
(2010) 10 AHC CK 0389
In the Allahabad High Court
Case No : C.M.W.P. No. 8960 of 2010

Rama Kant Chaturvedi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-10-2010

Acts Referred:

Hindustani Teaching Certificate Junior Teaching Certificate Basic Teaching Certificate or Certificate of Training Rules, 1978 — Rule 5
University Grants Commission Act, 1956 — Section 3
Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 — Rule 22
Uttar Pradesh Basic Education Act, 1972 — Section 16, 16E(10)
Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Services of Teachers) Rules, 1978 — Rule 4

Citation : (2010) 10 AHC CK 0389

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Advocate : Kamla Singh, for the Appellant; Hanuman Upadhyay, C.S.C. and Anjali Upadhyay, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Petitioner Rama Kant Chaturvedi, has approached this Court questioning the validity of the seniority list dated 20.6.2009 prepared by Managing Committee of Uchchattar Madhyamik Vidyalaya Gangotri Nagar, Mudila-Pannai District Siddharth Nagar and the order of its affirmance in appeal decided on 25.1.2010 passed by Regional Joint Director of Education Basti Region Basti.

2. Brief background of the case is that in the District of Siddharth Nagar there is recognized institution known as Uchchattar Madhyamik Vidyalaya Gangotri Nagar, Mudila-Pannai District Siddharth Nagar which is a duly recognized institution under the provisions of U.P. Act No. II of 1921. Aforesaid institution in question at the present moment is in grant-in-aid list of the State Government and the provisions of U.P. Act No. 24 of 1971 are fully applicable to the said institution and selection and appointment in the said institution in question at the present

moment has to be made as per the provision of U.P. Act No. II of 1921 and U.P. Act No. v. of 1982 and 1998 Rules framed thereunder. To start with institution was granted temporary recognition in the year 1970 for running junior high school classes as is envisaged under the provisions of U.P. Basic Education Act, 1972. Before permanent recognition could be accorded to the said institution Mahendra Nath Shukla was appointed as Assistant Teacher on 1.1.1974 and further at the said point of time when Mahendra Nath Shukla was appointed as Assistant Teacher in C.T. Grade he was not having any training qualification and his appointment was made as untrained Assistant Teacher. Institution in question was accorded permanent recognition in the year 1975 as Junior High School. Petitioner Rama Kant Chaturvedi was appointed as Assistant Teacher C.T. Grade untrained on 1.12.1977. During his continuance in service Rama Kant Chaturvedi acquired his B. Ed. degree in the year 1978 and Mahendra Nath Shukla during his continuance in service by way of correspondence acquired his B.T.C. Certificate in the year 1983. Rama Kant Chaturvedi as per service record was confirmed on 1.7.1979 as Assistant Teacher C.T. Grade whereas Mahendra Nath Shukla was confirmed as Assistant Teacher L.T. Grade w.e.f. 1.1.1983. During this period, statutory rules known as U.P. Recognized Basic (Junior High School) (Recruitment and Condition of the Service of Teachers) Rules, 1978 has been enforced w.e.f. 13.2.1978. Both these incumbents had been continuing to perform and discharge their duties in the institution concerned as Assistant Teachers C.T. grade and subsequent to the same institution in question was upgraded from Junior High School to High School after orders were issued by Regional Office, Madhyamik Shiksha Parisad, U. P. at Allahabad, at Varanasi on 24.4.1984. When institution in question was upgraded from Junior High School to High School, Deputy Director of Education 7th Region Gorakhpur on 7.2.1991 proceeded to sanction two posts of L.T. Grade Teachers, 35 posts of C.T. Grade Teachers and while aforesaid letter has been issued categorical direction was given for upgrading two C.T. post to L.T. Grade post and against remaining sanctioned C.T. grade posts teachers working in Junior High School qua them directives were issued for adjustment. On 4.3.1991 in anticipation of approval by the U. P. Secondary Education Services Selection Board, Allahabad against two sanctioned post of L.T. Grade Mahendra Nath Shukla and Chandra Prakash were adjusted and absorbed and remaining teachers which was inclusive of Petitioner also were adjusted against newly sanctioned C.T. Grade posts. Institution in question was brought within the scope and ambit of U.P. Act No. 24 of 1971 w.e.f. 1.4.1996 and then on 27.3.1997 fixation of salary was made and therein after the name of Rama Kant Pandey Principal of the institution in L.T. Grade name of Mahendra Nath Shukla was accorded approval whereas name of the Petitioner Rama Kant Chaturvedi was accorded approval at serial No. 12. Mahendra Nath Shukla on account of C.T. Grade being declared dying cadre and on account of the fact that he had obtained training certificate by way of correspondence in the year 1983 after completing 10 years of service w.e.f. 1.1.1986 was accorded L.T. Grade of Pay scale and similarly Petitioner who was appointed on 1.12.1977 as untrained teacher and subsequently acquired training

