
(2019) 05 UK CK 0251

In the Uttarakhand High Court

Case No : Special Appeal No. 505 Of 2019

Balveer Singh Bisht & Others

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 24-05-2019

Acts Referred:

Right Of Children To Free And Compulsory Education Act, 2009 — Section 38
Uttarakhand Right Of Children To Free And Compulsory Education Rules, 2011 — Rule 3, 6, 6(2), 8, 8(3), 8(4)
Constitution Of India, 1950 — Article 226

Citation : (2019) 05 UK CK 0251

Hon'ble Judges : Ramesh Ranganathan, CJ; N.S. Dhanik, J

Bench : Division Bench

Advocate : Sandeep Tiwari, Ganesh Kandpal, A.K. Bisht

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This appeal is preferred against the order passed by the learned Single Judge in WPSS No. 634 of 2018 dated 27.04.2019. Writ Petition (S/S) No. 634 of 2018 formed part of a batch of the writ petitions, in WPSS No. 190 of 2019 and batch, all of which were dismissed by the order under appeal dated 27.04.2019. The relief sought for, in Writ Petition (M/S) No. 634 of 2018, is for the issue of a certiorarified mandamus to quash the effect and operation of the impugned order dated 25.01.2018, including all consequential orders and relieving orders, in so far as it related to BRP and CRP; and for a mandamus directing the respondents to continue the petitioners as BRP/CRP at their respective place of posting.

2. In the order under appeal, the learned Single Judge noted that the petitioners were all serving either as Block Resource Persons (in short "BRP") or Cluster Resource Persons (in short "CRP") under a project known as Sarva Shiksha Abhiyan; they belonged to the cadre of Assistant Teachers in Government Primary Schools or Government High Schools; they were appointed, on

deputation, as Co-ordinator-Block Resource Centre (BRC) and Cluster Resource Centre (CRC); the post of Co-ordinator in BRC was later re-designated as Block Resource Person (BRP) and Co-ordinator, CRC was re-designated as Cluster Resource Person (CRP); and the order, impugned in the writ petition, was the decision of the State Government to repatriate the BRPs and CRPs to their original cadre of Assistant Teachers.

3. Facts, as have been noted in the order under appeal, are that the Sarva Shiksha Abhiyan (Education for all) was a programme launched by the Government of India for universalization of elementary education. This programme is being implemented in partnership with the State Government. Under this scheme, the Central Government provides 90% of the funds, and the remaining 10% are required to be provided by the State Government. For implementation of this scheme, initially BRC and CRCs were appointed on deputation, from amongst Assistant Teachers serving in Government schools, without their having to undergo any process of selection. Later, a selection process was undertaken in which all Assistant Teachers could participate, and many of them, who were found successful in the selection process, were also appointed as BRCs and CRCs.

4. The process of selection commenced with an advertisement being issued on 27.06.2014, inviting applications from eligible Assistant Teachers for appointment as BRPs/CRPs. After a due process of selection, these Assistant Teachers in Government Schools were appointed to the said post by deputation; and, on their being relieved from their respective schools, they joined duty as BRPs/CRPs. By its order dated 25.01.2018 the State Government abolished the system of deputing Assistant Teachers in Government Schools as BRPs/CRPs, and decided to repatriate the Assistant Teachers, working as BRP/CRP, to their original post of Assistant Teachers in Government Schools. The Government order dated 25.01.2018 records that the Government Schools were facing acute shortage of teachers, because of which academic activity in such schools was impaired; the existing system of appointing BRPs/CRPs was also giving rise to unnecessary litigation; and, therefore, it had been provided that the BRPs would hand over charge of their office to the Deputy Education Officer of the concerned Block, and the CRPs would hand over charge of their office to the Principals of nearby schools.

