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**(1998) 05 AHC CK 0092**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 40849 of 1997

Tulsi Ram and Ors.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

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**Date of Decision :** 13-05-1998

**Acts Referred:**

Uttar Pradesh Educational (General Education Cadre) Service Rules, 1992 — Rule 3, 8(13)

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 2(b)

Uttar Pradesh Intermediate Education Act, 1921 — Section 16GG, 2(b), 2(c), 2(d), 7

Uttar Pradesh Secondary Education (Removal of Difficulties) (Sixth) Order, 1977 — Clause 3

**Citation :** (1998) 05 AHC CK 0092

**Hon'ble Judges :** S.H.A.Raza, J and Bhagwan Din, J

**Final Decision :** Disposed Of

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## Judgement

S. H. A. Raza, J.—This bunch of writ petitions pertains to selection of suitable candidates on 216 posts of the Principals in Government (Boys/Girls) Inter Colleges of the State. It was for the first time that exercise of such a magnitude was to be carried out by the Public Service Commission, U.P., Allahabad (hereinafter referred to as the Commission) in pursuance of the Advertisement dated May 8, 1996. The minimum qualifications prescribed for such a selection were:

(i) a postgraduate degree from a university established by law in india or a degree recognised by the Government as equivalent thereto.

(ii) L. T Diploma of the Department of Education, U.P., or B.T. or B. Ed. or an equivalent degree of a university.

(iii) at least three years" "experience as Head of a Higher Secondary or Normal School or in teaching Intermediate or Higher Secondary as a Lecturer in C.T or L.T Training College.

2. Condition No. 13 of the Advertisement provides that the candidature of such candidates who are subsequently found ineligible according to the terms laid down in the Advertisement, will be cancelled and their any claim for the main examination will not be entertained. The decision of the Commission regarding eligibility of a candidate shall be final.

3. Similarly Condition No. 14 provides that the Commission may, admit the candidate provisionally, after summary checking of the applications but if it is found at any stage that the applicant was not eligible or that his application should have been rejected or was not entertainable initially, his candidature will be rejected and if the candidate is selected, the recommendation of the Commission shall be withdrawn.

4. The candidates firstly were allowed to appear in the preliminary examination. Those who cleared the examination were allowed to appear in the main examination and those who cleared the main examination were allowed to appear in the Interview. About one lac candidates appeared in the preliminary examination.

5. At the time .of Interview the Commission took a decision to get aproforma filled up by the candidates with a view to decide as to whether they fulfilled the eligibility criteria. According to the Commission it was not possible to scrutinise each and every application while allowing the candidates to appear in preliminary examination, main examination and interview provisionally. A large number of candidates did not submit experience certificate and furnish details about their qualifications, experience etc. The Commission proceeded to hold the examination while the eligibility criteria was under consideration of the Commission to find truthfulness of the enterics in the form filled up by the candidates and to adopt a procedure where proper candidates for the post of the principal of an Intermediate College were selected.

6. As stated in the foregoing paragraph the Commission prepared an experience certificate"s pro forma which was to be furnished within 60 days in order to get full and correct address from the proper and competent authority so that false and fictitious candidates may be avoided from being selected. Against 216 posts of the Principals of Government Intermediate Colleges 417 candidates were called for interview. However, 410 candidates appeared in Interview, out of which 384 candidates submitted their experience certificates in the prescribed pro forma. The rest of the candidates have not submitted their experience certificates. After checking thoroughly all the experience certificates the Commission found the following types of candidates:

(i) who were claiming to work as Lecturer in aided institutions but were not getting salary from treasury of from Government fund. They were drawing salary in lampsum and fixed amount.

(ii) who were claiming to teach in unaided institutions as parttime lecturers.

- (iii) who were claiming to teach in unaided institutions as honorary lecturers.
- (iv) who were claiming to teach in selffinancing institutions but they were not appointed legally as stated by the Joint Director in their experience certificates. They were paid amount on day to day basis or a fixed amount by the management.
- (v) who were teaching as L.T. Grade Teachers or trained graduate teachers scale.
- (vi) who had not completed three years" teaching experience as a lecturer.
- (vii) who were working as lecturers in Government Inter Colleges and were drawing salary from treasury or Government fund.
- (viii) who were working as Lecturer in Navodaya Vidyalayas or in a Central School and drawing salary from Government fund.
- (ix) who were working as Lecturer in Government aided institutions and they were drawing salary from treasury or Government fund.
- (x) who were working as Lecturer in Defence Ministry/Railway Ministry or in a Government Sponsored Institution and were getting salary from Government fund.

7. As stated in the foregoing paragraph it was for the first time that the Commission conducted the examination for selection on the posts of the Principals. The qualifications and eligibility requirements for the post of the Principle have been specified by Rule 8(13) of the U.P. Educational (General Education Cadre) Services Rules, 1992 which were framed under Article 309 of the Constitution. The requirement of experience under this Rule for the post of Principal contains three alternative experience to be sufficient which are reproduced as under:

- (i) Three years" teaching experience as Head of a High School or Normal School.
- (ii) Three years" experience of teaching Intermediate or higher classes.
- (iii) Three years" teaching experience as Lecturer in a C.T./L.T Training College.

8. All the petitioners have cleared the preliminary examination as well as the main examination. Most of the candidates have also appeared in the Interview.

9. As the three years" teaching experience mentioned in the advertisement was nowhere explained or interpreted, the Commission sent letters to the Government to clarify the teaching experience but the Commission did not receive any reply. According to the averments made in the counteraffidavit at the time of Examination and Interview most of the candidates did not produce complete experience certificates the same varied from one to another.

10. The Commission after the process of the Interview was over asked the candidates to clarify their experience on a prescribed pro forma and to file

experience certificate with a view to maintain uniformity and uniform selection. The candidates submitted their experience certificates upto 30th September, 1997. Consequently after checking the experience certificates those candidates who were found ineligible were not placed in the merit list. Only 102 candidates were found eligible and considered for merit and accordingly the result was declared by the Commission. The Commission made recommendation for only 102 posts and the names of 114 posts were not recommended as they did not come within the field of eligibility. According to the Commission it has selected only eligible candidates and the petitioners being not found eligible were not considered for selection.

11. The petitioners who are before us can be categorised as under:

(1) Parttime teachers/lecturers.

(2) Persons having three years" experience as Assistant Teacher in L.T Grade who after completion of five years as Assistant Teacher are eligible for promotion as Lecturer in accordance with rules known as the U.P. Secondary Education Service Rules.

(3) The Lecturers who are not paid salary from the treasury but the institutions in which they are performing their duties as Lecturers or recognised as Intermediate College under the High School and Intermediate Education Act.

(4) Permanent Assistant Teachers of Government Colleges who are paid salary by the Government but they were teaching Intermediate classes on officiating basis only.

(5) The teachers who filed three years" teaching experience of those institutions which are affiliated to Central Board of Secondary Education, New Delhi or teaching I.S.C. courses and the salary is paid by the management.

(6) Three years" teaching experience as Teacher working in the institution run by Army and Air Force Association recognised by C.B.S.E.

(7) Three years" experience of teaching as ad hoc teacher under Section 18 of the U.P. Secondary Service Commission Act.