qualification of B. Ed. in the year 1978 was accorded L.T. Grade of Pay scale w.e.f. 1.7.1989. Dispute arose in between the two, when in the institution concerned post of Principal was to fall vacant on account of attaining the age of superannuation of Rama Kant Pandey who had been performing and discharging duties as Principal of the institution. Managing Committee of the institution published and circulated seniority list dated 20.6.2009 and based on the same it has been resolved to hand over the charge of officiating Principal to Mahendra Nath Shukla. Determination of said seniority list and handing over the said charge was objected to by the Petitioner by preferring representation in respect of seniority and also in respect of the fact that Mahendra Nath Shukla does not fulfill requisite minimum eligibility criteria for being appointed as Ad-hoc Principal as minimum qualification prescribed under Appendix-A Chapter II of U.P. Act No. II of 1921 is not at all fulfilled by him and thereafter matter has been decided vide order dated 25.1.2010 and at the said juncture present writ petition has been filed.

3. Counter affidavit has been filed by Mahendra Nath Shukla and therein details have been furnished that he was appointed as untrained Assistant Teacher on 1.1.1974 and Petitioner was appointed as untrained teacher on 1.12.1977 and further statement of fact has been mentioned that he completed his B.T.C. in the year 1983 then he has been granted L.T. Grade by Management while working in Junior High School. It has also been sought to be stated that on 27.3.1997 after the said institution in question has been included in grant-in-aid list in all 47 posts had been sanctioned, i.e., one post of Principal ; two posts of L.T. Grade teacher and thirty five posts C.T. Grade in addition to eight posts of non-teaching staff and thereafter Respondent has proceeded to mention that immediately just next to the name of Rama Kant Pandey his name finds figure whereas name of Petitioner finds place at serial No. 12. It has been stated that he was confirmed in L.T. Grade in the year 1983 and was accorded L.T. (Selection) Grade on 1.7.1996 whereas Petitioner in the year 1989 was granted L.T. Grade and thereafter granted L.T. (Selection) Grade on 1.7.1999, in such a situation and in this background it has been sought to be suggested that seniority status is clear and Petitioner cannot challenge validity of the same. Respondent No. 5 has further contended that on coming of the institution in the grant-in-aid list, as a re-affirmance of the sanction of post and approval of adjustment of preexisting staff of Junior High School at the time of upgradation to High School as communicated by District Inspector of School, Siddharth Nagar status of each and every incumbent was clear. Emphasis has also been led on the fact that Petitioner has acquired B. Ed. and Master Degree without permission of Management and that too as a regular candidate whereas Respondents took State Government's B.T.C. (correspondence) course as well as M.A. (private) with due permission of the Management. Respondent has reiterated that unnecessarily factum of ad hoc appointment has been mentioned. It has been stated that in such a situation claim of Petitioner is misconceived. Counter affidavit has been filed on behalf of State also and therein factum of order of

Regional Joint Director of Education has been supported and further mention has been made Mahendra Nath Shukla is B.T.C. thus he was qualified for being promoted as L.T. Grade teacher. Claim made by Petitioner has been objected. To both the counter-affidavits Smt. Kamla Singh contended that she does not intend to file any rejoinder-affidavit and contended that matter be heard and finally decided on the pleadings available.

4. Request made by Smt. Kamla Singh, advocate with the consent of Sri Hanuman Upadhyay, advocate has been accepted as such present writ petition is being heard and finally decided. Learned standing counsel has also agreed for final hearing/disposal of matter.

5. Smt. Kamla Singh, advocate learned Counsel for the Petitioner contended with vehemence that in the present case Mahendra Nath Shukla by no stretch of imagination could have been treated senior to Rama Kant Chaturevedi for the simple reason that he was accorded ad hoc promotion in L.T. Grade vide letter dated 4.3.1991 and his service as L.T. Grade teacher has never been regularized whereas Petitioner has been accorded status of L.T. Grade Teacher w.e.f. 1.7.1989 u/s 33D of U. P. Act No. 5 of 1982 in such a situation in all eventuality Petitioner is to be treated senior vis-a-vis Respondent No. 5 and further once Respondent No. 5 was not at all qualified to be appointed on the post of Principal then even by way of officiating arrangement same could not have done as has been done in the present case, as such present writ petition in question as it has been framed and drawn deserves to be allowed.

6. Countering the said submission Sri Hanuman Upadhyay, advocate on the other hand contended that while determining seniority collateral/incidental challenge qua validity of the appointment is not at all permissible. Coupled with this at no point of time well within reasonable time at any stage of continuance in the institution Petitioner has ever questioned the validity of the status of the Respondent, Mahendra Nath Shukla as L.T. Grade teacher then at the said point when post of Principal has fallen vacant, on 1.7.2009 Petitioner has no authority to stake claim and raise challenge and further answering Respondent is fully eligible to hold the Office of Principal and as such writ petition in question deserves to be dismissed, as it has been framed and drawn. Learned standing counsel contended that rightful view has been taken in the matter and no interference should be made.

