

(2017) 05 AHC CK 0152
In the Allahabad High Court
Case No : 442 of 2016

Smt. Sadhna

APPELLANT

Vs

State of U.P. And 5 Ors.

RESPONDENT

Date of Decision : 30-05-2017

Acts Referred:

[Constitution of India](#), [Article 141](#), [Article 141](#), [Article 141](#), [Article 16](#), [Article 16](#), [Article 16](#) -

Principal Act, 1963, — Section 3, Section 3, Section 3, Section 35, Section 35, Section 35, Section 14, Section 14, Section 14, Section 15, Section 15, Section 15, Section 16, Section 16, Section 16, Section 11, Section 11, Section 11, Section 10(1), Section 10(1), Section 10(1), Section 18, Section 18, Section 12, Section 12, Section 12, Section 2(I), Section 2(I), Section 2(I), Section 33-D, Section 33-D -

Uttar Pradesh Secondary Education Services Selection Board Rules, 1998, — Rule 10, Rule 10, Rule 6, Rule 6, Rule 6, Rule 24, Rule 9(4), Rule 14(2), Rule 11(2), Rule 11(2), Rule 13(5), Rule 4 (6)

Citation : (2017) 05 AHC CK 0152

Hon'ble Judges : V.K. Shukla, Arun Tandon, P.K.S. Baghel, Sunita Agarwal, M.C. Tripathi

Bench : Full Bench

Advocate : Vijay Kumar Singh, Hritudhwaj Pratap Sahi, Rahul Kumar, A.K. Yadav, Anoop Trivedi, C.B. Yadav, Rajesh Kumar Mishra, Shashank Shekhar Singh

Judgement

1. on behalf of V.K. Shukla, J., Sunita Agarwal, J. and M.C. Tripathi, J.) (majority view) - A Division Bench of this Court finding it difficult to agree with the Full Bench judgment in the case of Raeesul Hasan v. State of U.P. & Others reported in 2015(4) S.C.T. 718 : 2015 (6) ADJ 778 referred the following questions for being examined by a Larger Bench vide order dated 15th July, 2016: "a. Whether the Full Bench in the case of Raeesul Hasan (supra) has laid down the correct law. b. Whether there can be two different years of recruitment with reference to the posts, which are within the direct recruitment quota and for the posts within the promotion quota under Rules 10,11 and 14 of the Rules, 1998.

c. Whether Rule 10 of the Rules 1998 read with the proviso attached to it necessarily entails the determination of the number of vacancies to be filled by way of promotion in that year of recruitment which would end on 30th of June of the succeeding year by adding all the existing and likely vacancies due for retirement so as to make the proviso workable which requires that the vacancies, which may not be filled by promotion be intimated to the Board for direct recruitment by 31 of July of that year. d. Whether the view taken by the Full bench would result in giving a leverage to the management to decide as to what would be the year of recruitment under Rule 14 of Rules 1998 or determine the 1st day of the year for eligibility requirements for promotion at its whims and fancies and thereby defeat the right of eligible L.T. Grade teachers for promotion on their turn. e. Whether determination of the quota under which a particular vacancy in Lecturer's grade would fall has necessarily to be so done with reference to the date of occurrence of vacancy in the institution or the management has a right to club all the vacancies of the recruitment year and decide which is to be filled by direct recruitment and which by promotion." The Hon'ble The Acting Chief Justice vide order dated 28th July, 2017 constituted this Special Bench for considering the questions so referred. 2. We have accordingly assembled. We have heard Sri Anoop Trivedi, Advocate on behalf of the respondent no.6-writ petitioner, Sri G.K. Singh, learned Senior Advocate assisted by Sri Hritudhwaj Pratap Sahi, Advocate on behalf of appellant-respondent, Sri Rajesh Kumar Mishra, Advocate on behalf of respondent no.5 and Sri C.B. Yadav, the learned Additional Advocate General assisted by Sri Shashank Shekhar Singh, learned Additional Chief Standing Counsel on behalf of the State-respondents. 3. The facts relevant for answering the questions, which have been referred, lie in very narrow compass and are as under: Mewa Lal Ayodhya Prasad Gupta Smarak Inter College, Soraon, Allahabad (hereinafter referred to as the "institution") is an aided and recognized institution governed under the provisions of the Intermediate Education Act, 1921 (hereinafter referred to as the "Act, 1921"). The provisions of the Act, 1921 and the regulations framed thereunder as also those of the U.P. Secondary Education Services Selection Board Act 1982 (hereinafter referred to as the Act 1982) and the rules and regulations framed thereunder are applicable to the teachers of the institution. 4. A post of Lecturer(Hindi) fell vacant in the said institution in the year 2000. The petitioner, Amar Singh was appointed in the said institution on the recommendation of the Selection Board as L.T. grade teacher on 30.11.2004. He moved an application seeking promotion against the said vacancy of lecturer (Hindi) in the year 2012. This application remained pending. 5. In the meantime, a Full Bench of this Court in the case of Raeesul Hasan v. State of U.P. and others reported in 2015 (6) ADJ 778 held that the eligibility for the post of lecturer as required to be determined under Rule 14 of the U.P. Secondary Education Services Selection Board, Rules 1998 (hereinafter referred to as the "Rules, 1998"), must be with reference to the first day of the year of recruitment in which the Committee of Management decides to make promotion on the said post. That would be the recruitment year for the purpose of promotion. Based

upon the aforesaid judgment the petitioner filed a fresh representation before the educational authority for his promotion, which was not considered. He, therefore, filed Writ Petition No. 59229 of 2015. The writ petition was disposed of vide judgment and order dated 26.10.2015 requiring the Education Authority to consider and decide the pending claim. The claim of the petitioner for promotion has been rejected vide order dated 29.4.2016 on the ground that the petitioner did not possess the required experience of five years of teaching in L.T. Grade on the first day of the year of recruitment in the facts of the case 2000-2001, as required under Rule 14 of the 1998 Rules. 6. Dissatisfied, the petitioner filed Writ A No. 21753 of 2016 (Dr. Amar Singh v. State of U.P. & 4 Others). The learned Single Judge, following the judgment of the Full Bench in Raeesul Hasan (Supra) has allowed the writ petition vide judgment and order dated 13th May, 2016. A direction has been issued to the Regional Joint Director of Education to consider the claim of the petitioner for promotion against the vacant post of lecturer (Hindi) in accordance with the Full bench judgment of this Court in the case of Raeesul Hasan (Supra). It is against this judgment that an intra-court appeal has been filed. The appellant before the Court is a lecturer in Nathu Ram Purohit Balika Inter College, Konch, District Jalaun. She moved an application for her transfer in accordance with Regulations 55 to 62 of Chapter-III of the Regulations framed under the Intermediate Education Act, 1921 (hereinafter referred to as the "Act, 1921") to the institution in question against the same vacancy of lecturer in Hindi in the institution. 7. It may be recorded that Section 16 of Act, 1982 (hereinafter referred to as the "Act, 1982") does contemplate appointment by way of transfer. It is settled law that an order for transfer can only be made under the statutory provisions applicable against a vacancy, which falls within the quota for direct recruitment only and with the concurrence of the Committee of Management of the two institutions. According to the appellant, both the respective Committee of Management granted no objection to the transfer of the appellant and ultimately the matter was placed before the Additional Director who accorded his approval. Now because of the order of the writ court, her claim for transfer stands frustrated. The appellant, therefore, filed the special appeal along with an application seeking leave to appeal on the ground amongst other that she was a necessary party to the writ proceeding and for her non-impleadment, the writ petition was liable to be dismissed. 8. Appellant's plea is that the judgment of Full Bench in the case of Raeesul Hasan (Supra) does not lay down the correct law. The issue as to whether a particular post falls within the quota for direct recruitment is required to be determined under Rule 10 of the Rules, 1998 read with Rule 11 of the said Rules. Such determination is to be done in respect of the existing vacancies as well as those which are likely to fall vacant during the course of the year, i.e. up to the last day of the year of recruitment. 9. Once the vacancies for direct recruitment in an institution are determined, the remaining vacancies would necessarily fall within the quota for promotion. It is explained that the proviso to Rule 10 of Rules, 1998 specifically provides that if in any year of recruitment, any vacancy cannot be filled by promotion on account of non availability of eligible candidate, it has

necessarily to be filled by direct recruitment. 10. This process, according to the appellant, has to be completed with reference to the year of recruitment in which the determination of the vacancies is done inasmuch as the vacancy within the quota for direct recruitment has to be notified in the manner laid down under Rule 11 of the Rules, 1998. It is further stated that there cannot be two different meanings for the phrase "years of recruitment", one for the post within the direct recruitment quota and the other for the posts within the quota for promotion in the same institution. It was lastly explained that Rule 10 and Rule 11 the Rules, 1998 have to be read in conjunction with Rule 14 for determining as to what would be the first day of the "year of recruitment" on which a teacher in L.T. Grade must possess five years teaching experience so as to make him eligible for promotion on the post which falls within the promotion quota. It is, therefore, submitted that the law laid down by the full Bench in *Raeesul Hasan* (supra) needs to be reconsidered in light of the Rules 10 to 14 of 1998" Rules so as to make the proviso to Rule 10 of the Rules, 1998 workable and to make first day of the year of recruitment certain, as contained in Rule 14 of the Rules "1998. 11. It was also stated that if the judgment in the case of *Raeesul Hasan* (supra) is given effect to, it will lead to a precarious situation where a teacher not even born on the rolls of the institution on the date of occurrence of vacancy (like in the facts of this case) may set up a claim for promotion after decades only because the management of the institution, at the relevant point of time, did not requisition the vacancy for direct recruitment for years together, despite the fact that there was no suitable eligible person available for appointment by promotion and thereby succeeded in keeping the post vacant for an uncertain period. 12. The respondent-petitioner on the contrary submitted that the Full Bench of this Court has taken note of all the statutory provisions which are applicable for determination of vacancies and appointment by promotion. The Full Bench has dealt with the statutory provisions including the proviso to Rule 10 and Rule 14 of Rules, 1998 and has come to a definite conclusion that the words "the first day of the year of recruitment" contained in Rule 14 of Rules, 1998 would mean the first day of the year in which the recruitment is made. It has, therefore, been held that the eligibility of candidates has to be determined with reference to the year in which the Committee of Management decides to fill in the vacancy by promotion. According to the respondent-petitioner, the date of occurrence of vacancy with reference to the year in which it has caused is wholly irrelevant. He submitted that as the petitioner had completed more than five years of service when his claim for promotion against the post of Lecturer (Hindi) was considered. There is no illegality in the order of the learned Single Judge so as to warrant any interference. 13. It was also explained to the Court that the Full Bench did not subscribe to the contrary view expressed by the Division Bench in its judgment in the case of *Km. Poonam v. State of U.P. and others* reported in 2008 (1) ADJ 273 (DB) and held it to be an incorrect law on the point. 14. It is on these facts and issues that the aforesaid questions have been referred for consideration to the Larger Bench. 15. Sri Anoop Trivedi, learned counsel for the writ petitioner raised a preliminary objection with regard to the

reference itself being bad. According to Sri Anoop Trivedi, the Division Bench could not have doubted the correctness of the Full Bench judgment of this Court in the case of Raeesul Hasan (Supra). He has heavily relied upon the judgment of this Court in the case of Natraj Chhabigarh v. State of U.P. Through Secretary Institutional Finance, U.P. Secretariat, Lucknow & Another reported in 1997 (30) ALR 24, wherein it has been held as follows: "Thus, a necessary corollary the Division Bench is higher Court than the Single Judge Court, and the Full Bench is higher Court than the Division Bench and therefore, correctness of the Division Bench decision cannot be doubted by Single Judge Bench and that of the Full Bench decision cannot be doubted by Division Bench and accordingly judicial propriety demands that the Division Bench decision should not be referred to larger Bench by Single Judge Bench and the Full Bench decision should not be referred to still larger Bench by the Division Bench. It is only for the Benches of coordinate jurisdiction to refer the decisions of equal Benches to the larger Benches, in case they doubt its correctness." 16. He would contend that the binding nature of precedents generally and of Full Benches in particular, is the kingpin of our judicial system. It is the bond that binds together what otherwise might well become a thicket of individualistic opinion resulting in a virtual judicial anarchy. According to him this is a self-imposed discipline which rightly is the envy of other Schools of Law. The judgments of the Benches of the same High Court in a limited way are binding in the sense that a judgment cannot be rendered contrary to the earlier decision of a co-equal Bench. At the highest an equivalent Bench can seek reconsideration of the same by a Larger Bench. Reference has also been made to the order passed by the Full Bench of the Allahabad High Court in the case of Rana Pratap Singh v. State of U.P. Reported in 1995 JIC 1062 (All) (FB). The relevant paragraph whereof reads as follows: "17. On this aspect another relevant judicial pronouncement comes in Ambika Prasad v. State of U.P.. There, in the context of the U.P. Imposition of Ceilings on Land Holdings Act, 1961, while dealing with the question as to when reconsideration of a judicial precedent is permissible, Krishna Iyer, J. so aptly put it "Every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent". 19. Implicit, thus, in the disregard by a single Judge or a Division Bench of a binding judicial precedent of a larger Bench or seeking to doubt its correctness for reasons and in circumstances other than those spelt out in Pritam Kaur's case (supra) is what cannot but be treated as going counter to the discipline of law so essential to abide by, for any efficient system of law to function, if not it virtually smacking of judicial impropriety. In other words, it is only within the narrow compass of the rule as stated by the Full Bench in Pritam Kaur's case that reconsideration of a judgment of a larger Bench can be sought and as has been so expressively put there, such judgments are not "to be blown away by every side wind". 20. We are, with respect, unable to concur or accept as correct these observations, in so far as, they imply that a single Judge can seek, by reference, reconsideration of a binding decision of the Division Bench and much less that the question framed by him, doubting the correctness of a Division Bench, be referred for decision to a

Full Bench." 17. For the same proposition, Sri Anoop Trivedi, learned counsel for the writ petitioner has referred the judgment of the Apex Court in the case of Bharat Petroleum Corporation Ltd. v. Mumbai Shramik Sangh and Others, reported in 2001(2) S.C.T. 960 : (2001) 4 SCC 448 and in the case of Pradip Chandra Parija & Others v. Pramod Chandra Patnayak reported in 2002(1) R.C.R. (Civil) 551 : (2002) 1 SCC 1 and Central Board of Dawoodi Bohra Community and Another v. State of Maharashtra reported in 2016(1) R.C.R.(Civil) 429 : (2005) 2 SCC 673. 18. On merits, he further submits that it is pertinent to note that the Principal Act specifically sets out distinct provisions for the two sources of appointment, viz direct recruitment and recruitment by promotion. 19. Further, it is noteworthy that neither Section 10 nor Section 12 of the Principal Act provides for any specific provision which may even remotely be construed to state that the appointing authority is mandated to conduct the recruitment each and every year. 20. As stated above, the said provisions do not, in any case, provide for any chained system of recruitment. The proviso to the above stated Rule 10 is apparently subject to the provisions contemplated under Rule 14 of the Rules, 1998 which categorically provides for the procedure for recruitment by promotion. It is pertinent to note that the said proviso can be attracted only once the procedure prescribed under Rule 14 of the Rules, 1998 is followed and an opinion is formed that there are no suitable candidates for recruitment by promotion. In other words, the interplay between Rule 14 and proviso to Rule 10 of Rules, 1998 is that in order to ascertain that no suitable eligible candidates are available for promotion and the recruitment may be done by direct recruitment, the actual test as set out in Rule 14 of Rules, 1998 must be passed, because it is only through Rule 14 of Rules, 1998, as specifically stated therein, that availability of suitable candidates can be ascertained, and not otherwise. That from bare perusal of the provisions contemplated under Rule 12 of Rules, 1998, it is quite evident that the legislature, in its wisdom, has not provided any specific timeline for the initiation of recruitment or selection process. Additionally, sub-rule (1) of Rule 2 of Rules, 1998, though obliges the Board to advertise the vacancies in 2 daily newspapers, does not stipulate or provide for any specific date or time period within which the advertisement must be published. 21. The sub-rule (1) of Rule, 14 of Rules, 1998 provides that the question of eligibility qua the qualification is required to be ascertained on the first day of the year of recruitment and not on the date of occurrence of vacancy. Further, it may be added that the said requirement was earlier there in the 1983 Rules, however, subsequently the Rules were amended and the said requirement was dispensed with. 22. No time period or time line, whatsoever, has been provided in sub-rule (3) of Rule 14 of Rules, 1998. There is no obligation under Rules, 1998 on the Management to prepare the list of eligible teachers within any particular time or in the same year in which the vacancy arose. In the light of the above-mentioned, it is thus evidently clear that there was no embargo on the clubbing of vacancies of different years for making recruitment by promotion, under the provisions of Rule 14 of Rules, 1998. He placed reliance upon the following judgments: (i) Balbir Kaur & Another v. U.P. Secondary Education Services

