
(2016) 07 AHC CK 0125

In the Allahabad High Court

Case No : Special Appeal Defective No. 442 of 2016

Smt. Sadhna

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 15-07-2016

Acts Referred:

Citation : (2016) 7 ADJ 443 : (2016) 6 AllWC 6353 : (2016) 4 UPLBEC 2700

Hon'ble Judges : Arun Tandon and Mrs. Sunita Agarwal, JJ.

Bench : Division Bench

Advocate : Vijay Kumar Singh, Hritudhwaj Pratap Sahi and Rahul Kumar, Advocates, for the Appellant; C.S.C, A.K. Yadav, Anoop Trivedi and Rajesh Kumar Mishra, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard Sri V.K. Singh, learned counsel for the appellant and Sri Anoop Trivedi, learned counsel for the respondent no. 6, Learned Standing Counsel on behalf of respondent nos. 1 to 4 and Sri Rajesh Kumar Mishra, learned counsel for the respondent no. 5.

2. Facts in short leading to the present Special Appeal are as under:-

Mewa Lal Ayodhya Prasad Gupta Smarak Inter College, Soraon, Allahabad (hereinafter referred to as the "institution") is an aided and recognised institution governed under the provisions of the Intermediate Education Act" 1921. The provisions of the said Act 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.

3. A post of Lecturer(Hindi) is stated to have fallen vacant in the said institution in the year 2000. The petitioner, Amar Singh is stated to have been appointed in the said institution on the recommendation of the Selection Board on the post of 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.

4. 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, which would be the recruitment year for the purpose of promotion.

5. 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. It was disposed of vide judgment and order dated 26.10.2015 requiring the authority to consider and decide the pending claim.

6. 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, as required under Rule 14 of the 1998 Rules.

7. 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 v. State of U.P. and others, reported in 2015 (6) ADJ 778 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 the present intra-court appeal has been filed.

8. The appellant before this 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.

9. We may record that Section 16 of the U.P. Secondary Education Services Selection Board 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.

10. The appellant states that 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 has accorded his approval. Now because of the order of the writ court, her claim for transfer stands frustrated. The appellant has, therefore, filed this 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.

11. The other submission of the learned counsel for the appellant 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 promotion or direct recruitment is required to be determined under Rule 10 of the Rules, 1998. Rule 11 of the said Rules further requires that such determination 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.

12. It is submitted on behalf of the appellant that once vacancy for direct recruitment in an institution is determined, the remaining vacancies would necessarily fall within the quota for promotion. It is further 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.

13. This process, according to the petitioner, 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.

14. It is lastly explained that Rule 10 of the Rules, 1998 has 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.

15. It is, therefore, submitted that the law laid down by the full Bench in Raeesul Hasan (supra) needs to be reconsidered in the 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 attach a definite meaning to the words "first day of the year of recruitment" as contained in Rule 14 of the Rules "1998.

16. It is stated that if the judgment in the case of Raeesul Hasan (supra) is given affect 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 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 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.

17. Sri Anoop Trivedi, counsel for the petitioner on the contrary submits that the Full Bench of this Court has taken note of all statutory provisions which are applicable for determination of vacancies and appointment thereon. 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 specific 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.

18. According to Sri Anoop Trivedi the date of occurrence of vacancy with reference to the year in which it has caused is wholly irrelevant. He submits 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, as such there is no illegality in the order of the learned Single Judge so as to warrant any interference from this Court.

19. It is also explained to the Court that the Full Bench did not subscribe to the contrary view expressed in the Division Bench judgment of this Court 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.

20. We have heard learned counsels for the parties and examined the records of the case.

21. For the mode and manner of appointment of teachers in Intermediate Colleges it would be apt to record that under the provisions of the Act, 1921 also 50% of the posts in Lecturer grade are required to be filled in by promotion (reference Chapter-II Regulation 5 (2) (a) of Act, 1921).

22. Under the Act, 1982, Rules have been framed in the matter of appointment on the post of teachers in intermediate colleges. Rule 10 and 11 of the Rules, 1998 provide for the source of recruitment, determination and notification of vacancies on the posts of teachers in Intermediate Colleges.