5. The learned Single Judge, thereafter, noted the submissions urged on behalf of the appellants-writ petitioners and on behalf of the State Government. The appellant-writ petitioners had contended that the Sarva Shiksha Abhiyan, under which they were appointed, had been extended upto 2020, and they had the right to continue therein till 2020; the reasons assigned for abolishing the system of BRPs/CRPs, that there was shortage of teachers in Government Schools, was merely an eye-wash, as several of them were being assigned non-teaching duties; pendency of court cases was also not a valid reason for doing away with the system of appointing BRPs/CRPs; the Deputy Education Officers and

Principals of Government Schools, who were looking after the duties of BRPs/CRPs, were not eligible to hold charge of the post of BRP/CRP; and, before a decision was taken to repatriate them to their parent post, the petitioners ought to have been heard.

6. The learned Single Judge, thereafter, noted the submission, urged on behalf of the State Government, that because of Teachers of Government Schools being appointed as BRP/CRP, they were not available for discharging their duties as Teachers; as this had adversely affected educational activity in Government Schools, the State Government had decided to abolish the system of appointing Government Teachers as BRP/CRP; as these teachers were appointed under a temporary project, they had no lien over the post; at best the status of the petitioners was that of a deputationist; the State Government had decided to send them back to their original posts, as Assistant Teachers in Government Schools, in public interest, so that they could perform their duties as a Teacher; vacancies, arising in the cadre of Assistant Teachers, in view of their appointment on deputation as BRPs/CRPs, could not be filled up by making fresh appointment; the impugned order was neither punitive nor stigmatic in nature; no prejudice was caused to the petitioners, in view of their repatriation, as they would get the same salary as they were getting earlier; the State Government is under a statutory obligation under the Right of Children to Free and Compulsory Education Act, 2009 (for short the "2009 Act") to make available adequate number of teachers in Government Schools; and the challenge to the impugned order was without merit.

7. In the order under appeal, the learned Single Judge observed that the petitioners were, admittedly, appointed as teachers in Government Schools, and they held a lien over the post of Assistant Teachers in Government Schools; under the Sarva Shiksha Abhiyan, the State Government had decided to temporarily utilize their services as BRCs/CRCs (now known as BRPs/CRPs); their appointment was subject to the condition that they would continue to hold a lien on the post of Teacher, and they could be repatriated to their original post at any time; a majority of teachers, so appointed as BRPs/CRPs, did not face any selection process; the status of the petitioners was that of deputationists; a deputationist had no right to be absorbed in the borrowing organization, and he could be repatriated at any time to his parent department; such repatriation, of a deputationist, did not have any civil consequences to the concerned employee; principles of natural justice was not attracted while repatriating a deputationist; the State of Uttarakhand was basically a hill State; the State Government is under a Constitutional obligation to provide elementary education also to children living in far flung hilly areas; shortage of teachers is a matter of concern, and Government Schools situated in remote parts of hill districts were the worst affected in view of shortage of teachers; the provisions of the 2009 Act, and the Right of Children to Free and Compulsory Education Rules, 2010 (for short the "2010 Rules") required the Government to maintain optimum pupil-teacher ratio in all schools; in its order in WPSS No. 1204 of 2014 and batch dated

27.10.2014, this Court had held that the Coordinators in BRC/CRC (now re-designated as BRP/CRP) had no right to claim absorption; the Division Bench, in its order in SPA No. 106 of 2016 and batch dated 09.08.2017, had held that, because of very nature of their appointment as BRP/CRP, the Assistant Teachers could be repatriated to their parent department, and principles of natural justice were not attracted in case of repatriation to their parent department; the Division Bench had also repelled the contention urged on behalf of the petitioners, based on the judgment of the Supreme Court in (State of Haryana & others vs. Piara Singh & others (1992) 4 SCC 118), and had held that no permanent posts were created as BRP/CRP, their tenure was precarious in law, and they could be repatriated if their services were found to be unsatisfactory; and, while holding that no person could have a lien over the post, the Division Bench had dismissed the writ petition.

