

**(2025) 07 AHC CK 0816**  
**In the Allahabad High Court**  
**Case No : Writ Petition A No. 2983 Of 2023**

Neelesh Kumar Verma

APPELLANT

Vs

State Of U.P. And 6 Others

RESPONDENT

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**Date of Decision : 22-07-2025**

**Acts Referred:**

Constitution of India, 1950 — Article 309, 311(2)

Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 — Rule 9, 9(2)

**Citation : (2025) 07 AHC CK 0816**

**Hon'ble Judges : Manish Mathur, J**

**Bench : Single Bench**

**Advocate : Hari Prasad Gupta, Hari Ram Gupta, Parul Bajpai**

**Final Decision : Allowed**

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## Judgement

Irshad Ali, J.

1. Vide order dated 6.8.2025, the review application was allowed, which is being quoted below :-

" IA No.1 of 2024- Delay Application

1. Heard.

2. In paragraph-2 of the objection filed, objection has been raised, which has no merit. The reasons assigned in the affidavit filed in support of the application are sufficient. Accordingly, the application is allowed. The delay in filing the review application is condoned.

Review Application

1. Heard Sri Anurag Kumar Singh, learned counsel for the applicant and Sri Sharad Pathak, learned counsel for the respondent.

2. This review application has been filed for review of judgment and order dated 14.2.2023, passed in Writ-A No.2823 of 2004.

3. It is submitted by learned counsel for the applicant that at no point of time, correct facts were brought into the notice of the Court, neither the validity of the appointment was shown by the respondent/ petitioner, therefore, writ of mandamus cannot be issued for the payment of salary to the respondent/ petitioner from the State exchequer. He next submitted that once the institution has been upgraded to high school and intermediate, the provisions of U.P. Intermediate Education Act, 1921 and U.P. Secondary Education Services Selection Board Act, 1982 are applicable, therefore, the appointment made under the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment And Conditions Of Service Of Teachers) Rules, 1978 is not permissible in the eyes of law.

4. Sri Sharad Pathak, Advocate opposed the review application filed by the applicant on the ground that the Committee of Management was issued notice and did not turn up to file counter affidavit before this Court and in absence of the Committee of Management, the judgment was passed by this Court on 14.2.2023, therefore, the submission advanced by learned counsel for the applicant is not sustainable in law.

5. In rebuttal, learned counsel for the applicant submitted that after filing of Writ A No.2823 of 2004, several other disputes came before this Court in the writ petition and special appeal and it was nowhere disclosed that in the writ petition filed by the petitioner, the Committee of Management was not represented, therefore, it is pure concealment of fact, therefore, the review application is maintainable.

6. I have heard the submission so advanced by both the parties. The respondent has concealed material fact in regard to appointment of the petitioner that will the Rules of 1978 are applicable and the institution has been upgraded to intermediate college, has obtained the order for payment of salary in the writ petition, therefore, the review application is maintainable. I am of the considered opinion that once the Committee of Management was not represented by any of the counsel before this Court in the writ petition (Writ-A No.2823 of 2004), therefore, by coming alongwith the relevant facts, the review application is maintainable and is hereby allowed.

7. In the present writ petition, writ of mandamus has been prayed on the ground that the petitioner was appointed by the approval of the District Basic Education Officer dated 21.10.2003 on the post of Headmistress in the institution. Question arose that whether after upgradation of the institution as intermediate college, the appointment made with the approval of the District Basic Education Officer and selection committee appointed by him, is in accordance with law or not and whether a writ of mandamus can be issued for payment of salary from the State exchequer.

8. For dealing with the matter, relevant facts are necessary to be brought into notice. Initially, the institution was junior high school, Para Hamidpur, District

Pratapgarh. There is sanctioned strength of one Headmaster and Teachers. On 2.11.1995, recognition was granted to the society running the junior high school under Section 7(4) of U.P. Intermediate Education Act, 1921 for the purpose of examination up to the intermediate level.

9. The petitioner's service was terminated from the School and she filed Writ Petition No.4534 (S/S) of 1993 on 30.5.1993. The petitioner was appointed as Assistant Teacher in the said junior high school on 30.8.1991. She took leave and started working in a Co-operative Bank and since she was not paid salary, she filed Writ Petition No.7000 of 1992. Leave was granted from 1.10.1992 to 19.5.1993. She joined back as Assistant Teacher in the School on 1.11.1993. Communications were made for payment of salary to the petitioner as Assistant Teacher on 24.6.1997. Recognition was granted under Section 7(4) of the U.P. Intermediate Education Act, 1921 on 5.1.2001.

10. Vacancy on the post of Headmaster occurred due to retirement of one Ramsamugh Maurya in intermediate college. The Committee of Management sent letter for permission from Basic Education Officer for starting selection process, which was granted on 8.8.2003.

11. Vide letter dated 22.8.2003, the Committee of Management request the District Basic Education Officer to appoint Observer at the time of holding of selection. On 20.9.2003, Observer was appointed by the Basic Education Officer and selection was held by duly constituted selection committee. Basic Education Officer approved the selection of the petitioner and she joined the post on 1.12.2003 and started getting salary. The Finance and Accounts Officer stopped the salary of the petitioner vide order dated 27.3.2004. The petitioner filed the present writ petition, in which interim order was passed and notice was issued to the Committee of Management, which is duly served and no counter affidavit has been filed during the pendency of the writ petition.