Rules 10 and 11 of Rules, 1998 are quoted 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

(I) 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 sub-rule (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".

23. From a simple reading of the said provisions it can be seen that so far as the posts of lecturers are concerned, 50% are required to be filled by direct recruitment whereas 50% are to be filled by promotion from substantively appointed teachers of L.T. Grade. The proviso to Rule 10 of the Rules" 1998 further specifically provides that if in any year of recruitment suitable eligible candidates are not available for recruitment by promotion, the posts may be filled in by direct recruitment.

24. Rule 11 of the Rules, 1998, thereafter, casts an obligation upon the management of the institution to determine the number of vacancies for making appointment within direct recruitment quota in accordance with the sub Section

(1) of Section 10 of the Act, 1982 and to notify the said vacancies through the Inspector to the Board.

25. Rule 11 (2) provides for the mechanics and the manner to be adopted for intimation of such vacancies.

26. Rule 11 (2)(a) provides that the vacancies to be filled by direct recruitment including the vacancies that are likely to arise due to retirement upto the last day of year of recruitment shall be sent separately in the proforma given in appendix "A" by the Management to the inspector by 15th July of the year of recruitment. The inspector shall then verify the records and shall prepare a consolidated statement of the vacancy of the district subject wise in respect of the lecturer grade. This statement is to be forwarded to the Board by 31st July under intimation to the Joint Director.

27. It is noteworthy that under Rule 11 (3) of Rules, 1998 if any vacancy occurs after the submission of the statement notifying the vacancies in a particular year because of unforeseen circumstances like resignation, dismissal or death of the incumbent then such vacancy is to be notified by the management to the Inspector within fifteen days of its occurrence for onward intimation to the Board. In case, the vacancies are not notified by the management to the Inspector as contemplated in Rule 11 (1), (2) and (3), the Inspector is empowered to determine the vacancies on the basis of records maintained in his office on his own and intimate the same to the Board.

28. Rule 12 deals with the procedure for direct recruitment which is not of much relevance for us.

29. Rule 13 deals with the intimation of the list of selected candidates which is also not of much relevance in the present controversy.

30. It is worthwhile to reproduce Rule 14 of Rules, 1998 which deals with the procedure for recruitment by promotion as the interpretation of the words "first day of the year of recruitment" as contained therein is the bone of contention between the parties.

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 authorisation under its resolution issue the appointment order in the pro forma given in Appendix "F" to such candidate."

31. From a simple reading of the aforesaid provision it will be seen that not only the existing vacancies, which have occurred in the year of recruitment but also the vacancies, which are likely to occur on account of retirement upto the last day of the year of recruitment are to be included in the statement at the time of determination of quota for the purpose of direct recruitment which would necessarily determine the quota for posts, which are required to be filled by promotion. Since there are only two sources of recruitment under Rule 10 of Rules, 1998, determination of number of vacancies under one source, would necessarily indicate that the remaining vacant posts would fall within the other source of recruitment i.e. promotion, by application of simple mathematics. In other words, the determination of vacancies within the quota for direct recruitment necessarily entails the determination of the remaining vacancies to be filled within the promotion quota.

32. In our opinion, determination of vacancies for direct recruitment for a particular recruitment year would simultaneously determine the vacancies to be filled within the promotion quota in the same recruitment year. It is with reference to this recruitment year in which such determination is done that the proviso to Rule 10 contemplates that in case a vacancy within promotion quota cannot be filled for want of eligible candidate within the feeding cadre of L.T. Grade, the vacancy has to be notified for direct recruitment. The use of the word "any" preceding the words "year of recruitment" in the said proviso further clarifies the intention of the legislature to make it mandatory for the Management to ascertain in the same recruitment year as to whether there are eligible candidates available in the institution to be appointed by promotion against the vacancy, which falls outside the direct recruitment quota i.e. within the promotion quota, or not. In other words, the eligibility of the L.T. grade teachers working in the institution has to be determined with reference to the same recruitment year in which the determination of the vacancy is done as per Rule 10 of the Rules, 1998.