8. The learned Single Judge, thereafter, referred to the judgment, in Union of India vs. V. Ramakrishnan & others (2005) 8 SCC 394, wherein the Supreme Court held that ordinarily a deputationist has no legal right to continue in the post nor has he any right to be absorbed in the post, to which he is deputed. With regards the petitioners' claim that they were selected and appointed pursuant to a regular process of selection, the learned Single Judge observed that the posts of BRPs/CRPs were not permanent posts in the Education Department; these posts were created under the Project which was likely to come to an end in the year 2020; the petitioners were all appointed, as BRP/CRP on deputation, with the condition that they would continue to hold their lien in their parent cadre of Assistant Teachers; a Government employee cannot hold a lien, simultaneously, over two posts; pendency of a large number of cases indicated dissatisfaction amongst Government Teachers in respect of the present system of appointing BRPs/CRPs; the State Government, as an employer, was well within its rights to devise a humane resource policy which may help in reducing the burden of Court cases; there was no statutory provision which stipulated any qualification for appointment as BRP/CRP; executive instructions, if any, issued on the subject did not have the force of law, and they could be superseded by subsequent executive instructions; no law, which provided permanency to the tenure of the petitioners as BRP/CRP, was shown; the decision to deploy Assistant Teachers in Government schools, as BRP/CRP, was taken by the State Government in public interest; the impugned decision had also been taken by the State Government in public interest; the State Government could very well devise another method of deploying/appointing BRP/CRP; and, in the absence of any statutory provisions to the contrary, the freedom available to the State Government in these matters could not be curtailed.

9. The appellants-writ petitioners are all Assistant Teachers employed by the State Government in various Government Schools. After the Government of India introduced the Sarva Shiksha Abhiya, several of them were deputed to the posts of DRP/CRP. While some of them were straightway appointed as DRP / CRP without having to undergo any process of selection, some others were appointed

pursuant to an advertisement being issued, and a written examination being held to select candidates for appointment to these posts. The Sarva Shiksha Abhiyan project is of limited duration, and is expected to come to an end by the next year i.e. 2020. The scheme does not provide for creation of any permanent posts. As a result, the State Government decided in its wisdom, and as a matter of policy, to depute Assistant Teachers, employed in Government Schools, to work as BRP/CRP, making it clear that they continued to hold a lien over their posts of a Government Teacher, and were liable to be repatriated to the said posts later.

10. It is not in dispute that no permanent posts were created under the Sarva Shiksha Abhiyan, the posts of BRP/CRP are temporary in character, and would remain only till the project is continued, and not thereafter. Since the appellants-writ petitioners, admittedly, continue to hold a lien over their post of Assistant Teachers in Government Schools, they cannot claim to also hold a lien on another post i.e. to the post of BRP/CRP under the scheme, more so as these posts are not even permanent in character. As the appellants-writ petitioners continue to hold a lien over their posts of Government Teachers, it was always open to them, at their volition, to seek cancellation of their deputation, and come back and join the posts of Assistant Teachers in Government Schools. Likewise, it is also open to the State Government to cancel their deputation, and repatriate them back as Assistant Teachers in Government Schools.

11. Assistant Teachers in Government Schools were deputed to work as BRPs and CRPs in the Sarva Shiksha Abhiyan Project. 'Deputation' means service outside the cadre or outside the parent department or, in other words, deputing or transferring an employee to a post outside his cadre i.e. to another department on a temporary basis. After expiry of the period of deputation, the employee must come back to his parent department to occupy the same position. (State of Punjab and Ors. Vs. Inder Singh and Ors. (1997) 8 SCC 372). Deputation can be described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. Deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee. (Umapati Choudhary Vs. State of Bihar and Ors. (1999) 4 SCC 659). There exists a distinction between 'transfer' and 'deputation'. 'Deputation' connotes service outside the cadre or outside the parent department in which an employee is serving. 'Transfer', however, is limited to equivalent post in the same cadre and in the same department. While deputation is a temporary phenomenon, transfer need not be. (Prasar Bharti and Ors. Vs. Amarjeet Singh and Ors. (2007) 9 SCC 539).