Selection Board, Allahabad & Others; 2008 (12) SCC 1, (ii) Jammu and Kashmir Public Service Commission etc v. Dr. Narinder Mohan & Others etc.; 1994(1) S.C.T. 626 : 1994 (2) SCC 630, (iii) Balbir Chand Atri & Others v. State of J & K; 2008 (2) JKJ 167, (iv) Rajasthan Council of Diploma Engineers & Another v. The State of Rajasthan & Another; 1991 (2) WLC 597. Sri Anoop Trivedi, learned counsel for respondent petitioner has also submitted before us that the basic rule of statutory interpretation is that the words used in statute must be provided their simple meaning. He has placed reliance upon the following judgments: (i) D.R. Venkatachalam & Others v. Dy. Transport Commissioner & Others; 1977 (2) SCC 273. (ii) Chief Justice of Andhra Pradesh & Others v. L.V.A. Dixitulu & others, 1979 (2) SCC 34. (iii) Padma Sundara Rao (dead) & Others v. State of T.N. & Others; 2002(2) R.C.R.(Civil) 373 : 2002 (3) SCC 533. (iv) Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. & Others; 1987 (1) SCC 424. (v) Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd.; 2000 (5) SCC 515. (vi) Kehar Singh & Others v. State (Delhi Administration); 1988 (3) SCC 609. (vii) Shashikant Laxman Kale & Another v. Union of India & Another; 1990 (4) SCC 366. (viii) Ameer Trading Corporation Ltd. v. Shapoorji Data Processing Ltd.; 2004(1) R.C.R.(Civil) 259 : AIR 2004 SC 355. (ix) District Mining Officer & Others v. Tata Iron & Steel Co. & Another; 2001 SCC (7) 358. (x) Babu Manmohan Das Shah & Others v. Bishnu Das; 1967 AIR (SC) 643. (xi) Kanai Lal Sur v. Paramnidhi Sudhukhan; AIR 1957 SC 907. 23. Sri Anoop Trivedi has also submitted that the Courts are not required to proceed with any preconceived notions for interpreting/determining the meaning of a particular provision/rule. He further submitted that the rule of construction that same meaning is implied by the use of the same expression in every part of an Act is only one element of the rule. In deciding the true import of the statutory provision, it is necessary to ascertain the purpose behind the particular provision and its setting in the scheme of the statute. According to him, same words may be used in different sense in same statute and even in the same section. In support of his case, he has placed reliance upon the following judgments: (i) Shamrao Vishnu Parulekar v. The District Magistrate, Thana; AIR 1957 SC 23. (ii) Jeewanlal (1929) LTD. Calcutta v. Its Workmen; AIR 1961 SC 1567. (iii) Commissioner of Income Tax, Bangalore v. Venkateshwar Hatcheries (P) Ltd. etc. etc.; 1999 (3) SCC 623. (iv) Vangaurd Fire & General Insurance Co. Ltd. Madras v. Fraser & Ross & Another; AIR 1960 SC 971. 24. Sri G.K. Singh, learned Senior Advocate on behalf of appellant-respondent and Sri C.B. Yadav, learned Additional Advocate General on behalf of the State have supported the referring order and contended that the legal position has already been explained by the Full Bench in the case of Prashant Kumar Katiyar v. State of U.P. & Others reported in 2013(1) ESC 221 (All) (FB). 25. We have carefully examined the preliminary objection so raised by Anoop Trivedi, learned counsel for the writ petitioner. In our opinion, the contention so raised proceeds on misreading of the order of reference made by the Division Bench dated 15th July, 2016. 26. The Division Bench had only opined that the questions as noticed above did need examination by Larger Bench and accordingly opined as follows: "Let this order

be placed before Hon''ble The Acting Chief Justice for consideration of constituting a larger Bench to answer these issues." 27. On a simple reading of the aforesaid part of the order of the Division Bench dated 15th July, 2016, it will be seen that it had not expressed any opinion about the matter being referred to a Bench of larger number of Hon''ble Judges than the Full Bench of this Court i.e. 3 Hon''ble Judges. It was Hon''ble The Acting Chief Justice, who had taken a decision that the matter needs to be examined by 5 Hon''ble Judges and, accordingly, constituted this Bench. 28. For a Bench of two Judges, its opinion that the questions referred be examined by a Larger Bench means that the same can be looked into by a Bench of 3 Judges or such larger number of Judges as the Chief Justice desires. We may notice that 3 Judges' Bench is also a Larger Bench for the Division Bench. 29. Judgments, which have been so heavily relied upon by Sri Anoop Trivedi, learned counsel for the writ petitioner in support of his preliminary objection do not lay down anything to the contrary. What has been laid down in the aforesaid judgments is that a Bench of two Hon''ble Judges cannot directly refer the matter to the Larger Bench. If a Division Bench has any doubt about a judgment of a Full Bench, then it can at best direct the matter to be placed before the Chief Justice for being considered by a Bench of such number of Judges as the Chief Justice may deem fit and proper. It flows from the judgments cited at bar in our opinion that a Bench of lesser number of Hon''ble Judges cannot directly overrule the judgment of a Coordinate Bench or of a Larger Bench. In case a Bench finds it difficult to agree with the law laid down by equal number of Hon''ble Judges or by a larger number of Judges, it can at best direct the matter to be placed before the Chief Justice for consideration of the questions referred by such number of Hon''ble Judges as the Chief Justice may decide. The power of the Chief Justice for the matter being heard by a Bench comprising of larger number of Hon''ble Judges or equal number of Hon''ble Judges or such number of Hon''ble Judges as Hon''ble The Chief Justice may decide, is conceded by all the Advocates at bar. It is within the domain of Hon''ble The Chief Justice to constitute a Bench for hearing such a reference by a Bench comprising of such number of Judges equivalent to the Bench, whose judgment has been doubted or by a Bench of large number of Hon''ble Judges, than the Bench, which had decided the judgment in doubt. Reference in that regard be made to the judgment of the Apex Court in the case of Central Board of Dawoodi Bohra Community & Another v. State of Maharashtra & Another reported in (2005) 2 SCC 673. Relevant paragraph-12 of the said judgment reads as follows: "12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :- (1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength. (2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a

Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co- equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co- equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted. (3) The above rules are subject to two exceptions : (i) The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and"

30. In order of keep the records straight, it may be noticed that in the case of *Raeesul Hasan v. State of U.P. Through its Secretary, Secondary Education, U.P. Civil Secretariat, Luknow & Others*) itself a doubt was raised by a learned Single Judge vide order dated 20th December, 2016 passed in Writ Petition No. 1593 (S/S) of 2001 along with connected petitions in respect of Division Bench Judgment in the case of *Km. Poonam v. State of U.P. & Others* reported in 2008 (1) ADJ 273 (DB). The Hon"ble The Chief Justice at the relevant time thought it proper to constitute a Bench of three Hon"ble Judges to answer the questions referred instead of referring the same to a Bench of two Hon"ble Judges. It is this Full Bench Judgment which has been doubted and is under consideration before us. In view of the aforesaid, the preliminary objection raised by Sri Anoop Trivedi, learned counsel for the writ petitioner is overruled.

31. In order to examine the legal issues which have been so referred to the present Larger Bench, it would be worthwhile to refer to the statutory amendments which have taken place in the relevant provision applicable in the field.

32. The U.P. Act No. 5 of 1982 referred to as the "Act, 1982", as was originally passed by the State Legislature, under Section 10 provided for the procedure of selection of a teacher specified in the Schedule and required the notification of the vacancies to the Selection Commission by the Management in such manner through such officer/authority as may be prescribed, in respect of teachers not included in the Schedule, the same procedure for determination of the vacancies was to apply except that intimation was to be sent to the Selection Board (See Section 15 of Act, 1982).

33. It may be recorded that the original Act did not define the term "year of recruitment". The term "year of recruitment" came be defined for the first time under the U.P. Secondary Education Commission Rules, 1983 i.e. the Rules framed in exercise of powers under Section 35 of the Act, 1982. Rule 2 (i) of Rules, 1983 reads as follows: "2. Definitions.---- (i) "year of recruitment" means a period of twelve months commencing from July 1 of a calender year." Rule 4 of Rules, 1983, which deals with the determination/intimation of the vacancies, provided that the determination of the vacancies shall be done by the Management and communicated to the Commission in the pro forma as mentioned in the Appendix "A", which will include the existing vacancies as well as those likely to fall vacant during the year of recruitment. Rule 4 (2) required such statement of vacancies to be submitted by 15th September of the year of recruitment through Inspector and after verification to be forwarded to the Deputy Director by 15th October

with an advance copy to the Commission. The Deputy Director in turn was required to forward the same to the Commission by 15th November. Rule 4 (5) of Rules, 1983 contemplated that if any vacancy occurs at any time during the session or after the requisition has already been sent, the Management shall notify the vacancy to the Inspector within 15 days of its occurrence and the Deputy Director was to deal with the same within 10 days of the receipt thereafter. 34. The Commission was conferred powers to require the Inspector to notify the vacancies, where the Management has failed to do so. So far as appointment of a teacher by promotion is concerned, Rule 9 of Rules, 1983 provided as under: "9. Procedure for appointment by promotion. -----(1) Where any vacancy is to be filled by promotion, all teachers working in L.T. or C.T. grade, who possess the minimum qualifications and have put in at least 5 years continuous service as teacher on the date of occurrence of vacancy shall be considered for promotion to the Lecturer or L.T. grade as the case may be, without their having applied for the same. Note.---For the purpose of this sub-rule, service rendered in any other recognised institution shall count for eligibility, unless interrupted by removal, dismissal or rendered to a lower post. (2) The criterion for promotion shall be seniority subject to the rejection of unfit. (3) The management shall prepare a list of teachers, referred to in sub-rule (1), and forward it to the Commission through the Inspector with a copy of seniority list service records (including the character rolls) and a statement in the pro forma given in Appendix "A"."

35. Thus, it will be seen that under Rules of 1983 for being eligible to be considered for promotion, a teacher was required to have put in at least 5 years of continuous service in the feeding cadre on the date of occurrence of the vacancy in the grade concerned. Therefore, for the purposes of promotion, what was relevant was the date of occurrence of vacancy and fulfillment of five years of continuous service on that date along with other minimum qualifications. 36. Act of 1982 was amended by U.P. Act No. 8 of 1991 i.e. U.P. Secondary Education Services Commission and Selection Boards (Amendment and Validation) Act, 1991. Provision for appointment by way of transfer was introduced by way of proviso to Section 16 of Act, 1982. Further amendments were made by U.P. Act No. 26 of 1991, whereby Section 33-A was added to the Act, 1982. 37. By means of U.P. Act No. 1 of 1993, comprehensive amendments were introduced in the Act, 1982 and for the first time "year of recruitment" was defined by adding Section 2 (I) to the Act, 1982, which reads as follows: "2..... (1) "year of recruitment" means a period of twelve months commencing from first day of July of a calendar year." Section 15 as introduced by U.P. Act No. 1 of 1993 read as follows: "15. Procedure for selection of teachers---(1) For the purposes of making appointment of a teacher, the Management shall determine the number of vacancies existing or likely to fall vacant during the year of recruitment and in the case of any post, other than the post of head of institution, also the number of vacancies to be reserved for the candidate belonging to the Scheduled Castes, Scheduled Tribes and other categories of persons in accordance with the rules or orders issued by the Government in this behalf in regard to the institution and

notify the vacancies to the Board in such manner and through such officer or authority as may be prescribed. (2) The procedure of selection of candidates for appointment to the post of such teachers shall be such as may be prescribed : Provided that the Board shall, with a view to inviting talented persons, give wide publicity in the State to the vacancies notified under sub-section (1)." 38. As a consequence to the amendments under Act No. 1 of 1993, Uttar Pradesh Secondary Education Services Commission Rules, 1995 (hereinafter referred to as the Rules, 1995) were published under notification dated 8th May, 1995. Rules, 10, 11 and 14 of the Rules, 1995 relevant for our purpose read as follows: "10. Source of recruitment. - Recruitment to various categories of teachers shall be made from the following sources : (a) Principal of an Intermediate College or Headmaster of a High School by direct recruitment. (b) Teachers of lecturers grade. - (i) 50 per cent by direct recruitment; (ii) 50 per cent by promotion from amongst substantively appointed teachers of the trained graduates (L.T.) grade; (c) Teachers of trained graduates (L.T.) grade. - (i) 50 per cent by direct recruitment; (ii) 50 per cent by promotion from amongst the substantively appointed teachers of Certificate of Teaching (C.T.) Grade : Provided that if in any year of recruitment suitable eligible candidates are not available for recruitment by promotion, the posts may be filled by direct recruitment : Provided further that if in calculating respective percentage of posts under this rule there comes a fraction then the fraction of the posts to be filled by direct recruitment shall be ignored and the fraction of the posts to be filled by promotion shall be increased to make it one post. 11. Determination and notification of vacancies. - (1) The Management shall determine the number of vacancies in accordance with subsection (1) of Section 15 of the Act and notify them through the Inspector, to the Commission in the manner hereinafter provided. (2) The statement of vacancies for each category of post to be filled in by direct recruitment or by promotion, including the vacancies that are likely to arise due to retirement on the last day of the year of recruitment, shall be sent separately in quadruplicate in the pro forma given in Appendix "A" by the Management to the Inspector by July, 15 of the year of recruitment and the Inspector shall, after verification from the record of his office, prepare consolidated statement of vacancies of the district subject-wise in respect of the vacancies of lecturers grade, and group-wise in respect of vacancies of trained graduates (L.T.) grade. The consolidated statement so prepared shall, along with the copies of statement received from the Management, be sent by the Inspector to the Commission by July, 31 with a copy thereof to the Deputy Director : Provided that if the State Government is satisfied that it is expedient so to do, it may, by order in writing, fix other dates for notification of vacancies to the Commission in respect of any particular year of recruitment : Provided further that in respect of the vacancies existing on the date of commencement of these rules as well as the vacancies that are likely to arise on July 30, 1995 the Management shall, unless some other dates are fixed under the preceding proviso, send the statement of vacancies by June 15, 1995 to the Inspector and the Inspector shall send the consolidated statement in accordance with the sub-

rule to the Commission by June 30, 1995. Explanation. - For the purposes of this sub-rule the word groupwise in respect of the trained graduates (L.T.) grade means in accordance with the following groups, namely : (a) Language Group. - This group consists of the subjects of Hindi, Sanskrit, Urdu, Persian and Arabic; (b) Science Group. - This group consists of the subjects of Science and Mathematics; (c) Art and Craft group; (d) Music Group; (e) Agriculture Group; (f) Home Science Group; (g) Physical Education Group; and (h) General Group. - This group consists of the subjects not covered in any of the foregoing groups. (3) If, after the vacancies have been notified under sub-rule (2), any vacancy in the post of a teacher occurs, the Management shall, within fifteen days of its occurrence, notify the Inspector in accordance with the said sub-rule and the Inspector shall within ten days of its receipt by him send it to the Commission. (4) Where, for any year of recruitment, the Management does not notify the vacancies by the date specified in sub-rule (2) or fails to notify them in accordance with the said sub-rule, the Inspector shall on the basis of the record of his office, determine the vacancies in such institution in accordance with sub-section (1) of Section 15 of the Act and notify them to the Commission in the manner and by the date referred to in the said subrule. The vacancies notified to the Commission under this sub-rule shall be deemed to be notified by the Management of such institution. 14. Procedure for recruitment by promotion. - (1) Where any vacancy is to be filled by promotion all teachers working in trained graduates (L.T.) grade or Certificate of Teaching (C.T.) grade, if any, who possess the qualifications prescribed for the post and have completed five years continuous service as such on the first day of the year of recruitment shall be considered for promotion to the lecturers grade or the trained graduates (L.T.) grade, as the case may be, without their having applied for the same. Note. - For the purposes of this sub-rule, regular service rendered in any other recognised institution shall be counted for eligibility, unless interrupted by removal, dismissal or reduction to a lower post. (2) The criterion for promotion shall be seniority subject to the rejection of unfit. (3) The Management shall prepare a list of teachers referred to in sub-rule (3), and forward it to the Commission through the Inspector with a copy of seniority list, service records, including the character rolls, and a statement in the pro forma given in Appendix "A". (4) Within three weeks of the receipt of the list from the management under sub-rule (3), the Inspector shall verify the facts from the record of his office and forward the list to the Commission. (5) The Commission shall consider the cases of the candidates on the basis of the records referred to in sub-rule (3) and may call such additional information as it may consider necessary. The Commission shall forward the panel of selected candidates within the one month to the Inspector with a copy thereof to the Deputy Director. (6) Within ten days of the receipt of the panel from the Commission under sub-rule (5), the Inspector shall send the name of the selected candidate to the management of the institution which has notified the vacancy and the management shall accordingly on authorisation under its resolution issue the appointment in the pro forma given in Appendix "E" to such candidate." 39. Amendments were