(8) Three years" teaching experience as ad hoc teacher who were not selected by the Commission.

(9) Three years" experience of teaching Intermediate classes in District Institute of Training, the teachers of which are transferable to Government Colleges.

(10) Those candidates who have cleared the National eligibility test conducted by the University Grants Commission for Research Fellowship and are engaged in various Universities or Post Graduate Colleges.

12. As stated hereinabove the Commission after checking the experience certificates of all the" candidates found ten types of candidates. The Commission took a decision that the candidates belonging to category Nos. 1 to 6 could not

be treated as lecturer because their selection and approval was not made legal through any Government agency and they were teaching actually under the arrangement of private management. The category mentioned at serial No. 5 which pertains to L.T. Grade Teachers was not found eligible for selection as the Principal as they were not lecturers. The Commission only treated category Nos. 7 to 10 as lecturers in true sense of the term but as they were actually teaching in the institutions as lecturers and they were appointed legally they were getting salary properly from the Government fund.

13. The contention of the petitioners is that they possess three years experience of teaching Intermediate and higher classes as indicated in the advertisement as well as Rule 8(13) of the U.P. Education (General Education Cadre) Services Rules, 1992, but the Public Service Commission imposed further condition with regard to the requirement of teaching experience without any authority or jurisdiction and the assumption of such a power by the Commission is without jurisdiction. In this regard from the side of the petitioners Shri Ashok Khare cited the law laid down by the Hon''ble Supreme Court in Umesh Chandra Shukla v. Union of India, 1985(3) SCC 721; Durga Charan Mishra v. State of Orissa, 1987(4) SCC 646) and Dr. Krishna Chandra Sahi v. State of Orissa, AIR 1996 SC 352.

14. In Umesh Chandra Shukla (supra) a competitive examination was held for filling the posts of Subordinate Judge in the Delhi Judicial Service. 27 candidates were found qualified after the written examination to be eligible for vivavoce test and after the test their results were declared. When the results of the written examination were placed before the Full Court the Full Court approved the initial list of 27 qualified candidates but directed that moderation of two marks in each paper to every candidate be done. Moderation was done accordingly after adding two marks on revaluation of papers of one candidate but due to lack of two marks in Essay and General Knowledge paper he was disqualified. A second list was prepared showing the names of 8 more candidates who also qualified for the vivavoce test. All the qualified candidates were interviewed. The Selection Committee considered only those general candidates who had secured 600 or more marks in aggregate and only the first two Scheduled Caste candidates were found suitable for appointment. Accordingly the Committee prepared a final select list containing names of 30 general candidates and 5 Scheduled Caste candidates but observed in its recommendation that it selected and recommended for appointment only 21 candidates. Before the final list of candidates was published by the Selection Committee as required by Rule 18 of the Rules, the petitioners came to know that names of certain candidates whose names had not been included in the initial list of 27 qualified candidates had been included in the final list by the Selection Committee and that the names of certain candidates who had been interviewed by the Selection Committee had been omitted from the said final list. Two questions arose before the Hon''ble Supreme Court firstly whether it was open to the High Court to include in the list prepared under Rule 16 of the Rules name of the candidates who had not

secured the minimum marks prescribed in the Appendix of the Rules for being eligible to appear at the vivavoce test; and secondly whether it was open to the Selection Committee or the High Court to omit the names of certain candidates who had appeared at the vivavoce examination from the final list. While following the writ petition the Hon"ble Supreme Court observed :

"The exclusion of the names of certain candidates, who had not secured 600 marks in the aggregate including marks obtained at the vivavoce test from the list prepared under Rule 18 of the Rules is not legal. There is no power reserved under Rule 18 of the Rules for the High Court to fix its own minimum marks in order to include candidates in the final list. The Selection Committee has no power to prescribe the minimum marks which a candidate should obtain in the aggregate different from the minimum already prescribed by the Rules in its Appendix. No fresh disqualification or bar may be created by the High Court or the Selection Committee merely on the basis of the marks obtained at the examination because clause (6) of the Appendix itself has laid down the minimum marks which a candidate should obtained in the written papers or in the aggregate in order to qualify himself to become a member of the Judicial Service."

In *Durgacharan Misra v. State of Orissa and others*, (1987)4 SCC 646, the Hon"ble Supreme Court observed:

"The Orissa Judicial Service Rules do not prescribe any minimum qualifying marks to be secured at the vivavoce test for selection of Munsifs. Rule 18 enjoins that after the vivavoce test, the Commission shall add the marks of the vivavoce test to the marks in the written examination. Therefore, the Commission had no power to prescribe such minimum standard for determining the suitability of candidates for appointment as Munsifs and to exclude the name of any candidates from the select list merely because he had secured less marks at the vivavoce test."

The Hon"ble Supreme Court further observed:

"Even if the minimum qualifying marks was fixed for the vivavoce test by the Commission on the advice of the High Court Judge present at the vivavoce test in accordance with Rule 17 of the Rules that cannot validate the action of the Commission."

It was further observed by the Hon"ble Supreme Court:

"The Orissa Judicial Service Rules framed under the proviso to Article 309 read with Article 234 have been made after consultation with the Commission and the State High Court. The Commission which has been constituted under the Rules must, therefore, faithfully follow the Rules. It must select candidates in accordance with the Rules. It cannot prescribe additional requirements for selection either as to eligibility or as the suitability. The decision of the Commission to prescribe the minimum marks to be secured at the vivavoce test

would, therefore, (sic) legal and without authority."

15. In *Dr. Krushna Chandra Sahu and others v. State of Orissa and others*, AIR 1996 SC 352, the matter pertains to appointment of junior teachers under the Orissa Homeopathy Medical Teaching Service (Methods of Recruitment and Conditions of Service) Rules, 1980 which were framed under Article 309 of the Constitution. Rule 3 of the said Rules was silent as to the guidelines for adjudging the suitability of the candidates. The omission of the guidelines were not supplied to the Commission by the State Government by issuing any administrative instructions. A question arises as to whether the Selection Board was competent to ask for the confidential character rolls of the candidates as the basis for determining the suitability of the candidates. It was observed that such an exercise was without jurisdiction. The Hon''ble Supreme Court further observed :

"Where Rule 3 was silent as to the guidelines on the basis of which suitability of the candidate for appointment to post of junior teachers was to be adjudged and the Government did neither issue any administrative instruction nor did it supply the omission with regard to the criteria on the basis of which suitability of the candidates was to be determined, the decision of members of the Selection Board, of their own, to adopt the confidential character rolls of the candidates who were already employed as Homeopathic Medical Officers, as the basis for determining their suitability was wholly arbitrary, without authority or jurisdiction. The members of the Selection Board or for that matter, any other Selection Committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorised specifically in that regard by the Rules made under Article 309. It is basically the function of the Rule making authority to provide the basis for selection. Further, rule making function under Article 309 is legislative and not executive, for this reason also, the Selection Committee or the Selection Board cannot be held to have jurisdiction to lay down any standard or basis for selection as it would amount to legislating a rule of selection."

