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**(2013) 08 AHC CK 0231**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No's. 648 and 848 of 2013

Sister Meera

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 23-08-2013

**Acts Referred:**

Uttar Pradesh Intermediate Education Act, 1921 — Section 16FF(4)

**Citation :** (2013) 10 ADJ 310 : (2014) 3 ALJ 378

**Hon'ble Judges :** Manoj Misra, J

**Bench :** Single Bench

**Advocate :** Ashok Khare and Siddharth Khare, for the Appellant; Santosh Kumar Yadav, for the Respondent

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## **Judgement**

Manoj Misra, J.—In both the writ petitions, I have heard Sri Ashok Khare, learned senior counsel, assisted by Sri Siddharth Khare, for the petitioner, the learned Standing Counsel for the state-respondents and Sri Santosh Kumar Yadav for the private respondent (Committee of Management). As both these writ petitions raise common questions of law and fact, with the consent of learned counsel for the parties, they are being decided together by a common judgment.

2. For convenience and better appreciation of facts, the facts and respective arguments relating to each writ petition, have been stated under separate heading. WRIT PETITION No. 648 OF 2013

3. By this petition, the petitioner, who applied for appointment on the post of Principal in Km. Udyan Balika Inter College, Ashok Nagar, Kanpur Nagar, has challenged the order dated 26.11.2012 passed by the Regional Level Committee whereby the selection/appointment of the petitioner on the post of Principal, has been disapproved.

4. It is the admitted case of the parties that Km. Udyan Balika Inter College, Kanpur Nagar is a recognised and aided educational institution governed by the provisions of U.P. Intermediate Education Act, 1921 and the regulations framed

thereunder as also the U.P. High School and Intermediate Colleges {Payment and Salary to Teachers and other Employees) Act, 1971. It is undisputed that the said institution is recognised as a minority institution, therefore, by virtue of Section 30 of the U.P. Act No. 5 of 1982, the provisions of the U.P. Act No. 5 of 1982 are not applicable to it.

5. A substantive vacancy on the post of Principal in the said college was advertised in News daily Times of India" (an English daily) dated 9.5.2012 and "Amar Ujala" (a Hindi daily) dated 9.5.2012, thereby inviting applications from eligible candidates, within 15 days from the date of advertisement. The petitioner being eligible and a serving teacher in the said institution and possessed of degrees in Master of Arts and Bachelor in Education, applied alongwith other candidates. The Selection Committee, after carrying out the selection process, recommended the petitioner for appointment on the post of Principal. The recommendations of the Selection Committee were approved by the Committee of Management and the papers pertaining to the selection were submitted in the office of the District Inspector of Schools, Kanpur Nagar, vide letter dated 14.8.2012. Certain queries were made from the office of the Joint Director, Kanpur Nagar, vide letter dated 3.11.2012, to which a reply was submitted by the Committee of Management. Thereafter, the matter was considered by the Regional Level Committee which, in its meeting dated 26.11.2012, disapproved the selection/recommendation.

6. The selection/recommendation was disapproved by the Regional Level Committee on the following grounds:

(a) The advertisement was published in the Newspapers "Pioneer", Kanpur Nagar and "Dainik Swatantra Bharat", Kanpur Nagar dated 4.11.2011, which do not have wide circulation in the State.

(b) The advertisement neither made a complete disclosure of the minimum eligibility qualification required for the post nor it disclosed the last date for submission of the applications, which was a violation of the provisions of Regulation 17 of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921.

(c) Copy of the advertisement was not provided to the District Inspector of Schools, within the prescribed period.

(d) The basis on which the candidate was selected was not disclosed in the recommendation.

Arguments of Learned Counsel for The Parties In Writ Petition No. 648 of 2013

7. Assailing the grounds taken by the Regional Level Committee, the learned counsel for the petitioner submitted that the vacancy concerned was duly advertised in the Times of India", Kanpur Nagar (an English daily) dated 9.5.2012 and "Amar Ujala", Kanpur Nagar (a Hindi daily) dated 9.5.2012 which have wide circulation not only in the district but also in the entire State of Uttar

Pradesh. It has been submitted that the recital in the order impugned that the advertisement was published in the "Pioneer" and "Swatantra Bharat" is not factually correct. To support the aforesaid contention, attention of the Court was drawn to Annexure No. 1A and Annexure No. 1B to the petition i.e. photocopy of the advertisements, as also to paragraph 7 of the writ petition, wherein statement has been made that the advertisements were published in News daily Times of India" and "Amar Ujala" dated 9.5.2012. Attention of the Court was also drawn to the averments made in paragraph 6 of the counter-affidavit wherein the statement made in paragraph 7 of the writ petition has not been specifically denied by the District Inspector of Schools.

