

(2004) 04 PAT CK 0071

In the Patna High Court

Case No : CWJC Nos. 5448, 5360, 5352, 5378, 5403, 5424, 5443, 5454, 5455, 5651, 5620, 5613, 5614, 5607, 5606, 5584, 5583, 5572, 5563, 5557, 5523, 5522, 5465, 5586, 5672, 5698, 5705, 5708, 5722, 5723, 5728, 5745, 5747, 5753, 5761, 5762, 5763, 5791, 5797, 5802, 5804,

Narmadeshwar Prasad Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-04-2004

Acts Referred:

Citation : (2004) 04 PAT CK 0071

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioners, learned counsel for the intervenors and learned Advocate General.

2. The batch of analogous cases has been filed for common cause for declaring Rule 1(4) of the Bihar Nationalised Secondary School (Service Conditions) Rules, 2002 as ultra vires Article 14 of the Constitution and also being discriminatory and unworkable and to quash the impugned press communique dated 13.6.2003, issued in daily newspaper "Hindustan", whereby and whereunder the State Government has transferred all the headmasters/assistant teachers of secondary schools and has directed them to join the original schools, where they were initially appointed and posted, within fifteen days from the date of publication of the communique.

3. To consider the grievances of the writ petitioners necessary facts and the existing Act and Rules also the service conditions and mode of transfer of the teachers are required to be noticed.

4. The petitioners are the headmasters/headmistresses and assistant teachers of different Nationalised High Schools/Project Schools.

5. Initially, there were two types of schools imparting secondary education in the State of Bihar, namely, schools run and managed by the State Government

known as "Government Secondary Schools" and the schools run and managed by private persons/society/associations including minorities.

6. In the year 1981, the State Government with a view to streamline and regulate the "secondary education in the State of Bihar enacted a legislation known as "Bihar Non-Government Secondary School (Taking Over of Management and Control) Act, 1981 (hereafter referred to as "the Act"), and pursuant to the same, management and control of all such Non-Government Secondary Schools in the State were taken over with effect from 2.10.1980.

7. Section 9 of the Act is the enabling provision to make Rules/Regulations regarding the service conditions of the headmasters/teachers and non-teaching staff of the taken over Non-Government Secondary Schools. Section 15 of the Act is the enabling provision to make Rules/Regulations for implementation of the provisions of the Act.

8. The State Government in exercise of its power u/s 9 of the Act vide notification dated 9.6.1983 framed Rules with regard to service conditions of the employees, both teaching and non-teaching, of the Nationalised Secondary Schools known as "Bihar Nationalised Secondary Schools (Service Conditions) Rules, 1983 (hereinafter to be referred to as "Rules 1983).

9. Rule 6 of the said Rules, 1983 defined the cadre of the teaching employees of the Nationalised Schools and categorised that the cadre of junior teachers would be of the District and that of the teachers in the junior and senior selection grade would be of the Division, whereas the cadre of the headmasters/ headmistress would be of the State.

10. Rule 12 of the Rules 1983 contemplates that the posts of all the teaching and non-teaching employees would be transferable and they would be transferred within their cadres. It further contemplates that an employee, however, may be transferred outside the cadre at his own request after losing his seniority, which he had acquired in his original cadre.

11. The State Government again amended the Rules, 1983, in exercise of its power under Sections 9 and 15 of the Act known as "Bihar Nationalised Secondary Schools (Service Conditions) Amendment Rules, 1988 (hereinafter to be referred to as "Rules 1988).

12. The main thrust of the amendment of Rules 1988 was with regard to the provisions relating to the transfer and posting of teaching and non-teaching employees of the Nationalised Secondary Schools and under the Rules, it was stipulated that no employee of the schools would be allowed to stay in one district for more than ten years and he would not be posted in his home District. However, exceptions were made for the teachers, who were to retire within one year, the ladies and the handicapped persons.

13. The State Government again framed certain Rules vide notification No., 4575 dated 20.10.1997 known as "Bihar Nationalised Secondary Schools (Service

Conditions) Amendment Rules, 1997 (hereinafter to be referred to as "Rules 1997"). By this amendment, Rules, 1983, were amended with minor changes with regard to transfer and posting of the teaching and non-teaching employees of the Nationalised Schools, but Rules, 1988, were not amended vis-a-vis the Rules relating to transfer and posting of the employees of the Nationalised Schools.