16. Mr. Ashok Khare laid emphasis on the observations of the Hon''ble Supreme Court in *State of Madhya Pradesh v. Laxmishankar Mishra*, AIR 1979 SC 979. The matter pertains to absorption of Headmasters/Principals working in Government Colleges. Rule 3(b) of the M.P. Local Authorities School Teachers (Absorption in Government Service) Rules, 1964 provides for the computation of the period of 7 years for the purposes of absorption. In the said case a question arose as to whether the period for which the teachers working as incharge Headmasters/Principals should be taken into account by the State Government for computing the period of 7 years" service for absorbing them as Headmasters/Principals. The Hon''ble Supreme Court answered the said question in the following terms:

"On a pure grammatical construction of the expression "should have worked on the post for a minimum period of 7 years in the same institution" it would indisputably appear that the person claiming to be absorbed must have worked on the post of Headmaster/Principal of a High/Higher Secondary School for a

minimum period of 7 years. Emphasis is on the experience gained by working on the post of Headmaster/Principal. A person incharge of the post also works and discharges the duties and functions of the post of which he has taken charge. Even an officiating incumbent of the post does discharge the functions and duties of the post."

17. In *Dr. Asim Kumar Bose v. Union of India and others*, AIR 1983 SC 509, the Central Health Service Rules nowhere provided that the teaching experience gained by a Specialist in a teaching hospital in the capacity of an Associate Professor (exofficio) shall not count towards the requisite teaching experience. No provisions exist in the Rules that the teaching experience must be gained on a regular appointment. In the light of the aforesaid facts the Hon"ble Supreme Court observed:

"There is hardly any difference so far as teaching experience is concerned whether it is acquired on regular appointment or as Specialist in a teaching hospital with the exofficio designation. As the statutory rules do not provide that the teaching experience gained in an exofficio capacity shall not count towards the requisite teaching experience, the teaching experience gained by the appellant in the instant case while holding the post of RadiologistcumAssociate Professor of Radiology (exofficio) in the Irwin Hospital cannot be ignored in determining his eligibility for appointment as Professor of Radiology in Maulana Azad Medical College. There is a failure on the part of the Ministry of Health to draw a distinction between teaching and nonteaching hospitals under the Central Health Service."

It was further observed by the Hon"ble Supreme Court:

"The effect of the amendments of the Rules is that normally, a Professor or an Additional Professor in a medical college or a teaching institution can be appointed by direct recruitment from amongst persons holding the post of Associate Professor or Assistant Professor in the concerned specially in a medical college or a teaching institution having at least six years" teaching experience out of 12 years" standing in the Grade through the Union Public Service Commission. An Associate Professor in the medical college or a teaching institution can only be promoted from amongst persons holding the post of Reader of Assistant Professor having at least five years" teaching experience in the concerned speciality by the Departmental Promotion Committee. The word "as" in the collocation of the words used "at least six years" experience as Reader/Assistant Professor" in paragraph 3 and subrule (2A) of Rule 8 must be interpreted in its ordinary sense as meaning teaching experience gained "in the capacity of." In this view the Ministry of Health is apparently wrong in assuming that the word "as" in paragraphs 2(b) and 3 of Annexure I to the Second Schedule and subrule (2A) of Rule 8 makes holding of a post in the cadre a condition precedent to the appointment of a Professor or an Associate Professor."

18. In *State of Orissa and another v. N. N. Swamy and others*, (1977) 2 SCC

508, the respondent petitioners were teachers in the private college some of them confirmed Readers but all drawing pay less than Rs. 600/ at the time of takeover. On takeover the Government circular specified in addition to the requirement of qualification and experience that the incumbents should be drawing a pay of Rs. 600/ on the date of takeover. Only then would their names be referred to the Public Service Commission for appointment as Readers. The respondents who fulfilled all the other requirements successfully impugned in the High Court the requirement of drawing Rs. 600/. In the light of the aforesaid facts the Hon''ble Supreme Court observed:

"It is one thing to lay down appropriate educational and intelligibly relevant qualifications for certain posts in a college and also teaching experience of a specified duration but complete ignorance, without valid reason, of the teaching experience of a lecturer in a private college, otherwise qualified, on the sole ground of drawing a particular amount of salary on a particular date cannot be countenanced."

Before the High Court the teachers had staked the claim for equal pay with the teachers of other institutions. Before the High Court the action under Government Circular dated March 23, 1971 was in controversy. The said circular took recognition of the service in private college in the case of two Readers. The only differentia was, therefore, the salary drawn by the Readers on the date of take over. The Hon''ble Supreme Court held that eight years'' teaching experience in a college and the fulfilment of other requisite qualifications make a person eligible for appointment as a Reader, but whether he is suitable for selection for the post is an entirely different matter. Therefore, the Hon''ble Supreme Court directed for referring the names of the respondents to the Public Service Commission accordingly. Whether they will be suitable for appointment as Readers will be a matter entirely for due and proper consideration of the Public Service Commission whose recommendations will be considered by the Government in the matter of final absorption. The High Court was right in allowing the above claim in the writ applications and the appeals which were filed against the judgment of the High Court were dismissed. Reference was also made to the decision of the Hon''ble Supreme Court in *Uma Shankar Sharma v. Union of India and others*, (1980)3 Section 202, wherein the Hon''ble Supreme Court held that the conditions of eligibility should not be viewed too technically where candidate was required to be a sportsman had represented at an interuniversity tournament and the petitioner had been so selected by his university and the fact of nonparticipation in the actual tournament for reasons beyond his control was not fatal to his eligibility and, therefore, the termination of his services after three years of temporary service was not justified.

19. In the light of the aforesaid decisions we have to consider the correctness or otherwise of the action of the U.P. Public Service Commission in excluding the candidates belonging to category (i) to (vi) as indicated in page 3 of this judgment. Three years'' teaching experience of the teachers mentioned in

category (i) to (iv) and (vi) was not accepted by the Commission because their selection and approval was not made through any Government agency and they were teaching actually under the arrangement of private management. The L.T. Grade teachers mentioned in category (v) were not found eligible for selection as Principals as they were not Lecturers.

20. It is pertinent to mention here that the Commission was entrusted upon the duty to select Principals in Government Intermediate Colleges in the State of U.P. All the Government or Higher Secondary or Intermediate Colleges are governed by the U.P. Intermediate Education Act and are recognised by the Board of High School and Intermediate Education. The teachers working in the Government Intermediate Colleges or in the recognised private colleges impart those courses which are prescribed by the Board of High School and Intermediate Education. The courses of those institutions which are affiliated to the Central Board of Secondary Education, New Delhi (C.B.S.E.) are entirely different. Mostly they are English medium Schools which impart education based on C.B.S.E. and I.S.C. Courses.

21. Such institutions are not recognised by the Board of High Court and Intermediate Education. In most of these Schools students are taught from the textbods which are prepared by N.C.E.R.T

The eligibility requirements for the posts of the Principals advertised before the selection are more or less similar to what are provided under Rule 8(3) of the U.P. Educational (General Education Cadre) Service Rules, 1992, framed under Article 309 of the Constitution. The said Rule 8(13) is reproduced by us at page 4 of this judgment. The words "three years" teaching experience as Head of a High School or Normal School" will only means three years" teaching experience as Head of a High School or Normal School recognised under the U.P. Intermediate Education Act, 1921.