12. Election of the Committee of Management was held and new office bearers came into the office on 20.9.2008 and dispute arose in the Committee of Management of the School. Vide order dated 11.10.2008, the petitioner was suspended on the ground that she does not follow the dictates of the new Manager. In view of the provisions contained under U.P. Intermediate Education Act, after expiry of sixty days period, suspension order stood revoked. An enquiry report has been submitted in regard to the appointment of the petitioner on 25.9.2008, in which selection process of the petitioner has been found to be appropriate. Thereafter, various orders were passed for payment of salary of the petitioner, which was stopped by the Committee of Management.

13. The Committee of Management filed Writ Petition No.5640 (S/S) of 2012, alleging therein that the appointment of the petitioner is illegal. Learned Single Judge directed for enquiry to be conducted by the Commissioner.

14. The petitioner filed Special Appeal No.818 of 2012, wherein the enquiry order was stayed and question was framed by the Court in regard to validity of

appointment of the petitioner. An application for modification of the judgment passed in the present writ petition was filed, which was dismissed as withdrawn. The special appeal was also filed against judgment and order dated 14.2.2023, which was also dismissed as withdrawn vide order dated 20.8.2024 and the review application in the present writ petition has been filed thereafter.

15. Submission of Sri Sharad Pathak, learned counsel for the petitioner is that there is no prohibition in regard to the appointment of the petitioner on the post of Headmistress in an intermediate college, which is receiving grant in aid from the State Government. The appointment made by constituting a selection committee at the level of Basic Education Officer is the criteria to make appointment on the post of Headmaster/ Headmistress of an intermediate college. Next submission is that in view of government order dated 15.10.2009, a ban was imposed on appointment in intermediate colleges.

16. He next submitted that the appointment of the petitioner is not dehors the rules, that is in accordance with law under U.P. Recognised Basic Schools (Junior High Schools) (Recruitment And Conditions Of Service Of Teachers) Rules, 1978, therefore, the salary of the petitioner cannot be denied in view of the fact narrated above. Relying on certain judgments, learned counsel for the petitioner submitted that prior to judgment of Manju Awasthi and others Vs. State of U.P. and others, there is no prohibition in regard to appointment in intermediate colleges under U.P. Recognised Basic Schools (Junior High Schools) (Recruitment And Conditions Of Service Of Teachers) Rules, 1978, therefore, the judgment relied upon by the learned counsel for the respondent is not applicable to the facts and circumstances of the present case.

17. The moot question in the present writ petition is that whether the appointment of the petitioner is in accordance with law or not. The question arises for consideration is that once the institution has been upgraded from junior high school to high school and intermediate, the process of appointment will be under U.P. Recognised Basic Schools (Junior High Schools) (Recruitment And Conditions Of Service Of Teachers) Rules, 1978 or U.P. Intermediate Education Act, 1921 and U.P. Secondary Education Services Selection Board Act, 1982.

18. In support of his submission, Sri Sharad Pathak, learned counsel for the petitioner placed reliance upon judgment rendered in the case of Vinod Kumar and others Vs. Union of India and others arising out of SLP (C) Nos.22241-42 of 2016. Relevant paragraph-7 is being quoted below :-

"7. The judgement in the case Uma Devi (supra) also distinguished between "irregular" and "illegal" appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case. Paragraph 53 of the

Uma Devi (supra) case is reproduced hereunder:

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [(1967) 1 SCR 128 : AIR 1967 SC 1071] , R.N. Nanjundappa [(1972) 1 SCC 409 : (1972) 2 SCR 799] and B.N. Nagarajan [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme."

19. On the other hand, Sri Anurag Kumar Singh, learned counsel for the respondent has placed reliance upon the judgments, which are as under :-

(i) State of Uttar Pradesh and others Vs. District Judge Varanasi and others [1981 SCC OnLine All 279]. Relevant paragraph-17 is being quoted below :-

"17. A basic school or a Junior High School is thus different from a High School or an Intermediate College. On the plain language of these definitions the same institution cannot be called a basic school or a Junior High School as well as a High School or an Intermediate College. Each one has a distinct legal entity. On a basic school or a Junior High School being upgraded as a High School or an Intermediate College the identity of the institution known as basic school or Junior High School is lost. It ceases to exist as a legal entity and in its place another institution with a new legal entity comes into being. One cannot be equated with the other. In this connection reference may also be made to the decision of the Supreme Court in Commissioner, Lucknow Division and Others Vs. Kumari Prem Lata Misra, . It would further be seen that administration including constitution of Committee of Management of an institution recognized under U, P. Act II of 1921 is to be carried out in accordance with a Scheme of Administration prepared u/s 16-A of the said Act and this Section does not apply to basic school or a Junior High School. For all these persons and in the absence of any specific provisions in this behalf none having been pointed out to us maintenance grant

payable to the basic school or Junior High School which has been upgraded as High School cannot and does not automatically become payable to the recognised High School. Suppose after a Basic School or a Junior High School has been upgraded as a recognised High School, the State Government stops payment of the amount of maintenance grant which was being paid to the Basic School or the Junior High School, can the recognized High school claim as a matter of right that the said amount has become automatically payable to it. The answer, in the absence of any specific provision permitting such automatic transformation, so to speak will, in our opinion, have to be in the negative. Such a recognized High School will have to wait till maintenance grant payable to it as a recognized High School has been fixed as contemplated by Section 2(c) of U.P. Act 24 of 1971. Consequently, even if the maintenance grant payable to a Basic School or a Junior High School is continued to be paid to those who were managing the erstwhile Basic School or Junior High School it cannot be said that the upgraded recognized High School is receiving any maintenance grant as defined in Section 2(c) of U.P. Act 24 of 1971. In view of the foregoing discussion our answer to both the questions referred to us is in the negative."