8. The learned counsel for the petitioner had also drawn attention of the Court to the averment made in paragraph 26 of the writ petition wherein it has been stated that the recital to the effect that there has been cutting in the marks awarded in interview to certain candidates, was contrary to the record. The learned counsel for the petitioner submitted that the averments made in paragraph 26 of the writ petition, have not been specifically denied in the counter-affidavit. Attention of the Court was also drawn to the relevant extracts of the selection proceedings dated 12.8.2012 (Annexure No. 4 to the writ petition) to demonstrate that there was no cutting in the marks.

9. Relying on a statement in the advertisement, which provided that application for appointment should be submitted in the college office within 15 days from the date of advertisement, it was submitted that since the advertisement was published on 9.5.2012 in both the newspapers, the last date for submitting the application form was easily ascertainable and as more than two weeks time was provided, there was sufficient compliance of the provisions of Regulation 17(a). It was thus submitted that the recital in the impugned order that no last date, for submitting application form, was specified in the advertisement, was factually incorrect. It was further submitted that in a case where there was an advertisement on similar terms, relating to Saint Francis Zavier's Inter College, Ashok Nagar, Kanpur, the Regional Level Committee raised no such objections, as were raised by it in the instant case, and there the selection was approved by the order of the Regional Level Committee dated 5.7.2008. In support of the aforesaid submission, the learned counsel for the petitioner drew attention of the Court to Annexure Nos. 11A, 11B and 12 of the writ petition as also to paragraph 24 of the writ petition where statement was made that an advertisement on same terms was made by the management of Saint Francis Zavier's Inter College, Kanpur and there the selection proceedings were accorded approval by the Regional Level Committee. Attention of the Court was also drawn to paragraph 11 of the counter-affidavit filed by the District Inspector of Schools wherein the averments made in paragraph 24 of the writ petition, were not denied. In the alternative, it was submitted that there was substantial compliance of the provisions of Regulation 17 of the Regulations framed under the U.P. Intermediate Education Act, 1921 and, therefore, the Regional Level Committee was not legally justified in refusing to accord approval to the

selection/recommendation.

10. The learned counsel for the petitioner further submitted that u/s 16FF(4) of the U.P. Intermediate Education Act, 1921, the Regional Deputy Director of Education or Inspector, as the case may be, can withhold approval for the selection only on the ground that the person selected does not possess the minimum qualifications prescribed and is, otherwise, not eligible. Relying on sub-section (4) of Section 16 FF of the Act, the learned counsel for the petitioner submitted that the provisions of Regulation 17 of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, are to be read as "directory" and not "mandatory", with reference to a minority institution, and substantial compliance thereof would be sufficient to accord validity to the selection process. It was further submitted that right to select a Principal of its choice is inherent with the management of a minority institution and the State can interfere only on the limited ground that the person recommended for appointment, does not hold minimum qualification/experience.

11. It was thus submitted that the order of the Regional Level Committee disapproving the selection process as well as the recommendation of the Selection Committee, which was approved by the Committee of Management, was not legally justified and, as such, liable to be quashed.

12. Sri Santosh Kumar Yadav, who appeared on behalf of Committee of Management of the institution, supported the case of the petitioner.

13. The learned Standing Counsel, appearing for the State-respondents, submitted that the Regulation 17 of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 are mandatory and the consequences for violating the provisions are mentioned in Regulation 19 which provide that where a person is appointed in contravention of the provisions of the Chapter II of the Regulations, the Inspector shall decline to pay salary and other allowances to any person where the institution is covered by the provisions of the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971. It was submitted that as, admittedly, the institution is covered by the aforesaid Act, the Regional Level Committee was well within its jurisdiction in disapproving the recommendation for appointment on account of violation of the provisions of Regulation 17. It was further submitted that the provisions of Section 16FF(4) are to be read alongwith the provisions of sub-sections (1) and (2) of Section 16-E of the Act, 1921, which provides that the vacancies are to be advertised containing such particulars as may be prescribed. It was thus submitted that the contents of the advertisement must be in conformity with the terms prescribed by Regulation 17. It was also submitted that being an aided institution, the management, though may have freedom in the matter of administration but would not have right to maladminister and, therefore, the Regulation 17, which ensures proper selection of teachers/head of the institution, is to be taken as mandatory. It was further submitted that since, admittedly, the contents of the advertisement were not in complete conformity

with the Regulations, the Regional Level Committee was legally justified in refusing to accord approval to the appointment.

Writ Petition No. 848 of 2013

14. By this petition, the petitioner, who applied for appointment on the post of Principal in Christ Church Inter College, Kanpur Nagar, has challenged the order dated 26.11.2012 passed by the Regional Level Committee whereby the selection/appointment of the petitioner, has been disapproved.