22. The members of the Government Intermediate Colleges (for boys and girls) according to the U.P. Educational (General Education Cadre) Service Rules, 1992 must be the "members of the service." "Member of the service" has been defined under the aforementioned service Rules of 1992 which means a person substantively appointed under these Rules or the Rules or Orders in force prior to the commencement of these Rules to a post in the cadre of the service. According to Section 3(h) of the aforementioned service Rule of 1992 "Service" means the U.P. Educational (General Education Cadre) Service. Rule 3(i) of the aforementioned Service Rules of 1992 defines "substantive appointment" which means an appointment, not being an ad hoc appointment, on a post in the cadre of the service, made after selection in accordance with the Rules and, if there are no Rules, in accordance with the procedure prescribed for the time being by executive instruction issued by the Government.

23. Section 2(b) of the U.P. Intermediate Education Act, defines "Institution" according to which it means a Recognised Intermediate College, Higher

Secondary School or High School and includes, where the context so requires, a part of an institution and Head of institution" means the Principal or "Headmaster, as the case may be, of such institution. According to Section 2(d) "recognition" means recognition for the purpose of preparing candidates for admission to the Board's examinations. Under Section 3 of the Act "Constitution of the Board" means the manner in which the Board has to be constituted. Section 7 of the Act deals with the power of the Board which is reproduced below:

"7. Power of the Board. Subject to the provisions of this Act, the Board shall have the following powers, namely:

(1) To prescribe courses of instructions, textbooks, other books and instructional material, if any, for the High School and Intermediate classes in such branches of education as it thinks fit;

(1A) To publish or manufacture, whether to the exclusion, complete or partial of others or otherwise, all or any of such text books, other books or instructional material;

(2) To grant diplomas or certificates to persons who

(a) have perused a course of study in an institution admitted to the privileges of recognition by the Board, or

(b) are teachers, or s

(c) have studied privately under conditions laid down in the regulations and have passed the examinations of the Board under like conditions;

(3) To conduct examinations at the end of the High School and Intermediate Courses;

(4) To recognize institutions for the purposes of its examinations;

(5) To admit candidates to its examinations ;

(6) To demand and receive such fees as may prescribed in the regulations;

(7) To publish or withhold publication of the results of its examinations wholly or in part;

(8) To cooperate with other authorities in such manner and for such purposes as the Board may determine;

(9) To call for reports from the Director on the condition of recognised institutions or of institutions applying for recognition;

(10) To submit to the State Government? its views on any matter with which it is concerned.

(11) 1b see the Schedules of new demands proposed to be included in the budget relating to institutions recognised by it and to submit if it thinks fit, its

views thereon for the consideration of the State Government;

(12) To do all such other acts and things as may be requisite in order to further the objects of the Board as a body constituted for regulating and supervising High School and Intermediate Education."

24. A perusal of the said provisions indicates that the Board has been vested with a power to prescribe courses of instructions textbooks, other books and instructional material, if any for the High School and Intermediate Classes in such branches of education as it thinks fit; and to publish textbooks, other books or instructional material, to grant diplomas or service to persons who have pursued courses of studies in an institution admitted to the privileges of recognition by the Board and have passed the examination of the Board and to conduct the examinations at the end of the High School and Intermediate Courses. The power also includes to recognise institutions for the purposes of its examinations, to admit candidates to its examinations and to demand and receive such fees as may be prescribed in the regulations and to publish or withhold publications of the results of its examinations wholly or in part etc.

25. Section 7A of the Act provides that notwithstanding anything contained in clause (4) of Section 7 the Board may, with the prior approval of the State Government, recognise an institution in any new subject or group of subjects or for a higher class.

26. It is thus evident that an institution under the Act must be recognised by the Board with the prior approval of the State Government. The approval by the State Government for the purposes of grant of recognition by the Board is sine quo non for grant of recognition to an institution by the Board and after approval the Board has still to pass an order for recognising the institution.

27. Section 7AB provides that nothing in the U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 (U.P. Act No. 24 of 1971), or the Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 (U.P. Act No. 5 of 1982) shall apply in relation to parttime teachers and parttime instructors employed in an institution under Section 7AA.

28. Section 7AA reads as under:

"7. Employment of parttime teachers or parttime instructors.(1) Notwithstanding anything contained in this Act, the management of an institution may, from its own resources, employ

(1) as an interim measure parttime teachers for imparting instructions in any subject or group of subjects or for a higher class for which recognition is given or in any section of an existing class for which permission is granted under Section 7A;

(ii) parttime instructors to impart instructions in moral education or any trade or

craft under socially useful productive work or vocational course.

(2) No recognition shall be given and no permission shall be granted under Section 7A, unless the Committee of Management furnishes such security in cash or by way of Bank guarantee to the Inspector as may be specified by the State Government, from time to time.

(3) No parttime teacher shall be employed in an institution unless such conditions as may be specified by the State Government by order in this behalf are complied with;

(4) No parttime teacher or parttime instructor shall be employed unless he possesses such minimum qualifications as may be prescribed.

(5) A parttime teacher or a parttime instructor shall be paid such honorarium as may be fixed by the State Government by general or special order in this behalf;

(6) Nothing in this Act shall preclude a person already serving as a teacher in an institution from being employed as a parttime instructor under Section 7AA."

29. Section 7B of the Act prohibits the unauthorised conferment of diplomas and certificates by any person.

30. Section 7C provides for the bar of charging any donation for admission to an institution.

31. Section 7D provides for penalty of contravention of Section 7B or Section 7C.

32. Section 7E provides for proper utilization of donations received by an institution.

33. Section 8 exempts Banaras Hindu. University and the Aligarh Muslim University from the operation of the Act.

34. Section 9 deals with the powers of supervision and control of the State Government. Section 15 of the Act vests a power to the Board to make regulations for the purposes of carrying into effect the provisions of this Act which includes the conditions of recognition of an institution for the purposes of examinations and the courses of studies to be laid down for all certificates and diplomas as well as the conditions under which candidates shall be admitted to the examinations of the Board and shall be eligible for diplomas and certificates etc.

35. As we have pointed out earlier that the Public Service Commission was asked to make selection on the post of the Principals of the Government Colleges which are recognised by the Board of High School & Intermediate Education. In view of the aforesaid reason the Commission was fully justified in considering the cases of those teachers or lecturers who have been imparting education in such institutions which are recognised by the Board constituted under the U.P. Intermediate Education Act, 1921. The teachers of only those institutions were rightly held to be eligible for selection on the post of the principals in

Government Colleges of the State which are recognised by the Board of High School and Intermediate Education.

36. The teachers of those institutions where different curriculum or courses are prescribed other than prescribed by the Board of High School & Intermediate Education, if allowed to impart education in Higher Secondary and Intermediate classes, recognised by the Board of High School and Intermediate Education would lead to anomolous situation because they have been teaching different courses in their institutions and they would not be effectively discharging their duties as teachers by teaching those courses which are prescribed by the Board of High School & Intermediate Education. By holding the post of the Principal of the Government College recognised by the Board of High School & Intermediate Education a Principal does not only administer or supervise the teachers and the students but also imparts education.