12. Before sending employees on deputation their consent is invariably taken.

(R.L. Gupta Vs. Union of India (1988) 2 SCC 250). In the absence of a statutory rule, the State can neither compel an employee to go on deputation from his parent department to another organisation or undertaking, nor can an employer force an employee to join the services of another employer. (Indu Shekhar Singh and Ors. Vs. State of U.P. and Ors. (2006) 8 SCC 129). The service of an employee on deputation, in another department, is treated by the rule as equivalent to service in the parent department. (State of Mysore Vs. M.H. Bellary AIR 1965 SC 868).

13. Government employees sent on deputation continue to remain public servants in the service of the State Government. The State Government merely lends the services of these employees to the Organisation to which they are deputed; and, inspite of their deputation, the relationship of master and servant between the State Government and these employees does not stand terminated. (Inder Singh (2005) 8 SCC 394 and C.Rangaswamaiah and Ors. Vs. Karnataka Lokayukta and Ors. (1998) 6 SCC 66). Employees sent on deputation can be reverted to their parent cadre at any time, and they have no right to be absorbed in the deputation-post. (Ratilal B. Soni and Ors. Vs. State of Gujarat and Ors. AIR 1990 SC 1132). When the tenure of deputation is not specified, an order of reversion can be questioned only when it is mala fide. (Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Ors. (2004) 2 SCC 65 and V. Ramakrishnan (2005) 8 SCC 394).

14. Ordinarily, a deputationist has no legal right to continue in the post or to be absorbed in the post to which he is deputed. When a deputation does not result in absorption in the service, to which an officer is deputed, no recruitment, in its true import and significance, takes place as he continues to be a member of the parent service. (V. Ramakrishnan (2005) 8 SCC 394). Unless the claim of the deputationist for permanent absorption in the department, where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in his claim for absorption. The basic principle underlying deputation is that the person concerned can always, and at any time, be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments, and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation. (Kunal Nanda Vs. Union of India (UOI) and Ors. (2000) 5 SCC 362). An employee of the State Government sent on deputation, on his own request, to work as an employee in another department, would still maintain his lien with the State Government even if he has been allowed to continue on deputation for several years. (Nishant Puri Vs. State of Himachal Pradesh and Ors. AIR 1999 SC 27).

15. In Badri Singh Bhainsora Vs. State of Uttarakhand and others Order in Writ Petition (S/S) No. 1204 of 2014 and batch dated 27.10.2014, on which the learned Single Judge has relied upon in passing the order under appeal, the

petitioners were all working as BRCs/CRCs. By way of these writ petitions, they had questioned the validity of the order dated 27.06.2014 by which fresh appointments were made for various posts of Coordinators, the nomenclature of which was later changed as "CRP" and "BRP". However, the work remained broadly the same as it was earlier. In his order, in Writ Petition (S/S) No.1204 of 2014 and batch dated 27.10.2014, the learned Single Judge observed that the petitioners were appointed after facing a selection process; the Selection Committee was constituted as per Government Order dated 19.03.2003, which was a District Level Committee; the petitioners had participated in the written examination and a group test and, after its evaluation, they were finally selected; the petitioners' lien remained as that of teachers; their appointment as CRCs or BRCs was only on deputation; reliance placed on the Government Order dated 31.03.2008, to contend that their deputation was to be treated as posting, was of no avail as their appointment was, effectively, nothing but a deputation; in Dharmendra Rawat & others Vs State of Uttarakhand & others Order in WPSS No. 1732 of 2007 dated 26.07.2011 this Court had discarded the view that such employees were not working as deputationists; this order in WPSS No. 1732 of 2007 dated 26.07.2011 was upheld by a Division Bench of this Court; since the status of the petitioners was that of deputationists, they could not claim as of right to be absorbed in the post, more so in posts which were not permanent posts, and were project posts; as the petitioners had already faced a regular selection process, that itself should not be a cause for repatriating them to their original posts; however the Government could always repatriate the petitioners to their parent department, if they so chose, as the status of the petitioners remained that of deputationists.

