
(2012) 11 AHC CK 0157
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 58880 and 60118 of 2012

Uma Pandey and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-11-2012

Acts Referred:

Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 — Rule 21

Citation : (2013) 2 ADJ 480 : (2013) 3 AWC 3223

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

Bench : Single Bench

Advocate : Radha Kant Ojha, for the Appellant; A.K. Yadav, for the Respondent

Final Decision : Allowed

Judgement

V.K. Shukla, J.—In both these writ petitions grievance of the petitioners is to the effect that transfer and posting has not at all been carried out in open and transparent manner and the institutions have been allotted arbitrarily and in view of this transfer/posting order dated 6.10.2012 be quashed and respondents-authority be directed to conduct open counseling for posting of petitioners and others in consonance with the provision as contained under U.P. Basic Education (Teachers) (Posting) Rules 2008 and as per amended Rules 2010. Brief background of the case as is reflected that petitioners have been performing and discharging their duties as Assistant Teachers/Head-master in the institutions run and managed by the Basic Education Board U.P. at Allahabad constituted under the provisions of U.P. Basic Education Act, 1972 and have been serving in District other than Allahabad. Service conditions of petitioners are governed by statutory rules known as U.P. Basic Education (Teachers Service) Rules 1981. Therein in the said Rules amendment has been introduced known as U.P. Basic Education (Teachers Service) (13th Amendment) Rules 1981, wherein provision has been incorporated for providing another district transfer i.e. from one district to another and as per the same each and every incumbent was obliged to move on line application and thereafter on the basis of application so moved transfer was

to be considered strictly as per the parameter of the aforesaid Rules as has been provided for.

2. This much is also clear that incumbents who would be transferred would be accorded placement at the bottom of the list of the teachers of corresponding class or category in the aforesaid district. Each one of the petitioner who have been working in their respective district and as they fulfilled parameter as provided for applied for consideration of their transfer under U.P. Basic Education (Teachers Service) (13th Amendment) Rules 1981 and thereafter list of incumbents who have been transferred has been published on 14.8.2012 effectuating transfer by Secretary Basic Shiksha Parishad, U.P. at Allahabad. As far as petitioners are concerned they have requested for being transferred to district Allahabad by giving their option and their option has been accepted and they have been transferred to District Allahabad.

3. On being transferred issue has been raised as to in what way and manner placement is to be accorded to the said incumbents qua their respective place of posting i.e. the assignment of respective institution where they are supposed to function and in the said direction as placement and posting is governed by statutory Rules, recourse has been undertaken of the aforesaid Rules known as U.P. Basic Education (Teachers) (Posting) Rules 2008 and said Rules have further been amended in year 2010 Rules 8(3) mentions that teachers transferred from one District to another will be given posting as per the provision of these Rules. After said incumbents have reported for their joining at Allahabad, District Level Posting Committee has been constituted in this regard and same comprised of Vinay Kumar Pandey, Principal District Institute of Education and Training, Allahabad who was the Chairman of the aforesaid Committee, Dinesh Kumar Yadav, District Basic Education Officer, Allahabad as Member Secretary, Shyam Kishor Tiwari, Senior Lecturer, District Institute of Education and Training, Allahabad, and Smt. Sudha Yadav, Principal Government Girls Inter College, Allahabad as Members. Said District Level Posting Committee in question proceeded to ask for option from the aforesaid incumbents in this direction and the incumbents, who have joined upto 3.9.2012 were required to submit their option on 21.9.2012 and incumbents who have joined on 4.9.2012, and until 22.9.2012 they were asked to submit their option on 22.9.2012 and in this regard notification has been published in newspaper Dainik Jagran and Amar Ujjala. Apart from this on the basis of information so furnished by respective Block Education Officer vacancies in question have been identified in reference to institution in question which were lying closed known as list "A" and in-reference of the institutions where single teacher has been posted known as List "B" and the list of said institution has been finalised in English Alphabetical order by arranging the same in ascending order and thereafter list of vacancies as has been existence in respect of institution lying closed and where single teacher had been functioning had been published and it has also been pasted on the Notice Board and by the prescribed date as was fixed in all 807 incumbents have given their option for being posted as Assistant Teachers of Primary Institutions and 95

incumbents have given their option for being posted as Assistant Teachers at Senior Basic School/Headmaster of Primary institutions.