14. The State Government again vide notification No. 1512 dated 16.11.2002 amended Rules 1983 to be known as "Bihar Nationalised Secondary Schools (Service Conditions) Amendment Rules, 2002 (hereinafter to be referred to as "Rules 2002")

15. Rule 1(4) of Rules, 2002 provides that after

implementation of the present Rules, all the headmasters/teachers, who have been transferred and posted after notification No. 437 dated 28.4.1988, and, who are still in service, shall be sent back to schools, where they had been firstly posted and if in course of such transfer and posting there would be some surplus or shortage of teachers in the schools, then they shall be adjusted on the basis of seniority.

16. Rules 2002 further stipulates that after transfer of the headmasters/ teachers under Rule 1(4) normally they shall not be transferred save and except in administrative exigencies.

17. The State Government for implementation of the provisions of the Rules 2002, issued detailed guidelines vide letter No. 814 dated 11.6.2003 and therein it defined and clarified the concept of first posting and at the same time in paragraph 1 (Anga) of the guidelines, it disclosed one of the objects of the person transferred to identify the fake teachers and to ensure the compliance of Rules, 2002 in terms of the guidelines laid down in letter dated 11.6.2003.

18. Learned counsel appearing on behalf of the petitioners have made manifold arguments challenging the validity of Rules, 2002 and at the same time, they have also challenged the vires of the provisions of the Rules, 2002.

19. The main thrust of argument of learned counsel is that Rules 2002 and the guidelines issued thereunder by way of an executive instruction are wholly unworkable and it leads to anomalies, injustices and absurdities, as the same has been enacted with an oblique purpose to identify the fake appointees of the Nationalised Schools as the same is discernible from the executive instruction dated 11.6.2003. It is contended by learned counsel that the Act of 1981 is the main Statute to streamline and regulate the secondary education in the State of Bihar and in exercise of the powers under Sections 9 and 15 of the Act, certain amendments have been introduced from time to time by the State Government laying down the service conditions and mode of transfer of the teaching as well as non-teaching staff of the Nationalised High Schools and, accordingly, the teachers and the staff were used to be transferred and now by the amended

Rules 2002 all such transfers made under Rule 12 of the Rules 1983 have been cancelled and they have been directed to join the schools, where they had firstly been posted in violation of Rule 6 of 1983 Rules, which till date has not been amended. It is further submitted that Rule 6 of Rules, 1983 defined the cadre of the teaching employees of the Nationalised Schools and categorised that the cadre of Junior teachers would be of the District and that of the teachers in junior and senior selection grade would be of the Division, whereas the cadre of the headmasters and headmistresses would be of the State. The authorities now have resorted to the provisions of the amended Rules, 2002 and irrespective of the cadre of the teachers and without amending Rule 6, of Rules, 1983, they have been directed to join to their respective schools of first posting and, thus, Rules 2002 is violative of Rule 6 of Rules, 1983, and, thus, the same must be held to be ultra vires Article 14 of the Constitution and not workable.

20. It is further submitted that several other anomalies have been created by bringing the amended Rules, 2002 in existence and it has resulted into injustices and absurdities and to buttress their point, it is submitted that after transfer of the teachers by virtue of the amended Rules, 1988 many of them have been promoted either in selection grade or as headmasters/headmistresses and in case they are asked to go back to their schools of first posting they will have to lose their seniority and they will have to work under their juniors and further many of the teachers were transferred outside the cadre after losing their seniority and if they join the schools of their first posting, then there will be clash of interests as there may be two headmasters in one school and such promotion granted to junior teachers after transfer of the persons outside the cadre are not being recalled and this would be the drawback of the Rules, which adversely affects the petitioners and similarly situated teachers and in case, the order issued under Rules, 2002 is implemented directing the teachers for transfer to their original schools, then it would be violative of Rule 6 of Rules 1983 and unless the cadre is amended or changed by Rules, no transfer from one cadre to another is permissible and, thus, the impugned order and Rules 2002 are contrary to the Statute, as referred to above.