introduced in Act, 1982 vide U.P. Act No. 15 of 1995, which was notified in the official gazette on 8th August, 1995. Section 10 of the Act provided for determination of the vacancies existing or likely to fall vacant during the year of recruitment to be notified to the Commission in such manner and through such officer or authority as may be prescribed. It is needless to emphasize that since Rules, 1995 were in existence, which took care of the determination etc. of the vacancies, no amendments were made in the Rules subsequent to enforcement of Act, 1995, at least none has been brought to our notice. 40. Further amendments were made in the Act, 1982 by means of U.P. Act No. 25 of 1998. By this amending Act, with the substitution of Chapter II changes were introduced in the definition Clause under Section 2 and Sections 3 to 11 of Act, 1982 as well as Chapter III Section 12, Section 16 and Section 18 were amended. Sections 33-C and 33-D were introduced. Corresponding amendments were also introduced by framing and notifying the U.P. Secondary Education Services Selection Board Rules, 1998 (hereinafter referred to as the "Rules, 1998"). 41. Rules of 1998 as far as relevant for our all purposes are Rules, 10, 11 and 14, which are being quoted herein below: "10. Source of recruitment.-- Recruitment to various categories of teachers shall be made from the following sources :

(a) Principal of an Intermediate College or Headmaster of a High School
By direct recruitment

(b) Teachers for lecturer's grade 50 per cent by direct recruitment: (ii) 50 per cent by promotion from amongst substantively appointed teachers of the trained graduates grade.

(c) Teachers of trained graduates grade (i) 100 per cent by direct recruitment except the category of institutions mentioned below in 2(ii); (ii) Those Intermediate colleges and High Schools in which teachers of attached primary section are getting salary under the provisions of U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, 75 per cent posts shall be filled by direct recruitment and the remaining 25 per cent posts shall be filled by promotion from amongst those trained graduate teachers of attached primary section who have completed 5 years of satisfactory service.

Provided that if any year of recruitment suitable eligible candidates are not available for recruitment by promotion, the posts, may be filled in by direct recruitment: Provided further that if in calculating respective percentages of posts under this rule, there comes a fraction then the fraction of the posts to be filled by direct recruitment shall be ignored and the fraction of the posts to be filled by promotion shall be increased to make it one post. 11. Determination and notification of vacancies.--(1) For the purposes of direct recruitment to the post of teacher, the management shall determine the number of vacancies in accordance with sub-section (1) of Section 10 and notify the vacancies through the Inspector, in the Board in the manner hereinafter provided. (2)(a) The

statement of vacancies for each category of posts to be filled in by direct recruitment including the vacancies that are likely to arise due to retirement on the last day of the year of recruitment, shall be sent in quadruplicate, in the proforma given in Appendix "A" by the Management to the Inspector by July 15 of the year of recruitment and the Inspector shall, after verification from the record of his office, prepare consolidated statement of vacancies of the district subject-wise in respect of the vacancies of lecturer grade, and group-wise in respect of vacancies of trained graduates grade. The consolidated statement so prepared shall, along with the copies of statement received from the Management, be sent by the Inspector to the Board by July 31, with a copy thereof to the Joint Director: Provided that if the State Government is satisfied that it is expedient so to do, it may, by order in writing, fix other dates for notification of vacancies to the Board in respect of any particular year of recruitment: Provided further that in respect of the vacancies existing on the date of the commencement of these rules as well as the vacancies that are likely to arise on June 30, 1998, the Management shall, unless some other dates are fixed under the preceding proviso, send the statement of vacancies by July 20, 1998 to the Inspector and Inspector shall send the consolidated statement in accordance with this sub-rule to the Board by July 25, 1998. Explanation:- For the purposes of this sub-rule, the word group-wise in respect of the trained graduate's grade means in accordance with the following groups, namely. (b) With regard to the post of Principal or Headmaster, the Management shall also forward the names of two senior-most teachers, along with copies of their service records (including character rolls) and such other records or particulars as the Board may require from time to time. Explanation-For the purpose of this sub-rule "senior-most teachers" mean the senior-most teachers in the post of the highest grade in the institution, irrespective of total service put in the institution. (3) If, after the vacancies have been notified under subrule (2), any vacancy in the post of a teacher occurs, the Management shall, within fifteen days of its occurrence, notify to the Inspector in accordance with the said sub-rule and the Inspector shall within ten days of its receipt by him send it to the Board. (4) Where, for any year of recruitment, the Management does not notify the vacancies by the date specified in sub-rule (2) or fails to notify them in accordance with the said sub-rule, the Inspector shall on the basis of the record of his office, determine the vacancies in such institution in accordance with sub-section (1) of Section 10 and notify them to the Board in the manner and by the date referred to in the said sub-rule. The vacancies notified to the board under the sub-rule shall be deemed to be notified by the Management of such institution" 14. "Procedure for recruitment by promotion.-- (1) Where any vacancy is to be filled by promotion all teachers working in trained graduates grade or Certificate of Teaching grade, if any, who possess the qualifications, prescribed for the post and have completed five years continuous regular service as such on the first day of the year of recruitment shall be considered for promotion to the lecturers grade or the trained graduates grade, as the case may be, without their having applied for the same. (2) The criterion

for promotion shall be seniority subject to the rejection of unfit. (3) The Management shall prepare a list teachers referred to in sub-rule (1), and forward it to the Inspector with a copy of seniority list, service records, including the character rolls, and a statement in the pro forma given in Appendix "A". (4) Within three weeks of the receipt of the list from the management under sub-rule (3), the Inspector shall verify the facts from the record of his office and forward the list to the Joint Director. (5) The Joint Director shall consider the cases of the candidates on the basis of the records referred to in sub-rule (3) and may call such additional information as it may consider necessary. The Joint Director shall place the records before the Selection Committee referred to in sub-section (1) of section 12 and after the committee's recommendation, shall forward the panel of selected candidates within one month to the Inspector with a copy thereof to the Management. (6) Within ten days of the receipt of the panel from the Joint Director under sub-rule (5), the Inspector shall send the name of the selected candidates to the management of the institution which has notified the vacancy and the management shall accordingly on authorization under its resolution issue the appointment order in the proforma given in Appendix "F" to such candidate." 42. Since the intimation of the vacancies for direct recruitment under Rule 11 (2) of Rules, 1998 and details for promotion under Rule 14 of Rules, 1998 are to be provided by the Management in Appendix "A" to Rules, 1998, it is worthwhile to reproduce Appendix "A", which reads as follows: "APPENDIX "A" [See Rules 11 (2) and 14 (3)] Requisition Form for the Recruitment of Candidates for Appointment to the post of Teacher/Principal/Headmaster (To be sent in quadruplicate) 1. (i) Name of the Institution..... (ii) Place..... (iii) District..... (iv) Number of Students..... Class..... SectionNo (v) Names of Subjects; High School/Intermediate..... (vi) Number of Teachers 2. (i) Name(s) of the post(s) to which selection is to be made (ii) Number of posts (iii) Qualification for the post(s)..... (iv) Pay scale of the post..... 3. Where the post for which selection to be made is of Lecturer Trained Graduate grade; (i) Total number of sanctioned posts..... (ii) Number of posts already filled by- (a) direct recruitment. (b) promotion. (iii) Total number of vacancies determined by the Management to be filled by- (a) direct recruitment. (b) promotion. 4. Number of posts, if any, reserved for- (a) Scheduled Castes. (b) Scheduled Tribes. (c) Other Backward Classes of citizens. 5. Names of all candidates eligible for promotion, their qualification and length of service from date of regular appointment in the grade from which promotion is to be made. 6. Any other information, that the Board may desire to have certified that the above information is correctly recorded and verified from the relevant documents. *This information shall be given in case of promotion and required under sub-rule (3) of Rule 14. Manager Verified and forwarded to the Secretary, Uttar Pradesh Secondary Education Services Selection Board, Allahabad (in case of appointment by direct recruitment) and to Joint Director in case of appointment

by promotion. District Inspector of Schools" 43. It is also worthwhile to record that the C.T. Grade was declared a dying cadre under the Government Order dated 11th August, 1989. The Government Order provides that on substantive vacancies being caused in C.T. Grade subsequent to 11th August, 1989, the same shall be deemed to be converted into L.T. Grade. Section 33-D which was added to the Act, 1982 vide U.P. Act No. 25 of 1998 provides that all those who have completed ten years of continuous service in C.T. Grade would be deemed to be teachers in L.T. grade. For ready reference Section 33-D of Rules, 1998 is being quoted herein below: "33 D. Special provision for certificate of Teaching grade teachers.--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." 44. The amendments, which had been made in the Act, 1982 and the Rules from time to time had following effect: Under Section 10 of the Parent Act, the Management had to notify the vacancies to the Commission for making appointment of teachers specified in Schedule while in respect of teachers other than those specified in Schedule, the Management had to notify the vacancies to the Selection Board as is clear from Section 15 of the Parent Act. For the first time under the U.P. Act 1 of 1993 the concept of determination of vacancies by the Management of the institution, was provided for, with a direction that the vacancies likely to fall vacant during year of recruitment shall be included in such determination. 45. This procedure continued under U.P. Act No. 15 of 1995, except that under amended Section 10, the provision for intimation of the vacancies of teachers not mentioned in Schedule of Act, 1982 to the Board was done away with, as C.T. Cadre had been declared to be a dying cadre. Section 10 as amended by U.P. Act No. 1998 required determination of vacancies but restricted such determination to be in respect of the post to be filled by direct recruitment, while Section 12 provided for constitution of Selection Committee for each region for promotion. 46. Percentage of posts of Lecturers' grade and L.T. grade to be filled by direct recruitment and by promotion has been provided under Rule 10 of Rules, 1998, referred to herein above. The power was given to the management to determine the number of vacancies existing or likely to fall vacant during the year of recruitment. Thus the initial task of determining the vacancy is on the management by identifying the number of vacancies that are existing or are likely to fall vacant, on account of retirement etc. during the year of recruitment. The procedure to ascertain the quota in which a vacancy would fall is regulated by the Act and Rules, inasmuch as, this would involve the nature of the vacancy and the post that was held by the earlier incumbent. This would mean as to what subject was taught by the earlier incumbent and the current requirement of the institution. Rule 10 of the 1998 Rules clearly provides for the appointment in the Lecturers Grade 50% by direct recruitment and 50% by promotion from amongst substantively appointed teachers of the Trained

Graduate Grade (L.T. Grade). 47. The vacancies of Trained Graduate Grade (L.T. Grade) are to be filled by direct recruitment except for 25% by promotion as per Rule 10(c)(ii) of 1998 Rules. After the vacancies for direct recruitment are determined, the management is also obliged to calculate the applicability of reservation for the candidates belonging to the reserved category for the purpose of giving benefit to eligible candidates. The aforesaid calculation therefore has to be in accordance with the rules provided for reservation namely the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 Act, as applicable in the State of U.P. 48. This determination by the management in respect of direct recruitment is to be made under Rule 11 of the 1998 Rules quoted herein above. The statement of the vacancies so determined by the management has to be sent to the District Inspector of Schools by 15th of July of the year of recruitment in proforma given in Appendix "A", and the Inspector, after verifying it from the records of his office, has to prepare a consolidated statement of the vacancies of all the institutions in the district subject-wise and group-wise in respect of Trained Graduate Grade posts. The statement so prepared by the Inspector must be sent by 31st of July of the year of recruitment with a copy thereof to the Joint Director of Education. The State Government has however, been given the power to fix other dates for notification in respect of any particular year of recruitment. 49. On this exercise being completed by 31st of July, if any other vacancy occurs thereafter, for example by death or resignation then the management within 15 days of its occurrence, shall notify the said vacancy to the District Inspector of Schools. The Inspector within 10 days of receipt of such information send it to the U.P. Secondary Education Services Selection Board for being notified. It is this procedure which has to be followed for the notification/intimation of the vacancies to the Board as per Section 10 of the 1982 Act read with Rule 11 of the 1998 Rules. 50. The provisions of Sub-Rule (4) of Rule 11 also provide for the alternative arrangement where there is a failure on the part of the management to notify the vacancies by the date fixed. The said rule authorizes the District Inspector of Schools to determine the vacancies on the basis of the records that are available in his office and notify it to the Board which shall be deemed to be notified by the management of such institution. It will be seen that determination of number of vacancies is the responsibility of the Management at the first instance and such determination has to be for the "year of recruitment" under Rule 11(2) of Rules, 1998. 51. Rule 14 of Rules, 1998 which deals with the procedure of recruitment by promotion does not require any fresh determination of vacancies for the purposes of promotion, it only requires that where the vacancies are required to be filled by direct recruitment, details of teachers working in the feeding cadre, who have completed five years of continuous service on the "first day of year recruitment" and is possessed of the requisite qualifications on that date be provided in proforma given in Appendix "A" to the Joint Director of Education. On a simple reading of the aforesaid provisions, it will be seen that the words "year of recruitment" have been used in (a) first proviso to Rule 10 of Rules, 1998 relevant part whereof reads as "if in

any year of recruitment", (b) in Rule 11 (2) relevant part whereof reads as "on the last day of year of recruitment", (c) in 11 (4) relevant part whereof reads as "for any year of recruitment" and (d) in Rule 14 (1) relevant part whereof reads as "on the first day of the year of recruitment". 52. The issue with regard to the determination of vacancies under Rules 10 and 11 of Rules, 1998 has been subject matter of consideration before the Full Bench of this Court in the case of Prashant Kumar Katiyar (Supra) and in paragraph nos. 36 to 40 it has been held as follows: "36. It is this entire exercise with regard to determination that has to be performed mandatorily by the management and the District Inspector of Schools, to enable the Board to advertise the vacancy as notified which shall be done through wide publicity as provided for under Section 10(2) of the 1982 Act read with Rule 12(1) as quoted herein above. 37. The controversy raised in this reference is vis a vis the impact of the action taken by the management and the District Inspector of Schools for determination of the vacancies and the consequential advertisement made by the Board and any attempt to alter the same by adopting the exceptional modes of appointment. 38. In our opinion if the management has determined the vacancy or the District Inspector of Schools has done it as per Rule 11(4) then in that event the alteration of such determination and intimation is controlled only to the extent as provided by sub-rule (3) of Rule 11 which authorises the management and the Inspector to notify any fresh vacancy that may have occurred after such notification. The management or the District Inspector of Schools therefore has not been empowered under the rules to reverse the determination and it can only add to it, subject to the contingency as contemplated under sub-rule (3) of Rule 11. This however does not take away the power to correct any arithmetical or calculative errors that may have crept into such determination. 39. To our mind, the function of the management and the District Inspector of Schools, therefore, has to follow this procedure and it is trite law that if a statute requires a thing to be done in a particular manner then it should be done in that manner alone and not otherwise. The procedure under the Act and Rules is mandatory and it has to be done in that manner alone. Reference be had to Para 20 and 23 of the division bench judgment in the case of Km. Poonam v. State of U.P. 2008 (3) AWC Pg. 2852 and to Para 24 of the decision in the case of U.P. Secondary Education Service Selection Board v. State of U.P. 2011 (3) ADJ Pg. 340. The rules have been framed consciously by making a provision of limited alteration in the determination by adding to the vacancies on account of any fresh occurrence during the year of recruitment itself. Thus impliedly no power has been conferred for altering the vacancies already determined and intimated to the Board for the purpose of notification under the Act and Rules. The requisition to fill up the vacancies after having sent to the Board therefore becomes unalterable as the Board proceeds with the advertisement under Rule 12 by publishing the vacancy in accordance with reservation rules and in accordance with the subject-wise and group-wise vacancies against which appointments are to be made inviting applications from candidates giving their preference of the institution which choice has to be indicated by the candidate. At this stage, to upset the procedure