37. In view of the aforesaid reason we are of the view that as the Commission was entrusted with the task of making selections for the posts of Principals of Government Colleges, recognised by the Board of High School & Intermediate Education, hence the Commission was justified in treating the three years" experience as Head of the Higher Secondary or Normal School or three years" teaching experience of Intermediate or higher classes or three years" teaching experience as Lecturer in a C.T/L.T. Training College.

38. Three years" experience of teaching Intermediate or higher classes for the purposes of selection of Principals in Government Colleges recognised by the Board actually means three years" experience of teaching Intermediate or higher classes in those institutions which are recognised under Sections 7(4) and 7A of the U.P. Intermediate Education Act, 1921. If we treat three years" experience of teaching in Intermediate or higher classes. In other institutions, not recognised by the Board of High School & Intermediate Education, then all those teachers who are teaching in private coaching institutions, who teach the students as tutors and prepare them to appear in High School or Intermediate Examinations as private candidates, would also come within the eligibility criteria.

39. In view of the aforesaid position the decision of the Commission to treat the three years" experience of teaching of Intermediate or higher classes for selection to the posts of Principals in Government Colleges for those teachers who impart education in those institutions only which are recognised by the Board of High School & Intermediate Education cannot be faulted.

40. It is pertinent to mention here that after coming into force of the U.P. Secondary Education Services Selection Boards Act, 1982 the Secondary Education Services Commission at the State level was constituted to select the Principals, Lecturers, Headmasters and L.T. Grade Teachers. Under the said Act the U.P. Secondary Education Services Commission Rules, 1983 were framed which lay down the qualifications and experiences for appointment as teachers, determination and intimation of vacancies, notification of vacancies, procedure

for recruitment, preparation of panel for appointment, notification of selected candidates and procedure for appointment by promotion etc. But till the regular selection may be made, Rule 9A of the aforesaid Rules provides for the procedure for ad hoc appointment by direct recruitment, where under the vacancies are to be advertised subjectwise by the District Inspector of Schools inviting applications for ad hoc appointments in the prescribed pro forma mentioning the pay and allowances admissible to the posts minimum academic qualifications for appointment and such other things as may be considered necessary. Later on Regulations were also framed which are known as the U.P. Secondary Education Service Commission First Regulations, 1983, the U.P. Secondary Education Services Commission (Procedure and Conduct of Business) Regulations, 1983 and the U.P. Secondary Education Services Commission (Procedure for Approval of Punishment) Regulations, 1985 etc.

41. Whereas difficulty arose in giving effect to certain provisions of the U.P. Secondary Education Laws (Amendment) Act, 1975, the State of U.P. issued several Government Orders, known as the U.P. Secondary Education (Removal of Difficulties) Orders in between 1975 and 1985. In some of those Government Orders the Managing Committees were allowed to fill up the vacancies of the heads of the institutions or teachers on ad hoc basis in the manner provided under those Orders. However, the District Inspector of Schools were given powers to approve or disapprove such an ad hoc appointment.

42. It was contended on behalf of the parttime teachers, as well as such ad hoc teachers that their three years' teaching experience in imparting education was sufficient for their eligibility for the selection of the posts of Principals of Government Inter Colleges. A perusal of the provisions of Section 7AA itself will indicate that the parttime teachers are not regularly appointed teachers. They are engaged for imparting instructions on the parttime basis for which the Board has granted permission under Section 7A of the U.P. Intermediate Education Act, 1921. The provisions of the U.P. High Schools & Intermediate College (Payment of Salaries of Teachers and other Employees) Act, 1971 or the U.P. Secondary Education Services Selection Boards Act, 1982 (U.P. Act No. 5 of 1982) are not applicable in relation to the parttime teachers and parttime instructors employed in the institutions under Section 7AA of the U.P. Intermediate Education Act, 1921.

43. In view of the aforesaid reason the three years' teaching experience of parttime teachers cannot be deemed to be three years' teaching experience of regularly selected teachers according to the Rules. The provisions of Section 7AA were inserted by the U.P. Act No. 18 of 1987 in the U.P. Intermediate Education Act, 1921 are were actually meant for the benefit of the students whose studies might not suffer due to nonavailability of the regularly selected teachers. They are appointed by the Management on parttime basis, without obtaining the approval of the District Inspector of Schools and their services may be terminated at any time by the Management, hence their case for being selected

as Principals of the Government Inter Colleges even if they had completed three years" experience as parttime teachers in any recognised institution cannot be accepted and the Commission was justified in eliminating them from the field of eligibility.

44. The case of ad hoc teachers whose appointments were not in accordance with the provisions contained in Sections 16E, 16 F, 16FF and 16GG of the U.P. Intermediate Education Act, 1921 and the Regulations framed thereunder and the U.P. Secondary Education Services Selection Boards Act, 1982 and the Regulations framed thereunder cannot be deemed to be a substantively appointed teachers under the provisions of the Act, the Rules and the Regulations framed thereunder.

45. Section 2 of the U.P. Secondary Education (Removal of Difficulties) Order, 1975 reads as under:

"2. (a) Notwithstanding anything contained in Section 14 of the aforesaid Act, any substantive or leave vacancy or any vacancy existing or occurring during the current academic session or the Head of Institution or, a teacher of an institution may be filled in by the Committee of Management, on ad hoc basis in the manner provided hereunder till such period, not exceeding six months in any case, as a person duly selected in accordance with Section 14 aforesaid is appointed against such vacancy.

(b) The vacancy of the Head of the Institution shall be filled:

(i) in case of Intermediate College, by the seniormost teacher of the institution in the Lecturer"s grade;

(ii) in case of High School raised to the level of Intermediate College or a Junior High School raised to the level of High School, during the current academic session, by the Headmaster of such High School or Junior High School, as the case may be:

Provided the seniormost teacher or the Headmaster, as the case may be, possesses a good record of service and administrative ability.

(c) The vacancy of a teacher in the Lecturer"s grade or L.T Grade or C.T grade shall be filled in by the seniormost teacher of the institution in the L.T. grade, C.T. grade and J.TC./B.TC. grade respectively.

(d) Where any vacancy cannot be filled in the manner laid down in the preceding clauses, the same may be filled in on ad hoc basis for the same maximum period, as laid down in clause (a), by appointment of outsiders after selection by a Selection Committee consisting of three members, which may be constituted for the purpose on an ad hoc basis by the Committee of Management.

(e) Any person to be eligible for being appointed under clauses (b), (c) and (d) shall possess the minimum qualifications prescribed in Appendix A" referred to in Regulation I of Chapter II of the Calendar of the Board of High School and

Intermediate Education.

(f) Where on account of difference or dispute or for any other reason there is no Committee of Management in effective control of the affairs of an institution or has not been recognised as such by the Inspector and no Authorised Controller has been appointed by the State Government in respect of such institution, the powers of the Committee of Management in the foregoing clauses shall in the case of appointment of the Head of Institution be exercised by the Inspector and in the case of appointment of a teacher be exercised by the Head of the Institution concerned.

(g) All appointments made under the foregoing clauses shall, as soon as may be, reported to the Inspector giving particulars of qualifications and experience in respect of each person and the Inspector shall have the power to disapprove any appointment made in contravention of the foregoing provisions upon which the appointment in question shall cease. The decision of the Inspector in this regard shall be final."