21. It is further submitted that the underlying object of transfer of the petitioners appears to identify the fake appointees and the object cannot be achieved by transferring the teachers enmasse in violation of the unamended provisions of the Statute. In this context, it is submitted that there may be some other modes to identify the fake teachers and for which a process had started in the years 1999 and 2001, where all the teachers were asked to produce relevant papers, appointment letters, service books and academic/training certificates for verification about the genuineness of their appointments and the process to identify the fake appointees had started and therefore, there would be no rational relation and reasonable nexus of this Rule with the object sought to be achieved by the Rules in question.

22. It is also urged that the alleged object to detect fake and forged

appointments of the employees of Nationalised Schools appears to be absolutely frivolous and untenable in the eyes of law for the reasons that a person need not be physically asked to join his place of first posting and there may be other methods to check the veracity of appointments of the employees of the Nationalised Secondary Schools and that apart, the clarification dated 11.6.2003 creates an anomalous situation as the place of first posting of headmasters is not the schools, where they had joined for the first time, but the schools, where they had joined for the first time after becoming headmasters. Therefore, the veracity of appointment of such teachers, who are holding the posts of headmasters can never be confirmed and the main objective of the Rules, 2002 would be frustrated.

23. Now another anomalous situation is being focussed that after coming into force of Rules, 2002 majority of the Project Schools have been closed and existing teachers of the Project Schools now are members of the cadre of the Nationalised Secondary Schools and, therefore, a question would arise as to what would be the first place of posting of such teachers, who are being transferred. It is further submitted that the impugned Rules 2002 has not taken care of N.C.C. trained teachers, as certain teachers of Nationalised Schools were selected for N.C.C. training and after training they became commissioned officers equivalent to the rank of gazetted commissioned officers of Armed Forces and they are getting honorarium per month and now they have been directed to join the schools of their first posting and in case, they are forced to join pursuant to the impugned Rules, 2002 they shall be decommissioned putting huge loss to the State as fresh teachers shall be selected for fresh training and, thus, it will create anomalous position for the N.C.C. teachers.

24. The impugned Rules, 2002 is also being assailed on the ground that the posts of the teachers of Nationalised Secondary Schools cannot be made non-transferable as it would be against the established norms of service jurisprudence. In this regard, it is submitted that the amended Rules, 1988, whereby and whereunder provisions were laid down for transfer and posting of the teaching and non-teaching employees of the Nationalised Secondary Schools was resisted by one Tripurari Mishra, but no relief was granted and the matter, ultimately went to the Apex Court and the Apex Court while dismissing the SLP directed the State Government to follow its policy strictly and see to it that no headmaster is kept in his own home district. It is further submitted that the posts were made transferable under amended Rules, 1988 to streamline the teaching administration, as the teachers transferred outside their home districts would put more time in teaching the students than other activities and the amendment, thus, was based on sound public policy and, therefore, the object of the amended Rules 1988 making provision for transfer should not be frustrated.

25. Learned Advocate General, appearing on behalf of the State respondent, on the contrary, opposed the prayers of the writ petitioners saying that Rules 2002 and the executive instruction dated 11.6.2003 and the impugned order issued