after advertisement by giving any further leverage would be to disturb the entire process of selection and if such a concession is given, the management can indulge into motivated manipulations which are not uncommon and give rise to uncalled for controversies ending up in litigation. 40. We would also like to put a note of caution for the District Inspector of Schools while performing his duty of verification of the determination of vacancies. There can be cases where the management deliberately modifies a requirement in the name of extending benefit to some candidate/teacher who may be desirous of seeking promotion but otherwise not eligible within the year of recruitment. The management can withhold such information and it is at this stage that the District Inspector of Schools has to exercise his powers under sub-rule (4). The management at times may not cooperate with the District Inspector of Schools and therefore the District Inspector of Schools has to determine the vacancy as per the records available in his office and inform the Board. The responsibility therefore rests on the District Inspector of Schools to undertake this exercise by putting the management to clear notice during the year of recruitment itself. The District Inspector of Schools on coming to know of any additional vacancy if any that arises or the management having withheld such information is obliged to take action forthwith and disallow the management from taking any undue advantage in such situations. The vacancy that has occurred during the year of recruitment has to be mandatorily informed as noted herein above as no selection can be held except through the Board." Again, in paragraph 48 it has been held as under: "There is no difficulty with regard to the calculation of a post to be filled up by absorption or by promotion which can also be done by the management before determining the vacancies in the year of recruitment. The calculation has to be made for the year of recruitment and sent by 31st of July. Thus any claim thereafter having arisen will have to wait for the vacancy to occur thereafter. The calculation is not in respect of all possible claims that may arise in future. This aspect is clearly governed by the expression "year of recruitment" as explained hereinabove and by the calendar fixed under the rules. Accordingly the same reasoning as in the case of transfers would apply here and neither the management nor the District Inspector of Schools can be permitted to alter the process of recruitment/appointment by taking recourse to the provisos under Section 16 after the vacancies have been determined and notified to the Board under the provisions referred to hereinabove." 53. The relevant question referred and which has been answered by the Full Bench in the case of Prashant Kumar Katiyar (Supra) as contained in paragraph-93 (d) reads as follows: "93. In view of what has been said above, our answer to the questions (a) and (c) referred to us is as follows:- D) The view expressed by the learned Single Judge in Raja Ram's case (supra) and affirmed by the division bench in U. P. Secondary Education Services Selection Board (supra) in so far as it relates to other modes of appointment is approved and the judgments to that extent are affirmed." 54. It is clear from simple reading of the three provisions, namely, Rule 10, Rule 11 and Rule 14 of Rules, 1998 that the rules contemplate determination of the vacancies for direct recruitment within the quota prescribed for the post of

Lecturer and L.T. grade as per Rule 10 of Rules, 1998. As a logical consequence of such determination of the posts for direct recruitment, the remaining vacancies, if any, would fall within the promotion quota, inasmuch as Rule 10 of Rules, 1998 contemplates only two sources of recruitment for the post of Lecturer and L.T. grade teacher, namely, direct recruitment and promotion. Therefore, determination of the vacancies within the direct recruitment quota would necessarily entail that the remaining posts are within the quota for other mode of appointment i.e. promotion. 55. It is at this point of determination of posts for direct recruitment that the proviso to Section 10 comes into play, all the vacancies, which cannot be filled by way of promotion may be filled by direct recruitment. 56. One of the cardinal principle of interpretation is that where the draftsman uses the same word/phrase in similar contexts, he must be presumed to intend it in each place to bear the same meaning (Reference Chairman Indore Vikas Pradhikaran v. Pure Industrial Coke and Chemicals Ltd.; [(2007) 8 SCC 705 Pr. 70]. Relevant paragraph of the judgment of the Apex Court in the case of Chairman Indore Vikash Pradhikaran (Supra) reads as follows: "76. It is also well-settled that in the absence of any context indicating a contrary intention, the same meaning would be attached to the word used in the later as is given to them in the earlier statute. It is trite that the words or expression used in a statute before and after amendment should be given the same meaning. It is a settled law that when the legislature uses the same words in a similar connection, it is to be presumed that in the absence of any context indicating a contrary intention, the same meaning should attach to the words. [See *Lenhon v. Gobson & Howes Ltd.*, (1919) AC 709 at 711, *Craies on Statute Law*, Seventh Edition, page 141 and *G.P. Singh's Principles of Statutory Interpretation*, Tenth edition, page 278]." The words are generally used in same sense throughout in a Statute unless there is something repugnant in the context (Reference *Bhogi Lal Chunni Lal Pandya v. State of Bombay*; AIR 1959 SC 356). 57. Logically the same meaning is to be attached to the same words/phrases throughout the Statute unless of course something repugnant is found in the context which requires for taking a different view. 58. We may record that absolutely nothing could be shown to the Court by the learned counsel for the respondent-petitioner to suggest any repugnancy in reading phrase "year of recruitment" at all the four places i.e. in Rule-10, Rule-11 (2), Rule-11 (4) and Rule-14 of Rules, 1998 in the same manner. In our opinion, "the last day of year of recruitment" as provided for under Rule 11 (2) of Rules, 1998 would mean "the last day of 12 calender month" starting from "1st July" and ending on "30th June" following which would be 30th June, likewise "first day of year of recruitment" as provided for under Rule 14 would mean "the first day" i.e. of the 12 calender months starting from first July and ending on 30th June following i.e. 1st July. 59. The provisions cannot be read to mean that while determining the vacancies for direct recruitment under Rule 11 (2), year of recruitment would be 12 calender months starting from 1st July of a different calender year, while under Rule 14 of Rules, 1998 the phrase "year of recruitment" would mean a period of 12 calender months starting from 1st of July of a different calender year. The provisions of

Rules, 10, 11 and 14 of Rules, 1998 have to be read as a continuous chain of different determinations/actions. The year of recruitment has to be one and the same for the proviso to Rule 10, Rule 11 (2), Rule 11(4) and Rule 14 (2) of Rules, 1998 i.e. 12 calendar months starting from 1st of July of the same calendar year. Another important aspect of the matter which needs mention is that in respect of the vacancies to be filled by direct recruitment, intimation has to be forwarded to the Commission in proforma given in Appendix "A" while in respect of vacancies to be filled by way of promotion, under Rule 12 information in respect of teachers eligible for promotion has to be provided in same proforma given in Appendix "A" to the Joint Director of Education. 60. Clause "3" of proforma in Appendix "A" requires specially the disclosure of the vacancies by the Management for direct recruitment as well as of the vacancies for promotion. Proforma in Appendix "A" to be supplied by the Management in the matter of direct recruitment under Rule 11 (2) (a) of Rules, 1998 has to be *pari materia* to the information to be supplied in proforma in Appendix "A" to the Joint Director of Education under Rule 14 (2) of Rules, 1998 for promotion. 61. The proforma given in Appendix "A" necessarily requires disclosure of the fact as to what number of vacancies have been determined by the Management to be filled by direct recruitment and those to be filled by promotion. In our opinion, there cannot be any variance in the proforma which has to be supplied by the Management in respect of the vacancies determined to be filled by direct recruitment under Rule 11 (2) of Rules, 1998 and the details of the teachers, who are to be considered for promotion in proforma given in Appendix "A" to the Joint Director of Education. Information in that regard has to be common. Otherwise the same may lead to a precarious situation, where the same vacancy may be notified to the Board for direct recruitment as well as for promotion to the Joint Director of Education or a vacancy being not notified either to the Selection Board for direct recruitment or for promotion to the Joint Director of Education. 62. Even otherwise, we are of the opinion that keeping of first day of year of recruitment under Rule 12 fluid, to be determined on the whims and discretion of the Management would lead to nepotism and favoritism as has been highlighted by the Full Bench of this Court in the case of Prashant Kumar Katiyar (Supra), in paragraph 33 quoted above with which we respectfully agree. 63. It is settled rule of statutory interpretation that anomalies, injustice and absurdities have to be avoided while reading a statutory provision. Reference may also be had to the judgment of the Apex Court in the case of Aswini Kumar Ghosh v. Arabinda Bose; 1953 SCR Page-1, where-under it has been held as under: "At times the intention of the legislature is found to be clear but the un-skillfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it is permissible for the Court to read the statute so as to make it effective." 64. It is important to note the stand of the State Government, as is reflected from the affidavit filed on 15th February, 2017 by Principal Secretary, Secondary Education, Government of U. P. at Lucknow. Along with affidavit, the Principal Secretary of the State, has enclosed a letter of the Secretary, U.P. Secondary Education Services Selection

Board, Allahabad dated 13th December, 1999, which reads as under: "VERNACULAR MATTER OMITTED" 65. It has been explained that the year of recruitment has to be the year of determination of the vacancies under Rule 10 read with Rule 11 of Rules, 1998 and first day of the year of recruitment as provided for under Rule 12 would be 1st July of the year referable to Rule 10 of Rules, 1998. Judgments cited by Sri Anoop Trivedi, learned counsel for the respondent-petitioner in the matter of interpretation of statute do not lay down anything contrary to what has been noticed herein above by us. 66. The legal principles cited above by Sri Anoop Trivedi, learned counsel for the respondent-petitioner at bar are unquestionable and are well established. Now coming to the judgment of the Full Bench in the case of Raeesul Hasan (Supra), it is worthwhile to mention that the earlier Full Bench judgment of this Court in the case of Prashant Kumar Katiyar (Supra) has gone unnoticed. It has completely escaped the attention of the Full Bench in the case of Raeesul Hasan (Supra). Because of this, the law laid down by the Full Bench in the case of Prashant Kumar Katiyar (Supra) to the effect that the exercise for determination of the vacancies has to be performed mandatorily by the Management at the first instance and, in case of failure, by the District Inspector of Schools, as per the time table fixed under Rule 11 of Rules, 1983 has gone unnoticed. The reasons recorded in paragraph-40 by the Full Bench in the case of Prashant Kumar Katiyar (Supra), for leaving the "year of recruitment" for promotion at the discretion of the Management are that it may permit the management to take undue advantage and show favoritism to chosen few. The Full Bench in the case of Prashant Kumar Katiyar (Supra) has further observed that if the law requires something to be done in a particular manner, then it has to be done in that manner alone and not otherwise and in paragraph-29 has laid down that the procedure under the Act and Rules is mandatory and it has to be performed in that manner alone. 67. Another important aspect of the matter which has escaped the attention of the Full Bench in the case of Raeesul Hasan (Supra) is the intimation of the vacancies in proforma in Appendix "A" for the purposes of direct recruitment to the Selection Board as well as intimation of the names of the persons to be appointed by way of promotion in the same proforma given in Appendix "A" to the Joint Director of Education in Clause-3 of Appendix "A" requires disclosure of vacancies determined for direct recruitment and promotion both. 68. We are also of the opinion that the view of the Full Bench in the case of Raeesul Hasan (Supra), while holding that the purpose for deletion of the words "by promotion" in Rule 11 of Rules 1998 in juxtaposition with Rule 11 (2) of Rules, 1995, is that no time limit has been fixed in the matter of intimation of vacancies for which promotion is to be made, is not correct. Rule 10 provides for two sources of appointment only i.e by direct recruitment and promotion only, determination of number of vacancies for direct recruitment in a recruitment year would necessarily entail the determination of the vacancies which would fall for promotion in the same recruitment year. Once the vacancies for direct recruitment are determined, remaining vacancies, if any, would fall within the promotion quota. It has escaped the attention of Full Bench that there had been

a departure in the matter of procedure to be adopted for direct recruitment/promotion as per Rules of 1995, vis-a-vis, the procedure for promotion under Rule 12 of Rules, 1998. This change was necessitated because of amendments made in Section 10 and addition of Chapter III which includes Section 12 by the Act, 1998. Under Rule 11 (2) of Rules, 1998 intimation of the vacancies is to be ultimately communicated to the Selection Board for advertisement for direct recruitment in the proforma given in Appendix "A" while list of teachers eligible for promotion is to be communicated to the Joint Director of Education in the proforma given in Appendix "A". It is for this reason that the determination and intimation of vacancies for promotion quota to the Selection Board, as provided under Rule 11 (2) of Rules, 1995 was done away. The authority for promotion has been identified as Regional Selection Committee of which the Joint Director of Education is the Chairman in place of Selection Board as provided earlier. So far as the judgment of the Apex Court in the case of Balbir Singh & Another v. U.P. Secondary Education Services Selection Board, Allahabad & Others reported in 2008 (3) ESC 409 (SC) relied upon by the Full Bench in the case of Raeesul Hasan (Supra) is concerned, it may be noticed that in the judgment of the High Court in the case of Anand Narain Singh v. Uttar Pradesh Secondary Education Service, Selection Board reported in 2003 (2) UPLBEC 899, giving rise to the appeal before the Apex Court itself in the case of Balbir Singh (Supra), there is a specific recital in paragraph nos. 64 and 129 (iv) to the following effect: "64. The facts here are different than the two cases previously mentioned in paragraph 58. These cases are of direct appointment unlike cases cited by the petitioners (paragraph 58) on this point. Those cases related to promotion. The vacancies in case of direct appointments are notified by an advertisement and all the vacancies as mentioned in the advertisement have to be filled up. They are not required to be filled up year-wise: at least there is nothing in the Act or in the Rules to warrant this. 129. My conclusions and directions are as follows: (iv) In the present case, the appointments are being made by direct recruitment and not by promotion: Vacancies need not be marked separately for any particular recruitment year; They could be clubbed together. While filling these vacancies, the law as applicable on the occurrence of vacancy need not be applied." 69. It is, thus, clear that the Apex Court was considering the matter pertaining to the appointment by direct recruitment only and was not considering any issue with regard to the posts which are to be filled by promotion. It will be seen that the observations made by the Apex Court in paragraph 30 to the effect that neither Section 10 nor 11 of the Principal Act nor Rules, 1998 mandate that selection or determination of vacancies must be year wise and therefore, all the vacancies which are "existing or which are likely to fall vacant during the year of recruitment" can be clubbed together for being filled by the Selection Board is in the background that the number of vacancies received by the Selection Board from the various institutions could be advertised together. The issue of actual determination of the vacancies institution-wise for direct recruitment and resultant by way of promotion in the year year of recruitment was not subject matter of consideration before the Apex Court in the case of