33. If the choice to decide the year of recruitment in respect of the posts within the promotion quota is left at the discretion of the Committee of management it may result in a situation where for direct recruitment quota there may be a different year of recruitment whereas for the post under promotion quota there may be a different year of recruitment, with reference to which the minimum teaching experience of five years in L.T. grade under Rule 14 would have to be computed.

34. It is the settled principles of statutory interpretation that where the legislation has employed a plain and unambiguous language, the Court is not concerned with the consequences arising therefrom. A statute, it is trite, must be read in its entirety for the purpose of finding out the purport and object thereof. The statute should not be read in a manner so as to give rise to an absurd consequence. Construction of the statute which leads to confusion must be avoided (Reference T. Venkateswarulu v. Executive Officer, Tirumala Tirupathi Devasthanams & Other; (2009) 1 SCC 540, emphasis added to Paragraph-24). The same principle has been reiterated by the Apex Court in the case of Sonic Surgical v. National Insurance Company Ltd. reported in (2010) 1 SCC 135, Paragraph-10.

35. One of the other canons of interpretation is that if same "word(s)" or "expression" is used in a statute at different places, same meaning should be attached or given to such "word(s)" or "expression", unless there is something repugnant in the context. Reference may be made to para 6 of the Apex Court judgment in the case of Bhogilal Chunilal Pandya v. The State of Bombay reported in AIR 1959 SC 356.

36. We find that the phrase "year of recruitment" has been used at 6 places in Rules 10, 11 and 14 of Rules, 1998. Same meaning has to be attached to the said phrase in all the rules unless the context otherwise necessarily requires.

37. In the fact of the case, there are no good reasons/compelling circumstance for the Court to provide different meaning to the same phrase "year of recruitment" as used under Rule 10 for the purpose of direct recruitment vis-a-vis the words "the year of recruitment" as used in Rule 14 for computing the minimum teaching experience on the first day of the recruitment year for promotion.

38. In our opinion giving effect to the judgment of Full Bench in the case of Raeesul Hasan (Supra) may create a situation where a vacancy which stood determined as within promotion quota in a recruitment year under Rule 10, if not filled in that year may not been notified for direct recruitment under the proviso to the said Rule merely because the management of the institution decides to keep the post vacant and not to fill the same for years together. This will make the proviso to Rule 10 redundant. Such an interpretation of the statutory provision specifically in the circumstance when the selection board itself has been constituted for ensuring speedy appointments on the vacant post in the

intermediate college so that the teaching may not suffer, may defeat the very object of the statute itself.

39. As already stated above, as a consequence of determination of vacancy for direct recruitment under the Rule 10 of Rules, 1998, the determination of the vacancies under promotion quota is automatic. It appears that the said aspect as well as the very purpose of proviso to Rule 10 of the Rules "1998 has escaped the attention of the Full Bench.

In our opinion an anomalous situation may arise if the management will get the right to choose as to what would be the year of recruitment for the purpose of promotion.

40. It is also noteworthy that for the purpose of deciding as to whether a particular vacancy would fall within the promotion quota or direct recruitment quota, the number of teachers already working in lecturers grade in the institution has to be taken into account along with the quota under which they had been appointed. It therefore, logically follows that it is the year in which the vacancy is caused that such determination must take place in as much as at any subsequent point of time there may be variance in the number of appointees by direct recruitment or by promotion.

41. By way of example if four vacancies are caused in a particular year on the post of lecturer, which are subject-wise posts in an institution, two of which are to be filled by promotion and it is left at the whims and fancies of the management to decide the year of recruitment in respect of these two promotional quota posts, then the management may fix two different years of recruitment for the two posts, which may, in a given case, will give a leverage to it defeat the right of the senior-most L.T grade teacher by not resorting to promotion till he retires or else upset the inter-se seniority of L.T. Grade teachers by providing promotion to a junior L.T. Grade teacher as lecturer in a particular subject and after some delay to promote the senior L.T. Grade teacher on the post of Lecturer in other subject.