15. Admittedly, Christ Church Inter College, Kanpur Nagar is not only recognised as a minority institution but is also recognised and aided, governed by the provisions of the U.P. Intermediate Education Act, 1921 including the regulations framed thereunder and the provisions of U.P. High School and Intermediate Colleges (Payment and Salary to teachers and other employees) Act, 1971. Being a minority institution, by virtue of Section 30 of the U.P. Act No. 5 of 1982, the provisions of the said Act are not applicable to it.

16. According to the petitioner he was appointed as a lecturer in the said institution since the year 2003 and, earlier, was a L.T. Grade teacher in that very institution. The petitioner claims himself to be Master of Arts in five subjects with Doctorate in Hindi alongwith degree of Bachelor of Education. According to the petitioner, a substantively vacant post of Principal was advertised on 16.5.2013 in two newspapers, namely, "Amar Ujala" (a Hindi daily) and Times of India" (an English daily) having wide circulation in the State of Uttar Pradesh. By the said advertisement, applications were invited through registered/speed-post by 20.6.2012. Intimation of the advertisement was given to the District Inspector of Schools, Kanpur Nagar by communication dated 14.5.2012 and 17.5.2012. The Selection Committee met on 16.8.2012. Amongst several candidates, the petitioner was unanimously recommended by the Selection Committee for appointment on the post of Principal and the recommendations were approved by the Committee of Management, which forwarded the papers for approval.

17. The Regional Level Committee disapproved the recommendation/proposal for appointment of the petitioner on the following grounds:

(a) The advertisement was not in accordance with the provisions of Regulation 17 of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, inasmuch as: (i) scale of pay and other allowances admissible to the post were not mentioned; and (ii) teaching experience/minimum eligibility qualification/training required for the post was not mentioned, in detail, as provided under Chapter II Regulation 1 of the Regulations framed under the U.P. Intermediate Education Act.

(b) Copy of the advertisement was not served on the District Inspector of Schools concerned within the prescribed period.

(c) Last date for submission of the application was not fixed by the advertisement.

(d) The basis on which the candidate was selected was not disclosed in the recommendation.

#### Arguments of Learned Counsel for The Parties in Writ Petition No. 848 of 2013

18. Learned counsel for the petitioner submitted that the vacancies were duly advertised in accordance with the provisions of Regulation 17(a) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act. The advertisement clearly disclosed that the scale of pay and the other allowances would be payable according to Government rules. The advertisement also disclosed that a candidate should be not less than 30 years in age and should be a trained post-graduate with teaching experience of at least four years of teaching classes 9 to 12 in a recognised higher secondary school or intermediate college. The advertisement clearly disclosed that the last date for submission of the application was 20.6.2012, which was well outside the minimum period prescribed by Regulation 17(a). It was submitted that the recital in the impugned order that intimation of the advertisement was not given to the District Inspector of Schools was not correct, inasmuch as, the advertisement was duly communicated to the District Inspector of Schools vide communication dated 14.5.2012 and 17.5.2012. Attention of the Court was drawn to Annexure Nos. 2A and 2B i.e. copies of such letters as also to the averments in that regard made in paragraph 8 of the writ petition. Drawing attention of the Court to paragraph 6 of the counter-affidavit filed by the District Inspector of Schools, wherein the averments made in paragraph 7 and 8 of the writ petition, were not denied and rather accepted as a matter of record, it was submitted that the finding in the impugned order that copy of the advertisement was not served on the District Inspector of Schools concerned, within the prescribed period, is incorrect and contrary to the record. The learned counsel for the petitioner further submitted that u/s 16FF(4) of the U.P. Intermediate Education Act, 1921, the appointment made by a minority institution can be disapproved on ground that the selected candidate does not possess minimum qualification prescribed or is otherwise not eligible. It was submitted that the power of management of a minority institution to appoint a person of their choice is sacrosanct and is not only protected by sub-section (4) of Section 16-FF of the U.P. Intermediate Education Act, 1921 but also by sub-article (1) of Article 30 of the Constitution of India. It was thus submitted that the Regional Level Committee had no jurisdiction to question the basis for selection of the petitioner. The learned counsel for the petitioner further argued that the provisions of Regulation 17(a) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 are to be read in a manner so that there is no conflict with the provisions of sub-section (4) of Section 16FF as also the provisions of Article 30(1) of the Constitution of India. It was argued that seen in the aforesaid light, the provisions of Regulation 17(a), in so far as they relate to a minority institution, are to be taken as "directory" and not "mandatory". In the alternative, it was submitted that even if the provisions of Regulation 17(a) were required to be followed, in a matter relating to appointment of a teacher in a minority institution, their substantial compliance

would be sufficient and a recommendation for appointment cannot be annulled on a technical ground that all the details were not given in the advertisement when, otherwise, the advertisement clearly notified the vacancy, its nature, the name of the institution and the last date by which an application was to be submitted for consideration. It was thus submitted that since, in the instance case, the vacancy was duly advertised alongwith the last date for submission of the application form as well as the minimum age and the eligibility required by a prospective candidate, there was no occasion to annul the selection process on ground that the advertisement was not in complete conformity with the provisions of Regulation 17(a) of Chapter II of the regulations framed under the U.P. Intermediate Education Act, 1921.