Balbir Singh (Supra). 70. The judgment of the Apex Court in the case of Balbir Singh (Supra) has to be read in the background, it was dealing with the issue of clubbing of vacancies for direct recruitment of different years by the Selection Board while making the advertisement under challenge and nothing beyond it. It has been repeatedly held by the Apex Court that a little difference in the facts or additional facts may make a lot of difference in the precedential value of a judgment [Reference Bhavnagar University v. Palitana Sugar Mills (P) Ltd. & Ors. reported in 2003 (2) SCC, 111, which has been followed in the case of Rajveer Singh v. Chaudhary Devi Lal, reported in 2009(3) S.C.T. 326 : AIR 2008 SCW 5817]. 71. The Full Bench of this Court in the case of Raeesul Hasan (Supra) has also failed to take notice of the circular issued by the Secretary, U.P. Government at Lucknow dated 23rd January, 1998, which has been quoted herein above, which specifically clarified the position with regard to the "first day of year of recruitment" as provided for under Rule 14 of Rules, 1998. The said circular was very much on record of the connected writ petitions giving rise to the present reference in the case of Raeesul Hasan (Supra). 72. From the amendments which have been effected, it will be seen that earlier an incumbent was required to possess prescribed minimum qualification on the date of occurrence of vacancy. This requirement was amended in the year 1995 by requiring the candidate to possess the qualification and requisite experience on the first date of the year of recruitment which provision has been maintained under Rules, 1998. This became necessary as under Act, 1995, a provision for determination of the vacancies by the Management was introduced. This determination had to be done in respect of the vacancies pertaining to the year of recruitment both under Rules, 1995 and Rules, 1998 in a time bound manner at the start of the year itself. Further proviso was added that any vacancy which cannot be filled by promotion may be filled by direct recruitment, which was not the position earlier. In order to keep the determination of vacancies certain specifically with reference to the posts which fall within the promotion quota but could not be filled because of absence of suitable candidate, it was decided that the date on which the teacher of feeding cadre must possess the requisite qualification must also be fixed well in advance i.e. a date prior to the date on which the actual determination of the vacancies for direct recruitment, which will include the vacancies within promotion quota, which cannot be filled by promotion for want of eligible candidate in the feeding cadre is made mandatorily by the Management i.e. 15th July of the recruitment year. It is in this background that Rule framing Authority decided to fix the first day of year of recruitment as the crucial date for examining as to whether a candidate within the feeding cadre is available for promotion or not, inasmuch as in absence of any suitable candidate, the post has to be requisitioned for direct recruitment. 73. It has to be kept in mind that the purpose for enactment of Act, 1982 was to ensure that suitable teacher becomes available in the institution at the earliest so that the main objective of the institution i.e. teaching does not suffer. 74. Even otherwise fixation of a particular date i.e. when a candidate from feeding cadre is to be judged to be eligible or not has to be fixed rather than being kept fluid at the

whims and fancies of the private Management. 75. We are, therefore, of the considered opinion that the Full Bench in the case of Raeesul Hasan (Supra) does not lay down the correct law. 76. For the aforesaid reasons, the answer to the questions as referred is as under: (a) The year of recruitment both for the determination of vacancies for direct recruitment and for the purpose of Rule, 14 of Rules, 1998 for determining the eligibility of the candidates for promotion has to be one and the same. Full Bench judgment in the case of Raeesul Hasan (Supra) does not lay down the correct law (b) With the determination of the vacancies for direct recruitment, the number of posts within the promotion quota stands determined and it is at this stage that the Committee with reference to Rule 14 of Rules, 1998 has to decide as to whether an eligible candidate for promotion within feeding cadre is available or not. If the answer is in negative, the vacancy has to be included within the quota for direct recruitment. (c) The Full Bench in the case of Prashant Kumar Katiyar (Supra) has correctly held that the Management cannot be provided leverage in the matter of determination of the year of recruitment and in the matter of promotion, as it will lead to nepotism and favoritism. (d) Determination of the vacancies for direct recruitment along with reservation to be applied has to be done by the Management within the time frame fixed under Rule 11 (2) of Rules, 1998. (e) So far as the post within the promotion quota is concerned, the post remaining after determination of direct recruitment quota would fall therein. Sunita Agarwal and Arun Tandon, JJ. - I agree. V.K. Shukla, J. - I agree. M.C. Tripathi, J. - I agree. P.K.S. Baghel, J. - For Orders, see our order of date passed on the separate sheet. P.K.S. Baghel, J. (30.5.2017) - 77. I have had the benefit of reading the erudite judgment of our learned Brother Tandon, J. I am unable to take the view expressed by him and most respectfully dissent. 78. A Division Bench of this Court in Special Appeal Defective No. 442 of 2016, Smt. Sadhna v. State of U.P. and others, has doubted the correctness of the decision of a Full Bench of this Court in the case of Raeesul Hasan v. State of U.P. and others 2015 (6) ADJ 778 (LB)(FB). The terms of reference have been extracted in the judgment of His Lordship Hon'ble Mr. Justice Arun Tandon, so they need not to be extracted again. 79. The Division Bench has doubted the correctness of the decision of Raeesul Hasan (supra) on, amongst others, following reasons: (a) If the choice to decide the year of recruitment within the promotion quota is left to the discretion of the Committee of Management, it may result in a situation where there would be two different years of recruitment for direct recruitment and promotion quota. (b) If the discretion is conferred upon the Committee of Management to club the vacancies, there is likelihood that promotional right of the teachers already working in the institution in L.T. Grade may be defeated at the whims of the Management. (c) The impact of keeping the "year of recruitment" as used in Rule 14 of the Uttar Pradesh Secondary Education Services Selection Board Rules, 1998 fluid at the instance of the Committee of Management has lost the attention of the Full Bench in Raeesul Hasan (supra). (d) Whether the exercise under Rules 10 and 11 of the Rules, 1998 is a ministerial exercise or it confers a discretion upon the Management to decide as

to which vacancy is to be filled by promotion and as to which vacancy is to be filled by direct recruitment. 80. In order to appreciate the rival stand on the issue it would be expedient to briefly notice the historical background of the statutory provision. 81. The Uttar Pradesh Secondary Education Services Commission and Selection Board Act, 1982 Act, 1982 or Principal Act (U.P. Act No. 5 of 1982) received the assent of the President on 25th February, 1982. The object of the Act was to hold free and fair selection of the teachers and to raise the standard of education. By the enactment of this Act, the power of the Committee of Management for appointment of the Principal and teachers and their promotion, which was governed under the Uttar Pradesh Intermediate Education Act, 1921 and the Regulations framed thereunder, was completely taken away from the Management and it was vested in the Secondary Education Services Selection Board 5. The provisions of the Act, 1982 were drastically amended from time to time. The details of those amendments are not relevant for the issue involved in the present case, hence they need not any elaboration. For the determination of the case, it will be necessary to set out the relevant statutory provisions. 82. Section 9 of the Act, 1982 enumerates the powers and duties of the Commission. Clause (a) thereof provides that it shall prepare guidelines on matters related to the method and promotion of teachers. Section 10 provides the procedure of selection by direct recruitment. It casts an obligation on the Management to notify the vacancies to the Commission. It enjoins that the Management shall determine the number of vacancies existing or likely to fall vacant during the year of recruitment and notify the vacancies to the Board in such manner as may be prescribed. The procedure for selection by direct recruitment was also left to the rule-making authority. Section 11 of the Act, 1982 deals with panel of candidates. Chapter III of the Act, 1982 lays down the procedure of selection by promotion. Chapter III was inserted by U.P. Act No. 25 of 1998 (w.e.f. 20th April, 1998). Section 34 gives power to the Board to make or amend regulations with the previous approval of the State Government. Section 35 of the Act, 1982 empowers the State Government to make rules for carrying out the purposes of the Act. 83. Exercising the powers conferred by Rule 35 of the Act, 1982, the State Government made the Uttar Pradesh Secondary Education Services Commission Rules, 1983. Rule 2(i) of the Rules, 1983 defines the "year of recruitment" to mean a period of twelve months commencing from July 1 of a calender year. Rule 4 casts an obligation on the Management to determine and intimate the Commission, in the proforma given in Appendix "A", the number of vacancies existing or likely to fall vacant during the year of recruitment. It also enjoins the Management to pay regard to the provisions of the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 19947. Sub-rule (2) of Rule 4 of the Rules, 1983 provides that the statement of vacancies shall be sent by the Management to the Inspector by 15th September of the year of recruitment and the Inspector after verification shall forward it to the Deputy Director by 15th October. Sub-rule (3) provides that the Deputy Director shall forward it to the Commission by November 15. Sub-rule (5) of Rule 4 provides that if a vacancy occurs any time

during the session or after the requisition, the Management is required to notify the vacancy to the Inspector within fifteen days of its occurrence. Sub-rule (6) puts a check on the Management as it provides that if the Management has failed to notify the vacancy by the date specified in the earlier part of the rule, the Commission would require the Inspector to notify the vacancy to the Commission. 84. As the present dispute is in respect of the promotion, the other parts of the Rules, 1983 which deal with the procedure for direct recruitment, preparation of panel and notification of the selected candidates are not relevant for our purposes. Rule 9 of the Rules, 1983 provides the procedure for appointment by promotion. Rule-9 is set out at below: "9. Procedure for appointment by promotion.- (1) Where any vacancy is to be filled by promotion, all teachers working in L.T. or C.T. grade, who possess the minimum qualifications and have put in at least 5 years continuous service as teacher on the date of occurrence of vacancy shall be considered for promotion to the Lecturer or L.T. grade, as the case may be, without 7 Act, 1994 their having applied for the same. Note.-For the purpose of this sub-rule, service rendered in any other recognised institution shall count for eligibility, unless interrupted by removal, dismissal or reduction to a lower post. (2) The criterion for promotion shall be seniority subject to the rejection of unfit. (3) The Management shall prepare a list of teachers, referred to in sub-rule (1), and forward it to the Commission through the Inspector with a copy of seniority list, service records (including the character rolls) and a statement in the pro forma given in Appendix "A". (4) Within three weeks of the receipt of the list from the Management under sub-rule (3), the Inspector shall verify the facts and forward the list to the Commission. (5) The Commission shall, after calling for such additional information as it may consider necessary, intimate the name of selected candidate or candidates to the Inspector with a copy to the Manager of the Institution. (6) Within 10 days of the receipt of the intimation from the Commission under sub-rule (5), the Inspector shall send the name of the selected candidate(s) to the Manager of the concerned institution and the provisions of sub-rules (3) and (4) of Rule 8 shall mutatis mutandis apply." 85. As can be seen from bare reading of the rule, one of the eligibilities for promotion is that a teacher must possess five years continuous service on the date of occurrence of vacancy and the Management is required to prepare a list of the teachers and forward it to the Commission through the Inspector with a copy of the seniority list, service record, etc. and the statement in the proforma given in Appendix "A". Subrule (4) of Rule 9 further enjoins the Inspector to verify the facts sent by the Management and forward the list to the Commission. It is relevant to note that under Rules 4 and 9 of the Rules, 1983, Appendix "A" has been provided. It has material bearing for determination of the case, hence it would be advantageous to reproduce entire Appendix "A", which reads thus: "APPENDIX A (See Rules 4 and 9) Requisition for the Recruitment of Candidates for appointment to the post of Teacher/Head of Institutions (To be sent in quadruplicate) 1. (i) Name of Institution. (ii) Place- (iii) District- (iv) No. of Students : Class Section No. (v) Names of Subjects: High School/Inter (vi) No.

of Teachers. (2) (i) Name(s) of the post(s) for which selection is to be made- (ii) Number of posts- (iii) Qualification for the post(s) (iv) Pay scale of the post- 3. Where the post for which selection is to be made, is of Lecturer or L.T. Grade- (i) Total number of sanctioned posts- (ii) Number of posts already filled by- (a) direct recruitment (b) promotion (iii) Total number of vacancies determined by the Management to be filled by- (a) direct recruitment (b) promotion 3-A. Where the post for which selection is to be made is of Principal, names of two senior most teachers possessing requisite qualifications for the post of Principal, in order of seniority and their- (a) educational qualifications, (b) teaching experience, (c) administrative experience, if any. Note.-Copies of the service records (including character rolls) shall be sent with the requisition. 4. Number of posts, if any, reserved for- (a) Scheduled Caste (b) Scheduled Tribe (c) Backward Class 5. *Names of all candidates eligible for promotion, their qualification and length of service from the date of regular appointment in the grade from which promotion is to be made *To be filled in only where the post is to be filled by promotion. 6. Any other information that the Commission may desire to have- Certified that the above information is correctly recorded and verified from the relevant documents. Manager Verified and forwarded to the Regional Deputy Director of Education..... Region. District Inspector of Schools/Regional Inspectress of Girls Schools. Forwarded to the Secretary, U.P. Secondary Education Services Commission, Allahabad. Deputy Director of EducationRegion." 86. An examination of the Appendix "A" would show that in fact, it is a comprehensive information regarding all the details of the institution as the number of the sanctioned posts, number of vacancies determined by the Management to be filled by direct recruitment and promotion, educational qualification of teachers, teaching experience, number of students, names of subjects of High School/Inter, number of posts, if any, reserved for reserved candidates. In short, all the details are made available to the office of the Inspector, who maintains his own record. The Inspector can very easily verify the facts from his own record. Appendix "A" has an important role as it would be clear from the subsequent Rules of 1995 and 1998 that there was no change in the format of Appendix "A" as well as the requirements of sending the information under it. 87. In 1993 an amendment was made in the Principal Act by the U.P. Act No. 1 of 1993. By this amendment, under Section 2 of the Principal Act i.e. Act, 1982 a "sub-section (l)-year of recruitment" has been inserted. It provides that "year of recruitment" means a period of twelve months commencing from first day of July of a calendar year. By the same amendment, in sub-section (3) of Section 14 of the Principal Act, after clause (e), Clauses (f), (g) and (h) were inserted. Clause (h) needs to be mentioned here which is in the following terms: "(h) to obtain the periodical returns or other informations from institutions regarding strength of the teaching staff and the appointment, promotion, dismissal, removal, termination or reduction in rank of teachers." 88. By the same amendment of 1993, Section 15 of the Act, 1982 was substituted by a new Section 15, which lays down the procedure for selection of teachers. It casts an obligation on the Management to timely notify the vacancies. On 08th

August, 1995 the Uttar Pradesh Secondary Education Services Selection Boards (Amendment) Act, 1995 (U.P. Act No. 15 of 1995) was made which came into force on 28th December, 1994. By this amendment, Chapter II containing Sections 3 to 11 was inserted in the Act, 1982. Section 10 of the Act, 1995 provides the procedure of selection. A duty has been cast upon the Management to determine the number of vacancies existing or likely to fall vacant during the year of recruitment. By the same amendment, Section 15 of the Act, 1982 was deleted. On 08th May, 1995 the Uttar Pradesh Secondary Education Services Commission Rules, 1995 was framed by the State Government in exercise of its powers conferred by Section 35 of the Act, 1982. The salient features of the changes made are: (i) the "year of recruitment" defined under sub-rule (i) of Rule 2 of the Rules, 1983 was deleted; as noted above by a separate amendment it was incorporated in the Act, 1982 by the U.P. Act No. 1 of 1993 by inserting Section 2(I), year of recruitment; (ii) a new Chapter being Part III was inserted which provides the procedure for recruitment. Rule 10 of the Rules, 1995 stipulates the source of recruitment and lays down that the posts of teachers of lecturers grade shall be filled (i) 50 per cent by direct recruitment, and (ii) 50 per cent by promotion from amongst the substantively appointed teachers of the trained graduates (L.T.) grade. A proviso is also appended to the said rule which has a material bearing in the present case. For convenience, Rule 10 of the Rules, 1995 is reproduced below: "10. Source of recruitment.-Recruitment to various categories of teachers shall be made from the following sources: (a) Principal of an Intermediate College or Headmaster of a High School by direct recruitment. (b) Teachers of lecturers grade.-(i) 50 per cent by direct recruitment; (ii) 50 per cent by promotion from amongst substantively appointed teachers of the trained graduates (L.T.) grade; (c) Teachers of trained graduates (L.T.) grade.-(i) 50 per cent by direct recruitment; (ii) 50 per cent by promotion from amongst the substantively appointed teachers of Certificate of Teaching (C.T.) Grade: Provided that if in any year of recruitment suitable eligible candidates are not available for 8 Rules, 1995 recruitment by promotion, the posts may be filled in by direct recruitment: Provided further that if in calculating respective percentages of posts under this rule there comes a fraction then the fraction of the posts to be filled by direct recruitment shall be ignored and the fraction of the posts to be filled by promotion shall be increased to make it one post." Rule 11 of the Rules, 1995, which deals with determination and notification of vacancies, is also relevant for the present dispute, hence it needs to be extracted for the convenience. It reads as follows: "11. Determination and notification of vacancies.-(1) The Management shall determine the number of vacancies in accordance with sub-section (1) of Section 15 of the Act and notify them through the Inspector, to the Commission in the manner hereinafter provided. (2) The statement of vacancies for each category of post to be filled in by direct recruitment or by promotion, including the vacancies that are likely to arise due to retirement on the last day of the year of recruitment, shall be sent separately in quadruplicate in the pro forma given in Appendix "A" by the Management to the Inspector by July, 15 of the year of recruitment and the