42. We further find that the Full Bench has not taken note of the fact that the likely vacancies which occur till the last day of the recruitment year due to resignation, death, dismissal, are also required to be considered for the purpose of determination of quota within which they would fall, which would necessarily imply determination of the number of posts within the promotion quota for that year of recruitment.

43. Another aspect, which needs to be examined in respect of Rules 10 and 11 of U.P. Secondary Education Services Selection Board Rules, 1998 is as to whether they only provide for determination of vacancies as 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 required to be filled by direct recruitment.

44. For appreciating the aforesaid, it is worthwhile to mention that Rule 10 of Rules, 1998 lays down the sources of recruitment. It will be seen that in respect of the posts of Lecturers only, 50% posts are to be filled by promotion and remaining 50% are to be filled by direct recruitment. While for other faculty members, namely the Principal and L.T. Grade teachers, the only source of recruitment is by way of direct recruitment where there is no primary section attached.

45. The posts of Lecturers are created subject-wise in an intermediate institution.

46. In our opinion, Rule 11 (2) of Rules, 1998 does not confer any discretion upon the Management in respect of the exercise to be undertaken for the purposes of determination as to whether a particular vacancy would fall within quota for direct recruitment or within promotion quota.

47. We may explain by way of an example. In a given institution, there are 10 sanctioned posts of Lecturers, five of which have been filled in by promotion and remaining five by way of direct recruitment. If in a recruitment year, three vacancies on the posts of Lecturers in the subject of Geography, English and Physics; are to fall vacant on 21st October, 22nd December and 23rd January respectively due to retirement, thereby reducing the working strength of the Lecturers in the institution to seven, the only right left with the Committee of Management is to see as to whether the vacancy of the month of October i.e. Lecturer's Geography would fall within the direct recruitment/ promotion quota having regard to the working strength of the Lectures in the institution, and the mode and manner of their appointment on that date of occurrence of vacancy, and similarly to examine as to whether the vacancy, which is to be caused on the post of Lecturer's English on 22nd December would fall within the direct recruitment/promotion quota having regard to the remaining working Lecturers on that date. Same shall be the position qua the vacancy to be caused in the month of January.

48. In our opinion, such determination has to be done with reference to the date of occurrence of vacancy.

49. We are of the further opinion that the Management cannot club three vacancies for the recruitment year and decide as to which of these three vacancies would be filled by direct recruitment quota, and which of them should be filled by promotion. If such a discretion is conferred upon the Committee of Management, there is likelihood of promotional right of the teachers already working in the institution in L.T. Grade may be defeated at the whims of the Management, as in a given case, the Management may decide that the vacancy of Physics (i.e. the last vacancy) may be filled by promotion, while two other vacancies be filled by direct recruitment. When as matter of fact, there may not be any teacher in L.T. Grade qualified for the post of Lecturer in Physics, while there may be teachers available for promotion in the subjects of Geography and English.

50. It is also settled rule of interpretation that no Rule or statutory provisions may be interpreted in the manner, which may cause undue hardship and may result in injustice.

51. We draw support from the fact that the vacancies, which are referred to under Rule 11 (3) of Rules, 1998, can only be determined to fall within quota for direct recruitment only with reference to the actual number of remaining lecturers already working and the mode or manner of their appointment on the date of occurrence of vacancy.

52. The impact of keeping the "year of recruitment" as used in Rule 14 of Rules 1998 fluid at the instance of the Committee of Management vis-a-vis the L.T. Grade teachers working in the institution eligible and within the zone of consideration in the matter of promotion within the quota has lost the attention of the Full Bench.

53. For all the aforesaid reasons, we find it difficult to agree with the law as laid down by the Full bench in the case of Raeesul Hasan (Supra). In our opinion, following questions need to be examined by a larger Bench:-

(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 for 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.

54. Let this order be placed before Hon"ble the Acting Chief Justice for consideration of constituting a larger Bench to answer these issues.

55. Since the issue involved effects the appointments to be made by promotion in Intermediate Colleges throughout the State of U.P. Office may place this order before Hon"ble the Acting Chief Justice at the earliest.