7. After respective arguments have been advanced factual position which is emerging in the present case that both Mahendra Nath Shukla and Rama Kant Chaturvedi have been appointed in the institution concerned as temporary C.T. Grade Assistant Teacher untrained on 1.1.1974 and 1.7.1977 respectively. This is accepted position that Petitioner obtained his B. Ed. Degree in the year 1978 and Respondent No. 5 obtained his B.T.C. certificate by way of correspondence in year 1983. Service book of Rama Kant Chaturvedi at page 12 of the counter-affidavit reflects that he was confirmed as C.T. Grade teacher on 1.7.1979 whereas service book of Mahendra Nath Shukla at page 41 of the counter-

affidavit reflects his status as of C.T. grade teacher in temporary capacity w.e.f. 1.1.1974 and same continued up till 1.1.1982 thereafter he has been shown to have been confirmed in L.T. Grade w.e.f. 1.1.1983 in pay scale of Rs. 540.

8. In reference of selection and appointment of teachers in recognized Junior High Schools, State Government framed Rules, published in U. P. Gazette dated 13.2.1978 known as U.P. Recognized Basic (Junior High School) (Recruitment and Condition of the Service of Teachers) Rules, 1978. Rule 4 of 1978 Rules deals with minimum qualifications to be possessed by candidate namely having passed Intermediate Examination and teachers training course recognized by the State Government such as Hindustani Teaching Certificate, Junior Teaching Certificate, Basic Teaching Certificate, or Certificate of Training. Rule 5 of 1978 Rules prohibits appointment in substantive capacity in any recognized school unless incumbent possess such qualification prescribed for the said post. Prior to enforcement of Rules, untrained Assistant Teachers used to be employed when trained teachers were not available and the untrained Assistant Teachers became Assistant Teachers only on their getting requisite certificate of training and from the said date only they can be treated as regular employees.

9. Hon'ble Apex Court in reference of analogous 1981 Rules, in the case of U.P. Basic Shiksha Parishad and Another Vs. Hari Deo Mani Tripathi and Others, has taken the view that only after getting requisite teacher training certificate, incumbent can be treated as regular teacher. When 1981 Rules, came into force the incumbent had become trained Assistant Teacher, as such under Rule 22 only the date of appointment as trained Assistant Teacher in substantive capacity has to be seen and not the date of appointment as untrained Assistant Teacher.

10. Under 1978 Rules, B. Ed. has never been accepted as training qualification for being offered appointment in recognized junior High School. Entire law on the subject holding the field since long has been dealt with in extenso, in the case of Committee of Management and Another Vs. State of U.P. and Others, including the issue of B. Ed. being higher qualification and by concluding that B. Ed. is different qualification than a training qualification required for teaching of Primary Classes, i.e., B.T.C. J.T.C., H.T.C. or C.T.

11. Under U. P. Basic Education (Teachers) Service Rules, 1981 specific provision of determination of "Seniority" has been provided for whereas under 1978 Rules, there is no provision provided for determination of seniority in the event of dispute being there.

12. There is no explanation available on record as to under what circumstances, when Petitioner was not possessing requisite training qualification as is envisaged under 1978 Rules having to his credit B. Ed. degree then as to how he was confirmed on 1.7.1979 at C.T. Grade teacher. Coupled with this, this fact is also not clear that when initial appointment of Mahendra Nath Shukla was as untrained Assistant Teacher in C.T. Grade, he acquired his B.T.C. certificate by way of correspondence in the year 1983 then how he was confirmed in the scale

of L.T. Grade, whereas prior to it, w.e.f. 1.1.1974 to 1.1.1982 in the service book he has been referred to as temporary C.T. Grade teacher. All these facts noted above are now not being made issue, and have been mentioned to show that as there has been no statutory rule holding the field of seniority, things proceeded as were desired by parties unmindful of the statutory provisions holding the field.

13. Institution in question thereafter was upgraded from Junior High School to High School vide order dated 24.2.1984. On 7.2.1991 Deputy Director of Education 7th Region Gorakhpur passed an order in respect of creation of post and therein sanctioned two posts of L.T. Grade Teachers, and 35 posts of C.T. Grade Teachers and while aforesaid letter has been issued categorical direction was given therein for upgrading two C.T. posts to L.T. Grade posts and against remaining sanctioned C.T. grade posts teachers working in Junior High School qua them directives were issued for their adjustment. On 4.3.1991 in anticipation of approval by the U. P. Secondary Education Services Selection Board, Allahabad against two posts of L.T. Grade sanctioned Chandra Prakash Pandey and Mahendra Nath Shukla were sought to be upgraded/ promoted as L.T. Grade Teachers. In the said order of adjustment passed it was clearly mentioned that absorption/promotion of Mahendra Nath Shukla and Chandra Prakash Pandey is in anticipation of approval by the Selection Board. Thereafter institution in question has been brought in grant-in-aid list w.e.f. 1.4.1996 and therein in the said absorption process also Mahendra Nath Shukla has been shown as L.T. Pay scale teacher and Petitioner Rama Kant Chaturvedi has been accorded C.T. grade pay scale vide order dated 27.3.1997 passed by Regional Joint Director of Education 7th Region Gorakhpur.