46. By means of the U.P. Secondary Education (Removal of Difficulties) (Second) Order, 1976, the Removal of Difficulties (First) Order was amended only to the extent that for the words "not exceeding six months" the words "not extending beyond June 30, 1976" were substituted.

47. By means of the U.P. Secondary Education (Removal of Difficulties) (Third) Order, 1976 for the words "not extending beyond June 30, 1976", the words "not extending beyond September 30, 1976" were substituted.

48. By means of the U.P. Secondary Education (Removal of Difficulties) (Fourth) Order, 1976 for the words "not extending beyond September 30, 1976" the words "not extending beyond November 15, 1976" were substituted.

49. Clause 3 of the U.P. Secondary Education (Removal of Difficulties) (Fifth) Order, 1976 provides:

"3. Where any person was appointed by the Committee of Management as a teacher on or before the June 30, 1975 for any period as a temporary measure with the approval or permission of the Inspector and such person has worked thereafter upto November 15, 1976, he shall be deemed to have been appointed in a substantive capacity

(a) in case the appointment was initially made in a clear vacancy, from the date of appointment ;

(b) in case the appointment was initially made in a leave vacancy or a vacancy occurring for a part of the session or otherwise than in clear vacancy, from the date when such vacancy assumed the character of clear vacancy;

(c) in case the appointment was initially made on a post, the creation of which was sanctioned subsequently by a competent authority in that behalf, from the date of such sanction;

(d) in case he did not possess the prescribed training qualifications at the time of initial appointment, from the date of acquisition of such training qualification:

Provided that in cases referred to in subclauses (a), (b) and (c), such person possesses the prescribed qualification or has been exempted from the requirements of minimum qualifications and was duly selected and appointed in accordance with law for the time being in force.

Explanation. The period during which any such teacher has, between the date of his appointment and November 15, 1976, ceased to work for any reason not arising out of his own request shall not continue a break into service for purposes of this clause."

50. Clause 4 of the aforesaid order provides that "any teacher deemed to have been appointed in a substantive capacity under Clause 3 shall be deemed to be on probation from the date of substantive appointment and subject to the provisions of the Act and the Regulations made thereunder shall be confirmed."

51. Clause 5 of the said Order provides that "nothing in this order shall be construed as entitling any teacher to any pay or allowance for any period for which his services were discontinued."

52. Clause 6 provides that "nothing in Clause 3 shall entitle any teacher to substantive appointment on any post if on the date of publication of this Order such post has already been filled or selection for such post has already been made in accordance with the Act and the regulations made thereunder."

53. Clause 3 of the U.P. Secondary Education (Removal of Difficulties) (Sixth) Order, 1977 provides that "where any post was held on December 31, 1976 by a person appointed by the Committee of Management under the Uttar Pradesh Secondary Education (Removal of Difficulties) Order, 1975 or the Uttar Pradesh Secondary Education (Removal of Difficulties) (Fifth) Order, 1976 and no appointment has been made after the said date on such post in accordance with the Act and the Regulations made thereunder, a person shall continue to hold such post until May 20, 1977 or the appointment of a person in accordance with the Act and the Regulations made thereunder, whichever is earlier."

54. Section 16 GG was inserted in the U.P. Intermediate Education Act, 1921 by U.P. Act 5 of 1977 with effect from 21/4/1977 which reads as under:

"16GG. Regulation of appointment of ad hoc teachers. (1) Notwithstanding any thing contained in Sections 16E, 16F and 16FF, every teacher of an institution appointed between August 18, 1975 and September 30, 1976 (both dates inclusive) on ad hoc basis against a clear vacancy and possessing prescribed qualifications or having been exempted from such qualifications in accordance with the provisions of this Act, shall, with effect from the date of commencement of this section, be deemed to have been appointed in a substantive capacity, provided such teacher has been continuously serving the Institution from the date of his appointment up to the commencement of this section.

Explanation. For the purposes of this subsection, the period during which any break in service of teacher has occurred between the date of this ad hoc appointment and the date of commencement of this section for any reason not arising out of his misconduct or his own violation shall be disregarded:

Provided that nothing in this section shall be construed as entitling such teacher to any pay or allowance for any such period of break in his service.

(2) Every teacher deemed to have been appointed in a substantive capacity under subsection (1) shall be deemed to be on probation from the date of commencement of this section.

(3) Nothing in this section shall be construed to entitle any teacher to

(a) substantive appointment on any post if on the date of commencement of this section, such post has already been filled or selection for such post has already been made in accordance with this Act or the regulations made thereunder ; or

(b) substantive appointment if such teacher was related to any member of the Committee of Management or the Principal or Head Master of the institution concerned.

Explanation. For the purposes of this subsection, a person shall be deemed to be related to another if

(a) they are members of a Hindu undivided family; or

(b) they are husband and wife; or

(c) the one is related to the other in the manner indicated in the (Second Schedule)."

55. It is thus evident that a teacher falling within the protective clutches of Section 16GG (1) read with Clause 3 of Fifth Order (Removal of Difficulties) and Clause 3 of the Sixth Order is entitled to be holder of a post in substantive capacity and to continue to hold it. Only such teachers can be said to be substantively appointed under the provisions of Section 16GG of the U.P. Intermediate Education Act, 1921 and Fifth and Sixth Removal of Difficulties Orders. The three years" experience of teaching Intermediate or higher classes or three years" teaching experience as Head of High School or Normal School or three years" teaching experience as Lecturer in C.T./L.T. Training College which is eligibility criteria for the selection on the post of Principal of Government Inter College would be limited to only those teaches or lecturers who have been regularly or substantively appointed as teachers or lecturers in accordance with Section 16GG of the U.P. Intermediate Education Act, 1921 and Clause 3 of the Fifth and Sixth Removal of Difficulties Orders. The other teachers who were either appointed on ad hoc or officiating or honorary basis by the Management Committees in violation of Section 16GG of the U.P. Intermediate Education Act, 1921 and the Fifth and Sixth Removal of Difficulties Orders do not come within the eligibility criteria.

56. Promotion to Lecturer Grade or L.T. Grade is provided under Regulations 5 and 6 of the Regulations framed under the U.P. Intermediate Education Act, 1921 which are reproduced as under:

"5. Any teacher aggrieved by the decision of the Committee may within fifteen days of its communication to him file an appeal to the Inspector or Regional Inspectress, as the case may be, whose decision thereon shall be final.

6. A copy of the list after it has been finalized shall be supplied to each teacher, the head of the institution and the Inspector or Regional Inspectress for the reference and record. Any change in the strength or grades to teachers comprising a category shall be duly noted in the list and all concerned promptly intimated of it. Any teacher who feels aggrieved by the change may file objection before the Managing Committee within a month of the intimation and that objection shall be dealt with as if it were an objection under Regulation 4."