4. After said option of institutions has been submitted then in consonance with the Rules it is stated the exercise has been undertaken by means of resolution dated 5.10.2012 and keeping in view option so submitted and keeping in view the seniority prepared on the basis of joining and date of birth in district Allahabad same had been arranged and at the first instance female physically handicapped candidates and male physically handicapped category candidates have been considered for posting and thereafter all female candidates have been resolved to be offered posting as per their seniority and in respect of Assistant Teachers of Senior Basic Schools and Headmaster of Primary School resolution has been passed to make placement keeping in view subject as well as seniority on the basis of date of joining and date of birth in district Allahabad. Thereafter meeting had been convened on 6.10.2012 and on the said date resolution has been passed mentioning therein that at the first instance female physically handicapped category candidate have been accommodated on the basis of their choice given by them in the list of institutions mentioned in the list "A" and list "B". In the said direction female physically handicapped candidates, who have opted for, institution of their choice they have been given institution of their choice. Similarly in respect of the physically handicapped male category candidates as per their seniority status from list "A" and "B" they have been accorded institution and posting of their choice. Lastly it has been mentioned that as per option so furnished and as per seniority list so prepared option has been considered and from amongst female category candidates 294 female category got institution chosen by them in their option and in respect of 484 female category candidates as qua the institution in question qua which option has been exercised by them was not available then as per seniority from the list which have been prepared in accordance with ascending order of English Alphabet at the first instance institutions which were lying closed and where only single teacher was available same has been allotted and it has been stated, that rightful exercise has been undertaken accordingly.

5. After the said list has been prepared, lot of hue and cry has been made in respect of aforesaid list in question and then it is reflected that some complaints have been made before the District Magistrate therein it has been stated that placement/posting has not been made fairly and correctly and District Magistrate thereafter constituted four member committee comprising of Chief Development Officer, Allahabad as Chairman; Chief Treasury Officer, Allahabad and District Basic Education Officer, Allahabad and District Social Welfare Officer, Allahabad as Members. Said committee in question submitted its report mentioning therein that posting have been accorded strictly as per the Rules and there are clerical errors and same can be rectified by the District Level Posting Committee and thereafter it is further reflected that District Basic Education Officer Allahabad constituted three members committee comprising Ramesh Chandra Mishra, Block Education Officer, Allahabad, K.D. Yadav, Block Education Officer, Allahabad and

Jawahar Lal, Block Shiksha Adhikari Bahriya, Allahabad to submit its report and the said committee in question proceeded to mention that female category candidates have been excluded from roster and posting exercise has been undertaken as per option and in respect of left out teachers posting has been given keeping in view the seniority status and said report is dated 22.11.2012. It appears that petitioners were still not satisfied with the posting process as has been undertaken and they have rushed to this Court.

6. This Court on 8.11.2012 has proceeded to pass following order:

Put up this case on 21.11.2012.

By that time, Sri A.K. Yadav, Advocate is directed to obtain necessary instructions qua the provisions of roster which has been made applicable for female teachers. Instructions may also be obtained in reference to paragraph 16 of the writ petition. Coupled with this details be also furnished by way of instructions as to whether strictly on merits and as per choice transfers have been effectuated or not.

7. Thereafter when the matter has been taken up, Sri A.K. Yadav, Advocate has produced all the relevant record to demonstrate the way and manner in which proceeding for posting has been carried out.

8. Parties to the dispute have agreed that present matter be taken up for final hearing and disposal.

9. Sri R.K. Ojha, Advocate as well as Sri R.K. Upadhyay, Advocate appearing with Sri S.K. Singh, Advocate submitted that in the present case entire procedure so adopted and adhered to on the face of it is de hors the statutory provision as at the first instance seniority which has been so determined is per se bad and coupled with this, once option has been exercised and institutions so opted mentioned were not at all available even then thereafter as per seniority status, institutions available ought to have been put up for exercising their choice and in view of this procedure which has been so adopted is totally unfair, arbitrary and unreasonable and the posting has not at all been accorded in consonance with the provision as contained under the Rules, as such writ petition in question deserves to be allowed.