14. At this juncture, the Government order dated 3.6.1989 wherein the provision of grant of L.T. Grade to C.T. Grade teacher, as well as its explanation by Government order dated 19.10.1989, and the letter of Director of Education dated 2.12.1989 is also being looked into, which have been dealt with by this Court in the cases of Smt. Aruna Ghosh v. State of U.P. 1995 (2) UPLBEC 763 : 1995 (1) AWC 576 ; Ansan Lal Jha Vs. District Inspector of Schools and Account Officer, Smt. Samapika Charterjee Vs. State of U.P., Ambika Prasad Singh v. State of U.P. 2009 (1) ESC 81, by taking the view that after completion of 10 years of service, incumbent is entitled for L.T. Scale of pay. Coupled with this Section 33D has also been introduced w.e.f. 20.4.1998 by means of U.P. Act No. 25 of 1998 extending the status of L.T. Grade teacher. Here when post of Principal had to be filled up then issue has been raised in respect of seniority. Managing Committee has declared seniority wherein Petitioner was shown junior and said order has been affirmed in appeal also.

15. Seniority is to be determined in terms of Regulation 3 of Chapter II, of the Regulations framed under the U.P. Intermediate Education Act, 1921. Regulation 3 reads as follows:

3. (1). The Committee of Management of every institution shall cause a seniority list of teacher to be prepared in accordance with the following provisions-

(a) The seniority list shall be prepared separately for each grade of teachers whether permanent or temporary, on any substantive post ;

(b) Seniority of teachers in a grade shall be determined on the basis of their substantive appointment in that grade. If two or more teachers were so appointed on the same date, seniority shall be determined on the basis of age ;

(bb) Where two or more teachers working in a grade are promoted to the next higher grade on the same date, their seniority inter se shall be determined on the basis of the length of their service to be reckoned from the date of their substantive appointment in the grade from which they are promoted:

Provided that if such length of service is equal, seniority shall be determined on the basis of age.

(c) A teacher in a higher grade shall be deemed to be senior to a teacher in the lower grade irrespective of the length of service ;

(d) If a teacher who is placed under suspension is reinstated on his original post, his original seniority in the grade shall not be affected ;

(e) Every dispute about the seniority of the teacher shall be referred to the Committee of Management, which shall decide the same giving reasons for the decision ;

(2) The seniority list shall be revised every year and the provisions of Clause (1) shall mutatis mutandis apply to such revision.

16. In the case of *Vijay Narain Sharma v. District Inspector of Schools Etawah and Ors.* 1986 UPLBEC 44, this Court has held as under:

23. It is, therefore, clear that even in the case of a promotion of a teacher to the lecturer's grade or to the L.T. grade, a teacher aggrieved by the decision of the Committee of Management has got a remedy to challenge the said decision before the District Inspector of Schools. From the above provisions, therefore, the Scheme of the Act is that at the time when the appointment is made or when the promotion is made, the said appointment or promotion made by the Managing Committee can be challenged to the higher authority prescribed under the Act and the regulations framed thereunder.

Regulation 3 of Chapter II lays down the principles on which the seniority list has to be prepared. I have already quoted Regulation 3 of Chapter II, which lays down the manner in which the seniority is to be determined. The relevant factors for determining the validity of the seniority list are the grade in which the teacher is working, whether he is appointed on the substantive post or not, whether the appointment is permanent or temporary, the date of the appointment or promotion and the age of the teachers.

25. On a reading of Regulation 3 of Chapter II, it is clear that it nowhere contemplated that the teacher who challenges the seniority list can again

challenge the validity of the appointment or promotion of a teacher in the college. He can only be aggrieved by the factors, if wrongly decided, as mentioned in Regulation 3. The dispute can be taken in appeal under Clause (f) of Regulation 3, quoted above. In my opinion, it is clear that while disputing the validity of the seniority list, it is not open to a teacher to challenge the appointment and promotion which had already been done. The challenge to the appointment and promotion has been specifically provided. If no challenge is made at that stage then the appointment and promotion becomes final. If the Legislature intended that the appointment and promotion can be challenged at the time of determining seniority, the Legislature would have specifically provided in the Regulations. This has not been done.

17. In the case of Smt. Rani Srivastava Vs. State of U.P. and Others, this Court has held as under:

5. Principal infirmity in appointment of Petitioner, that could be pointed out, was that it was made without issuing any advertisement and recommendation by Selection Committee. May be but could the management which appointed Petitioner in 1984 and the Basic Shiksha Adhikari who did not raise any objection to payment of salary for five years raise this objection in 1989. The appointing authority under rules is the Committee of Management. And the approving authority is the Basic Shiksha Adhikari, who under U.P. Act No. 6 of 1979 is also to supervise the payment of salary and is empowered to inspect and check. For five years no objection was raised by him. And then suddenly when one of the members desired that a male principal, should be appointed, he also raised an objection. The Petitioner had raised objection as far back as 1985 against her being treated as temporary employee. No action was taken on it. Nor any decision was given. For procedural irregularity the Petitioner should not be made to suffer. Normally it is to be presumed that Management must have sent papers for appointment of Petitioner to Basic Shiksha Adhikari who must have granted approval unless it is rebutted either by placing any communication by Management from record of Basic Shiksha Adhikari to show that things did not proceed as they are provided in the Act. In absence of any material there is no reason to doubt that Committee of Management would have appointed without intimating Basic Shiksha Adhikari and would have even issued letter appointing Petitioner permanently and Basic Shiksha Adhikari would not have raised any objection in respect of payment of salary etc. from 1984 to 1989. Change of Secretary or Basic Shiksha Adhikari should not be permitted to create any difference otherwise it shall result in creating arbitrariness and expose teachers of being thrown out of employment on one or the other pretext and shall never have security which is necessary for efficient discharge of duty. Equity stands in her favour and prevents both the appointing and approving authority from taking recourse to their own mistakes, for causing prejudice to Petitioner. Estoppel, the principle of equity, is the shield for such unjust and unfair actions.