(ii) Dr.(Smt.) Sushila Gupta Vs. The Joint Director of Education, Kanpur and others [2005 SCC OnLine All 1183]. Relevant paragraph-28 is being quoted below :-

"28. It is, thus, clear from all the decisions cited herein above and the provisions discussed herein above that a Junior High School upgraded to the High School/ Intermediate level, the institution is governed by the provisions of U.P. Intermediate Education Act and Service Rules as applicable to such institution, have to be applied. There is no distinction drawn between an aided or an unaided school. The recognition of the institution is by itself sufficient to exclude the applicability of the laws governing Junior High School once the institution is upgraded. It is for this reason that a special transitory amending provision was brought in by way of Section 13-A in U.P. Act No. 6 of 1979 discussed herein above to enable such upgraded institution to continue to receive the grant-in-aid that they were receiving at the level of Junior High School."

(iii) Ajay Pratap Rai Vs. District Basic Education Officer, Jaunpur and others [2007 SCC OnLine All 1485]. Relevant paragraphs-6, 7 and 8 are being quoted below :-

"6. Replying to the aforesaid submissions, Shri Khare has taken us to the findings recorded by the learned Single Judge with the aid of the Full Bench decision in the case of State of U.P. and Ors. v. District Judge, Varanasi and Ors. 1981 UPLBEC 336 and the decision of the learned Single Judge in the case of Dr.Smt. Sushila Gupta v. Regional Joint Director of Education (2006) 1 AD 523 and has urged that the entire claim of the appellant has to be rejected in view of the findings recorded by the learned Single Judge and, therefore, the appeal deserves to be dismissed.

7. The learned Standing Counsel has also made his submissions and has Invited

the attention of the Court to the various definitions as contained in Act, 1972, the Rules, 1978, the U.P. Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978, the provisions of the Act, 1921 and the U.P. Secondary Education Services Selection Boards Act, 1982 (hereinafter called the "Act 1982") and has urged that the directions given by the learned Single Judge in respect of the claim on the post of the Head of the Institution do not deserve any interference as no ground has been made out either in law or in fact for any further judicial intervention.

8. Having considered the rival submissions, we find that the learned Single Judge after having noticed the Full Bench decision in the case of State of U.P. and Ors. (supra) and the judgment of the learned Single Judge in Sushila Gupta (supra) has held that once a Junior High School stands upgraded as a High School or an Intermediate College, then in that event the post of the Head of the Institution has to be filled up in accordance with the procedure prescribed under the Act, 1921 read with Act, 1982. It has been held that in such eventuality the Junior High School loses its identity as such and upon upgradation of the Institution, there cannot be any appointment of a Head Master in a Junior High school under Rules 1978. For this, the learned Single Judge has placed reliance upon the decisions referred to therein and has also indicated the ratio of the decision in Sushila Gupta's case to be fully applicable to the facts of the present controversy."

(iv) Manju Awasthi and others Vs. State of U.P. and others [MANU/UP/ 3739/ 2012. Relevant paragraph-72 is being quoted below :-

"72. After the Full Bench judgment, the Legislature inserted Section 13- A, the consequence of which is for limited purpose that is for payment of salary, the provisions of 1978 Act applies and the service conditions of teachers of High School have to be governed by 1921 Act and 1982 Act. Before the Division Bench in Ajay Pratap Rai Vs. District Basic Education Officer & others 2007(4) ADJ 357, the issue as to whether after upgradation of an institution as High School, U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 shall apply or appointment is to be made in accordance with 1921 Act and 1982 Act came for consideration. Following was laid down by the Division Bench in paragraphs 8,10,11 and 16:

"8. The learned Standing Counsel has also made his submissions and has Invited the attention of the Court to the various definitions as contained in Act, 1972, the Rules, 1978, the U.P. Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978, the provisions of the Act, 1921 and the U.P. Secondary Education Services Selection Boards Act, 1982 (hereinafter called the 'Act 1982') and has urged that the directions given by the learned Single Judge in respect of the claim on the post of the Head of the Institution do not deserve any interference as no ground has been made out either in law or in fact for any further judicial intervention.