10. Sri A.K. Yadav, Advocate on the other hand contended that all fairness and transparency has been maintained at the time of finalising of posting lists and same has been prescribed strictly in consonance with the Rules and in view of this Court should not interfere with the aforesaid posting order as procedure which has been adopted is fair and transparent and even seniority has been properly determined and no one has ever objected to the same.

11. In order to appreciate the respective arguments, the pleadings as set out in the writ petitions, as well as record which has been produced before this Court alongwith statutory provisions such as Rules which hold the field for selection and appointment and transfer as well as seniority as well as relevant Rules in

reference of posting are being looked into. Selection and appointment as Assistant Teacher in Primary Schools as well as Senior Basic School which is inclusive of the post of the Headmaster as already mentioned above is governed by statutory Rules known as U.P. Basic Education (Teachers Services) Rules 1981. Under aforesaid Rules, Rule 19 deals with appointment, Rule 20 deals with appointment to be made by order; Rule 21 deals with procedure for transfer and Rule 22 deals with seniority. Rule 21 (unamended) and 22, of the aforesaid Rules being relevant are being extracted below:

Rule 21: Procedure for transfer.-- There shall be no transfer of any teacher from the rural local area to an urban local area or vice versa or from one urban local area to another to the same district or from local area of one district to that of another district except on the request of or with the consent of the teachers himself and in either case approval of the Board shall be necessary.

Rule 22 of 1981 Rules: Seniority.-- (1) The seniority of a teacher in a cadre shall be determined by the date of his appointment in a substantive capacity:

Provided that, if two or more persons are appointed on the same date their seniority shall be determined in which their names appear in the list referred to in Rule 17 or 17-A or 18, as the case may be.

Note.--A candidate selected by direct recruitment may lose his seniority, if he fails to join without valid reasons when a vacancy is offered to him whether the reasons in any particular case are valid or not shall be decided by the appointing Authority.

(2) The seniority of a teacher who has been transferred from one local area to another in accordance with the provisions of Rule 21 shall be placed at the bottom of the list of teachers of the corresponding class or category pertaining to the local area to which he has been transferred as on the date of orders for transfer are passed, such a persons shall not be entitled to any compensation.

12. State of U.P. proceeded to amend the Rule 21 by means of U.P. Basic Education Teachers Service (13th Amendment) Rules, 1981 wherein provision for inter-district transfer has been provided for by substituting Rule 21 of U.P. Basic Education (Teachers Services) Rules 1981. Rule 21 as amended by Thirteenth Amendment is being extracted below:

Rule 21 -Procedure for Transfer. -- Any teacher who is working as Assistant Teacher/Head-master in Schools governed by the Board on October 31, 2011 may submit his/her option/application once in his/her service period for transfer from one district to another district on the proforma laid down by the Board in the manner prescribed by it, which shall be effective till his/her transfer is executed.

(i) On and from the commencement of the Uttar Pradesh Basic Education (Teachers Service) (Thirteenth Amendment) Rules 2011, head-masters/teachers who are willing to seek inter-district transfer shall have to submit their options/

applications till December, 31, 2011. The options/applications for transfer received by the Board shall be listed in accordance with opted district wise by the Board in order of their date of substantive appointment.

(ii) The inter-district transfer of teachers shall be considered in the following order of preference:

(a) Female teacher who applies for transfer on marriage basis.

(b) Female teacher who applies for transfer in a district other than her home district.

(c) Female teacher who applies for transfer in her home district.

(d) Male teacher who applies for transfer in a district other than his home district.

(e) Male teacher who applies for transfer in his home district.

(iii) For transfer of teacher working in schools governed by the Board three options of the districts in order of preference shall be obtained on one application Form laid down Board.