18. In the case of Dr. Asha Saxena v. Smt. S.K. Chaudhary and Ors. 1991 (2)

UPLBEC 1202, a Full Bench of this Court has held as follows:

16... In any view of the matter, the appointments which were existing for the last 17 years could not be set aside after a lapse of such a long period. Even the earlier Full Bench had quashed the order of the Regional Inspectress of Girls Schools referring the matter u/s 16E (10) of the Act and we are also of the opinion that the aforesaid order is liable to be quashed. It is true that there is power u/s 16E (10) of the Act to cancel the appointments but the power has to be exercised within a reasonable time. The appointment had been made in the year 1973 and by no stretch of imagination it can be said that the exercise of that power after the lapse of 17 years by the Director of Education u/s 16E (10), on the facts and circumstances of the case can be said to be exercise of a power within a reasonable time.

19. This Court in the case of Smt. Manju Keshi Dixit Vs. State of U.P. and Others, reiterated the aforesaid view by following observations:

5. The Court is no doubt conscious of the maxim "*Quod Ab initio Non Valet in Tractu Temporis Non Convalescit*," which implies that which was originally void, does not by lapse of time become valid but rule contained in the said maxim is subject to certain exceptions and one such exception is illustrated by the maxim, *quod fieri non debet factum valet* which means the fact cannot be altered though it should not have been done. *R. v. Lord Neborough*, 4 QB 585, will illustrate the doctrine of *factum valet*. There, the question as to the payment of salary to certain special constables whose appointments had not been made in accordance with the requirements of the Special Constable Act, 1831 nor was there any valid order for payment of their salaries. Relying upon the doctrine of *quod fieri non debet factum valet*. Lush, J. who decided that, as the order for payment had been acted upon, the account allowed, and the money paid, the proceedings should not be reopened. The appointment of the Appellant herein to C.T. grade and later, to L.T. grade by promotion having been in fact acted upon, it would not be just and proper to reopen the question of validity of her appointment by promotion to C.T. grade and later, to grade after a lapse of about 23 years. In our opinion, the order of the Regional Inspectress of Girls Schools referring the matter to the Director Education u/s 16E (10) is thus liable to be quashed.

20. Thus, the consistent view of this Court is that the appointment cannot be challenged while determining the seniority and if the appointment has been made and is continued for long period, it should not be disturbed or set aside on some technicalities or procedural irregularities. The status of incumbent has to be seen vis-a-vis the provisions of U.P. Act No. II of 1921, i.e., date of substantive appointment in the particular grade, in terms of Chapter II, Regulation 3 of U.P. Act No. II of 1921.

21. On the parameter as set out facts of the present case are being looked into. The question is what would be the date of substantive appointment of Petitioner as well as Mahendra Nath Shukla as L.T. Grade teacher. C.T. Grade was declared

to be dying cadre, vide Government order dated 3.6.1989 in such a situation and in this background incumbents who have completed 10 years of service as C.T. Grade teacher as on 1.1.1986 their claim had been considered and they have been accorded L.T. Scale of pay and those who have completed subsequently they have been accorded L.T. Scale of pay accordingly thereafter. As far as Mahendra Nath Shukla is concerned he was given L.T. Pay Scale w.e.f. 1.1.1986 and as far as Petitioner is concerned he was accorded L.T. Pay scale w.e.f. 1.7.1989 after completing 10 years of regular continuous service. Both Mahendra Nath Shukla as well as Petitioner were accorded L.T. Pay scale selection grade on 1.1.1996 and 1.7.1999 respectively. At no point of time Petitioner ever disputed the grant of said promotional pay scale of L.T. Grade to the Mahendra Nath Shukla including the grant of selection grade at earlier prior of time as compared to him.