thereunder, which is based on sound public policy and this legislation has been brought to streamline the academic atmosphere in large number of Nationalised Secondary Schools, as the State Government found several anomalies on account of execution of orders of transfer of the teachers, as the teachers could not be posted subject wise and several schools became overcrowded with teachers and on the contrary, many schools either ceased to function or functioned improperly due to lack of requisite number of teachers, because many teachers exercised their option of going back to places of their choice taking advantage of Rule 12 of Rules 1983 and the State Government had reason to believe that due to mass scale transfer many unscrupulous persons managed to join several schools on the basis of fake appointment/transfer/adjustment letters and in most of the cases this was done by such persons showing that they had come from far away places on the basis of inter-divisional or even divisional transfers and, thus, it was not easy for the headmasters/field officers to get their identity verified and due to the above unforeseen development arising out of the transfer policy, the academic atmosphere of large number of Nationalised Secondary Schools was in semblances. The State Government keeping in view the aforesaid circumstances examined the matter seriously to restore the academic environment in the Nationalised Secondary Schools taking into special consideration the adverse impact of the transfer policy upon the smooth functioning of such schools in the rural areas of the State and it was felt that one of the best ways to check the movement of the teachers away from the rural areas into urban/semi-urban areas of the State would be to revert back to the old system of making the posts of teaching as well as non-teaching staff of the Nationalised Secondary Schools as non-transferable and this would also ensure greater personal commitment of the teachers towards the schools in which they had been appointed. The further stand of the learned Advocate General is that the State Government in furtherance of achieving the object of the Rules 2002, issued the impugned press communique to prevent the academic collapse specially in the rural areas and to restore the academic atmosphere in three State of Bihar by weeding out fake teachers and necessary guidelines have been issued for implementation, of Rules 2002 vide notification dated 11.6.2003, where all confusions have been removed clarifying as to what would be the school of first posting of the teachers and the object of the present transfer Rules has been disclosed, which is to identify the fake teachers.

26. Learned Advocate General with reference to the counter-affidavit submitted that all necessary precautions have been taken in the transfer Rules to restore the seniority of the affected teachers on transfer and the amended Rules, 2002, therefore, is fully workable and not ultra vires Article 14 of the Constitution.

27. Some of the teachers of the Nationalised Secondary Schools have intervened in these matters to oppose the prayer of the writ petitioners on the ground that pursuant to the impugned press communique they have joined their respective schools of first posting. Learned counsel appearing on behalf of the intervenors submitted that the law amending power is the competence of the State and,

therefore, the amended Rules 2002 and the guidelines issued thereunder cannot be challenged. The Rules 2002 has been enacted in exercise of power under Sections 9 and 15 of the Act and the same has been enacted with an object to weed out the fake employees of the Nationalised Secondary Schools to streamline the leaching administration and when a legislation has been made to achieve an object the same should not be interfered with by Court of law, as it is only within the domain of the legislature, and, therefore, Rules, 2002 and the impugned communication cannot be said to be arbitrary, unreasonable or ultra vires Article 14 of the Constitution.

28. Learned counsel for the intervenors have tried to impress upon the Court even on facts that since the intervenors have joined their respective schools of first postings, they will be put to great hardship in case the impugned communication is set aside and thus, their interest would be jeopardised.

29. In these cases, validity of Rules, 2002 and the consequential guidelines and the impugned communique issued thereunder, whereby and whereunder the employees, teachers and headmasters/headmistresses have been directed enmasse to join their respective schools of first postings; are under challenge, the press communique virtually has cancelled the transfer of the employees, teachers and headmasters/headmistresses of Nationalised Secondary Schools, who were earlier transferred by virtue of Rule 12 of Rules 1983 in their respective cadres and some of them were transferred on their own requests even outside the cadre as per the provisions of the aforesaid Rules after losing their seniority.

30. The Act of 1981 is the principal Statute, whereby and whereunder management and control of all Non-Government Secondary Schools in the State were taken over with effect from 2.10.1980; Sections 9 and 15 of the Act are the enabling provisions to make Rules/Regulations for implementation of the provisions of the Act and in exercise of the powers under Sections 9 and 15 of the Act, Rules have been framed from time to time. In 1983, the State Government vide notification dated 9.6.1983 framed Rules with regard to service conditions of the employees, both teaching and non-teaching, of the Nationalised Secondary Schools, known as Bihar Nationalised Secondary Schools (Service Conditions) Rules, 1983. Rule 6 of the said Rules, 1983, defined the cadre of the teaching employees of the Nationalised Secondary Schools and categorised that the cadre of junior teachers would be of the District, and that of the teachers in junior and senior grade would be of Division, whereas the cadre of the headmasters/headmistresses would be of the State. Rule 12 of the Rules 1983 contemplates that the posts of all the teaching and non-teaching employees would be transferable and they would be transferred within their cadres. However, exceptions were made, where the employees can opt for transfer outside the Cadre after losing one's seniority, which he/she has acquired in the original cadre.