19. Sri Santosh Kumar Yadav, who appeared on behalf of the Committee of Management of the institution, supported the case of the petitioner.

20. Per contra, the learned Standing Counsel appearing for the State-respondents supported the decision taken by the Regional Level Committee and claimed, inter alia, that the provisions of Regulation 17(a) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921, are mandatory and since the advertisement did not specify the details, as were required by the said Regulation, the Regional Level Committee was well within its jurisdiction in disapproving the recommendation of the Selection Committee and the proposal of the Committee of Management.

#### Points For Determination

21. Having considered the rival submissions of the learned counsel for the parties as also on perusal of record, the Court finds that following points arise for determination in the aforesaid two petitions:

(1) Whether the provisions of Regulation 17(a) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 are violative of Article 30(1) of the Constitution of India? If not, then whether their non compliance would render a selection liable to disapproval notwithstanding Section 16-FF(4) of the U.P. Intermediate Education Act, 1921?

(2) Whether the provisions of Regulation 17(a) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 are mandatory or directory?

(3) Whether in view of sub-section (4) of Section 16-FF, the concerned authority can question the basis of selection of a candidate recommended by the selection committee, when he otherwise possesses the minimum qualifications prescribed, and is otherwise eligible?

(4) Whether there has been a substantial compliance of the provisions of Regulation 17(a) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 in the selection process, which is subject-matter of writ petition No 648 of 2013?

(5) Whether there has been a substantial compliance of the provisions of Regulation 17(a) of Chapter II of the regulations framed under the U.P. Intermediate Education Act, 1921 in the selection process, which is subject-matter of writ petition No 848 of 2013?

Point No. 1

22. The question No. 1, as framed hereinabove, is no longer *res Integra*. By a catena of decisions, following the apex Court's decision in *T.M.A. Pai Foundation and others v. State of Karnataka and others*, (2002) 8 SCC 481, it is well-settled that regulations can be framed governing service conditions for teaching and other staff of minority institutions for whom aid is provided by the State without interfering with the overall administrative control of Management over the staff. A single judge of this Court, after considering various decisions, in the case of *Mohd. Ateeque Siddiqui and others v. State of U.P. and others*, 2011 (88) ALR 80, held as follows:

22. Judged in the aforesaid legal background, this Court has no hesitation to hold that Section 16-E(1), (2) and Section 16-FF and Regulations 17 to 19 of Chapter II of the Regulations framed under the U.P. Intermediate Act, 1921 which lay down the procedure for selection of principal and teachers in minority institutions are basically provisions for furtherance of fair administration of the minority institution and not to its detriment. These provisions have stood the test of time for decades together.

24.....It is held that the provisions of Section 16-E(1) and (2) and Section 16-FF and Regulations 17 to 19 of Chapter II of the Regulations framed under U.P. Intermediate Education Act, 1921 do not violate Article 30 of the Constitution of India. Every recognised minority intermediate institution is obliged under law to hold selections strictly by following the procedures prescribed thereunder.

The Court further proceeded to hold, in paragraph 34, as follows:

34.....applicability of the deeming provision u/s 16-FF(4) would arise only when the other statutory provisions have been followed, namely, the vacancy has been advertised as required under law, selections have been held by a duly constituted selection committee, as per the statutory provisions, etc. Section 16-FF(4) cannot be read independent of the other provisions. Section 16-E and Section 16-FF and the Regulations 17 to 19 of the Regulations framed under U.P. Intermediate Education Act, 1921 form part of the same scheme for appointment of teachers in minority institution and have to be read together.

23. Even otherwise, in the case of *Government of A.P. v. K. Brahmanandam*, (2008) 5 SCC 241, the apex Court held that the liability of the State to pay salary to a teacher appointed in a recognised school would arise provided the provisions of the statutory rules are complied with, subject to just exception. The right to claim salary must arise under a contract or under a statute. If such a right arises under a contract between the appointee and the institution, only the

latter would be liable therefor. Its right in certain situation to claim reimbursement of such salary from the State would only arise in terms of the law as was prevailing at the relevant time. If the State in terms of the statute is not liable to pay the salary to the teachers, no legal right accrues in favour of those who had been appointed in violation of mandatory provisions of the statute or statutory rules. It is thus apparent that the liability of the State to pay salary to a teacher arises only when the appointment is made as per the statutory rules framed for that purpose.