(iv) Teacher willing for transfer, if working as head-master in primary schools and assistant teacher in upper primary schools after promotion their transfer shall be considered in the applied/opted district, only when the teachers appointed in the same year have got promotion. The transfer of head-teacher of upper primary schools shall not be permitted.

(v) The female teacher willing for transfer according to the order of preference prescribed in clause (ii) above shall be transferred, on the basis of first option given by them, in applied/ opted district in order of their seniority. After that they shall be transferred on the basis of their second option, and remaining female teachers shall be transferred on the basis of their third option. Thereafter transfer of male teachers shall be considered on the basis of their seniority, in the district on the vacant posts available against sanctioned posts in respective district.

(vi) No option shall be accepted after 31.12.2001 the date prescribed for submission of application/option by the teacher for inter-district transfer. It shall be the last opportunity for the teachers to submit their application/ options for inter-district transfer. The teachers who have not submitted their option till the stipulated date, the right to give option thereof shall stand expired.

(vii) In accordance with the above procedure, the teachers by whom the option for their transfer have been submitted, this rule shall stand infructuous for them after the execution of their transfer on the aforesaid basis.

(viii) The facility of this rule shall not be admissible to the teachers appointed after dated 31.10.2011.

13. In the present case each one of the petitioners who have been performing and discharging duties either in the capacity of Assistant Teacher in Primary School or Head-master of Primary School or the Assistant Teacher in Senior Basic School applied for inter district transfer by exercising their option on the premises that they fulfil the term and condition for being transferred. Claim of the petitioners have been considered at the level of Secretary U.P. Basic Education Prishad at Allahabad and thereafter transfer list has been finalized on 14.8.2012 accepting the transfer of the petitioners at district Allahabad. After the aforesaid list in question has been finalised, it appears that petitioners have been relieved from their respective district and have reported on different dates at the office of District Basic Education Officer. After they had reported in the office of District Basic Education Officer, the District Basic Education Officer, has proceeded to make publication in daily news paper Dainik Jagran and Amar Ujjala mentioning therein that the candidates who have joined at the office District Basic Education Officer they should submit their option and it was also precisely mentioned therein that all those incumbents who have joined on 3.9.2012, they should submit their option on 21.9.2012 and those candidates who have joined on 4.9.2012 and upto 20.9.2012 they should submit their option on 22.9.2012 at the office of Principal, District Education and Training Institute.

14. This Court at this juncture proceeds to take note of the provision as contained under U.P. Basic Education (Teachers) (Posting) (First Amendment) Rules 2010.

2. Amendment of Rule 5.--In the U.P. Basic Education (Teachers) (Posting) Rules 2008 hereinafter referred to as the said rules, for Rule 5 the following rules shall be substituted namely;

5 for the purpose of posting, the list of teachers selected in accordance with the provision of the U.P. Basic Education (Teacher) Service Rules 1981 shall be prepared in the manner mentioned herein under -

- (f) Handicapped candidates
- (g) General candidates
- (h) Candidates belonging to Other Backward Classes
- (i) Candidates belonging to Scheduled Castes
- (j) Candidates belonging to Scheduled Tribes.

3. Amendment of Rule 6.--In the said rules for Rule 6 the following rule shall be substituted, namely:

6. The list of schools shall be prepared in the following manner--

(d) The blocks of the district mentioned in Appendix A shall be identified as general and backward blocks as per Rule 4 and separate lists of teachers less schools will be prepared for these blocks in accordance with the order of English

Alphabet: The name of the block will also be mentioned in the bracket with school's name.

(e) The blocks of the district mentioned in the Appendix A shall be identified as general and backward blocks as per Rule 4 and separate lists of single teacher schools will be prepared for these blocks in accordance with the order of English Alphabet. The name of the block would also be mentioned in the bracket with school's name.

(f) The lists of schools other than the schools described in clauses (a) and (b) shall be prepared separately for general and backward blocks in the ascending order of Pupil Teacher Ratio.

4. Amendment of Rule 8.--In the said rule for Rule 8 set out in Column I below the rule as set out in Column II shall be substituted, namely-

8(1) (a) Three options for schools shall be asked from the handicapped candidates in order of their merit and after receiving such options the handicapped candidates shall be posted on the basis of options given by them and the vacancies.