22. After enforcement of U.P. Act No. v. of 1982 an selection/ appointment/ conferment of status qua posts mentioned in the Schedule has to be done as per the provision of U. P. Secondary Education Services Selection Board, Allahabad failing which said appointment or conferment of said status in terms of Section 16 of U.P. Act No. v. of 1982 has to be treated as void. In the present case accepted position is that L.T. Grade pay scale and status has been accorded to Mahendra Nath Shukla as well as Petitioner w.e.f. 1.1.1986 and 1.7.1989 respectively thus, substantive status has been conferred to them only after Section 33D has been introduced with retrospective date under U.P. Act No. v. of 1982 which reads as follows:

Section 33D. Special provision for Certificate of Teaching grade teacher.-Every teacher in the Certificate of Teaching grade, who is a trained graduate and-

(a) has completed ten years continuous satisfactory service in the said grade on or before January 1, 1986 shall, with effect from January 1, 1986 ; or (b) completes the said service of ten years after January 1, 1986 shall with effect from the date of completion of the said service of ten years ; be deemed to have been appointed in the Trained Graduate Grade.

A bare perusal of the aforesaid provision quoted above shows that every teacher in the Certificate of Teaching grade, who is a trained graduate has completed ten years continuous satisfactory service in the said grade on or before January 1, 1986 shall, with effect from January 1, 1986 or completes the said service of ten years after January 1, 1986 shall with effect from the date of completion of the said service of ten years, shall be deemed to have been appointed in the Trained Graduate Grade.

23. Thus, from reading of the provision it is clear that such teachers have been accorded status of L.T. Grade teacher in term of Section 33D from retrospective date as mentioned therein and prior to it whatever status has been conferred to them it was only in respect of according of pay scale. Grant of pay scale and grant of pay-scale with posts are altogether different connotation and there is

distinction in between "grade" and "pay scale". In the case of Vipin Kumar v. District Inspector of Schools 1993 (2) ESC 456 , Division Bench of this Court has considered that "Grades" have various shades and meaning and mere grant of pay scale in particular grade is not equivalent to holding of post in substantive cadre. A teacher may be given Lecturers pay-scale but not the post until he is duly promoted. Said judgment has been followed and explained in the case of Ansan Lal Jha Vs. District Inspector of Schools and Account Officer,

24. On the parameter as set out, facts of the present case are being looked into. Any teachers who is C.T. Grade teacher on or before 1.1.1986 and trained graduate has been accorded status of trained graduate grade after he has completed 10 years continuous satisfactory service. Said provision at no place gives any emphasis qua point of time of acquiring training certificate rather requirement is that every teacher in the Certificate of teaching grade who is trained graduate has completed 10 years of regular continuous service shall with effect from 1.1.1986 or from the date when he completed 10 years of service in the said grade is entitled for L.T. Grade. On this parameter once in the past L.T. pay scale w.e.f. 1.1.1986 has been conferred on Mahendra Nath Shukla followed by selection grade on 1.1.1996 and L.T. Pay scale to the Petitioner w.e.f. 1.7.1989 followed by selection grade w.e.f. 1.7.1999 then contention of Petitioner that he is senior vis-a-vis Mahendra Nath Shukla cannot be accepted as per provision of Section 33D of U.P. Act No. v. of 1982.

25. Prior to insertion of Section 33D of U.P. Act No. v. of 1982 it was merely grant of pay scale of L.T. Grade and after insertion of Section 33D of U.P. Act No. v. of 1982 corresponding amendment has been made by making Section 16 of U.P. Act No. v. of 1982 also subject to provision of Section 33 D of U.P. Act No. v. of 1982 and said provision of Section 33D of U.P. Act No. v. of 1982 has conferred not only the post but pay scale also as it proceeds to mention that from the date of completion of ten years satisfactory service, incumbent shall be deemed to have been appointed in T.G.T. Grade.

26. Grant of pay scale and consideration of promotion are two different concepts under service jurisprudence. Grant of pay scale is dependent on completion of certain length of service prescribed whereas promotion is dependent on availability of vacancy in the next higher grade subject to there being avenue of promotion provided for.

27. Much emphasis has been led on the fact that on 4.3.1991 promotion which has been accorded same was subject to according approval by the Board and as same has never been accorded as such said promotion is of no consequence.

28. Various provisions have been inserted under U.P. Act No. v. of 1982, extending the benefit of regularization, one such provision is 33A (1A) where an incumbent who has been appointed by way of promotion in accordance with paragraph 2 of Removal of Difficulties Order, 1981, as amended from time to time, who possess the qualification as per U.P. Act No. II of 1921 with effect from

the date of commencement of U.P. Act No. 26 of 1991, are to be deemed to be appointed in substantive capacity. Mahendra Nath Shukla was considered the senior most eligible teacher in term of explanation of paragraph 4 of 1981 Order having longest continuous service and in his favour promotional exercise was undertaken on 4.3.1991 and same had never been questioned by any one including the Petitioner, as such in terms of Section 33A (1A) of U.P. Act No. v. of 1982, appointment of Mahendra Nath Shukla stood deemed regularized and in such a situation approval of Selection Board, though mentioned in letter dated 4.3.1991 same was not required by operation of law. View to the similar effect on the basis of records available has been taken by Hon"ble Apex Court in the case Muneshwar Dutt Pandey v. Ramjeet Tewari decided on 3.12.1996 Munishwar Dutt Pandey Vs. Ramjeet Tiwari and others,