24. In view of the law noticed above, and in absence of any other authority cited by the learned counsel for the petitioner which holds to the contrary, as also there being no good reasons to take a different view, this Court is of the view that Regulation 17 of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 is not violative of Article 30(1) of the Constitution of India and notwithstanding Section 16-FF(4) of the U.P. Intermediate Act, at the time of approval, the authority concerned has not only to ascertain whether the candidate holds minimum qualification and is otherwise eligible, but also as to whether other statutory provisions have been followed, namely, the vacancy has been advertised as required under law and selections have been held by a duly constituted selection committee, as per the statutory provisions. The question No. 1 is answered accordingly.

Point No. 2

25. Before arriving at an answer to the question whether the provisions of Regulation 17(a) of Chapter II of the U.P. Intermediate Act, 1921 are mandatory or directory, it would be useful to first examine the same. Regulation 17(a) reads as follows:

Regulation 17: The procedure for filling up the vacancy of the head of the Institution and teachers by direct recruitment in any recognised institution referred to in Section 16-FF shall be as follows:

(a) After the management has determined the number of vacancies to be filled up by direct recruitment, the posts shall be advertised by the manager of the institution in at least one-Hindi and one English newspaper having adequate circulation in the State giving particulars as to the nature (i.e. whether temporary/permanent) and number of vacancies, descriptions of post (i.e. Principal or Headmaster, Lecturer or L.T., C.T., or J.T.C. B.T.C. grade teacher including the subject or subjects in which the lecturer or teacher is required), scale of pay and other allowances, experience required, minimum qualification and age prescribed, if any, for the post and prescribing a date which should not ordinarily be less than two weeks from the date of advertisement by which the applications shall be received by the Manager. A copy of the advertisement shall be simultaneously sent to the Inspector concerned.

Notes: (1) All vacancies in the posts of teachers and the head of institution existing at the time of advertisement shall be advertised. (2) No new post shall

be advertised unless sanction of the appropriate authority for the creation thereof has been received by the management.

26. A careful perusal of clause (a) of Regulation 17 would reveal that it has various parts. The first part relates to the requirement of an advertisement of the posts by the manager of the institution in at least one Hindi and one English newspaper having adequate circulation in the State giving particulars as to the nature and description of the post. The second part relates to scale of pay and other allowances for the post. The third part relates to the experience required, minimum qualification and age prescribed, if any, for a candidate to possess so as to be eligible for the post. The fourth relates to the date by which an application is to be made by a candidate to the Manager, which should not, ordinarily, be less than two weeks. The last part is in respect of sending a copy of the advertisement to the Inspector simultaneously.

27. The answer to a question as to whether a provision of a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other (vide Crawford on Statutory Construction, approved by a five judges bench of the apex Court in *State of U.P. v. Manbodhan Lal Srivastava*, AIR 1957 SC 912). Further, in the case of *Raza Buland Sugar Co. Ltd., Rampur v. The Municipal Board, Rampur*, AIR 1965 SC 895, a five judges bench of the apex Court observed:

The question whether a particular provision of a statute which on the face of it appears mandatory, inasmuch as it uses the word "shall" as in the present case-- is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory.

28. Regulation 17(a), in relation to a minority institution, seeks to implement the general mandate set out in sub-section (2) of Section 16-E of the U.P. Intermediate Education Act, 1921, which provides that every post of Head of Institution or teacher of an institution to be filled by direct recruitment must be advertised in at least two newspapers having adequate circulation in the State. The principal object of such advertisement is to ensure widest possible awareness of the vacancy so as to ensure maximum participation by eligible

candidates thereby ensuring availability of maximum number of suitable candidates to choose from which, in turn, ensures high standard of education, aided by the State. Therefore, any provision which furthers such object has to be read as mandatory, because its non compliance may defeat the principal object. Seen in that light, the requirement of an advertisement of a vacancy by the manager of an institution in at least one Hindi and one English newspaper having adequate circulation in the State giving particulars of the vacancy as also the timeframe by which an application is to be submitted by a candidate, is a mandatory requirement and any infraction thereof would render the selection process void. Meaning thereby that there has to be strict compliance of the aforesaid requirements.

29. Whether the remaining parts of the Regulation 17(a) are mandatory or directory, to ascertain the same, it will first have to be seen as to what is the statutory intendment in providing for the same and as to what would be the consequences including prejudice caused if they are not strictly followed. At the outset it be noted that there can be no cavil to the proposition that if a provision is found to be mandatory there ought to be strict compliance of it whereas if it is found to be directory then its substantial compliance may suffice.