31. Rules, 1983 again was amended in 1988 by virtue of the enabling provisions

of the Act, as referred to above, known as Bihar Nationalised Secondary Schools (Service Conditions) Amendment Rules, 1988, wherein it was stipulated that no employee of the school would be allowed to stay in one district for more than ten years and he would not be posted in his home district. However, exceptions were also made for the teachers, who were to retire within one year, the ladies and the handicapped persons.

32. The State Government again framed certain Rules, known as Bihar Nationalised Secondary Schools (Service Conditions) Amendment Rules, 1997, whereby and whereunder minor changes were made in the Amendment Rules, 1983 with regard to transfer and posting of the teaching and non-teaching employees of the Nationalised Schools, but Rules, 1988 was not amended vis-a-vis the Rules relating to transfer and posting of the employees of the Nationalised Secondary Schools and now by the Rules 2002 all the teachers and headmasters, who were transferred after notification No. 437 dated 28.4.1988 and who are still in service are being sent to the schools of their first postings, meaning thereby the earlier orders of transfer and postings of the teachers pursuant to notification No. 437 dated 28.4.1988 are being cancelled.

33. Now in the background of the facts, as noticed above, it would be necessary to examine as to whether there is conflict in the provisions of the Act and the Rules framed thereunder from time to time.

34. By virtue of Sections 9 and 15 of the Act, the State Government has framed Rules with regard to the service conditions of the employees, both teaching and non-teaching of the Nationalised Secondary Schools. Rule 12 of Rules, 1983, which made the posts of all the teaching and non-teaching employees of the Nationalised Secondary Schools transferable within their cadres and at the same time, it further made enabling provisions for transfer even outside the cadre at the request of the employees after losing their seniority, which they had acquired in their original cadre, is being amended by the Rules, 2002 partially. By virtue of Rules, 2002, now the posts of all the teaching and non-teaching employees have been made non-transferable except in administrative exigencies.

35. The competence of the legislative authority to frame the Rules in exercise of the powers under Sections 9 and 15 of the Act, no doubt, cannot be challenged nor the same would be the subject matter of judicial scrutiny. But, it would be the bounden duty of the Court to see as to whether there is clash/conflict in between the provisions of the Act and the amended Rules and further according to Heydon's principle, a well recognised mode to interpret an enactment, the Court must see as to what was the law before making of the Act; what was the mischief or defect for which the law did not provide; what is the remedy that the Act has provided; what is the reason of the remedy and, thus, the Court must adopt that construction, which suppresses the mischief and advances the remedy.

36. In these contexts, it would be necessary to notice the law laid down by the Apex Court as to what should be the proper construction of legislative provision

as regards the rules and regulations made under the Act. In the case of The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc., , the Apex Court held as follows :

"The proper construction of a legislative provision as regards rules or regulations made under an Act having effect as if enacted in the Act fell to be considered in several English and Indian decisions and from one of these the earliest case in which the question appears to have been considered-Mr. Pathak sought assistance. That is the case of Institute of Patent Agents v. Lockwood 1894 AC 347. There, a declaration was sought against Lockwood that he was not registered as a patent agent in pursuance of the Patent Design and Trade Marks Act, 1888 and was not entitled to describe himself as a patent agent; and consequential relief was asked for. While the first section of the Act, required such a registration, the Act, itself did not provide "for the manner in which the register is to be formed, who is to be the Registrar, the formalities requisite for the registration, or any particulars in relation to it." The Act left to the Board of Trade to make such general Rules as were required for giving effect to the first section. Among the rules made by the Board, was one requiring certain fee to be paid on first registration, and also an annual fee, non-payment of which shall be a ground for cancelling the registration. The question arose whether the rules with reference to fees were intra vires or ultra vires. The House of Lords held that the rules were intra vires; but dealt also with a contention raised on behalf of the appellants that in view of the provisions in the Act that the rules "shall be of the same in this Act," the question whether the rules were intra vires or ultra vires could not at all be canvassed in the Courts. Speaking about the effect of the above provisions, Lord Herschell, L.C. said :

"I own I feel very great difficulty in giving to this provision that they shall have of the same effect as if they were contained in the Act", any other meaning than this, that you shall for all purposes of construction or obligation or otherwise, treat them, as if they were in the Act."