10. The issue raised by the appellant, therefore, in respect of the status of the institution as still to be that of a Junior High School for the purposes of appointment on the post of Head of the Institution, has to be rejected for the reasons given by the learned Single Judge with which we find ourselves to be in full agreement with, The word "upgradation" in its normal connotation means improvement; enhancement of status; more efficient. The word "grade" is derived from the latin word 'gradus' which means degree, step. In *Hari Nandan Sharan Bhatnagar v. S.N. Dixit and Anr.* MANU/SC/0430/1969 : [1970]1SCR421 ; and *A.K. Subraman v. Union of India and Ors.* MANU/SC/0360/1974 : (1975)ILLJ338SC , the Apex Court held 'grade' means rank, position in a scale, a class or position in a class according to the value. It means a degree in the scale of rank, dignity, proficiency etc. (Section 15 of Code of Civil Procedure, 1908). The word 'upgradation' therefore means improvement in degree, raising of status, rank, quality or in value. It is an improvement in proficiency and reflects a rising gradient. The institution was admittedly a Junior High School and was raised to the status of a High School in 1993 and to that of Intermediate College in the year 1999. It is undisputed that upon being upgraded as a High School, the institution has been recognized as such under the provisions of Act, 1921. This undisputed position, therefore, clearly establishes that the institution ceases to be a Junior High School and for the purposes of appointment of Head of the Institution, the appointment can only be made by resorting to the provisions as indicated in the judgment rendered in *Sushila Gupta's case* (supra). The observations made by the Full Bench in the case of *State of U.P. v. District Judge Varanasi* (supra), which have been quoted in detail by the learned Single Judge are worth reiterating to the effect that Basic School or a Junior High School is different from a High School or an Intermediate College as the same institution cannot be called Basic School or a Junior High School as well as a High School or an Intermediate College. The Full Bench above referred to held as under:

On a Basic School or a Junior High School being upgraded as a High School or Intermediate College, the identity of the institution known as Basic School or a Junior High School is lost and it ceases to exist as a legal entity and in its place another institution with a legal entity comes into being. One cannot be equated with the other.

11. The aforesaid observations of the Full Bench as explained in the judgment *Sushila Gupta's case*, therefore, leave no room for doubt that the selection and appointment on the post of Head of the Institution which has been cognized as a High School and Intermediate College cannot be made under the provisions which are applicable to a Junior High School. In *Sushila Gupta* (supra), the learned Single Judge considered all the Amendment made in the Statute and held that in spite of so many amendments to the statutory provisions, the proposition of law laid down by the above referred to Full Bench remained the same. Mr. Saxena has not brought to our notice any provision which have altered the legal position.

16. The contention with regard to the direction of the learned Single Judge in respect of lodging a First Information Report also does not deserve to be interfered with as the learned Single Judge having recorded his finding in respect of the manipulations in the publication in the newspaper, has concluded that the same requires to be investigated by an investigating agency. We do not find any error in the same as, prima facie, there was ample material before the learned Single Judge to have arrived at the aforesaid conclusion. We have ourselves also perused the two copies of the Hindi Daily "Dainik Manyavar" alleged to have been published on Monday, the sixth of January, 2003. On page two of the said newspaper there is a clear difference as the same space in one copy carries a news item of arrest of two persons whereas the other copy contains the advertisement under scrutiny. The same therefore leaves no room for a genuine doubt that fraud has been apparently practiced. Both copies at page four disclose the name of the Editor Sri Om Prakash Jaiswal and recite the name and address of Mamta Printers, Khwajgi Tola, Jaunpur as Publishers. The same further discloses the name of the printing press as Bharatdoot Press, 6 Rampuri, Varanasi. The telephonic and E-mail address are also indicated therein. The Investigating agency shall also take notice of the above while initiating proceedings and copies of the newspapers shall be made available and obtained for the said purpose as the involvement of the publishing and printing agency in this matter cannot be ruled out. The investigation shall forthwith be set into motion as per the directions of the learned Single Judge."

(v) Standard Intermediate College Mau Aima and others Vs. State of U.P. and others [MANU/UP/ 2018/ 2019]. Relevant paragraphs-1, 15, 16, 17, 18, 19, 20 are being quoted below :-

"1. All these appeals have arisen from a common judgment dated 16.01.2019 passed by learned Single Judge deciding nine Writ Petitions collectively. Basic issue raised in all these appeals is that Junior High School when granted recognition under Section 7-A(a) of U.P. Intermediate Education Act, 1921 (hereinafter referred to as "U.P. Act, 1921") and upgraded to High School, if any vacancy of Teacher arises in such Institution subsequently whether it would be filled in following procedure laid down under U.P. Basic Education Act, 1972 (hereinafter referred to as "U.P. Act, 1972") read with U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as "Rules, 1978") or for administrative and other purposes the Institution would be deemed to be governed by provisions of U.P. Act, 1921 and recruitment would be governed by provisions of U.P. Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as "U.P. Act, 1982"). Learned Single Judge has taken the view that once Institution is upgraded or recognition upto High School is granted under Section 7-A(a), provisions of U.P. Act, 1921 would be attracted and in such a case any vacancy of teaching staff caused in such Institution, would have to be filled in as per the provisions of U.P. Act, 1982.

15. In all these Appeals, basic submission is that despite recognition having been granted by U.P. Board upto High School and Intermediate under Section 7-A of U.P. Act, 1921, appointments of teaching and non-teaching staff in respect to the classes upto Junior High School, Institution would continue to be governed by the provisions of U.P. Act, 1972 read with Rules, 1978 and U.P. Act, 1921 read with U.P. Act, 1982 would not apply. It is in this regard, judgment of learned Single Judge, taking an otherwise view, has been challenged.