(b) Based on the order of their merit, female teachers would be required to submit under their signature option of three schools each from the general and backward block and accordingly, posting would be given in one of these schools.

(c) The posting of male teachers shall be made in accordance with the order of candidates in the roster prepared under Rule 7.

(2) (a) The newly appointed male teachers shall initially be posted compulsorily in backward areas for a period of at least five years.

(b) Newly, appointed female teachers shall also be compulsorily posted in backward area for a period of at least two years.

(c) Mutual transfers within the district from general block of backward block and vice-versa would be permitted with the condition that the teacher on mutual transfer to a backward block shall have to serve in that block compulsorily for five years. Mutual transfers would be permitted only in case of those teachers who have more than remaining five year's service.

(d) In normal circumstances the applications for inter-district transfers in respect of male and female teachers will not be entertained within five years of their posting. But under special circumstances, applications for inter-district transfers in respect of female teachers would be entertained to the place of residence of their husband or in law's district.

(e) if by virtual of posting of newly appointed or promoted teachers the primary and upper primary schools of backward blocks get saturated i.e. no post of teachers is vacant in these schools, then handicapped and female teachers on their choice can be adjusted against the vacant posts of general blocks from

these saturated blocks.

(f) Mutual transfers of male/female teachers from one backward blocks to another can be considered.

(3) Teachers transferred from one district to another will be given posting as per the provisions of these rules.

15. Bare perusal of the U.P. Basic Education (Teachers) (Posting) (First Amendment) Rules 2010 would go to show that at the first instance list of institutions is to be got prepared wherein institutions are lying closed. The said list in question is to be prepared in ascending order of English Alphabet alongwith the name of respective blocks and the institution. Second list of institutions to be prepared is wherein single teachers are functioning in schools in accordance with ascending order of English Alphabet alongwith the name of the block in the bracket with school's name. As per amended Rule 8(1) (a) from the handicapped candidates three options for the schools where they intend to join is to be asked. It has also been provided that after receiving such options the handicapped candidates would be posted on the basis of options given by them and the vacancies. Rules 8(1)(b) mentions that based on the order of their merit, female teachers would be required to submit their option of three schools each from the general and backward block and accordingly, posting would be given in one of these schools. It has also been mentioned therein under Rule 8(1) (c) that male teachers shall be accorded placement in accordance with the order of candidates in the roster prepared under Rule 7.

16. Bare perusal of the aforesaid Rules would go to show that in the matter of posting in reference of physically handicapped candidates and in respect of female candidates special provision has been made so that said incumbents can get their posting with element of their choice being there.

17. In the present case factual situation which is emerging and which has been highlighted before this Court that seniority has been determined on the basis of their respective date of joining and date of birth and on the basis of aforesaid seniority list so prepared posting has been sought to be accorded in respect of institutions and accordingly posting made is per se bad.

18. First issue, which this Court takes note of, is as to whether incumbents who have been transferred their seniority status has been determined strictly as per the Rules or not in the facts of present case.

19. Rule 22 has already been quoted above, which clearly proceeds to mention that the seniority of a teacher in a cadre shall be determined by the date of his appointment in a substantive capacity. It has also been provided that if two or more persons are appointed on the same date their seniority shall be determined in which their names appear in the list referred to in Rule 17 or 17-A or 18, as the case may be. It has also been noted in the aforesaid Rules that a candidate selected by direct recruitment may lose his seniority, if he fails to join without

valid reasons when a vacancy is offered to him whether the reasons in any particular case are valid or not shall be decided by the appointing Authority. Sub-Rule (2) of Rule 22 provides that the seniority of a teacher who has been transferred from one local area to another in accordance with the provisions of Rule 21 shall be placed at the bottom of the list of teachers of the corresponding class or category pertaining to the local area to which he has been transferred as on the date of orders for transfer are passed. This much has also been stated before this Court that on transfer being effectuated, the incumbent would lose his seniority of the earlier District.