Mr. Pathak fastens on the phrase "for all purposes of construction, or obligation or otherwise" and submits that this is a good authority for holding that for the purpose of deciding whether rules were part of the Act, so as to attract the consequence of repeal, along with the repeal of the Act, the rules should be treated as if they were in the Act" and so stood repealed. We are bound however to take notice of the fact that the question whether the rules were to be treated as part of the Act to ascertain the effect on them of the repeal of the Act was not even remotely before the House of Lords. The sole question before them was how far, if at all, the Courts could consider the question of validity of the rules, in view of the above provisions as regards their having "the same effect as if they were contained in the Act." That the Lord Chancellor was not concerning himself with the effect of this provision in other aspects is further clear from what he said immediately after the observations quoted above ;

"No doubt", said he, "there might be some conflict between a rule and a

provision of the Act. Well, there is a conflict sometimes between two sections to be found in the same Act. You have to try and reconcile them as best as you may. If you cannot, you have to determine which is the leading provision and which is the subordinate provision, and which must give way to the other. That would be so with regard to enactments and with regard to rules which are to be treated as if within the enactment. In that the case probably the enactment itself would be treated as the governing consideration and the rule as subordinate to it."

37. In Raipur Development Authority Vs. Anupam Sahkari Griha Nirman Samiti and Others, , the Apex Court observed :

"Whenever there are two possible interpretations, the one which subserves to the intent of the legislature is to be accepted. The object of the aforesaid Act is for planned development and thus the interpretation, which upholds any such scheme should be followed. Heydon's principle is now well recognised in interpreting any enactment. It lays down that Courts must see (a) what was the law before making of the Act; (b) what was the mischief or defect for which the law did not provide; (c) what is the remedy that the Act has provided; (d) what is the reason of the remedy. It states that Courts must adopt that construction which suppresses the mischief and advances the remedy. This has been approved by this Court in a number of decisions. One of them is K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, ."

38. Again in Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc., , the Apex Court observed :

"In order to properly interpret any statute it is as necessary now as it was when Lord Coke reported Heydon's case to consider now the law stood when the Statute to be construed was passed, what the mischief was for which the old law did not provide, and the remedy provided by the Statute to cure that mischief."

39. By virtue of Rule 12 of Rules 1983, the posts of teaching and non-teaching employees have been made transferable within their cadre. Rule 6 of Rules 1983 defines the cadre of the teaching employees of the Nationalised Secondary Schools. Rules 2002 while making posts, as such non-transferable except on certain exigencies has not taken, care of the provisions of Rule 6 of the Rules 1983, which defines the cadre of the employees. Rule 6 of Rules 1983 has not been amended nor the same has been substituted somewhat in different manner. The posts, which have been made transferable since are being made non-transferable by virtue of the Rules, 2002, yet the cadre of those employees will remain unchanged and, the Rules, 2002, and the guidelines and the impugned communique, thus, would be violative of Rule 6 of Rules 1983. The press communique in such a situation will become redundant and nugatory in view of Rule 6 of Rules, 1983, and it would be wholly unworkable and discriminatory without amending Rule 6 of Rules 1983, as no transfer from one cadre to another would be permissible and thus, it would be contrary to the Statute leading to

direct conflict in between the provisions of the Act and the Rules framed from time to time.

40. Besides, these aspects of the matter, in my opinion, the posts of the employees of Nationalised Secondary Schools should not be made non-transferable, as it would be against the established norms of service jurisprudence. Transfer being one of the incidence of services has been recognised as a healthy incidence of service in public interest and based on sound public policy, so that an employee may not develop vested interest by remaining on the post for ever, and, therefore, the object of the amended Rules, 1988 making provisions for transfer should not be frustrated and, therefore, the enactment itself would be treated as the governing consideration and the Rules of 2002 as subordinate to it.