30. In the case of *Pratap Singh v. Shri Krishna Gupta*, AIR 1956 SC 140, a five judges bench of the apex Court had deprecated the tendency of the Courts to hold that failure to comply with any of the provisions set out in the various rules is fatal. In paragraph 3 of its judgment, the apex Court observed as follows:

We do not think that is right and we deprecate this tendency towards technicality; it is the substance that counts and must take precedence over mere form. Some rules are vital and go to the root of the matter: they cannot be broken; others are only directory and a breach of them can be overlooked provided there is substantial compliance with the rules read as whole and provided no prejudice ensues; and when the legislature does not itself state which is which judges must determine the matter and, exercising a nice discrimination, sort out one class from the other along broad based, commonsense lines. This principle was enunciated by Viscount Maugham in *Punjab Cooperative Bank Ltd, Amritsar v. Income Tax Officer, Lahore* and was quoted by the learned High Court Judges:

It is a well-settled general rule that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially.

31. The statutory intendment of inserting Regulation 17(a) is to ensure proper notice to the persons who would be interested in participating in the selection process. As held by the apex Court in the case of *Rai Vimal Krishna v. State of Bihar*, (2003) 6 SCC 401, the object of giving a notice is to draw the attention of the persons sought to be affected to the matter notified. The purpose of specifying a particular mode of giving notice is to raise a legal presumption

against such person, of knowledge of the subject of the notice. In other words, once the mode specified for giving notice is complied with, the onus is on the persons notified to prove that they were not aware of the subject-matter of the notice.

32. Seen in that light, it is to be seen whether the teachers, who are the target audience of an advertisement for appointment on the post of a Principal, would be sufficiently interested in applying for appointment on the post of a Principal for which their candidature is solicited, even if the advertisement does not give full details of the salary, allowances, scale, eligibility conditions attached to that post.

33. It is worthwhile to note that for appointment on the post of a Principal, a candidate must be a teacher with certain minimum teaching experience of classes at a particular level, in specified institutions. Thus, the advertisement for appointment on the post of Principal is meant for such teachers and not for the masses. Such teachers, by themselves, constitute a distinct class and it is expected of them to have basic knowledge of the pay scales, allowances, etc. attached to the post of Principal as also the qualifications, experience, training required therefor. Therefore, even if pay scale, allowances, scale or even full particulars of the qualifications are not provided in the advertisement, the target audience, who are the teachers, would not be prejudiced, as it can safely be presumed that they would be broadly aware of the details. Moreover, in a case of minority institution, the choice of the management in the matter of appointment can be questioned on very limited grounds, therefore, the provisions, the non compliance of which may not have serious consequences, ought to be considered as directory. Accordingly, by applying the principle laid down by apex Court in Pratap Singh's case (supra), it is held that the requirement of mentioning the scale of pay and other allowances for the post of Principal as well as the minimum experience and qualification including age prescribed for the post of Principal in the advertisement, is directory.

34. Whether the requirement of sending a copy of the advertisement to the Inspector, simultaneously, is mandatory or directory, to adjudge the same it would be useful to examine as to why the same is provided for. The purpose of supplying the aforesaid information to the Inspector is to inform the concerned authority of the process of recruitment so as to ensure timely preparation of a panel of experts under Regulation 14 of Chapter II of the Regulations for enabling selection of a member of the Selection Committee in accordance with the Proviso to sub-section (1) of Section 16-FF of the U.P. Intermediate Education Act, 1921 read with clause (f) of Regulation 17 of the Regulations framed thereunder. The said purpose can very well be served if there is timely information, even though not simultaneous with the advertisement. Accordingly, it is held that the requirement of sending a copy of the advertisement to the Inspector, simultaneously, is directory and not mandatory. POINT No. 3.

35. The question No. 3, as framed hereinabove, directly relates to the extent of

right that a management of a minority institution has in administering the educational institution, which stands protected by Article 30(1) of the Constitution of India. In *N. Ammad v. Emjay High School*, (1998) 6 SCC 674, the apex Court observed that the management's right to choose a qualified person as the Headmaster of the School is well insulated by the protective cover of Article 30(1) of the Constitution and it cannot be chiseled out through any legislative act or executive rule except for fixing up the qualifications and conditions of service for the post. Any such statutory or executive fiat would be violative of the fundamental right enshrined in the aforesaid article and would hence be void. Likewise in *Kolawana Gram Vikas Kendra v. State of Gujarat*, (2010) 1 SCC 133, the apex Court observed that it would be perfectly all right for a minority institution to select the candidates without any interference from the Government. However, the requirement of this prior approval is necessitated because it is for the Government to see as to whether there were actually posts available in the said institution as per the strength of students and secondly; whether the candidates, who were sought to be appointed, were having the requisite qualifications in terms of the rules and regulations of the Education Department.

36. Mindful of the constitutional mandate, the legislature in its wisdom made special provisions, by way savings, for minority institutions. Sub-section (4) of Section 16-FF provides as follows:

The Regional Deputy Director of Education or the Inspector, as the case may be, shall not withhold approval for the selection made under this section where the person selected possesses the minimum qualifications prescribed and is otherwise eligible.