16. We find that real issue need be considered by this Court to find out whether judgment of learned Single Judge is correct or not is "whether on recognition as High School, a Junior High School or Basic School would loose its identity and would be governed by provisions applicable to Secondary Schools or in respect to posts upto Junior High School, it would continue to be governed by provisions applicable to a Junior High School."

17. We find that this aspect is covered by a Division Bench Judgment of this Court in Ajay Pratap Rai Vs. District Basic Education Officer 2007 (4) ADJ 357 (DB), wherein Court has held that once an Institution is upgraded to High School level, it would cease to exist as a legal entity as a Junior High School and, therefore, provisions applicable to a Junior High School would not be applicable to govern the same and, on the contrary, it would be governed by provisions applicable to a High School. Court in para-10 of the judgment said as under:

"10. From the aforesaid discussions, it is evident that status of an institution after being upgraded loses its significance and the lower section of the school after upgradation completely merges into the upgraded institution. Interpreting the provisions otherwise would lead to complete absurdity and create a chaotic situation even for governance of the different parts of the same institution. An institution cannot have a multiple Code for its governance. There is no provision permitting continued applicability of the laws in relation to a Junior High School even after its upgradation."(emphasis added)

18. This view is fortified from the fact that legislature had inserted Section 13-A in U.P. Act, 1978 providing for payment of salary to Teachers and other employees which has received grant-in-aid if it is upgraded and recognition is granted upto High School level. This provision was inserted to take care of a situation where without any grant-in-aid, a Junior High School which is in grant-in-aid, is upgraded and recognition is granted upto High School level and since it becomes a secondary educational institution, thereupon provisions of Junior High School will not be applicable, hence to obviate the difficulty in payment of salary to Teachers working upto Junior High School, who were already in grant-in-aid, Section 13- A was inserted and this also supports the view that after upgradation/ recognition granted to a Junior High School upto High School level, Statutes applicable to an institution which is upto Junior High School, become inapplicable.

19. Further this issue that a Junior High School when upgraded or recognized

upto High School loses its identity as Junior High School has also has been considered by a Full Bench in State of U.P. and others Vs. District Judge, Varanasi and others 1981 UPLBEC 336, and it has been held that after a basic school or a Junior High School is upgraded as a High School or an Intermediate College, the identity of Institution as basic school or Junior High School is lost. It ceases to exist as a legal entity and in its place another institution with a new legal entity comes into being. In fact Section 13-A was inserted after the aforesaid judgment of Full Bench so as to continue payment of salary from State Exchequer under the provisions of Act, 1978.

20. The view taken by Division Bench in Ajay Pratap Rai Vs. District Basic Education Officer (supra) has been reiterated by another Division Bench in Manju Awasthi and others Vs. State of U.P. and others 2013 (3) ADJ 64 (DB). Once a Junior High School ceased to continue with a separate entity, provisions relating to selection and appointment of Teachers applicable to Junior High School will not apply and entire Institution as a whole will be a Secondary Educational Institution and governed by provisions of Statute applicable to a Secondary Institution. Therefore, the view taken by learned Single Judge, we find, is consistent with the authorities discussed above. We find no legal infirmity therein so as to warrant interference in these appeals."

(vi) Sharda Prasad Yadav Vs. DIOS Deoria and others [2002 (49) ALR 800]. Relevant paragraphs-16 to 19 are being quoted below :-

"16. As regards the third contention of the petitioners, it is apparent from the records of this case as well as from the contention of the parties that the appointments of the petitioners were not as per Rules. There were only fourteen sanctioned posts of class-IV employee and the District Inspector of Schools, Deoria was not at all applied to grant financial sanction for four additional posts, which has been made against the rules. The contention of the petitioners that their appointments have been made on the posts in accordance with law by the Principal of the institution, is not correct.

17. Apart from the above, under Regulation 101 it is mandate upon the appointing authority not to pay the non-teaching staff except without prior approval of the District Inspector of Schools. The use of word shall in the Regulation 101 makes it obligatory upon the appointing authority to obtain prior approval from the D.I.O.S. before filling any vacancy of nonteaching post in the institution. Further use of word 'except' with prior approval of the D.I.O.S. do not give discretionary power to the appointing authority, Regulation 101 is as under:

"101. The appointing authority shall not fill any vacancy in the non- teaching staff of a recognized aided institution except with the prior approval of the inspector."

18. In Amit Kumar v. D.I.O.S., Jaunpur [ 2001 (42) ALR 153.] , it has been held by a Single Judge of this Court that the Regulation 101 cannot be treated to be directory and this interpretation would result in giving power to the appointing

authority for making appointment and thereafter obtain financial sanction. This Court held:

"If Regulation 101 is treated to be directory then the appointing authority could make appointment on non-teaching post even without prior approval of the DIOS. It would result in giving power to the appointing authority to make appointment first and thereafter obtain financial approval. This was not the intention of legislature or the Rule making authority. And it clearly intended that before making any appointment the appointing authority must obtain prior approval of the DIOS. The legislative intent has to be given effect to while interpreting regulatory provisions of Regulation 101. Regulations 103 to 106 further make it clear that the Regulation 101 cannot be construed as permissive or directory. Further the procedural safeguard contained in Regulation 101, making it obligatory for the appointing authority in matter of making appointment on non-teaching post, not to fill the vacancy except with the prior approval of the DIOS, has an element of public interest."