29. In the present case on 4th March, 1991 on ad hoc basis promotion has been made and even said ad hoc promotion in the facts of the case has to be accepted as having been regularized as already discussed above. Said fact is reflective of the fact that on account of seniority status Mahendra Nath Shukla was accorded ad hoc promotion and Petitioner never objected to it and even fixation in L. T. pay scale has been done prior in time as compared to Petitioner. In view of earlier history of the case and in view of the provision of Section 33D of U.P. Act No. v. of 1982 viewed from any angle Mahendra Nath Shukla has been accorded trained grade teacher status w.e.f. 1.1.1986 and Petitioner w.e.f. 1.1.1989 respectively. This situation has continued to hold the field for years and same has never been questioned, as such while determining seniority such issues has to be accepted as settled issues. Date of substantive appointment of Petitioner as L.T. Grade teacher is subsequent to appointment of Mahendra Nath Shukla as such Petitioner has rightly been held to be junior.

30. The qualification for the post of Principal has been prescribed in Appendix A under Regulation 1 of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921. Rule 5 of 1998 Rules mentions that a candidate for appointment to a post of teacher must possess qualifications specified in Regulation 1 of Chapter II of the Regulations made under the Intermediate Education Act, 1921. Appendix A of the said Regulation provides that a candidate must possess qualifications specified in Regulation 1 of Chapter II of the Regulations made under the Intermediate Education Act, 1921. For ready reference Appendix "A" of Chapter -II of the Regulations framed under U.P. Intermediate Education Act, 1921 is being extracted as below:

APPENDIX A

(In reference to Regulation 1 of Chapter II) Minimum eligibilities for appointment of Heads and teachers in non-Government recognised Higher Secondary Schools.

For the purpose of minimum eligibilities prescribed under this, the degree and diploma in concerned subject of any University established or issued under or by any Central Act, Provincial or State or any institution which is considered as

University u/s 3 of the University Grants Commission Act, 1956, or of any such institution specially empowered by any enactment of Parliament shall be admissible.

In relation to prescribed eligibilities the word "trained" means post graduate training eligibility, i.e., L.T., B.T., B. Ed., B. Ed. Sc. or M. Ed. or any equivalent diploma or degree of any University or institution as referred to in the preceding para. Departmental A.T.C. and C.T. with at least 5 years" experience of teaching would be inclusive under this. Teachers having J.T.C./B.T.C. would be deemed as C.T. if he has worked for at least 5 years in C.T. grade.

Essential Qualifications

Sl. No.

Name of the post

Essential Training Experience

Age

Desirable qualifications

1

2

3

4

5

Head of the institution

(1) should be trained M.A. or M.Sc. or M.Com or M.Sc. (Ag) or any equivalent Post-graduate or other degree which is conferred by any body as referred to in above para and should possess teaching experience from any training institution recognised by the department or any degree college affiliated with any University or institution or any degree college affiliated with such institution as referred to in above mentioned first para, or at least four years teaching experience in classes 9-12 in any institution recognised by Board or in any institution affiliated with the Boards of other States or alike institutions, whose examinations are recognised by Board, or should possess at least four years experience as trained graduate Head Master in any Junior High School recognised by Deptt. :

Minimum 30 years

Provided that he/she should not be less than thirty years of age.

(2) Teaching experience of ten years in Intermediate classes of any recognised institution with first or second class postgraduate degree, or third class post graduate degree with 15 years" teaching experience.

(3) Post graduate diploma holder in Science ; provided that he has passed diploma course in first or second class and has served meritoriously for 15 years or 20 years respectively in any recognised institution after passing such diploma course.

Note...(1) At least second class post graduate degree and on special teaching experience of 10 years in Intermediate classes of recognised institution, training eligibility of Asstt. teachers may be relaxed (As per the provisions in the Act).

(2) Teaching prior to training or after training both, are included in teaching experience.

(3) Higher classes means classes 9-12 and teaching experience of these classes is admissible for the post of Principal in Intermediate College.

31. The aforesaid Appendix provides three alternative qualifications. The first being Trained M.A. or M. Sc. or M. Com. or M. Sc. (Ag) or any equivalent post graduate or any other degree which is awarded by corporate body specified in above mentioned para one and should have at least teaching experience of four years in classes 9 to 12 in any training institute or in any institution. The second qualification which has been provided for is that the candidate should have 10 years teaching experience of Intermediate classes of any recognized institution with first or second class Postgraduate degree and of third class Postgraduate degree with 15 years teaching experience. Third qualification, which has been provided for is Postgraduate Diploma holders in Science with the condition that he has passed diploma course in first or second class and has served meritoriously for 15 years or 20 years respectively in any recognized institution after passing such diploma course. These are three alternative qualifications provided for being appointed on the post of Principal under Appendix-A of Chapter- II of U.P. Intermediate Education Act, 1921. Said qualification is further qualified by the note introduced to Section 12 of U. P. Act No. v. of 1982.

32. Hon"ble Apex Court in the case of Balbir Kaur v. U.P. Secondary Education Service Selection Board 2008 (3) UPLBEC 2376 : 2008 (6) AWC 6143, keeping in view the provisions of Section 32 of U.P. Act No. v. of 1982 has taken the view that note to Section 12 will prevail, and teaching experience as contemplated under the "Note" would apply to both the required experience and the experience more than that, and therefore, even for required experience only service record as Head Master/Lecturer is relevant.