37. In *T.M.A. Pai Foundation's* case (supra), it has been observed that regulations can be framed governing service conditions for teaching and other staff of minority institutions for whom aid is provided by the State without interfering with the overall administrative control of Management over the staff.

38. Nothing has been shown to the Court that there exist any provision either under the provisions of the U.P. Intermediate Education Act, 1921 or the Regulations framed thereunder, which may enable the authority to question the merit/choice/basis of selection except that the authority may record its disapproval if the candidate does not possess minimum qualification or is otherwise not eligible, as is provided by sub-section (4) of Section 16-FF of the U.P. Intermediate Education Act, 1921.

39. Even in *Mohd. Ateeque Siddiqui's* case (supra), the Court observed that the selection can be questioned where the candidate does not possess minimum qualifications or eligibility or where statutory provisions, relating to mode and manner of advertisement as also constitution of selection committee, have not been followed. In view of the aforesaid discussion, it is, accordingly, held that the concerned authority cannot question the basis of selection of a candidate

recommended by the selection committee, when he otherwise possesses the minimum qualifications prescribed and is otherwise eligible and is so selected after compliance of statutory provisions, relating to mode and manner of advertisement as also constitution of selection committee. POINT No. 4

40. Whether there has been a substantial compliance of the provisions of regulation 17(a) of Chapter II of the regulations framed under the U.P. Intermediate Education Act, 1921 is essentially a question of fact, which needs to be determined on the basis of the record. From the order impugned in Writ Petition No. 648 of 2013, it appears that the Regional Level Committee discarded the advertisement relating to vacancy on the post of Principal in Km. Udyan Bahka Inter College, Kanpur Nagar on the ground that the advertisement was published in newspapers "Pioneer" and Dainik Swatantra Bharat, which did not have wide circulation in the State. The learned counsel for the petitioner submitted that the advertisement was published in Times of India, Kanpur Nagar" (an English daily) and "Amar Ujala, Kanpur Nagar" (a Hindi daily), which have wide circulation not only in the district but also in the entire State of Uttar Pradesh. It has been submitted that the recital in the order impugned that the advertisement was published in the "Pioneer" and "Dainik Swatantra Bharat" is not factually correct.

41. The learned counsel for the petitioner drew attention of the Court to annexure No. 1A and annexure No. 1B to the writ petition as also the averments made in paragraph 7 of the writ petition, wherein statement has been made that advertisements were published in news daily Times of India" and "Amar Ujala" dated 9.5.2012. Attention of the Court was also drawn to the averments made in paragraph 6 of the counter-affidavit wherein the statement made in paragraph 7 of the writ petition has not been specifically denied.

42. In view of the aforesaid factual position, it is found that the statement in the order impugned that advertisement was published in newspapers "Pioneer, Kanpur Nagar and "Dainik Swatantra Bharat, Kanpur Nagar" dated 4.11.2011 is incorrect and contrary to the record.

43. The other reason taken in the order impugned for discarding the advertisement was that complete detail of the minimum eligibility qualification for the post and the last date for submission of the applications was not disclosed. In that regard, the learned counsel for the petitioner drew attention of the Court to the advertisement, which has been enclosed as Annexure No. 1A to the writ petition, which reads as follows:

"KUMARI UDYAN GIRLS" INTER COLLEGE ASHOK NAGAR KANPUR 208012

(A U.P. State Government aided Christian Minority Institution)

REQUIRED

A Principal against a permanent vacancy, Scale of pay and allowances as per admissible State Government rules. The educational qualification, eligibility and

training required for the post will be as given in the U.P. Intermediate Education Act, 1921 (Revised) u/s 16FF. The prescribed application form, can be had from the college office between 9:00 a.m. to 11:00 a.m. and the same has to be submitted duly filled in the college office within 15 days from the date of Advertisement.

MANAGER

44. A perusal of the advertisement reveals that the vacancy of a permanent post of Principal with scale of pay and allowances as per admissible State Government rules and educational qualifications as prescribed by the provisions of the U.P. Intermediate Education Act, 1921 was duly notified requiring the applicants to obtain the prescribed application form from the college office and to submit duly filled applications in the college office within 15 days from the date of the advertisement.

45. As has already been held, while deciding point No. 2, that the requirement of disclosure of full details of the scale of pay and the eligibility qualifications are directory in nature and since the advertisement was addressed to the teaching community, which constitutes a class by itself, mentioning in the advertisement that the educational qualification, eligibility and training required for the post would be as given in the U.P. Intermediate Education Act, 1921 (Revised) u/s 16FF, was substantial compliance of the provisions of Regulation 17(a) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921.

46. The allegation that copy of advertisement was not provided to the District Inspector of Schools within the prescribed period also does not appear to be correct in the light of the statement made in paragraph 7 of the writ petition where it was specifically mentioned that the intimation of the aforesaid advertisement was sent vide letter dated 5.5.2012 to the District Inspector of Schools as also to the Joint Director of Education, which averment has not been specifically denied in paragraph 6 of the counter-affidavit. It is, thus, held that the provisions of Regulation 17(a) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921, were complied with.