19. Since the petitioners have contended that they are still working since the date of their appointment by the Principal of the institution, they may raise their prayer of salary before the Principal of the institution. This Court will not regularize their appointments by directing the D.I.O.S. to grant financial sanction to the appointments of the petitioner in the aforesaid circumstances."

(vii) Shailendra Pratap Singh Vs. State of U.P. and others [2024 SCC OnLine All 2138]. Relevant paragraphs-3, 32 and 33 are being quoted below :-

"3. Factual matrix of the case is that a post of clerk became vacant due to retirement of regular clerk, namely, Mohan Lal Sharma in the Uchchar Madhyamik Vidyalaya, Para Hamidpur Pratapgarh (hereinafter referred to as 'the institution'), on 30.9.2011. Thereafter, the then Manager of the Committee of Management moved an application on 4.11.2011, to the District Basic Education Officer (hereinafter, referred to as 'DBEO') for granting permission for filling up the post of Clerk. On such application, the 'DBEO' granted permission and, thereafter, the post of Clerk (Class-III) was advertised in the newspaper as per the provisions of UP Recognised Basic Schools (Junior High Schools) (Recruitment of Conditions of Service of Ministerial Staff and Group D Posts), Rules 1984 (hereinafter referred to as 'the Rules 1984'). The qualification and other description as an eligibility criterion, was also mentioned in the advertisement and on 30.11.2011, the Manager i.e opposite party no.4 sent a letter to the 'DBEO' for providing Observer on 4.12.2011, i.e., the date fixed for interview but the same remained unheard. Again on 27.12.2011, a letter was sent for providing Observer/Nominee for 1st of January 2012 and in response, after the expiry of the aforesaid date, the DBEO informed to the opposite party no.5 that since, assembly election is notified, therefore, the appointment process would be conducted after the election is denotified. After the election was over again, the date of interview was fixed on 1st of April 2012 and it was intimated by the opposite party no.4, vide letter dated 3.3.2012 to the DBEO and,

thereafter, on 29.3.2012, 28.6.2012, 11.7.2012 and 24.7.2012, the same request was repeated before the DBEO while fixing the dates for interview but, ultimately, when the Entire effort went unsuccessful, the interview was held on 29.7.2012 and the selection so made was placed before the Committee of Management, who sent the papers before the opposite party no.2 for approval, which was received in the office of opposite party no.2, on 14.8.2012, which is undisputed fact.

32. Now the question crops up that whether, the institution in question is governed with the provisions of Rules, 1984 or the same is governed with the provision of the Act, 1921. The undisputed fact is that uptill 01.11.1982, the institution was running at the level of Junior High School and by virtue of an order dated 02.11.1982, this has been upgraded, however, there is no overt provision in the Rules, 1984 for appointment of Group D posts, in such institution, but time and again this issue was brought up before this Court and ultimately, this was decided in the case of Manju Awasthi and Ors. Vs. State of U.P. and Ors, reported in Manu/ UP/3739/2012 wherein, in the paragraphs 77,78 and 82, the Division Bench has very categorically held that the 'Government Order dated 24.11.2001 can be supported only to the extent of payment of salary at the Junior High School level and the ancillary power thereunder, but the Basic Siksha Adhikari cannot exercise any administrative control over the institution, except to the extent of payment of salary.' Paragraphs 77, 78 and 82 of the abovesaid judgment are extracted as under:-

"We are of the view that the Government Order dated 24.11.2011 can be supported only to the extent of payment of salary of teachers at the Junior High School level and ancillary power thereunder. However, the Basic Shiksha Adhikari cannot exercise any administrative control over the institution except to the extent of payment of salary nor can make any appointment in view of the applicability of 1921 and 1982 Acts. The judgment of Hon'ble Single Judge in Committee of Management Beni Singh Vaid?c Vidyawati Inter College, Baluganj, Agra and others (supra) to that extent cannot be approved. It is relevant to note that against the judgment of Hon'ble Single Judge dated 7.9.2005 in Committee of Management Beni Singh Vaidic Vidyawati Inter College, Baluganj, Agra and others (supra) special appeal No. 1419 of 2005, Agam Prakash Deepak. State of U.P., was filed, which appeal was also dismissed on 29.11.2005.

78. The Special Appellate bench considered the submissions of the appellant only qua the qualifications of the Assistant Teacher and laid down that Assistant Teacher must possess the training course recognised by the State Government hence, the appellant could not have been appointed as Assistant Teacher hence, the appeal was dismissed. No other ratio was laid down in the said judgment.

