules of 1998 provides sufficient objective criteria for selection of the candidates. In our opinion, the procedure for direct recruitment provided in the new Rule 12 is sufficient to prevent the selections on the basis of the extraneous considerations.

35. For the reasons recorded above, our conclusions orders with regard to the cases of this bunch are as under:

(1) Sections 9, 10 and 11 of U. P. Act No. V of 1982 (as amended by U. P. Act No. XV of 1995) did not suffer from vices of excessive delegation of legislative functions and also did not suffer from any other legal or constitutional infirmity.

(2) Rule 12 of U. P. Secondary Education Services Commission Rules. 1995. did not suffer from any constitutional infirmity. The reference is answered accordingly.

(3) In view of the extensive amendment of U. P. Act No. V of 1982 by U. P.

Secondary Education Services Commission (Amendment) Act, 1998 (i.e.. U. P. Act No. XXV of 1998) and the Rules framed thereunder (i.e.. U. P. Secondary Education Services Selection Board Rules. 1998) it is no longer necessary for this Court to give any opinion about the objective criteria for selection of the Principals and teachers, question No. 2 in reference dated 25.9.1996 is answered accordingly.

(4) The panel of selected candidates notified by the Commission on 3.8.1996 and 30.8.1996 are found valid and the writ petitions challenging the aforesaid selections and belonging to the second group of cases are dismissed.

(5) The selection made by the Commission and the panel prepared and notified on 15.4.1997 is not affected in any way by the Government notification dated 17.4.1997. The panel shall be Implemented by the educational authorities in accordance with law without any further delay. The writ petitions of Group III seeking implementation of the aforesaid panel are thus allowed and decided accordingly.

(6) The writ petitions belonging to the fourth Group challenging the panel dated 15.4.1997 are dismissed. However, it is left open that the Director of Education or any Deputy Director of Education nominated by him may, if the dispute is raised before him, enquire into the question as to whether the candidate recommended by the Commission in panels dated 3.8.1996. 30.8.1996 and 15.4.1997 possessed the requisite qualification or not and if the Director, after giving reasonable opportunity of hearing, comes to the conclusion that the candidate does not possess the requisite qualification, as prescribed under law, for the post of Principal of the Intermediate College or Headmasters of the High School, he shall refer the question to the Board with his report. The Board on receipt of such report may reconsider the recommendation after due hearing to the candidate concerned and if it is found that the candidate did not possess requisite qualification, his name may be struck off from the panel and proceedings may be Initiated afresh for selection of candidate.

(7) For the aforesaid limited purpose, the matter shall be deemed to be pending before the Board under the provisions of sub-section (6) of Section 3 of the Act [as amended by U. P. Act No. XXV of 1998).

(8) The first group of cases, namely, Special Appeal No. 180 of 1996 and all the other special appeals which were from the interim orders shall also stand disposed of finally. There will, however, be no order as to costs.