33. This Court in the case of Shamshul Zama Vs. District Inspector of Schools, Chandauli and Others, has clearly taken the view that appointment on the post of ad hoc Principal an incumbent has to fulfill requisite minimum eligibility criteria.

Having heard learned Counsel for the parties, I find that it is not into dispute consideration that Shamshul Zama does not hold trained post graduate diploma. He is simply possessed of post-graduate diploma in Zoology. Thus, in view of the Division Bench decision of this Court in the case of Bansh Lal Sengar (supra) and

in the case of Sri Jagdish Prasad Sharma (supra) Shamshul Zama is not qualified for being appointed on the post of ad hoc Principal, since he does not possess the necessary qualification, i.e., trained Post graduate diploma, he is not entitled for being appointed on the post of ad hoc Principal as held in the case of Sri Nath Singh (supra). In view of the foregoing discussions the Writ Petition No. 37758 of 1999 fails and is dismissed. The Writ Petition No. 55697 of 2000 succeed and are allowed. The order dated 16.11.2000 filed as Annexure 1 to the writ petition No. 55697 of 2000 is quashed.

34. View to the similar effect has been expressed in the case of Harihar Prasad Kushwaha v. District Inspector of Schools Kushinagar and Ors. 2004 (2) 1146. Relevant extract of the aforesaid judgment is being extracted below:

Before we part with this judgment, we may also refer to another question which was raised by the learned Counsel for the Appellant-writ Petitioner that whether the appointment of a permanent Principal on the basis of Appendix-A should also be applicable in the case of appointment of officiating Principal. So far as this question is concerned in our view in the case of Shamshul Zama (supra), it has clearly been held that essential qualifications would be required for the appointment of an officiating Principal. No other question was raised before us.

35. This is accepted position that Mahendra Nath Shukla has to his credit M.A. Degree and this is also accepted position that he has to his credit teachers training certificate, B.T.C. and has been performing and discharging duties as L.T. Grade teacher. Question is as to whether he fulfills eligibility criteria as is provided under Appendix A of Chapter II of U.P. Act No. II of 1921. Petitioner's contention is that Mahendra Nath Shukla is merely having B.T.C. training certificate and same cannot be treated as training qualification as per provision of Appendix A of Chapter II of U. P. Act No. II of 1921, as such once he is not trained then he cannot be accepted as Officiating Principal 36. A perusal of the Appendix A afore-quoted would go to show that for being appointed Head Master of the institution requisite eligibility criteria is Trained M.A. or M. Sc. or M. Com. or M. Sc. (Agri) or any equivalent post graduate or any other degree with four years teaching experience. Under Regulation 2 of Chapter II the word "trained" has been defined to be post-graduate training qualification such as L.T. B.T., B. Ed. S.C. or M. Ed. or any equivalent diploma or degree of any university or institution as specified in earlier para or any equivalent Degree in Diploma. It has been provided that same includes departmental A.T.C and C.T. with minimum teaching experience of five years. Teachers having J.T.C/B.T.C are to be deemed as C.T. if he has worked in C.T. Grade for at least for five years.

37. Thus, the provision quoted above are clear and categorical that J.T.C/B.T.C teachers having J.T.C./B.T.C. are also to be considered C.T certificate holder, if he has worked in C.T. Grade for at least for five years.

38. Mahendra Nath Shukla has to his credit B.T.C. certificate and has worked for more than five years as C.T. Grade teacher and as such he has to be deemed as

C.T. certificate holder. Departmental A.T.C. and C.T. with at least five years teaching experience have been included under "trained". Once by operation of law Mahendra Nath Shukla is C.T. certificate holder and has completed five years service as such then he has to be accepted as "Trained" qua the prescribed eligibilities. Mahendra Nath Shukla is as such eligible to be appointed as Head Master of the institution concerned. This definition of "trained" under Appendix A of Chapter II has already been considered by this Court, in the case of Om Prakash Verma v. State of U.P. Civil Misc. Writ Petition No. 26639 of 2003, decided on 7.1.2005 and view to the similar effect has been taken therein.

39. Reliance has been placed on the judgment of this Court in the case of Ashok Kumar Kulshrestha Vs. State of U.P. and Others, by the Petitioner that B.T.C. training is for primary education. In the said case issue was as to whether under 1998 Rules in lieu of B.T.C. training qualification, marks are to be awarded or not, and said issue has been answered in negative. In the case of Ram Naresh Mishra v. U.P.S.E.S.S. Board 2010 (1) UPLBEC 51 at page 58, the guidelines framed by Board in exercise of authority vested u/s 9 of U.P. Act No. V. of 1982 has been considered and same clearly provides for awarding 3+3 minimum quality point marks for C.T. trained teachers who are eligible to be considered for appointment on the post of Head Master/Principal. Said guidelines have been upheld in the said judgment.

40. Consequently writ petition is dismissed.

No order as to cost.