57. The words "all the teachers working in L.T. or C.T. Grade, as the case may be, "have been interpreted by this Court in Committee of Management, Shri Paramhans Intermediate College v. Additional Director of Education, U.P., Allahabad, 1981 U.P. L.B.E.C. 50 at page 52, where in it has been held that the words "all the teachers working in L.T. or C.T. Grade, as the case may be, having a minimum five years" continuous service to their credit" clearly mean that for the post of Lecturer's Grade the L.T. Grade teachers alone would be eligible and they should have minimum five years" service as such, namely, in the L.T. Grade. The services in the C.T. Grade were not relevant for the purposes of computing minimum five years" service for promotion to the Lecturer's Grade. Therefore, in the instant case the experience acquired by the petitioners in C.T. Grade cannot be taken into consideration while computing the five years" service for promotion to Lecturer's Grade. It is thus evident that the promotion or selection in the Lecturer's Grade as provided under Regulations 5 and 6 aforesaid has two necessary ingredients, firstly, for the post of Lecturer's Grade, the L.T. Grade teacher alone would be eligible and secondly, the teacher should have minimum five years" service as such, namely, in L.T. Grade. It is thus clear that for filling up the Lecturer's Grade posts only L.T. Grade teachers who have minimum five years" continuous substantive service, can be promoted as Lecturers. In view of the aforesaid Regulations it is thus evident that the persons having three years" experience as Assistant Teachers in L.T. Grade who despite completion of five years as Assistant Teachers had not completed three years" teaching experience as Lecturer cannot be appointed as Principals, but those teachers who have completed three years" teaching experience as Lecturer in C.T./L.T. Training Colleges will come within the field of eligibility to be selected as a Principal of a Government Inter College. The Commission was perfectly justified in excluding those teachers from being selection as Principals who were only teaching as L.T. Grade teachers or trained graduates drawing teacher's scale and who had not completed three years" teaching experience as Lecturer from being selected as Principal of a Government Inter College. Similarly the Commission was also

justified to exclude those teachers who possess three years' experience of teaching in unaided institutions as honorary lecturer because such lecturers are not selected or promoted as lecturers in accordance with Regulations 5 and 6 of the Regulations quoted in the preceding paragraph. Those teachers who were teaching in selffinanced institutions, but their appointment de hors the rules as they were not appointed legally and have been paid on day to day basis cannot claim to be selected even if they have obtained three years' experience in teaching.

58. The Commission also excluded those candidates who possess three years' teaching experience as Lecturer/teacher in aided institutions recognised by the Board but were not getting the salary from treasury or from Government funds and they were drawing their salary in lumpsum and fixed amount.

59. Before dealing with the question as to whether the exclusion of such lecturers teacher for the selection of Principals of Government Inter Colleges was proper or not, it is necessary to have a glance over the U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971. According to Section 2 (b) thereof "Institution" means recognised institution for the time being receiving maintenance grant from the State Government. Section 2(c) provides that "maintenance grant" means such graininaid of an institution, as the State Government by general or special order in that behalf direct to be treated as maintenance grant appropriate to the level of the institution. Section 2 (e) defines "teacher" according to which "teacher" of an institution means a Principal, Headmaster or other teacher in respect of whose employment maintenance grant is paid by the State Government to the institution and includes any other teacher employed in fulfilment of the conditions of recognition of the institution or its recognition in a new subject or for a higher class or as a result of the opening with the approval of the inspector of a new section in an existing class. Under Section 3 of the said Act the salary of a teacher or other employee of an institution in respect of any period after the thirtyfirst day of March, 1971, shall be paid to him before the expiry of the twentieth day, or such earlier day as the State Government may by general or special order in that behalf appoint, of the month next following the month in respect of which or any part of which, it is payable. It also provides that the salary shall subject to the provision of subsection (3), be paid without deductions of any kind except those authorised by the regulations or by any rules made under the Act or by any other law for the time being in force. Thus, according to the said Act the liability to pay salary to the teachers and employees now rests upon the State Government.

60. It has been submitted by Shri V.M. Sahai, learned Counsel for the Commission and Shri Nurul Huda, learned Standing Counsel that the conditions of the applicability of the Act to a High School or Intermediate College are:

(1) the institution has received recognition in terms of Section 2(d)of U.P. Act II of 1921,

(2) the State Government has fixed grantin aid appropriate to its level after applying its mind in view of the recognition granted to it and has treated as maintenance grant,

(3) it shall be receiving the maintenance grant at the time when the question of applicability of the Act came up before the Court.

61. It is pertinent to mention here that in the State of U.P. there are several institutions which have received recognition in terms of Section 2 (d) of the U.P. Intermediate Education Act, 1921 which either do not accept the grantin aid or they are not accorded grantin aid, e.g., Colvin College, Lucknow which is recognised by the Board of High School and Intermediate Education in terms of Section 2(d) of the U.P. Act II of 1921 but it is not on the grantin aid list. The State Government has never directed that the institution to be treated as maintenance grant appropriate to the level of the institution, because its management never applied for the grantin aid or maintenance grant. There are hundreds of institutions which have either received recognition in terms of Section 2(d) of the U.P. Act II of 1921 which were not given maintenance grant/grantin aid, may be due to the financial crunch, but the teachers or lecturers in those institutions were appointed in accordance with the provisions of the U.P. Act II of 1921 and the regulations framed thereunder as well as the U.P. Secondary Education Service Selection Boards Act, 1982. It is a matter of common knowledge that the budgetary allocation for education in the State of U.P. is as such that it cannot put all the institutions which have received recognition in terms of Section 2 (d) of the U.P. Act II of 1921 on the grantin aid list. The State of U.P. gives grantin aid or maintenance grant to such institutions according to the date to their recognition. Every year such a list is prepared which is always yearwise meaning thereby that the State Government frames a policy that those institutions which had been accorded recognition in a particular year would be put on the grantin aid list. Due to the lack of financial resources several recognised institutions could not be given grantin aid, although they were accorded recognition several years back. If the teachers who have been substantively appointed in accordance with the provisions of the Act and the Regulations framed thereunder are not paid their salary from the public treasury as those institutions were not given maintenance grant/grantin aid, they cannot be blamed for the lapse on the part of the State Government. Hence, we feel that the exclusion of such teachers who have been regularly selected as teachers in accordance with law and have completed three years" teaching experience for teaching in such institutions which have been given recognition in terms of Section 2 (d) of the U.P. Act II of 1921 was not justified as they could not be excluded from the eligibility criteria fixed by the Commission. Similarly the teachers of such institutions which never opted for the "maintenance grant" and the salaries of such teachers are paid by the management, instead of public treasury can also not be excluded from the field of eligibility of being selected as the Principals of Government Inter Colleges if they have fulfilled the qualifications and have attained three years" teaching experience.

62. We are also of the view that the teachers with three years" experience of teaching in any district unit of training whose services are transferable to Government Colleges also come within the field of eligibility for being selected as the Principals of Government Inter Colleges.