41. Secondly, in the given facts and circumstances of the case and keeping in view one of the objects of the Rules, 2002 to weed out the fake employees as clarified in paragraph 1 (Anga) of the guidelines, 2003, it would be further duty of the Court to see as to whether there is rational relation and reasonable nexus of this Rules with the object sought to be achieved by the Rule in question.

42. The underlying object of the impugned press communique appears to be a mode to identify the fake appointees. However, this object, in my opinion, cannot only be achieved by transferring the teachers enmasse in violation of the unamended provisions of the Statute, as referred to above. Since Rule 6 of the Rules, 1983 has not been amended, the transfer de hors the Rules would not be permissible and would be violative of Rule 6 of Rules 1983, and, thus, there appears to be direct conflict in the unamended provisions, as referred to above, and the provisions of the Rules, 2002.

43. The object to identify the fake appointees can also be achieved by some other means and not by subjecting the employees to mass transfer and for this purpose individual case would be required to be scrutinised on the basis of the records available with the employer/State Government.

44. From the pleadings of the petitioners, it appears that the process to identify fake teachers of Nationalised Secondary Schools had started in the years 1999 and 2001, where all the teachers were asked to produce relevant papers, appointment letters, service books and academic/training certificates for verification about the genuineness of their appointment. This fact, however, is not being controverted by the respondent State. The process, which had started, in my opinion, thus, was the proper process to identify the fake teachers/employees and the authorities could have resorted to the same to achieve one of the objects of Rules, 2002. But, in no case, to achieve this object, the mass transfer can be given sanction of law.

45. In this connection, it would be pertinent to mention here that in a similar circumstance, in case of *Kumari Shrilekha and Ors. v. State of Uttar Pradesh and Ors.* 1981 (1) SCC 212 the action of the State Government was tested, whereby

and whereunder panel of Government Law Officers enmasse was cancelled. The Apex Court while quashing the impugned order of cancellation observed that the act of terminating their appointment in one stroke was without application of mind and it was further observed that it would be too much to assume that every Government counsel was required to be replaced in order to streamline the conduct of the Government cases and indeed, that is not even the case of the State, which itself says that many of them were to be reappointed and it is not the case of the respondents that most or large number of sections in the present case were tainted. The Court further held that arbitrariness is writ large on the impugned circular. In State action public interest has to be the prime guiding consideration. It further held that the impugned State action was taken with only one object in view, i.e. to terminate all existing appointment irrespective of the substance or expiry of the tenure or suitability of the existing incumbent and that by one omnibus order the appointments of all Government counsel in the State of Uttar Pradesh were terminated. It was also noticed that no common reason applicable to all of them justifying their termination in one stroke on a reasonable ground had been shown.

46. In *Onkar Lal Bajaj Vs. Union of India (UOI) and Another etc. etc.*, , the Apex Court while examining the action of the Government pertaining to cancellation of largesse already granted to deal in petroleum products, has examined the scope of judicial review and held ;

"The expression "public interest" or "probity in governance" cannot be put in a straitjacket. "Public interest" takes into its fold several factors. There cannot be any hard-and-fast rule to determine what is public interest. The circumstances in each case would determine whether government action was taken in public interest or was taken to uphold probity in governance.

The role model for governance and decision taken thereof should manifest equity fair play and justice, the cardinal principle of governance in a civilised society based on rule of law not only has to base on transparency but must create an impression that the decision-making was motivated on the consideration of probity. The Government has to rise above the nexus of vested interests and nepotism and eschew window-dressing, the act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate."

47. In the case at hand, the action of the State Government is also required to be tested on the touchstone of reasonableness, equity and fair play. The object of Rules, 2002 primarily is to identify and weed out the fake appointees, both teaching and non-teaching employees of Nationalised Secondary Schools and the

other object, which has been disclosed in the counter-affidavit filed by the State appears to be in furtherance to streamline the teaching administration in the State. I have already noticed above that these objects can be achieved even without subjecting the teachers and non-teaching staff of the Nationalised Secondary Schools to the impugned action and it would be most unreasonable to subject the entire lot to draconian measures. The intention of the State, therefore, cannot be said to be in larger public interest nor the same can be based on justice, equity and fair play. It may be a case that on scrutiny some of the teaching and non-teaching staff of the Nationalised Secondary Schools may be identified as fake appointees and for this process the entire lot should not be subjected to this harsh rule, whereby and whereunder the transfer pursuant to Rules, 1988 has been cancelled. The transfer now contrary to Rule 6 of Rules 1983 will be redundant and nugatory and the whole process would become, thus, futile. The object of the legislation, of course, must be achieved faithfully, and not to achieve honour of public praise. In this view of the matter, there is no rational relation and reasonable nexus of this Rule with the object sought to be achieved by the Rules in question.