20. Inter-district transfer has been provided for by means of substituted Rule 21 of U.P. Basic Education (Teachers Services) Rules 1981, known as U.P. Basic Education Teachers Service (13th Amendment) Rules, 1981 and as per the aforesaid Rules an incumbent has to apply for inter-district transfer and on inter-district transfer being accepted it has been accepted by parties that an incumbent will have to lose his/her seniority in the district wherein he/she has been transferred and he/she shall be placed at the bottom of the list of teachers of the corresponding class or category pertaining to the said District to which he has been transferred. Sri A.K. Yadav submits that each and every candidate who had applied for transfer has agreed to such a term and condition and have been well aware of the said consequences. Thus, Scheme of things clearly provide that there would be loss of seniority and they would be accorded placement at the bottom of the list of teachers of corresponding class or category of the aforesaid district in the present case District Allahabad. Under the scheme of things provided for nowhere it has been mentioned that date of joining and date of birth would be relevant criteria for determining the seniority whereas contrarily Rule 22 recognises the date of substantive appointment to be the relevant factor for determining seniority. Once incumbent who has been transferred from one district to another then certainly he/she would lose his/her seniority at the earlier district and are bound to be placed at the bottom of teachers of the corresponding class or category of the District wherein they have been transferred.

21. Question is that all those teachers who have been transferred from different districts to one particular district i.e. at District Allahabad then in what way and manner their inter se seniority is to be determined. Can it be on the basis of date of joining and age or their seniority should be determined keeping in view their date of substantive appointment as well as age.

22. Transferred teachers of each and every category who have been transferred to Allahabad District constitute one class and in case seniority is to be determined category wise then the date of substantive appointment should be the relevant criteria and on the date of substantive appointment being one and same then age should be relevant factor for determination of seniority but certainly date of joining cannot be made basis for effectuating and determining seniority. Rule 22 recognises, substantive appointment as the relevant criteria for

determination of seniority and one may lose his/her seniority, if within time frame provided for, one has not joined but under the scheme of things provided for date of joining cannot be the relevant criteria for determining seniority. This Court does not approve of the way and manner in which seniority of transferred teachers has been determined by giving preference to the date of joining whereas under the relevant Rules determination of seniority is based on substantive appointment. In view of this, matter requires reconsideration on this score and on this aspect of the matter.

23. This Court has proceeded to peruse the record in question and the record in question reflects that application has been invited for filing option forms and based on the date of joining, those incumbents who have reported upto 3.9.2012 they were asked to submit their option till 21.9.2012 and those incumbents who have joined in between 4.9.2012 to 20.9.2012 they were asked to submit their option till 22.9.2012. This much is also clearly reflected that in all 807 Assistant Teachers of Primary institution and 95 Assistant Teachers of Senior Basic School/head-master gave their option and based on their option list has been prepared and the institution has been allotted to them as per their choice exercised in the option forms and from the institution mentioned in list "A" and list "B". Female handicapped candidates, 9 in number have been allotted institution as per their choice and similarly 27 male physically handicapped incumbents have been allotted institution as per their choice and in respect of female category candidates 294 female category candidate have got institutions as per their choice and in respect of 484 female teachers exercise for giving choice has not at all been undertaken and the incumbent who has been accorded placement at the bottom of the seniority list has been given posting at the first institution shown as lying closed.

24. Under the U.P. Basic Education (Teachers) (Posting) (First Amendment) Rules 2010 female teachers ought to have been accorded posting as per option given by them as language of the Rules, is clear and specific, that options shall be asked for, and posting would be given in one of those schools opted for. Admittedly female teachers have failed to get posting in school opted for by them, as it stood occupied by other teachers. Issue is that once option which has been given by female teachers in reference to the institutions of their choice same stood exhausted can even then the incumbents whose option could not be acted upon can still opt for institution remaining unfilled and what is the requisite exercise required to be undertaken.