Inspector shall, after verification from the record of his office, prepare consolidated statement of vacancies of the district subjectwise in respect of the vacancies of lecturers grade, and groupwise in respect of vacancies of trained graduates (L.T.) grade. The consolidated statement so prepared shall, along with the copies of statement received from the Management, be sent by the Inspector to the Commission by July, 31 with a copy thereof to the Deputy Director : Provided that if the State Government is satisfied that it is expedient so to do, it may, by order in writing, fix other dates for notification of vacancies to the Commission in respect of any particular year of recruitment : Provided further that in respect of the vacancies existing on the date of commencement of these rules as well as the vacancies that are likely to arise on July 30, 1995 the Management shall, unless some other dates are fixed under the preceding proviso, send the statement of vacancies by June 15, 1995 to the Inspector and the Inspector shall send the consolidated statement in accordance with the sub-rule to the Commission by June 30, 1995. Explanation.-For the purposes of this sub-rule the word groupwise in respect of the trained graduates (L.T.) grade means in accordance with the following groups, namely : (a) Language Group.-This group consists of the subjects of Hindi, Sanskrit, Urdu, Persian and Arabic; (b) Science Group.-This group consists of the subjects of Science and Mathematics; (c) Art and Craft group; (d) Music Group; (e) Agriculture Group; (f) Home Science Group; (g) Physical Education Group; and (h) General Group.-This group consists of the subjects not covered in any of the foregoing groups. (3) If, after the vacancies have been notified under sub-rule (2), any vacancy in the post of a teacher occurs, the Management shall, within fifteen days of its occurrence, notify the Inspector in accordance with the said sub-rule and the Inspector shall within ten days of its receipt by him send it to the Commission. (4) Where, for any year of recruitment, the Management does not notify the vacancies by the date specified in sub-rule (2) or fails to notify them in accordance with the said sub-rule, the Inspector shall on the basis of the record of his office, determine the vacancies in such institution in accordance with subsection (1) of Section 15 of the Act and notify them to the Commission in the manner and by the date referred to in the said sub-rule. The vacancies notified to the Commission under this sub-rule shall be deemed to be notified by the Management of such institution." 89. On a plain reading it becomes clear that the Commission was authorised to make the direct recruitment as well as promotion and the Management was required to send the details of the vacancies, on the proforma given in Appendix "A", by July 15 of the year of recruitment. It further requires the Inspector to forward the details after verification from the record of his office and prepare consolidated statement of vacancies of the district subjectwise in respect of the vacancies of trained graduates (L.T.) grade within a time-frame. Sub-rule (4) of Rule 11 of the Rules, 1995 provides that if the Management does not notify the vacancies within the time frame or fails to notify them, the Inspector is empowered to determine the vacancies on the basis of the record of his office and notify them to the Commission, and such vacancies sent to the Commission shall be deemed to be notified by the Management. 90. Rule

14 of the Rules, 1995 deals with the procedure for recruitment by promotion. It states that where any vacancy is to be filled by promotion, all the eligible teachers shall be considered for promotion irrespective of the fact whether they have applied or not. The eligibility was the qualification prescribed for the post and the teacher must have completed five years continuous service as such on the first day of the year of recruitment. The Management, under sub-rule (3) of Rule 14, is under obligation to send a copy of the seniority list, service records and other information with the list of teachers on the proforma given in Appendix "A", and the Inspector after verifying the fact shall forward it to the Commission under sub-rule (4) thereof. Rule 14 of the Rules, 1995 is as under: "14. Procedure for recruitment by promotion.-(1) Where any vacancy is to be filled by promotion all teachers working in trained graduates (L.T.) grade or Certificate of Teaching (C.T.) grade, if any, who possess the qualifications prescribed for the post and have completed five years continuous service as such on the first day of the year of recruitment shall be considered for promotion to the lecturers grade or the trained graduates (L.T.) grade, as the case may be, without their having applied for the same. Note.- For the purposes of this sub-rule, regular service rendered in any other recognised institution shall be counted for eligibility, unless interrupted by removal, dismissal or reduction to a lower post. (2) The criterion for promotion shall be seniority subject to the rejection of unfit. (3) The Management shall prepare a list of teachers referred to in sub-rule (3), and forward it to the Commission through the Inspector with a copy of seniority list, service records, including the character rolls, and a statement in the pro forma given in Appendix "A". (4) Within three weeks of the receipt of the list from the management under sub-rule (3), the Inspector shall verify the facts from the record of his office and forward the list to the Commission. (5) The Commission shall consider the cases of the candidates on the basis of the records referred to in sub-rule (3) and may call such additional information as it may consider necessary. The Commission shall forward the panel of selected candidates within one month to the Inspector with a copy thereof to the Deputy Director. (6) Within ten days of the receipt of the panel from the Commission under sub-rule (5), the Inspector shall send the name of the selected candidate to the management of the institution which has notified the vacancy and the management shall accordingly on authorization under its resolution issue the appointment order in the proforma given in Appendix "E" to such candidate." 91. As can be seen that for the first time a proviso was inserted in Rule 10 of the Rules, 1995 stipulating that if in any year of recruitment suitable eligible candidates are not available for recruitment by promotion, the posts may be filled by direct recruitment. This proviso was not there in the Rules, 1983. 92. By the Uttar Pradesh Secondary Education Services Commission (Amendment) Act, 1998 [U.P. Act No. 25 of 1998] (w.e.f. 20th April, 1998) Chapter III dealing with the procedure of selection by promotion has been inserted in the Act, 1982. Under the newly inserted Section 12, which deals with the procedure of selection by promotion, in each region a statutory Selection Committee has been constituted under the Chairmanship of the Regional Joint Director of Education. It

also comprises of senior most Principal of Government Inter College in the region as Member and the concerned District Inspector of Schools as Member-Secretary. For the first time, the power of the Commission for promotion was taken away by the amending Act, 1998 and it was entrusted to the Regional Level Committee.

93. The State Government vide notification dated 13th July, 1998 framed a new set of rules being the Rules, 1998, namely, the Uttar Pradesh Secondary Education Services Selection Board Rules, 1998 in exercise of its powers conferred by Section 35 of the Act, 1982. In the Rules, 1998, Rule 10 of the Rules, 1995 was retained with minor changes but both the provisos to Rule 10 were retained without any change. In the Rules, 1998 the rule-making authority has made a conscious departure from the earlier Rules of 1983 and 1995 in respect of the procedure for promotion. Sub-rule (4) of Rule 11 again puts a check on the Committee of Management that if it fails to notify the vacancies by the date specified in sub-rule (2), the Inspector shall send it to the Board and it shall be deemed to be notified by the Management. In the Rules, 1998, Rule 14 of the Rules, 1995 was retained with a significant change of inserting the word "regular" between the words "continuous service". Thus, fresh requirement is that a teacher who has completed five years continuous regular service on the first day of the year of recruitment shall be considered for promotion to the Lecturer's grade. It is apt to reproduce Rule 14 of the Rules, 1998, which reads as under: "14. Procedure for recruitment by promotion.- (1) Where any vacancy is to be filled by promotion all teachers working in trained graduates grade or Certificate of Teaching grade, if any, who possess the qualifications prescribed for the post and have completed five years continuous regular service as such on the first day of the year of recruitment shall be considered for promotion to the lecturers grade or the trained graduates grade, as the case may be, without their having applied for the same. Note.-For the purposes of this sub-rule, regular service rendered in any other recognized institution shall be counted for eligibility unless interrupted by removal, dismissal, or reduction to a lower post. (2) The criterion for promotion shall be seniority subject to the rejection of unfit. (3) The Management shall prepare a list of teachers referred to in sub-rule (1), and forward it to the Inspector with a copy of seniority list, service records, including the character rolls, and a statement in the pro forma given in Appendix "A". (4) Within three weeks of the receipt of the list from the Management under sub-rule (3), the Inspector shall verify the facts from the record of his office and forward the list to the Joint Director. (5) The Joint Director shall consider the cases of the candidates on the basis of the records referred to in sub-rule (3) and may call such additional information as it may consider necessary. The Joint Director shall place the records before the Selection Committee referred to in sub-section (1) of Section 12 and after the committee's recommendation, shall forward the panel of selected candidates within one month to the Inspector with a copy thereof to the Management. (6) Within ten days of the receipt of the panel from the Joint Director under sub-rule (5), the Inspector shall send the name of the selected candidates to the Management of the institution which has notified the vacancy and the Management shall accordingly on authorization under its

resolution issue the appointment order in the proforma given in Appendix "F" to the such candidate." 94. The Division Bench in *Sadhna* case (*supra*) has expressed its apprehension that if the choice to decide the year of recruitment within the promotion quota is left at the discretion of the Committee of Management, which has to be done in every recruitment year in terms of the proviso to Rule 10 of the Rules, 1998, the Management can misuse it. It has further raised the issue that the Management cannot club the vacancies for the recruitment years and there is likelihood of promotional right of the teachers already working in the institution "defeated at the whims of the Management". The issue whether the vacancies can be clubbed or not, fell for consideration before the Supreme Court in the case of *Balbir Kaur and another v. Uttar Pradesh Secondary Education Services Selection Board, Allahabad and others* (2008) 12 SCC 1 : 2008 (3) ESC 409 (SC). In the said case, the Supreme Court had the occasion to consider the construction of Sections 2(l), which defines the year of recruitment, 10 and 11 of the Act, 1982 and Rule 11(2) (a) of the Rules, 1998. In paragraphs-38, 39 and 40 of the judgment the Supreme Court dwelt upon the ambit and scope of Rules 10 and 11 of the Rules, 1998 and the year of recruitment as defined under Section 2(l) of the Act, 1982. Their Lordships in paragraphs- 38, 39 and 40 of the judgment ruled thus: "38. It was then contended by learned counsel for the respondents that under Section 10 of the Principal Act, vacancies are to be notified in respect of each year of recruitment and if the vacancies are clubbed together, the basic purpose of notifying the vacancies every year in terms of the said section will get frustrated, which cannot be permitted in law. According to the learned counsel, since the vacancies have to be notified each year it would naturally mean that they are also to be filled up each year from amongst the eligible candidates available in respect of that recruitment year. Therefore, the person who became eligible subsequently could not be considered in respect of the vacancies occurring in respect of the earlier recruitment year. The stand of the learned counsel is that in the present recruitment, the Board wrongly clubbed all such vacancies by taking recourse to the second proviso to Rule 11(2)(a) of the 1998 Rules. Learned counsel asserts that in the light of clear 9 provision of Section 10 of the Principal Act, the said rule cannot be resorted to. 39. We do not find much substance in the contention. Section 2(l) of the Principal Act, as amended by the U.P. Secondary Service Commission and Selection Board (Amendment) Act, 1992 defines "year of recruitment" to mean a period of twelve months commencing from 1st day of July of a calendar year. Section 10 of the Principal Act prescribes the procedure for determination of number of vacancies and directs the management to determine the number of vacancies, "existing or likely to fall vacant during the year of recruitment". On a bare reading of the provision, it is manifestly clear that when a selection is held in a "year of recruitment" then all the existing vacancies and the vacancies likely to fall vacant during the year of recruitment are clubbed and notified. Moreover, Section 11 of the Principal Act also contemplates preparation of a panel of the selected candidates with respect to the vacancies notified under Section 10(1) thereof. 40. It is clear that though it

may be desirable for better administration, but neither Section 10 nor Section 11 of the Principal Act nor the 1998 Rules as such mandate that selection or determination of vacancies must be yearwise and, therefore, all the vacancies which are "existing or which are likely to fall vacant during the year of recruitment" can be clubbed irrespective of the year of occurrence of the vacancy. Moreover, second proviso to Rule 11(2)(a) also contemplates that the vacancies existing on the date of commencement of these Rules as well as the vacancies which are likely to arise on 30-6-1998, shall be included in the consolidated statement by the management and sent to the Board for making selection which shows that all the existing vacancies irrespective of the year of occurrence can be clubbed for being filled up together by the Board. In this view of the matter, it cannot be said that Rule 11(2)(a) is in conflict with the provisions of Section 10(1) of the Principal Act, as is sought to be pleaded on behalf of the respondents. We have, therefore, no hesitation in endorsing the view taken by the High Court that the Board and the Management have not committed any error in clubbing vacancies which were existing on the date of selection." 95. A careful reading of the above paragraphs clearly indicates that similar argument was raised before the Supreme Court that under Section 10 of the Principal Act the vacancies are to be notified in each year of recruitment. It was argued that in terms of Rule 10 the vacancies have to be notified each year. Thus, the vacancies cannot be clubbed together. The said contention was rejected by the Supreme Court considering the scope of the year of recruitment, and Section 10 of the Principal Act and Rule 11 of the Rules, 1998, and held that all the vacancies which are existing or which are likely to fall vacant during the year of recruitment can be clubbed irrespective of the occurrence of year of vacancy. From the view expressed by the Supreme Court, it is manifestly clear that the Supreme Court has considered the scope of the aforesaid provisions, which are under consideration before this Court also. Hence, the law laid down by the Supreme Court has a binding precedent under Article 141 of the Constitution of India. This Court cannot wriggle out from the law laid down by the Supreme Court in the aforesaid three paragraphs by resorting to any interpretation. 96. The Supreme Court in the case of *Dashrath Rupsingh Rathod v. State of Maharashtra* and another 2014(3) R.C.R.(Criminal) 904 : 2014(4) Recent Apex Judgments (R.A.J.) 614 : (2014) 9 SCC 129 has held that if the Supreme Court interprets any statutory provision then it is binding under Article 141 of the Constitution of India in all the factual and legal situations. The Supreme Court observed as under: "10. It is axiomatic that when a court interprets any statutory provision, its opinion must apply to and be determinate in all factual and legal permutations and situations...." In *Union of India and others v. Dhanwanti Devi and others* (1996) 6 SCC 44, the Supreme Court has laid down the law about the ratio of the judgment. The relevant part of the judgment is extracted herein-below: "9. Before advertent to and considering whether solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that *Hari Kishan Khosla* case 1993 Supp (2) SCC 149 is not a binding precedent nor does it operate as

ratio decidendi to be followed as a precedent and is *per se per incuriam*. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates-(i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. The concrete decision alone is between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject-matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of *stare decisis*. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi. 10. Therefore, in order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts in the case in which the decision was given and what was the point which had to be decided. No judgment can be read as if it is a statute. A word or a clause or a sentence in the judgment cannot be regarded as a full exposition of law. Law cannot afford to be static and therefore, Judges are to employ an intelligent technique in the use of precedents...." 97. It is trite that even the obiter of the Supreme Court is binding on the High Courts. Even for the subsequent Benches of the Supreme Court, the obiter of the earlier Bench has a persuasive value. Reference may be made to the judgment of the Supreme Court in *Oriental Insurance Company Ltd. v. Meena Variyal* 2007(2) R.C.R.(Civil) 698 : (2007) 5 SCC 428, wherein the Supreme Court held thus: "An obiter dictum of this Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court. But as far as this Court is concerned, though not binding, it does have clear persuasive authority." 98.