Point No. 5

47. In Writ Petition No. 848 of 2013, it appears from the impugned order that the Regional Level Committee disapproved the recommendation on the ground that the advertisement was not in accordance with the provisions of Regulation 17(a) of Chapter II of the Regulations framed under the U.P. Intermediate Education Act inasmuch as: (i) scale of pay and other allowances admissible to the post as well as teaching experience/minimum eligibility qualification/training required for the post were not mentioned, in detail, as provided under Chapter II Regulation 1 of the Regulations framed under the U.P. Intermediate Education Act; (ii) copy of the advertisement was not served on the District Inspector of Schools concerned within prescribed period; and (iii) the last date for submission of the application was not fixed by the advertisement.

48. The learned counsel for the petitioner drew attention of the Court to Annexure Nos. 1A and 1B to the writ petition, which discloses that an advertisement was made in news daily Amar Ujala, Kanpur (a Hindi news daily) and Times of India (an English news daily) dated 16.5.2012. The supporting averment, with respect to the factum of advertisement, is made in paragraph 7 of the writ petition, which has not been denied in paragraph 6 of the counter-affidavit. The advertisement reads as follows:

"CHRIST CHURCH INTERMEDIATE COLLEGE KANPUR (GOVERNMENT AIDED MINORITY INSTITUTION OF DIOCESE OF AGRA) WANTED

Applications are invited on prescribed form available for Rs. 100/- from the college office between 9 am to 1 pm, for the post of PRINCIPAL. The candidate should be a trained post graduate with teaching experience for at least four years to classes IX to XII in a recognised Higher Secondary School or Intermediate College and age not less than 30 years. The candidate must be fluent in Hindi and English. Salary and other allowances according to Government rules. Application form complete in all respects should reach the Rt. Revd S.R. Cutting Chairman, Bishop of Agra, St. Paul's Church 4/116, Church Road, Civil Lines, Agra by Registered/Speed post on or before 20/6/2012.

MANAGER

49. A perusal of the advertisement reveals that the vacancy was duly advertised, giving substantial details for an eligible candidate to respond within the prescribed date, which happened to be after two weeks from the date of the advertisement, as required by Regulation 17(a). It has already been held while deciding point No. 2 that the requirement of disclosure of full details of the scale of pay and the eligibility qualifications are directory in nature and since the advertisement targets the teaching community, which constitutes a class by itself, the information given in the advertisement was sufficient compliance of the provisions of Regulation 17(a). Thus, the observation in the impugned order that information was not given as per Regulation 17(a) cannot be sustained.

50. The learned counsel for the petitioner further submitted that the allegation that intimation of the advertisement was not given to the District Inspector of Schools is not correct, inasmuch as, the advertisement was duly communicated to the District Inspector of Schools vide communication dated 14.5.2012 and 17.5.2012. Copies of such letters have been enclosed as Annexure Nos. 2A and 2B and the averment in that regard has been made in paragraph 8 of the writ petition. The learned counsel for the petitioner drew attention of the Court to paragraph 6 of the counter-affidavit filed by the District Inspector of Schools wherein the averments made in paragraph 7 and 8 of the writ petition, have not been denied and have rather been accepted as a matter of record. Accordingly, it is held that the allegation in the impugned order that copy of the advertisement was not served on the District Inspector of Schools concerned, within the prescribed period, is incorrect and contrary to the record. Even otherwise, as has

been held while dealing with point No. 2, the said requirement is directory in nature, therefore, even sufficient compliance of the same would suffice. It is, thus, held that the provisions of Regulation 17(a) of Chapter II of the regulations framed under the U.P. Intermediate Education Act, 1921, were complied with.

Conclusion

In view of the answers rendered on Questions Nos. 1 to 5 i.e. Points Nos. 1 to 5, herein above, the reasons recorded by the Regional Level Committee for passing the impugned order dated 26.11.2012, in both the writ petitions, are rendered unsustainable and, as such, the impugned order, in both the petitions, is liable to be set aside. Therefore, impugned order dated 26.11.2012 passed by the Regional Level Committee, Kanpur, in both the writ petitions, is hereby quashed. The Regional Level Committee or the authority concerned will consider, afresh, the matter relating to approval of appointment of the petitioner on the post of Principal, in both the institutions, separately, in accordance with law, and in the light of the observations made hereinabove and pass appropriate orders accordingly. The aforesaid exercise will be completed within a period of three weeks from the date of production of a certified copy of this order before the Joint Director of Education, Kanpur/Deputy Director of Education, Kanpur Region, Kanpur. Both the writ petitions are accordingly allowed to the extent indicated above. No costs.