25. In the present case factual situation which is clearly reflected that after 9 physically handicapped female teachers have been absorbed/adjusted as per their option and 27 male physically handicapped teachers have been absorbed/adjusted as per their option and 294 female teachers have been absorbed/adjusted as per their option then thereafter option/choice in question has not at all been asked for any further qua the left out institutions of list "A" and list "B" and to the contrary procedure which has been uniformly adopted for posting of

such female teachers by the District Level Posting Committee constituted in this regard is that they have started filling up the vacancy as it existed in institution shown in List "A" first and then from List "B" institution by starting placement of junior most incumbents first and then proceeding in descending order from the seniority list so prepared and according placement to female teachers in institution of List "A" and "B" in ascending-order. For example in the list of teachers prepared of primary institution, last incumbent in the seniority list is one Ranjana Singh her name finds place at serial No. 814 and said Ranjana Singh has been accorded placement at Block Phoolpur Primary Institution Ahirana and the said name of the institution finds place at serial No. 1 in list "A".. Similarly name of Ruma Singh finds place at serial No. 813 and she has been accorded placement at Block Meja, Primary institution Ahirana ka pura, Seniority list has been taken in descending order. List of institution mentioned in List "A" and List B has been utilized in ascending order and following such way and manner institution has been allotted to female teachers, qua the said matter query has been made as to why the said procedure has been adhered to, wherein there is no element of choice of female teacher involved, then before this Court justification has been sought to be given that as list "A" pertains to institution wherein no teachers are there and therein senior teachers would not like to prefer to go, in view of this procedure has been adhered by according placement to junior most incumbent first in the closed institution and adopting the same way and manner starting from bottom of seniority posting has been made from the list "A" of institutions mentioned as closed institution and thereafter from the List B in reference to single teacher institution, and same has accordingly been filled up.

26. This particular formula adopted by the authorities, in the opinion of the Court, is erroneous and mechanical and without their being any application of mind at the point of time when institution has been allotted whereas under the relevant Rules, female teachers have been given a right to exercise their choice/option in the matter of posting as the language used is that posting would be given in one of these schools. The Rules in question have further proceeded to mention, in Rule 8(1) (c) that if by virtue of posting of newly appointed or promoted teachers the primary and upper primary schools of backward class gets saturated i.e. no post of teacher is vacant in those schools, then handicapped and female teachers on their choice can be adjusted against the vacant post of general blocks from these saturated class. Said provisions, supports the plea of exercise/choice even where no post of teacher is available. At the stage, when option already exercised could not be given effect to on account of said institutions already opted by others, then fairness and transparency demanded to give such female teachers, as per their seniority, choice to be posted in remaining institutions of List A and List B as per their seniority status.

27. Fact of the matter is that seniority from bottom has been taken into consideration while according placement in stead of proceeding to adopt

procedure wherein posting ought to have been accorded on the basis of seniority and as per choice expressed by them qua the left out institution. Procedure adopted is mechanical with no element of application of mind on choice front. Entire list prepared after options have exhausted, are an outcome of formula devised i.e. taking name of incumbents starting from the junior most female in descending order of the seniority list prepared and matching the same with the list of institution prepared as. List A and List B in ascending order. Choice has been given a complete good bye in the facts of the present case, qua left out female teachers.

28. In view of this, opinion of the Court is that much more transparent procedure ought to have been adopted and some real exercise ought to have been undertaken specially when there is provision of option and in respect of female teachers they have to be accorded placement as per their choice in stead of proceeding to act on formula. In such a situation as it has been contended that in district Varanasi, Azamgarh and Jaunpur where choicest institutions were not available, procedure of counseling has been adopted, on the directives of State Government, as such, such procedure ought to have been adopted in the present case also, and accordingly if is hereby directed that District Level Posting Committee shall once again revisit the entire exercise preferably within two months from the date of presentation of certified copy the order passed by this Court.

29. In the meantime teachers, who have been accorded placement which has been so accorded to them should join at the transferred place and it is clarified that their joining and posting shall abide by fresh decision which would be taken by the authority concerned as already mentioned above. This order has been passed keeping in view the larger interest i.e. the interest of institution and the students at large.

30. For the reasons stated hereinabove both the writ petitions are allowed to the said extent and the impugned list dated 6.10.2012 shall abide by fresh decision to be taken by the District Level Posting Committee. No orders as to cost.