One of the questions arose before the Supreme Court in *Balbir Kaur* (supra) was also in respect of the scope of same provisions. The Supreme Court has expressed its view that it may be desirable for better administration but neither Section 10 nor Section 11 of the Principal Act i.e. Act, 1982 nor the Rules, 1998 lay down that it is mandatory that selection or determination of the vacancies must be yearwise and they cannot be clubbed. In view of the clear law laid down by the Supreme Court, no other interpretation by this Court is possible. The judicial discipline demands that the law laid down by the Supreme Court in respect of the same provision must be followed. I am in respectful agreement with the view expressed by the Full Bench of this Court in *Raeesul Hasan* (supra) that followed the law laid down by the Supreme Court in *Balbir Kaur* (supra). 99. Another issue which deserves consideration is whether, if the judgment of *Raeesul Hasan* (supra) is accepted as correct, there would be two different year of recruitment one for direct recruitment and another for promotion. In that event the Management can play mischief by keeping promotion quota vacant for a long time and there can be cases where the Management deliberately modifies a requirement in the name of extending benefit to some candidate/teachers, who may be desirous of seeking promotion, otherwise not eligible within the year of recruitment. The Management can withhold such information. 100. A close look at the scheme of the Act, 1982 and the Rules would show that the said submission is based on assumption. The provisions of the Act and the Rules provide enough check and balance as discussed in the later part of this judgment. The amendments mentioned above clearly indicate the intention of the legislature/rule-making authority as the words "on the date of occurrence of the vacancy" of the Rules, 1983 were deleted in the Rules, 1995. It is also important to bear in mind that the definition of the "year of recruitment" was deleted in the Rules, 1995 and it was incorporated in Section 2(I) of the Act, 1982. Lastly, the power of promotion was taken away from the Board and it was entrusted to a Selection Committee constituted under Section 12 of the Act, 1982 by inserting said section in Chapter III of the said Act by the amending Act of 1998. These changes clearly articulate the intention of the legislature/rule-making authority, which cannot be ignored simply because the Management can keep a vacancy for an indifferent period to show favour to its favourite candidate. In fact, the above mentioned legislative changes in the Act, 1982 as well as in the Rules made thereunder clearly indicate that it was a conscious and glaring departure from the Rules, 1983 and the Rules, 1995. These changes made by the legislature must be given its due significance. These amendments cannot be nullified by adopting a construction which is not permissible in the law if the language of the statute is plain and simple. 101. While amending these rules, the legislature/rule-making authority has applied its mind. If its intention in carrying out the amendments had been misunderstood by this Court or found ambiguous or it was leading to absurdity or against the intention of the legislature/rule-making authority, it was expected that the legislature would step in and rectify the situation by making appropriate amendment in the Act or the Rules. This amendment is in operation for more than 19 years. It is trite that the real

purpose in construing a statute is to ascertain the intention of the legislature. The legislature speaks its mind by use of correct expression which has to be given effect to. If there is ambiguity in the language of the provision, only then the Court can interpret the provision. If the language is clear and unambiguous, there is no need to look somewhere else to discover the intention or meaning. If the literal construction leads to absurdity, only in that case external aids to construction can be resorted to. It is a well-settled that if an enactment is capable of one meaning only, the Court will prefer its literal meaning irrespective of the consequences. The Court cannot read any word to statute or read into it, which are not there, and it is not the duty of the Court to assume that there is defect or omission in the words used by the legislature or correct it or make up assumed deficiency. 102. A survey of law on this subject would be necessary. Some of the judgments of the Supreme Court need to be referred to illuminate the above principle. 103. A recent decision in *Smita Subhash Sawant v. Jagdeeshwari Jagdish Amin and others* 2016(2) Recent Apex Judgments (R.A.J.) 552 : (2015) 12 SCC 169 is in point in this connection. The Court held thus: "31. It is a settled principle of rule of interpretation that the court cannot read any words which are not mentioned in the section nor can substitute any words in place of those mentioned in the section and at the same time cannot ignore the words mentioned in the section. Equally well settled rule of interpretation is that if the language of a statute is plain, simple, clear and unambiguous then the words of a statute have to be interpreted by giving them their natural meaning. (See Principles of Statutory Interpretation by G.P. Singh, 9th Edn., pp. 44-45.)..." 104. In *Rohitash Kumar and others v. Om Prakash Sharma and others* 2013(1) S.C.T. 537 : (2013) 11 SCC 451 the Supreme Court has held that if there is some defect in the phraseology used in the statute, it is not open to the Court to add or amend or by construction make up for the deficiencies. It is not permissible for the Court to twist the clear language of the enactment in order to avoid any real or imaginary situation. In the garb of interpreting the provision, the Court does not have the power to add or subtract even a single word. The relevant parts of the judgment, being paragraphs-27, 28 and 29 as are material, are extracted below: "27. The court has to keep in mind the fact that, while interpreting the provisions of a statute, it can neither add, nor subtract even a single word. The legal maxim "A verbis legis non est recedendum" means, "from the words of law, there must be no departure". A section is to be interpreted by reading all of its parts together, and it is not permissible to omit any part thereof. The court cannot proceed with the assumption that the legislature, while enacting the statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to add and amend, or by construction, make up for the deficiencies, which have been left in the Act. The Court can only iron out the creases but while doing so, it must not alter the fabric, of which an Act is woven. The Court, while interpreting statutory provisions, cannot add words to a statute, or read words into it which are not part of it, especially when a literal reading of the same produces an

intelligible result..... 28. The statute is not to be construed in light of certain notions that the legislature might have had in mind, or what the legislature is expected to have said, or what the legislature might have done, or what the duty of the legislature to have said or done was. The courts have to administer the law as they find it, and it is not permissible for the court to twist the clear language of the enactment in order to avoid any real or imaginary hardship which such literal interpretation may cause. 29. In view of the above, it becomes crystal clear that under the garb of interpreting the provision, the court does not have the power to add or subtract even a single word, as it would not amount to interpretation, but legislation." (emphasis supplied) 105. In *Orissa Public Service Commission and another v. Rupashree Chowdhary and another* 2011(4) S.C.T. 49 : (2011) 8 SCC 108 the Supreme Court has held that if the words of the statute are clear and unambiguous, then the Courts are bound to give effect to that meaning regardless of consequences. Paragraph-13 of the judgment reads thus: "13. When the words of a statute are clear, plain or unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences, for the Act speaks for itself. There is no ambiguity in the language of Rule 24 leading to two conclusions and allowing an interpretation in favour of the respondent which would be different to what was intended by the statute. Therefore, no rounding off of the aggregate marks is permitted in view of the clear and unambiguous language of Rule 24 of the Rules under consideration." (emphasis supplied) 106. The Supreme Court in *State through Central Bureau of Investigation v. Parmeshwaran Subramani and another* 2009(4) R.C.R.(Criminal) 309 : 2009(5) Recent Apex Judgments (R.A.J.) 647 : (2009) 9 SCC 729 has held that if a provision has been omitted by the legislature, the Court cannot read something into the provisions. It is not the duty of the Court to enlarge the scope of legislation as it will amount to rewrite the legislation and the Court cannot add words on the assumption that there is defect or omission in the words used by the legislature, correct or make up assumed deficiency. The relevant part of the judgment reads thus: "18. It is settled law that where there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to undertake any exercise to read something into the provisions which the legislature in its wisdom consciously omitted. Such an exercise if undertaken by the courts may amount to amending or altering the statutory provisions. 19. In a plethora of cases, it has been stated that where the language is clear, the intention of the legislature is to be gathered from the language used. It is not the duty of the court either to enlarge the scope of legislation or the intention of the legislature, when the language of the provision is plain. The court cannot rewrite the legislation for the reason that it had no power to legislate. The court cannot add words to a statute or read words into it which are not there. The court cannot, on an assumption that there is a defect or an omission in the words used by the legislature, correct or make up assumed deficiency, when the words are clear and unambiguous. Courts have to decide what the law is and not what it should be. ..." (emphasis supplied) 107. In *Nelson Motis v. Union of India and another* 1993(1) S.C.T 133 :

(1992) 4 SCC 711 the Court held that the Court is not concerned with the consequences if it gives effect to the plain meaning of the statute which indicates the intention of the legislature. The Court held thus: "8. The language of sub-rule (4) of Rule 10 is absolutely clear and does not permit any artificial rule of interpretation to be applied. It is well established that if the words of a statute are clear and free from any vagueness and are, therefore, reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, irrespective of consequences. The language of the sub-rule here is precise and unambiguous and, therefore, has to be understood in the natural and ordinary sense. As was observed in innumerable cases in India and in England, the expression used in the statute alone declares the intent of the legislature. In the words used by this Court in *State of U.P. v. Dr. Vijay Anand Maharaj* (1963) 1 SCR 1 : AIR 1963 SC 946 : 45 ITR 414, when the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the act speaks for itself. Reference was also made in the reported judgment to Maxwell stating: "The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words." 108. In *Union of India v. Sankalchand Himatlal Sheth and another* (1977) 4 SCC 193 the Supreme Court observed as under: "11. The normal rule of interpretation is that the words used by the legislature are generally a safe guide to its intention. Lord Reid in *Westminster Bank Ltd. v. Zang*, 1966 AC 182 observed that "no principle of interpretation of statutes is more firmly settled than the rule that the Court must deduce the intention of Parliament from the words used in the Act". Applying such a rule, this Court observed in *S. Narayanaswami v. G. Panneerselyam* AIR 1972 SC 2284, 2290 : (1972) 3 SCC 717, 726 (Para 19) that "where the statute's meaning is clear and explicit, words cannot be interpolated". But, if the provision is clear and explicit, it cannot be reduced to a nullity by reading into it a meaning which it does not carry..." 109. In *Nyadar Singh v. Union of India and others* (1988) 4 SCC 170 the Supreme Court held as under: "23. It is true that where statutory language should be given its most obvious meaning - "to accord with how a man in the street might answer the problems posed by the words" - the statute must be taken as one finds it. Considerations relevant to interpretation are not whether a differently conceived or worded statute would have yielded results more consonant with fairness and reasonableness. Consequences do not alter the statutory language, but may only help to fix its meaning." 110. In the case of *The State of Rajasthan v. Mrs. Leela Jain and others* AIR 1965 SC 1296 : (1965) 1 SCR 276 a decision taken under the Municipal Law was final. However, from a proviso under the Act the State Government had interfered in the municipal affairs. The Supreme Court did not agree with the interpretation made by the High Court to curtail the power of the State Government. The Supreme Court held thus: "(16).That is an aspect which appealed greatly to the learned Judges of the High Court and as we have pointed out earlier, forms the main reasoning on which they have arrived at the construction of the proviso. Though we are not unmindful of the consequences and implications of this construction, we consider that it would not

be proper to take these factors into consideration where the words of the statute are clear and what we have stated earlier should suffice to show that, in our opinion the opposite construction is not reasonably open without doing violence to the language of the enactment either by omitting the words "or other Municipal authorities" altogether or by rewriting the section so as to achieve the desired result. We do not conceive this to be the function of a Court of construction but that it must be left to other organs of Government. We, therefore, consider that the learned Judges of the High Court were in error in holding that the State Government had no power to entertain the revision against the order of the President of the Municipal Council and to quash it on that ground." 111. In the case of *State of Uttar Pradesh and others v. Dr. Vijay Anand Maharaj* AIR 1963 SC 946 : (1963) 1 SCR 1 by referring to certain passages in Maxwell on the Interpretation of Statutes and in Crawford on Statutory Construction, the Supreme Court held thus: "(8). ...Crawford says that a liberal construction does not justify an extension of the statute's scope beyond the contemplation of the Legislature. The fundamental and elementary rule of construction is that the words and phrases used by the Legislature shall be given their ordinary meaning and shall be construed according to the rules of grammar. When the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well recognized rule of construction that the meaning must be collected from the expressed intention of the Legislature. So construed, there cannot be two possible views on the interpretation of the first part of the section...." 112. Applying those principles in the present case, from a careful reading of Section 2(I) of the Act, 1982, Rules, 10, 11 and 14 of the Rules, 1998 it is evident that the words are clear and unambiguous, hence they have to be given their literal and ordinary meaning. The language of the aforesaid rule is so simple that they admit only one meaning. They also unmistakably show the intention of the legislature. By inserting Section 12 in the Principal Act and Rule 14 of the Rules, 1998 it is clear that Board's one of the functions regarding promotion of teacher was taken away from it and it was entrusted to a new statutory Committee. The detailed procedure is laid down in Rule 14. Any construction with reference to proviso to Rule 10 will make whole scheme unworkable. The legislature/ rulemaking authority has deliberately and purposely used the words "year of recruitment" in Rule 14 of the Rules, 1998. The Court cannot read the words "year in which vacancy occurred" in Rule 14. This will amount re-writing Rule 14, which is not permissible under the law as held by the Supreme Court in the cases referred above. 113. During the course of submission, much emphasis has been laid on the proviso to Rule 10, which provides that in case the promotion quota is not complete, the post shall be treated under the direct recruitment. It was urged that the year of recruitment has to be same for the proviso to Rule 10 and Rule 14(2). It cannot be determined at whims of the Management as it would lead to nepotism and favouritism. Before adverting to the above submission, it would be fruitful to consider the nature, scope and ambit of the proviso. 114. I find unbroken line of authority to the effect that a proviso generally provides

exception to the main provision. The proviso cannot expand or limit the provision, to which it is appended. It only embraces the field which is covered by the main provision, by carving out an exception to it. As in the present case, the language of the main provision is clear. A proviso cannot be interpreted to nullify by implication what the main provision clearly provides. It cannot set at naught the real object of the main enactment. A proviso must be construed with reference to the preceding part of the Clause to which it is appended. Sometimes an unnecessary proviso is inserted by way of abundant caution. 115. Recently, a three-Judge Bench of the Supreme Court in the case of Sidhharth Vyas and another v. Ravi Nath Misra and others 2015(1) R.C.R.(Rent) 100 : (2015) 2 SCC 701, has elaborately analysed the scope of proviso and quoted with approval the principles in regard to proviso collected in the Interpretation of Statutes by Sarathi. Paragraph-15 of the judgment, as is material for our purpose, is reproduced below: "15. *** ***** *** 30. Sarathi in Interpretation of Statutes at pp. 294-95 has collected the following principles in regard to a proviso: (a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso. (b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended. (c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers. (d) Where the section is doubtful, a proviso may be used as a guide to its interpretation; but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section. (e) The proviso is subordinate to the main section. (f) A proviso does not enlarge an enactment except for compelling reasons. (g) Sometimes an unnecessary proviso is inserted by way of abundant caution. (h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail. (i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one. (j) A proviso may sometimes contain a substantive provision." 116. The Supreme Court in the case of The Commissioner of Income-Tax, Mysore, Travancore-Cochin and Coorg, Bangalore v. The Indo Mercantile Bank Limited 1959 Supp (2) SCR 256 : AIR 1959 SC 713 has held as under: "10. ...The proper function of a proviso is that it qualifies the generality of the main enactment, by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment. "It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as proviso". Therefore it is to be construed harmoniously with the main enactment. (Per Das, C.J.) in Abdul Jabar Butt v. State of Jammu & Kashmir (1957) S.C.R. 51, 59. Bhagwati, J., in Ram Narain Sons Ltd. v. Assistant Commissioner of Sales Tax (1955) 2 S.C.R. 483, 493 said: "It is a cardinal rule of interpretation that a proviso to a

particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other". 11. Lord Macmillan in *Madras & Southern Mahratta Railway Co. v. Bezwada Municipality* (1944) L.R. 71 I.A. 113, 122 laid down the sphere of a proviso as follows:- "The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms". The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect. (Vide also *Corporation of The City of Toronto v. Attorney-General for Canada*) (1946) A.C. 32, 37." 117. In *Prakash and others v. Phulavati and others* 2015(4) R.C.R.(Civil) 952 : (2016) 2 SCC 36 the Supreme Court has held as under: "19. Interpretation of a provision depends on the text and the context. *RBI v. Peerless General Finance & Investment Co. Ltd.*, (1987) 1 SCC 424, p. 450, para 33 Normal rule is to read the words of a statute in ordinary sense. In case of ambiguity, rational meaning has to be given. *Kehar Singh v. State (Delhi Admn.)*, (1988) 3 SCC 609 : 1988 SCC (Cri) 711 In case of apparent conflict, harmonious meaning to advance the object and intention of legislature has to be given. *District Mining Officer v. TISCO*, (2001) 7 SCC 358 20. There have been number of occasions when a proviso or an explanation came up for interpretation. Depending on the text, context and the purpose, different rules of interpretation have been applied. *S. Sundaram Pillai v. V.R. Pattabiraman*, (1985) 1 SCC 591 21. Normal rule is that a proviso excepts something out of the enactment which would otherwise be within the purview of the enactment but if the text, context or purpose so require a different rule may apply. Similarly, an explanation is to explain the meaning of words of the section but if the language or purpose so require, the explanation can be so interpreted. Rules of interpretation of statutes are useful servants but difficult masters. *Keshavji Ravji & Co. v. CIT*, (1990) 2 SCC 231 : 1990 SCC (Tax) 268 Object of interpretation is to discover the intention of legislature." 118. As noted above, the language of Rules 10 and 14 of the Rules, 1998 is absolutely clear and free from any vagueness as they are susceptible to only one meaning. With effect from 27th July, 1998 by the *Uttar Pradesh Secondary Education Services Commission (Amendment) Act, 1998* (U.P. Act No. 25 of 1998) once again important amendments have been made in the Principal Act of 1982. By the said amendment, after Section 11 of the Principal Act, Chapter III was inserted containing Section 12. Both the amendments in the Principal Act and the Rule 14 of the Rules, 1998 are very significant for our purposes. 119. For the first time,