16. In Rajendra Prasad Dobhal Vs. State of Uttarakhand and others Order in Special Appeal No. 106 of 2016 and batch dated 09.08.2017 (order in Special Appeal No. 106 of 2016 and batch dated 09.08.2017, preferred against the order passed in Writ Petition (S/S) No. 1204 of 2014 and batch dated 27.10.2014), a Division Bench of this Court had observed that, admittedly, the lien of these teachers lay with the parent department; the Supreme Court, in Piara Singh (1992) 4 SCC 118, had no doubt held that one ad-hoc appointee could not be replaced by another ad-hoc appointee, and an ad-hoc appointee could only be replaced by a regular appointee; the facts of the present case showed that there was no scope for applying this principle; the appellants were persons who were selected on deputation basis, under the order dated 28.07.2003; when an issue was raised regarding non-payment of deputation allowance, the Government had brought out the order dated 31.03.2008 stating that the word mentioned as 'deputation' may be read as 'deployment'; subsequently orders dated 05.02.2013 and 01.08.2013 were issued which contemplated a completely different system of selection; the selection was contemplated against the re-designated posts of Block Resource Persons and Cluster Resource Persons; the existing Coordinators, to which category the appellants belonged, were also given liberty to apply for selection; if a person is on deputation, there is no scope for applying the

principle that an ad-hoc appointee could be replaced only by a regular appointee, and not by another ad-hoc appointee; this was not a case where an ad-hoc appointee was replaced by another ad-hoc appointee; this was a case where persons selected on deputation, who were later on treated to be on deployment, were sought to be, in the wake of the re-designation of the posts with a new system of selection being put in place, replaced under the said mechanism by persons who were selected; and even the appellants could apply. The Division Bench expressed its disinclination to interfere with the judgment passed by the learned Single Judge. With regards the observations of the learned Single Judge that persons could be repatriated, but on a case to case basis, the Division Bench noted the submission of the learned Additional Chief Standing Counsel that, as and when persons were selected under the advertisement, persons like the appellants would be repatriated based on the orders dated 05.02.2013 and 01.08.2013. Recording the submission made by the Additional Chief Standing Counsel, that the selection would be completed pursuant to the advertisement within a period of three months, the orders under appeal were set aside.

17. As noted hereinabove, the Division Bench of this Court, in Rajendra Prasad Dobhal Order in Special Appeal No. 106 of 2016 and batch dated 09.08.2017, had no doubt observed that a deputationist, such as a BRP/CRP, could always be repatriated if his service was found unsatisfactory. Cancellation of deputation, and the consequent repatriation to the parent department, is not confined only to cases where the services of the deputationist are found unsatisfactory. The State Government can, for just and valid reasons, always repatriate the deputationist back to his original post as he is not entitled, as of right, to continue in a post over which he has no lien, and his deputation is only for a temporary duration.

18. The mere fact that the petitioners underwent a process of selection to be appointed as BRP/CRP does confer any right to them to claim that the State Government should not cancel the earlier policy decision of deputing Government Teachers as BRPs/CRPs. Wisdom and advisability of policies are, ordinarily, not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. (*BALCO Employees Union vs. Union of India (UOI) and Ors.* (2002) 2 SCC 333). Policy decisions can be changed by the Government for just and valid reasons. The power to lay policy includes the power to withdraw the earlier policy or to change it. (*Bajaj Hindustan Ltd. v. Sir Shadi Lal Enterprises Ltd.* (2011) 1 SCC 640). The action of the Government cannot be declared illegal, arbitrary or ultra vires the provisions of the Constitution merely on the ground that the earlier policy had been given up, changed or not adhered to. It cannot also be attacked on the plea that the earlier policy was better suited to the prevailing situation. (*Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal* (2007) 8 SCC 418). Whether the policy should be altered or not is a matter for the Government to decide. (*Federal Power Commission v. Hope Gas Co.* 320 US 591, 602 (1944)). When the Government is satisfied that a change in the policy is necessary in the public interest, it would be entitled to revise the policy and lay down a new policy. It is