82. The selections made by the Basic Shiksha Adhikari under the provisions of U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978, have rightly been quashed in the writ petitions by Hon'ble Single Judge on the ground that after up-gradation of a

Junior High School, selection/appointment is to be made in accordance with 1921 Act and U.P. Act No. 5 of 1982. As noticed above, we have found that the State Government as well as the educational authorities have not been properly construing the provisions of Section 7A and under the misconception, they have granted recognition to the institution under Section 7A, for the first time whereas recognition under Section 7A is to be granted to an existing recognised institution within the meaning of Section 2(b). We thus, feel that certain directions are necessary to be issued in this context. We have already observed that our observations and interpretation of Section 7A in no manner shall affect any recognition already granted to an institution under Section 7A and institution which has been granted recognition shall be treated to be duly recognised but necessary action which has not yet been taken with respect to the said institution is required to be taken by the educational authorities as per our observation. The appeals are disposed of with following directions:

1. The judgment of Hon'ble Single Judge Impugned in the appeal holding that after up-gradation of a Junior High School to High School, appointment and selection on the post of Head Master shall be made in accordance with 1921 Act and U.P. Act No. 5 of 1982 are upheld and prayer of the appellant to set aside the judgment of Hon'ble Single Judge is refused.
2. The recognition/permission under Section 7A shall be granted to an institution which is already recognised institution within meaning of Section 2(b) of 1921 Act.
3. Recognition to a junior high school as High School is to be granted in accordance with the provisions of Section 7(4) of 1921 Act.
4. The State is fully empowered to grant recognition under Section 7(4) or Section 7A without finance (Vitta vihin).
5. After an institution is granted recognition for the first time as a High School minimum necessary post of teachers and Head Master is contemplated to be created even though without finance (Vitta Vihin) so as to fill up those posts in accordance with 1921 Act and 1982 Act.
6. Against the recognition/permission granted under Section 7A, the appointment of a part time teacher or instructor as contemplated under Section 7A(a) shall be continued to be made by the management as per the Government Orders issued from time to time regulating their terms and conditions.

All the appeals are disposed of accordingly.

Parties shall bear their own costs."

33. While dealing with the aforesaid issue, the coordinate division bench of this Court at Allahabad has also sketched out the difference in the judgment and order passed in earlier Special Appeal, thereby holding that the same considered the qualification of Assistant Teacher and no other ratio was laid down in the said

judgement and therefore, this was open to the coordinate bench to deal with the issue, regarding the applicability of the other provisions. The law laid down in the case of Manju Awasthi and Ors. Vs. State of U.P. and Ors still holds filled and therefore, the institution in question is covered with the provisions of the Act, 1921."

20. After having heard the rival submission of learned counsel for the parties, I perused the material on record as well as law report cited by the parties.

21. Arguments are concluded and judgment is reserved."

2. Initially, the institution was junior high school, Para Hamidpur, District Pratapgarh. The institution was granted recognition for high school vide order dated 2.11.1985 and thereafter, the institution was upgrade to the level of intermediate college by granting recognition under Section 7(4) of U.P. Intermediate Education Act, 1921.

3. The petitioner was appointed as Assistant Teacher in graduate scale on adhoc basis till the appointment of regularly selected candidate by the Board on 3.8.1991. During the course of appointment, the petitioner was also enrolled as a regular student for Master of Education course in Dr. Ram Manohar Lohiya Avadh University, Faizabad and completed M.Ed. in 1994. She was also working in the National Urban Cooperative Bank Limited, Pratapgarh from 16.4.1992 to 18.9.1992 on the post of Clerk-cum-Typist and her service was terminated, then she filed Writ Petition No.7000 (S/S) of 1992, challenging her termination.

4. The petitioner also filed Writ Petition No.4534 (S/S) of 1993, claiming salary w.e.f. 30.8.1991 in the Bank and this Court directed the respondents to allow her to work and pay her salary and the said writ petition was subsequently dismissed as infructuous.

5. On 30.6.2003, the regular Headmaster of the school retired from his post after completing his superannuation. The District Basic Education Officer granted permission for advertisement of the post of Headmaster in two newspapers on 18.8.2003. The post of Headmaster was advertised in two newspapers i.e. Dainik Jagran and Swatantra Bharat on 22.8.2003.

6. The respondent No.3 wrote for providing Observer in the selection scheduled to be held on 21.9.2003. The Assistant Basic Education Officer was directed by the respondent No.1 to participate in the selection. A selection committee was constituted under 1978 Rules and the petitioner-Km. Poonam Sharma was selected in the selection so held on 21.9.2003.

7. Papers were sent for grant of approval and the District Basic Education Officer, by granting approval on 21.10.2003, issued direction to appoint the petitioner and in pursuance thereof, the petitioner joined by issuing appointment letter on 21.11.2003 and when no payment of salary was made, the petitioner filed Writ-A No.2823 of 2004, alleging her appointment made under 1978 Rules, in spite of the fact that the institution has been upgraded to high school and intermediate

by granting recognition under Section 4 of the U.P. Intermediate Education Act.

8. The moot question for consideration is that whether the appointment of the petitioner has been made in accordance with the Act and Rules of U.P. Intermediate Education Act and U.P. Act No.5 of 1982 or not.

9. A Basic School or a Junior High School is different from a High School or an Intermediate College. On the plain language of these definitions the same institution cannot be called a basic school or a Junior High School as well as a High School or an Intermediate College. Each one has a distinct legal entity. Once a basic school or a Junior High School being upgraded as a High School or an Intermediate College the identity of the institution known as basic school or Junior High School is lost. It ceases to exist as a legal entity and in its place another institution with a new legal entity comes into being. One cannot be equated with the other.