the procedure for promotion was completely changed. The Board is completely divested of its one of its powers to make promotion of teachers. By inserting Section 12 in the Principal Act a separate procedure is provided whereunder a Selection Committee is constituted in each region under the Chairmanship of the Regional Joint Director. In the Rules, 1998, Rule 14 of the Rules, 1995 was retained except a change by adding word "regular". These changes clearly show the intention of the legislature to take away the power of promotion from the Board. 120. It is noteworthy that in 1998 the power of promotion has been taken away from the Board. The proviso to Rule 10 has been retained in the subsequent amendment but the intention of the legislature was clear that the power of promotion has been taken away from the Commission from the Board and a separate statutory selection committee has been constituted. Thus, the subsequent development clearly indicates that the purpose of the year of recruitment in the promotion can be separated from the direct recruitment. The proviso to Rule 10 was relevant when both the powers of the direct recruitment and promotion were entrusted to the Board, but as mentioned above, in 1998 both the powers of direct recruitment and promotion are now with the Board and the separate statutory authority has been constituted under Section 12 of the Principal Act. 121. As regards the apprehension that the Committee of Management can misuse its power, the said apprehension is misconceived on two grounds: (I) that if the literal meaning is clear then the Court cannot resort to any other principle of interpretation whether it likes or not the consequences. As held by the Supreme Court, the Courts are not concerned with the consequences, it is domain of the legislature to amend the law but under the garb of the interpretation the Court cannot legislate. (II) A careful reading of the schemes of the Act and the Rules clearly indicates that the Committee of Management has not been given unfettered power under the Act and the Rules regarding the determination of the vacancies and sending requisition to the Board or the Committee constituted under Section 12 of the Act, 1982 for promotion. Rule 6 of the Rules, 1998 clearly indicates that if the Management fails to send the requisition within the time-schedule, the Board can ask the Inspector to send the requisition directly to the Board and it shall be deemed to be sent by the Committee of Management. The legal fiction provided in Rule 6 clearly indicates the intention of the legislature that the Committee of Management has not been given freehand in respect of determination of the vacancies for direct recruitment as well as for promotion. It is also significant to mention that Appendix "A" has not been changed right from the Rules, 1983, Rules, 1995 and the Rules, 1998. The details which are required to be submitted in the format of Appendix "A" are very important. A complete reading of Appendix "A" would show that all the necessary information regarding the number of sanctioned posts, details of the teachers, seniority list, the qualification of the teachers, subjects in High School/Inter, strength of students, etc.. In brief almost all the information are with the Inspector of the schools. The Inspector from his records can easily find out about the eligibility of the teachers for promotion, date of vacancy and the vacancies likely to fall in a recruitment

year. In addition to above, the Board in respect of the direct recruitment and the Joint Director of Education for the promotion have the power under the provisions of the Act and the Rules to ask the Inspector to submit additional information, which they need in respect of the direct recruitment and promotion. 122. Hence, in view of the scheme of the Act and the Rules it is evident that the intention of the legislature is not to give freehand to the Management. It has to send only information to the Inspector and it does not have any authority either in the Principal Act or in the Rules for promotion of a teacher. Its simple duty is to send all the information of the teachers who are eligible for promotion irrespective of the fact whether they have applied or not. 123. In view of the above scheme, if any vacancy occurs in the promotion quota and any teacher in the institution is eligible for promotion in terms of Rule 14, then he has to be considered for promotion. In case the Management does not send the requisition, there are two options open to the Inspector: (i) he can ask the Management to send the information, and (ii) in case it does not send, he can forward the name of the eligible candidates to the Committee under Section 12 of the Act on the basis of the records of the institution as mentioned in sub-rule (6) of Rule 4 of the Rules, 1998. 124. Insofar as the judgment of the Full Bench of this Court in the case of Prashant Kumar Katiyar v. State of U.P. and others, 2014(3) S.C.T. 57 : (2013) 2 UPLBEC 971 is concerned, the said Full Bench was called upon to answer the following questions: "(a) Whether a dependent can claim appointment against a post of teacher even after the post has been requisitioned to the selection Board in view of the Regulations 101 to 106 of Chapter III of the Regulations framed under the Intermediate Education Act merely because he has qualifications for the same, specifically when on the date of requisition, no such application for compassionate appointment was pending. (b) Whether Article 16 of the Constitution of India will be applicable to the teachers working in recognized Intermediate Colleges which are under the private management even if aided by the State Government. (c) Whether the judgment of the Division Bench of this Court in the case of Ved Prakash (Supra) lays down the correct law." 125. Later on one more question was added by the Full Bench under Chapter VI, Rule 6 of the Allahabad High Court Rules, 1952. The said question reads as under : "(c) Whether the judgment of the Division Bench of this Court in the case of Ved Prakash (supra) is in direct conflict with the Division Bench judgment in the case of U.P. Secondary Education (supra), and which of the two decisions lay down the law correctly." 126. A perusal of the said questions indicates that the issue involved in the present case regarding the promotion in terms of Rule 14 of the Rules, 1998 was not before the said Full Bench. In fact, the Full Bench was called upon to resolve the conflicting decisions of two Division Benches in Ved Prakash v. Hari Krishna Singh and others, Special Appeal No. 30 of 2011, decided on 19th January, 2011 at Lucknow Bench, and U.P. Secondary Education Services Selection Board Allahabad v. State of U.P. and others, Special Appeal No. 146 of 2010, decided on 21st January, 2011. The dispute decided by the Division Benches was in respect of the candidates who have been selected by the Board on the posts of Lecturers and Assistant Teacher against Advertisement

No. 1 of 2009, but they were not appointed by the Management for multiple reasons. They prayed for their appointment, alternatively for their adjustment under Rule 13(5) of the Rules, 1998. Another issue raised before the Full Bench was regarding the compassionate appointment. The Full Bench answered the aforesaid questions in the following terms: "94. In view of what has been said above, our answer to the questions (a) and (c) referred to us is as follows:- (A) The claim of a dependant as per the third proviso to Section 16 of the 1982 Act read with Regulations 101 to 107 of Chapter III of the Regulations framed under the 1921 Act can be considered for compassionate appointment on the post of an Assistant Teacher (TGT grade) against a vacancy that has been notified for being filled up by direct recruitment under the 1982 Act read with the 1998 Rules framed thereunder upto the stage of the last date for receipt of application forms under the advertisement, but not thereafter till the selections are completed by the Board followed by appointments under the provisions aforesaid. (B) The law regarding the claim of compassionate appointment as expounded in the case of Ved Prakash (supra) is overruled to extent as indicated above in (A) and explained in the body of the judgment. (C) The view taken by the learned Single Judge in the case of Raja Ram (supra) and affirmed by the division bench in the case of U.P. Secondary Education Services Selection Board, Allahabad (supra) stands modified to the extent as indicated in (A) hereinabove in so far as it relates to compassionate appointments only. (D) The view expressed by the learned Single Judge in Raja Ram's case (supra) and affirmed by the division bench in U.P. Secondary Education Services Selection Board (supra) in so far as it relates to other modes of appointment is approved and the judgements to that extent are affirmed. (E) The interpretation, the scope and applicability of Rule 13(5) of the 1998 Rules as affirmed in the case of U.P. Secondary Education Services Selection Board (supra) is upheld as laying down the law correctly by confining its applicability to the vacancies that are subject matter of the same advertisement and not to such vacancies that were notified but not subject matter of the same advertisement." 127. From the nature of the questions referred to the Full Bench and the answer to the reference it is abundantly clear that there was no issue involved in respect of the promotion and the year of recruitment referred to in Rule 14 of the Rules, 1998. A careful reading of the entire judgment would show that there is not even a reference of Rule 14 of the Rules, 1998, which deals with the promotion. Hence, any observation made in the decision of the Full Bench in Prashat Kumar Katiyar (supra) has no binding precedent in the issue involved in the case in hand. 128. In addition to above, the Full Bench has not considered the judgment of Balbir Kaur (supra) of the Supreme Court, wherein Rules 10 and 11 of the Rules, 1998 have been considered and the Court has expressed its opinion that the vacancies of the different year of recruitment can be clubbed together. The judgment of the Supreme Court in Balbir Kaur (supra) has escaped the notice of the Full Bench. As regards some observations of the Full Bench in respect of Rule 11 and the year of recruitment are concerned, at the highest it is not a ratio of the judgment. Since the issue of the year of recruitment viz-a-viz Rule 14, which

deals with promotion, was not before the Full Bench, its any observation is mere an obiter. 129. The Supreme Court has considered the issue that when a judgment is binding, elaborately in the case of Dalbir Singh and others v. State of Punjab (1979) 3 SCC 745. Following passage is, in this regard, apposite: "22. ...According to the well-settled theory of precedents every decision contains three basic ingredients: (i) finding of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of (i) and (ii) above. For the purposes of the parties themselves and their privies, ingredient (iii) is the material element in the decision for it determines finally their rights and liabilities in relation to the subject matter of the action. It is the judgment that estops the parties from reopening the dispute. However, for the purpose of the doctrine of precedents, ingredient (ii) is the vital element in the decision. This indeed is the ratio decidendi R.J. Walker & M.G. Walker: The English Legal System, Butterworths, 1972. 3rd Ed.. pp. 123-124.. It is not everything said by a judge when giving judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. In the leading case of Qualcast (Wolverhampton) Ltd. v. Havnes LR 1959 AC 743 : (1959) 2 All ER 38 it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based. The other two elements in the decision are not precedents. The judgement is not binding (except directly on the parties themselves), nor are the findings of facts. This means that even where the direct facts of an earlier case appear to be identical to those of the case before the court, the judge is not bound to draw the same inference as drawn in the earlier case." 130. It is a trite that a decision ordinarily is a decision in the case before the Court while the principle underlying the decision would be treated as a binding precedent, but not every observation. A decision takes its colour from the questions involved in the case in which it is rendered. The scope of precedent cannot be expanded unnecessarily beyond the issue involved in that case. Reference may be made to the judgment of the Supreme Court in Prakash Chandra Shah v. State of Gujarat (1986) 1 SCC 581. Applying these principles of law, I regret my inability to lend concurrence to the aforementioned view in Prashant Kumar Katiyar (supra). 131. The next question which merit consideration is whether intention of the legislature/rule-making authority is to give different meaning to the "year of recruitment" in the Act and the Rules or it should be given same meaning. The Full Bench in Raeesul Hasan (supra) dwelt upon this issue elaborately and has followed the judgments of the Supreme Court. 132. In this regard it is worthwhile to refer to the judgment of the Supreme Court in Harish Chandra Ram v. Mukh Ram Dubey, 1995(4) S.C.T 588 : 1994 Supp (2) SCC 490. The Supreme Court has given a hypothetical example, which is in the line of reasoning given in Balbir Kaur (supra). Paragraph-6 of the judgment is relevant

for our purpose and it reads thus: "6. Take another illustration. Suppose Public Service Commission advertises for direct recruitment in the year 1980, but actually selects the candidates in 1984. Whether 1980 would be the recruitment year? Answer would be no. Second advertisement was made in 1985 and recruitment was made in 1990. The second recruitment year is 1990 and not 1985. It is thus clear that the recruitment year is the year in which recruitment takes place, but not each three successive years in which the vacancy exists. The same yardstick would apply to fill in the reserved vacancy. Dereservation will be considered only at the end of third recruitment year provided reserved candidates are not available, or considered at the recruitment and found not fit for promotion or carried forward for three successive recruitment years. Then the matter should be placed before the competent authority for consideration for dereservation of the reserved posts and a resolution or order should be made dereserving the posts. Then those alone reserved posts or vacancies will be thrown open for recruitment by the general candidates." (emphasis supplied)

133. Similar issue regarding year of recruitment also fell for consideration before the Supreme Court in *State of U.P. v. Sangam Nath Pandey* 2011(1) S.C.T. 456 : (2011) 2 SCC 105. As noticed by the Supreme Court in *Balbir Kaur* (supra), it would be an ideal situation that the Board will complete the recruitment every year, which is the clear intention of the legislature, but the past experience reveals that from 1982, when the Board was established, it could never achieve the said object. The Board is not able to complete the process of recruitment in a year of recruitment. It takes average 2-3 years to complete the process of recruitment, sometimes for years together the recruitment is stopped for one or another reason. Thus, on the ground of practical difficulties on multiple reasons, the vacancies go on accumulating, hence over emphasis on the compliance of the provisions to complete the entire recruitment process in a year of recruitment will make the statute unworkable. Regard may be had to the fact that there is no scheme in the Act, Rules or in the provisions of the Act, 1921 to prepare the seniority list in the promotion quota on the basis of the yearwise vacancy. In absence of any such provision in the aforesaid provisions of the Act, 1982, Act, 1921 and the Rules made under the Act, 1982 the clubbing of vacancies of different years of recruitment cannot be held to be illegal.

134. During the course of hearing the Court had requested the learned Additional Advocate General to produce the original record to ascertain the intention of the rule-making authority to incorporate the year of recruitment in Section 2(I) of the Act, 1982 and under the Rules 1995 and the Rules, 1998. The learned Additional Advocate General has failed to produce any record. He has filed an affidavit of the Principal Secretary, Secondary Education, Government of U.P.. In the said affidavit it is mentioned that for the appointment on different posts in the State, the Personnel Department of the State Government issued a Government order dated 20th August, 1993, whereby a procedure has been laid down for the selection. It is mentioned that the Personnel Department has issued another Government order dated 19th May, 2001. Relevant part of Para-11 (iv) and (v) of the affidavit has a material bearing in this regard hence it reads thus: "(iv) That the Personal

Department has issued a Government Order dated 19.5.2001, Para 2 (1) of the said Government Order reads as under:

"VERNACULAR MATTER OMITTED" (v) That it is pertinent to mention here that at the time of promulgation of Uttar Pradesh Secondary Education Services Selection Commission Rules, 1995, while submitting the proposal "first day of year of Recruitment" has not mentioned on the note sheet of the file, but it appears that at the time of English Drafting of the said Rule the Legislative Department, taking into the consideration of the provisions contained in different Government Orders issued by Personal Department, has inserted the provisions of Rule 14(1) on the strength of U.P Act No. 1 of 1993." 135. It is evident from the aforesaid affidavit that the intention of the rule making authority is very clear. It wanted to bring uniformity in all the Government Departments including the Education Department in respect of the year of recruitment. The use of word " (as far possible) would show that recruitment in the same recruitment year is not a mandatory and is a directory as held by the Supreme Court in Balbir Kaur (supra), which has held that it would be ideal to hold the selection in the same recruitment year but if it is not possible then there is nothing illegal to club the vacancies. The interpretation of the aforesaid rule in Prashant Kumar Katiyar (supra), thus, does not reflect correctly the intention of the rule making authority. 136. In addition to above, the judgment of the Full Bench in Raeesul Hasan (supra) has not been challenged by the State or any aggrieved person. The said judgment has attained finality. Smt. Sadhana (supra) case has not pointed out that the judgment of Raeesul Hasan (supra) is per incuriam and any statutory provision or any binding precedent has escaped its notice. 137. For all the reasons mentioned herein-above, I am of the view that the judgment in Raeesul Hasan (supra) does not need any reconsideration. It has correctly laid down the law. In view of the reasons mentioned above, my answer to the questions referred to this Bench is as follows: (A) The Full Bench in the case of Raeesul Hasan (supra) has laid down the correct law. (B) There is no provision under the Act, 1982 or the Rules for the year-wise selection. Since the vacancies can be clubbed, the recruitment year is in the year when recruitment takes place. The Court cannot substitute the words "year in which the vacancy occurred" for the words "year of recruitment". (C) The effect of proviso to Rule 10 of the Rules, 1998 is that if in the year of recruitment no eligible candidate under the promotion quota is available, the post can be filled by the direct recruitment. But in case recruitment does not take place, the vacancies can be clubbed and eligibility of a candidate can be determined on the first day of the year of recruitment when it takes place. (D) The scheme of the Act and the Rules shows that there is sufficient safeguard to prevent any such abuse of the provisions by the Management. (E) As held by the Supreme Court in Balbir Kaur (supra) vacancies can be clubbed, hence, a teacher who fulfills the norms of eligibility on the first day of the year of recruitment has to be considered and not on the first day of the year "when vacancy occurs".