48. According to the submission of learned Advocate General, the decision of the State pursuant to Rules, 2002 may look legitimate, but, as a matter of fact, the reasons are not based on values. The submission of learned Advocate General in support of the impugned action that to undo the unforeseen development arising out of transfer policy the academic atmosphere of large number of Nationalised Secondary School was in shambles and the State Government, therefore, keeping in view the aforesaid circumstances examine the matters seriously to restore the academic environment in the Nationalised Secondary Schools taking into special consideration the adverse impact of the transfer policy upon the smooth function of such schools in rural areas of the State, must be rejected on the ground that the posts now cannot be made non-transferable in view of unamended Rule 6, of Rules 1983, which decides the cadre of the teachers of the Nationalised Secondary Schools coupled with the reason that to achieve the object the whole lot of the teachers should not be put to test to identify the fake appointees,

49. Likewise, I do not find any force in the submission of learned counsel for the intervenors.

50. From the facts, as discussed above, and after going through the plain meaning of the language of the Statute, it appears that it leads to anomalies, injustices and absurdities, as the same has been enacted with an oblique purpose to identify the fake appointee of the Nationalised Secondary Schools, and, therefore, the Court may look into the purpose, for which the Statute has been brought and would try to give a meaning, which would adhere to the purpose of the Statute and in this connection, reference may be made to the case of Union of India (UOI) and Another Vs. Hansoli Devi and Others, .

51. It also becomes manifest that the Act of 1981, and the Rules 1983 and 1988

are the leading provisions governing the service conditions of the teaching and non-teaching employees of the Nationalised Secondary Schools and certain provisions have been incorporated about transfer of the teachers in consonance with their cadre, as defined under Rule 6 of Rules 1983. The provisions were incorporated to streamline the view the larger public interest. The law, as it stood, was enacted to maintain the teaching standard of the schools by transferring the teachers from their own districts in their own cadre and this was done to achieve a purpose that the teachers may not have vested interests in the schools of their localities. Rules 2002, which appears to be a subordinate legislation, in no way, has attempted to cure the defects or mischief, if any, found in the law before making the amendment and the Rule has been enacted only for the remedy to identify the fake appointees and it has tried to unsettle the settled law, well known, recognised and even applying the Heydon's case the Rules of 2002 cannot be interpreted to be a piece of legislation in public interest to cure any mischief. The primary object of Rules 2002, as disclosed in the Rules and guidelines, issued thereunder, is to weed out the fake appointees. Now it is for the Court to see as to whether this object can be achieved even in other way without subjecting the teachers to enmasse transfer. I have already discussed above that there are ways and means to identify the fake appointees and the procedures laid down in the impugned Rules, in my opinion, do not appear to be logical based on sound public policy, rather it appears to be a harsh measure to disturb the teaching administration of the Nationalised Secondary Schools and the object, therefore, cannot be achieved contrary to the settled provisions, as referred to above, and, thus, preference should be given to the leading provisions of the principal Statute.

52. For the reasons and discussions aforementioned, therefore, it is held that the Rules 2002 and the impugned press communique, issued thereunder, lead to anomalies, injustices and absurdities and not workable.

53. It is further held that the impugned press communique issued under Rules 2002 and the guidelines 2003 are wholly unreasonable, arbitrary, discriminatory and unworkable.

54. It is also held that Rule 1 (4) of Rules 2002 is ultra vires Article 14 of the Constitution and not workable. It is, accordingly, struck down.

55. In the result, these applications are allowed and the impugned press communique is set aside. No order as to costs.

P.K. Sinha, J.

56. I agree.