10. It is admitted by the parties that the appointment of the petitioner has been made as a Headmistress in an institution, which has been upgraded to intermediate college, therefore, consideration for payment of salary as well as appointment under 1978 Rules is in question that whether appointment after upgradation to another college can be made under 1978 Rules or not.

11. It would further be seen that administration including constitution of Committee of Management of intermediate college recognized under U.P. Act No.2 of 1921 is to be carried out in accordance with a Scheme of Administration prepared u/s 16-A of the said Act and this Section does not apply to basic school or a Junior High School. For all these, junior high school which has been upgraded as high school cannot and does not automatically become payable to the recognized high school. Suppose after a basic school or a junior high school has been upgraded as a recognized high school, the State Government stops payment of the amount of maintenance grant which was being paid to the basic school or the junior high school, can the recognized high school claim as a matter of right that the said amount has become automatically payable to it. The answer, in the absence of any specific provision permitting such automatic transformation, so to speak will, in my opinion, have to be in the negative.

Such a recognized High School will have to wait till maintenance grant payable to it as a recognized high school has been fixed as contemplated by Section 2(c) of U.P. Act 24 of 1971. Consequently, even if the maintenance grant payable to a basic school or a junior high school is continued to be paid to those who were managing the erstwhile basic school or junior high school it cannot be said that the upgraded recognized high school is receiving any maintenance grant as defined in Section 2(c) of U.P. Act 24 of 1971.

12. Sri Anurag Kumar Singh, counsel for the review applicant invited attention of this Court to various definitions as contained in Act, 1972, the Rules, 1978, the U.P. Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978, the provisions of the Act, 1921 and the U.P. Secondary Education

Services Selection Boards Act, 1982 and has argued that the claim on the post of the Head of the Institution do not deserve any payment of salary under U.P. Act No.24 of 1971, such recognition was granted vitta vihin.

13. Once a junior high school stands upgraded as a high school or an intermediate college, then in that event the post of the Head of the Institution has to be filled up in accordance with the procedure prescribed under the Act, 1921 read with Act, 1982. In such eventuality the junior high school loses its identity as such and upon upgradation of the institution, there cannot be any appointment of a Headmaster in a junior high school under Rules 1978.

14. Submission of Sri Sharad Pathak, Advocate in respect of the status of the institution as still to be that of a junior high school for the purposes of appointment on the post of Head of the institution, has to be rejected for the reasons hereinabove.

15. The word "upgradation" in its normal connotation means improvement; enhancement of status; more efficient. The word "grade" is derived from the latin word 'gradus' which means rank, position in a scale, a class or position in a class according to the value. It means a degree in the scale of rank, dignity, proficiency. The word 'upgradation' therefore means improvement in degree, raising of status, rank, quality or in value. It is an improvement in proficiency and reflects a rising gradient. The institution was admittedly a junior high school and was raised to the status of a high school in 1985 and to that of intermediate college in the year 2002. It is undisputed that upon being upgraded as a high school, the institution has been recognized as such under the provisions of Act, 1921. This is undisputed position, therefore, clearly establishes that the institution ceases to be a junior high school and for the purposes of appointment of Head of the institution, the appointment can only be made by resorting to the provisions as indicated hereinabove.

16. The above paragraphs clearly demonstrate the fact that once a basic school or a Junior High School being upgraded as a High School or an Intermediate College the identity of the institution known as basic school or Junior High School is lost. It ceases to exist as a legal entity and in its place another institution with a new legal entity comes into being. One cannot be equated with the other.

17. The basic issue raised in the writ petition is that the appointment of the petitioner has been made under U.P. Recognised Basic Schools (Junior High Schools) (Recruitment And Conditions Of Service Of Teachers) Rules, 1978. A junior high school when granted recognition under Section 7-A(a) of U.P. Intermediate Education Act, 1921 and upgraded to high school, if any vacancy of Teacher arises in such institution subsequently whether it would be filled in following procedure laid down under U.P. Basic Education Act, 1972 read with U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 or for administrative and other purposes the institution would be deemed to be governed by provisions of U.P. Intermediate

Education Act, 1921 and recruitment would be governed by provisions of U.P. Secondary Education Services Selection Board Act, 1982.

18. In my opinion, once Institution is upgraded or recognition upto High School is granted under Section 7-A(a), provisions of U.P. Intermediate Education Act, 1921 would be attracted and in such a case any vacancy of teaching staff caused in such Institution, would have to be filled in as per the provisions of U.P. Secondary Education Services Selection Board Act, 1982.

19. The judgments relied upon by the review applicant are fully applicable to the facts and circumstance of the present case and the judgment relied upon by learned counsel for the petitioner in the case of Vinod Kumar and others Vs. Union of India and others has not applicability to the case in hand and is distinguishable in nature.

20. In view of the overall facts and circumstances of the case, I am of the considered opinion that the appointment of the petitioner made on the post of Headmistress is totally against the provision of U.P. Intermediate Education Act, 1921 and U.P. Secondary Education Services Selection Board Act, 1982, therefore, the petitioner is not entitled for the appointment made against the provisions referred hereinabove, therefore, the petitioner is not entitled for issuance of writ of mandamus, directing for payment of salary to her.

21. In view of the above, the writ petition fails and is hereby dismissed.