63. The controversy as to whether the person imparting instructions during the period of his research fellowship would be deemed to be a teacher or not was set at rest by an Hon"ble Single Judge of the Delhi High Court in *University of Delhi v. Dr. Sudhakar Shukla and Dr. N.P. Singh*, 1992 Lab. I.C. 2315, wherein it has been held that the teaching experience of research fellowship should be qualitative so as to be counted as a teaching experience and that period of teaching can be counted towards his teaching experience. It was further held that the definition of "Teacher" is inclusive and not exhaustive. It not only includes Professors Readers and Lecturers but also includes other persons imparting instructions in the University. Thus person imparting instructions during the period of his research fellowship would be a teacher within meaning of Section 2 (g) and such teaching experience can be considered for his placement in the selection grade. Similar observations have been made in *Dr. M. C. Gupta and others v. Dr. Arun Kumar Gupta and others*, (1979) 2 SCC 339, wherein it has been observed:

"The State Public Service Commission invited applications for two posts of Professor of Medicine in the State Medical Colleges by an advertisement setting out qualifications as prescribed under Regulations framed under Section 33 of the Indian Medical Council Act, 1956 and approved by Government of India on June 5, 1971. The teaching/research experience as required by the special Regulation was five years" service as Reader/Assistant Professor in Medicine in a Medical College after requisite postgraduate qualification. Regulation 4 of the General Regulations provides : "50% of the time spent in recognised research under the Indian Council of Medical Research or a University or a Medical College after obtaining the requisite postgraduate qualification be counted towards teaching experience in the same or an allied subject provided that 50% of the teaching experience shall be the regular teaching experience."

64. In paragraph 22 of the report it has been observed that the Court is not competent to work out figure with mathematical precision. It can broadly examine the question whether the requirement is satisfied or not. The certificate produced by none other than some of the constesting respondents shows that the appellant No. 2 was fellow in the medical college and during the tenure of fellowship he was expected to take part in the teaching and research activities of the college though he would not be treated as part of the regular establishment of the college.

65. Thus, the Hon"ble Supreme Court observed that the experience of research fellowship should be counted as teaching experience.

66. Shri Ghanshyam Upadhyaya who is the petitioner is Civil Misc. Writ Petition

No. 6396 of 1998 possesses a good academic record. He cleared the National Examination Test for junior research fellowship conducted by the University Grants Commission in the year 1991/93. He also cleared Research Fellowship Test conducted by the University Grants Commission from 17/1991 and has been imparting instructions in B. Com. classes in the Department of Commerce and Business Administration at Allahabad University since the last five years and seven months.

67. Thus, the petitioner comes within the field of eligibility as he possesses a postgraduate degree from a University and more than three years' experience of teaching higher classes. The petitioner's candidature and the candidates of those teachers who possess three years' teaching experience of teaching Intermediate classes or higher classes should not be thrown out of the eligibility area only because they possess superior academic career and teaching experience for teaching graduate and post graduate classes.

68. In view of the fact that out of total 216 posts the Commission found 102 candidates only eligible for appointment on the posts of the Principals of the Government (Boys/Girls) Inter Colleges in the State and made their selection, the result was declared by the Commission and a recommendation was made to the State Government for appointment of 102 candidates on the posts of the Principals of the Government (Boys/Girls) Inter Colleges in the State. The names of 114 candidates were not recommended as the candidates did not come within the field of eligibility. There exists no reason for this Court to quash the selection. Because the Commission rightly found them eligible for being selected as such as they fulfilled the qualifications and the terms and conditions of the Advertisement dated May 8, 1996. There is another reason for noninterference by this Court into the process of the selection already made as the Commission did not make recommendation for 114 posts of the Principals of the Government Inter Colleges and in accordance with the provisions made by this Court the Commission may recommend to the State Government for their selection.

69. In view of what has been indicated hereinabove all the writ petitions are disposed of with the following directions:

(i) The candidates who were claiming to work as the Lecturers/Heads of High Schools or Normal Schools or Lecturers in C.T/L.T Training Colleges recognised by the Board of High School and Intermediate Education, the recognition of which institutions have been approved by the State Government and who have gained three years' teaching experience for teaching Intermediate and higher classes on the basis of their appointment/promotion in accordance with the provisions contained in the Act and the Regulations framed thereunder as well as 5th and 6th Removal of Difficulties Orders shall be eligible for being selected even if they are not getting their salaries.

(ii) The candidates who were claiming to teach in the unaided institution as parttime Lecturers and have gained three years' experience as parttime

Lecturers shall not be eligible to be selected.

(iii) The candidates who were claiming to teach in unaided institutions as honorary teachers and have gained three years" experience will not be eligible for being selected.

(iv) The candidates who were claiming to teach in the self financing institutions but were not appointed legally as stated by the Joint Director in their experience certificates and were paid certain amount on day to day basis or a fixed amount by the management shall not be eligible for being selected.

(v) The candidates who were teaching as L.T. Grade Teachers or trained graduate teachers and the candidates who have not completed three years" teaching experience as Lecturers will not be eligible for being selected.

(vi) The candidates who were vorking as Lecturers in the Government Inter Colleges and were drawing salary from the treasury or Government funds are eligible for being selected.

(vii) The candidates who were working as Lecturers in Navodaya Vidyalayas or in central schools and drawing salary from Government funds come within the field of eligibility and they are liable to be selected.

(viii) The candidates who were working as Lecturers in Government aided institutions and were drawing salary from treasury or from Government funds are also entitled for being selected.

(ix) The candidates who were working as Lecturers in Defence Ministry/Railway Ministry or in any Government sponsored institution and were getting salary from the Government funds are eligible for being selected.

(x) The candidates who after completion of minimum five years as Assistant Teachers and were promoted as Lecturers in accordance with the Rules known as the U.P. Secondary Education Service Rules and gained three years" teaching experience as Lecturers in the institutions which are recognised by the Board of High School and Intermediate Education and approved by the Government and they are promoted in accordance with the U.P. Secondary Education Service Rules are entitled for being selected.

(xi) The permanent Assistant Teachers of the Government Colleges who are paid salary by the Government but they are teaching Intermediate classes on officiating basis do not come within the field of eligibility.

(xii) The candidates who have filed three years" teaching experience of those institutions which are affiliated to the Central Board of Secondary Education, New Delhi or teaching I.S.C. Course and are being paid salary by the management do not come within the field of eligibility for being selected.

(xiii) The candidates who have obtained three years teaching experience as teachers for teaching in the institutions run by the Army and Air Force

Association recognised by the Central Board of Secondary Education do not come within the field of eligibility and thus cannot be selected.

(xiv) The candidates who have obtained three years' experience of teaching as ad hoc teachers under Section 18 of the U.P. Secondary Education Service Commission who have not been selected or whose services have not been regularised in accordance with the provisions of the U.P. High School and Intermediate Education Act and the Regulations framed thereunder or whose cases are not covered by the 5th and 6th Removal of Difficulties Orders do not come within the field of eligibility. The candidates who have obtained three years' experience of teaching Intermediate classes in District Institutes of Training whose posts are transferable to Government Colleges come within the field of eligibility and they are entitled for selection.

(xv) The candidates who have cleared the National Eligibility Test conducted by the University Grants Commission for Research Fellowship and are engaged in various Universities, Graduate or PostGraduate Colleges and have been imparting education for three years come within the field of eligibility and are liable to be selected. Similarly those candidates who possess superior academic qualifications and have possessed three years' teaching experience in Graduate and PostGraduate classes cannot be excluded from the selection.

70. Keeping in view the observations/directions mentioned in the foregoing paragraphs the Commission is directed to send the recommendations to the State Government for appointment of eligible candidates on the posts of the Principals of the Government (Boys/Girls) Inter Colleges in the State as early as possible preferably within a period of ten weeks or earlier in pursuance of the Advertisement dated May 8, 1996.