equally entitled to issue or withdraw or modify the policy.

19. The Court would neither bind the Government to a previous policy, (P.T.R. Exports (Madras) Pvt. Ltd. v. Union of India (1996) 5 SCC 268), nor would it strike down a policy merely because there is a variation. Consistency is not always a virtue. What is important is to know whether irrational and extraneous factors foul. There can be no quarrel if a policy is revised. The wisdom of yesterday may obsolesce into the folly of today, even as the science of old may sour into the superstition now, and vice versa. (Tamil Nadu Education Deptt. Ministerial & General Subordinate Services Assn. v. State of T.N. (1980) 3 SCC 97). Unless any illegality is committed in the execution of the policy, or the policy is contrary to law or is vitiated by malafides, a decision bringing about a change cannot, per se, be interfered with by the Court. [BALCO Employees' Union (Regd.) . (2002) 2 SCC 333 and Irrigation Development Employees Association v. Govt. of A.P. 2004(2) ALD 599 (DB)].

20. The right of the State or of its instrumentality to change its policy decisions, from time to time under changing circumstances, cannot be disputed. This Court, in the exercise of its jurisdiction under Article 226 of the Constitution of India and while considering the validity of a Governmental policy, cannot weigh the pros and cons of the policy or scrutinise it to test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on even sound reasoning. (Irrigation Development Employees Association 2004(2) ALD 599 (DB)). Policy issues fall in the realm of executive determination, and the Court has no role therein. (State of H.P. Vs. Rajesh Chander Sood . (2016) 10 SCC 77).

21. The Government has, in its wisdom, chosen to withdraw its earlier policy decision of deputing Assistant Teachers in Government Schools as BRPs and CRPs in the Sarva Shiksha Abhiyan Project, and has taken a decision to cancel the deputation of all Assistant Teachers, and repatriate them back to Government Schools. All that the State Government has done, by way of the impugned order, is only to cancel its earlier executive order/policy with another. It is always open to the State Government, for just and valid reasons, to withdraw its earlier policy. The reasons assigned in the impugned order dated 25.01.2018 are of acute shortage of Assistant Teachers in Government Schools in the State of Uttarakhand, and the voluminous litigation which ensued on the appellants-writ petitioner, and others similarly situated, being deputed as BRPs/CRPs. Both the said reasons found acceptance, with the learned Single Judge, in the order under appeal.

22. Both Sri Sandeep Tiwari and Sri Ganesh Kandpal, learned counsel for the appellants-writ petitioners, would seek to dissect the impugned order dated 25.01.2018 to contend that the reasons mentioned therein are not valid. In examining these contentions, it must be borne in mind that the Executive is entitled for some elbow room in taking its decisions. A free play in the joints is a necessary concomitant for an administrative body functioning in an

administrative sphere or a quasi-administrative sphere. The decision must, however, be free of unreasonableness or arbitrariness. It must not be affected by bias or actuated by mala fides. (Dhingra Construction Company v. Municipal Corporation of Delhi AIR 2005 Delhi 247; Tata Cellular v. Union of India AIR 1996 SC 11 and R.V. Tower Hamlets London Borough Council, ex p Chetnik Developments Ltd.(1988) 1 AC 858 = (1988) 2 WLR 654 (HL)). The administrator's right to trial and error, as long as both trial and error are bona fide and within the limits of authority, are judicially recognized. (G.B. Mahajan and others vs. Jalgaon Municipal Council and others (1991) 3 SCC 91).

23. While dealing with administrative problems where, in doing broad justice to many, some bruise to a few cannot be ruled out, some play in the joints, even some wobbling, must be left to Government without fussy forensic monitoring, since the administration has been entrusted by the Constitution to the Executive, not to the Court. All life, including administrative life, involves experiment, trial and error, but within the leading strings of fundamental rights, and, absent unconstitutional 'excesses', judicial correction is not right. (Tamil Nadu Education Department Ministerial (1980) 3 SCC 97). Bearing these aspects in mind, as also that this Court, in the exercise of its jurisdiction under Article 226 of the Constitution of India, would not sit in judgment over the decision of the State Government in this regard, let us now examine whether or not the contention urged on behalf of the appellants-writ petitioners, regarding the validity of the impugned order dated 25.01.2018, merits acceptance.

24. It has not even been disputed before us, by the appellants-writ petitioners, that there is an acute shortage of teachers in Government Schools in the State of Uttarakhand. Their contention, on the other hand, is that the Government Teachers are now being substituted, on additional charge being given to principals / headmasters and in some cases to other Assistant Teachers. It has not been shown how conferring additional charge of the posts of BRPs and CRPs to Block Education Officers and Principals/Headmasters is illegal. The learned Single Judge has faulted the appellants-writ petitioners for not taking such a plea in their respective writ petitions. Assuming that there is a grain of truth in the submission of Sri Sandeep Tiwari and Sri Ganesh Kandpal, learned counsel for the appellants-writ petitioners, that these functions are, in a few cases, being assigned to other Assistant Teachers, even then no right is conferred on them to claim that they should be continued as BRP/CRP, as there cannot be any parity in illegality. In Chandigarh Administration Vs. Jagjit Singh (1995) 1 SCC 745, the Supreme Court observed:

".....Generally speaking, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is

found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course barring exceptional situations would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises....."

(emphasis supplied)

25. With regards the appellants-writ petitioners' contention that, pendency of litigation, is not a ground to abolish the scheme of appointing Government Teachers as BRPs/CRPs, it is common knowledge that the State Government is a party to a large number of cases pending in Courts. Decisions taken to reduce such pendency would not only lessen the huge financial burden on the State, and

result in a substantial decrease in litigation costs, but would also reduce the time spent by Government Officials in defending cases in Courts. Their precious time, unnecessarily wasted in litigation, can be better spent elsewhere. It cannot, therefore, be said that this factor which was taken into consideration by the Government, in passing the order dated 25.01.2018, is irrelevant or irrational.

26. In the order under appeal, the learned Single Judge has observed that no statutory provision has been relied upon, by the appellants-writ petitioners, as having been violated by the State Government in passing the order, impugned in the writ petition, dated 25.01.2018. Both the learned counsel for the appellants-writ petitioners, would place reliance on the Uttarakhand Right of Children to Free and Compulsory Education Rules, 2011 (for short the "2011 Rules") made in the exercise of the power conferred by Section 38 of the 2009 Act, more particularly Rule 3, 6 & 8 thereof. Rule 3 of the 2011 Rules provides special training for children and, thereunder, the school management committee of the school and the teachers, with the help of Cluster Resource Coordinator, are required to assess the learning level of the child and, accordingly, organize such training in the manner prescribed therein. Rule 6 (2) requires an Academic Committee to be formed at the District Institute of Education and Training level. This Committee is required to analyze the academic monitoring report received from several officers including the Cluster Resource Coordinator. Rule 8 relates to responsibilities of , among others, the Block Education Officers and Cluster Resource Coordinators. Rule 8 (3) requires the BRC to ensure academic monitoring of schools every month, and to give academic support to these schools. The CRC is also required to analyze the progress of these schools, and to inform accordingly to the Block Education Officer. Rule 8 (4) requires the CRC to ensure the academic monitoring of schools every month, to give academic support to these schools, analyze the progress of these schools, and inform the Block Education Officer accordingly.

27. While the aforesaid Rules, no doubt, stipulate the functions of BRPs/CRPs, and the responsibilities which these posts entail, it does not prescribe the manner in which these posts of BRP/CRP should be filled up. These provisions are of no assistance to the appellants-writ petitioners, since these Rules do not confer any right on them to claim that Assistant Teachers in Government Schools should be continued on deputation as BRPs/CRPs.

28. As a result of the policy of deputing Assistant Teachers to man the posts of BRPs and CRPs in the Sarva Shiksha Abhiyan Project having been withdrawn by the impugned order dated 25.01.2018, the functions of BRPs have now been entrusted to Block Education Officers and Deputy Education Officers; and those of CRPs have been entrusted to principals/head masters of nearby schools. While the appellants-writ petitioners' claim that some other Assistant Teachers are now being deputed, in their place, this allegation is denied by the respondents. Mr. A.K. Bisht, learned Standing Counsel appearing on behalf of the State Government would assert that no Assistant Teachers would be deputed henceforth to discharge the duties of the temporary posts of BRPs/CRPs.

29. In this context it is necessary to note that an executive authority must be rigorously held to the standards by which it professes its actions to be judged, and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. He that takes the procedural sword shall perish with the sword. (Ramana Dayaram Shetty v. International Airport Authority of India. (1979) 3 SCR 1014; B.S. Minhas v. Indian Statistical Institute. (1983) 4 SCC 582; Amarjit Singh Ahluwalia v. State of Punjab AIR 1975 SC 984; Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi AIR 1975 SC 1331). When the State lays down executive instructions for taking any action, it is imperative on its part to scrupulously follow the same, to avoid arbitrariness and ensure fair-play. (B.S. Minhas (1983) 4 SCC 582). Executive Instructions issued by the State are binding on it. (Swaran Singh Chand v. Punjab State Electricity Board (2009) 13 SCC 758 and H.V. Nirmala v. Karnataka State Financial Corpn. (2008) 7 SCC 639). Having professed to abide by its executive instructions, the Government cannot, in the absence of any statutory provision, act contrary thereto. (N. Kannapan v. State (Union Territory) Andaman & Nicobar Islands (2013) 2 SCC 177 and Harjit Singh v. State of Punjab (2007) 9 SCC 582). Suffice it, therefore, to observe that State Government is obligated to abide by its own order dated 25.01.2018. It shall therefore ensure that, in terms of the impugned order dated 25.01.2018, no Assistant Teacher is deputed to work as BRPs/CRPs.

30. As the substantive posts held by the appellants-writ petitioners is that of Assistant Teachers in Government Schools, no legal right of theirs has been shown to have been violated as a result of cancellation of their deputation as BRPs and CRPs in the Sarva Shiksha Abhiyan Project, and their repatriation as Assistant Teachers to Government Schools. In the absence of any legal right to continue on deputation, no mandamus can be sought to enforce a non-existing right. The primary purpose of a writ is to protect and establish rights, and to impose a corresponding imperative duty existing in law. It is designed to promote justice, (*ex debito justiceiae*), and its grant or refusal is at the discretion of the Court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the Respondent. A writ does not lie to create or establish a legal right, but to enforce one that stood already established. (The Rajasthan State Industrial Development and Ors. Vs. Subhash Sindhi Cooperative Housing Society Jaipur and Ors. (2013) 5 SCC 427).

31. The learned Single Judge has, in our view rightly, refused to grant the appellants-writ petitioners the relief sought for by them in the writ petition. Interference in an intra-Court appeal is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the said order.

32. Subject to the aforesaid observations, the Special Appeal fails and is, accordingly, dismissed. No costs.