



2026:AHC:71072-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 209 of 2026

Veeresh Chandra Mishra And 2 Others

.....Appellant(s)

Versus

State Of U.P. And 5 Others

.....Respondent(s)

Counsel for Appellant(s) : Prashant Shukla, Ram Prakash
Upadhyay
Counsel for Respondent(s) : C.S.C.

Along with :

1. Special Appeal No. 193 of 2026:

Ghanshyam Singh

Versus

State of U.P. and 3 others

2. Special Appeal Defective No. 174 of 2026:

Shivraj Mishra

Versus

State of U.P. and 5 others

3. Special Appeal No. 196 of 2026:

Samita, Officiating Principal, Arya Kanya Inter College

Versus

State of UP and 2 others

4. Special Appeal Defective No. 180 of 2026:

Arun Kumar Pandey and 15 others

Versus

State of U.P. and 20 others

A.F.R.

Court No. - 3

HON'BLE SAUMITRA DAYAL SINGH, J.

HON'BLE SWARUPAMA CHATURVEDI, J.

(Order on Civil Misc. Leave to Appeal Application No. 01 of 2026 and Civil Misc. Exemption Application No. 02 of 2026 filed in Special Appeal Defective No. 174 of 2026)

1. Heard learned counsel for the appellant.

2. In absence of any serious objection, the present applications are allowed.

(Order on Special Appeal)

3. Heard Sri Prashant Shukla, learned counsel for the original petitioner-appellant, Sri Kartikey Saran, Additional Advocate General and Shri Ankit Gaur, learned Standing Counsel for the State.

4. Present intra Court appeals have arisen against the common judgment and order of the learned Single Judge dated 27.01.2026, **Samit vs. State of U.P. and 2 others and 11 connected writ petitions, 2026:AHC:17253**. By that order, the writ Court has disposed of the writ petitions filed by the original petitioners-appellants. In effect, the writ petitions had been filed seeking a direction on the respondent State Authorities for payment of salary commensurate to that payable to principal of different inter-colleges, covered under the grant-in-aid scheme of the State Government.

5. Primarily, in view of U.P. Education Service Selection Commission Act, 2023, (hereinafter referred to as the 'Commission Act'), and U.P. Education Service Selection Commission Rules, 2023 (hereinafter referred to as the 'Commission Rules'), the original petitioner/appellant have been found dis-entitled to receive salary commensurate to that of principal of Intermediate College, though it is an admitted case between the parties that original petitioners/appellants were officiating as principal at their respective intermediate colleges- all covered under the grant-in-aid scheme of the State Government. In doing that the writ Court has observed that three earlier decisions of coordinate benches in **Dhaneshwar Singh Chauhan vs. District Inspector of Schools, 1980 0 UPLBEC 286**, **Narbdeshwar Misra vs. District Inspector of School, Deoria, 1982 0 UPLBEC 171** and **Soloman Morar Jha vs. District Inspector of Schools, Deoria and others, 1985 UPLBEC 113** are no

longer good law.

6. For ready reference, the facts pertaining to Writ -A No. 19255, Veeresh Chandra Mishra and 2 others vs. State of U.P. and 5 others are as follows. The original petitioner, Veeresh Chandra Mishra, was initially appointed as lecturer (Chemistry) by the Service Selection Board on 16.08.2001. He was allotted Swatantra Bharat Inter College, Surjawali Via Khurja, Bulandshahar vide order dated 16.10.2001. Against appointment letter dated 18.10.2001, he joined that institution. On 30.12.2022, the then principal of said the institution namely, Anil Kumar submitted his resignation. He handed over charge to the petitioner, who was the senior most lecturer working at the institution.

7. Thereafter, the signature of the petitioner was attested by the D.I.O.S, Bulandshahar on 13.1.2023. Since then, the petitioner has been officiating as principal of that institution and he has been discharging his duties in that capacity. However, he was not paid salary commensurate to the post of principal on which he has officiated. This led the petitioner to file the writ petition. It has been disposed of.

8. In some of the other petitions, slight difference of facts exists, inasmuch as some of the petitioners were being paid salary commensurate to their officiating as principal of their respective institutions. Upon enforcement of the Commission Act, that salary payment has been withheld.

9. We have heard learned counsel for the parties. On behalf of petitioners submissions have been first advanced by Sri Prashant Shukla, learned counsel for the original petitioner Veeresh Chandra Mishra. He would submit- initially, under the provision of U.P. Intermediate Education Act,

1971 (hereinafter referred to as the 'Intermediate Act'), and the Regulations framed thereunder, provision existed for appointment of Officiating Principal, upon temporary or substantive vacancy on the post of Principal. At that time, a dispute arose, if an Officiating Principal of an intermediate college was entitled to payment of salary commensurate to that of Principal. In **Dhaneshwar Singh Chauhan (supra)**, the petitioner was a permanent lecturer at such an institution. While allowing the claim for payment of salary commensurate to that of Principal against work of Officiating Principal, a coordinate bench had considered that the salary of a teacher at aided and recognized institutions was regulated by the Regulations framed under the Intermediate Act, read with the orders issued by the State Government from time to time. Further, Regulation 46 under Chapter III of the Regulations framed under the Intermediate Act clearly recognized that the salary payment shall be commensurate to the pay scale sanctioned by the State Government. Taking note of a Government Order dated 18.01.1974, it was recognized that the State Government had accepted the recommendation of the U.P. Pay Commission prescribing pay scales for teachers. Moreover, Clause 5(2) of the said Government Order was read to entitle an Officiating Principal or Officiating Teacher to salary in the higher grade, commensurate to the post on which such person may have officiated. For failure on the part of the State Government to establish that any subsequent Government Order had been issued or any other Rule had been enforced, providing for another scheme and further upon failure to produce any material before the Court to establish that the claimant petitioner was not entitled to higher salary claimed, order to the contrary passed by the D.I.O.S was quashed and a positive direction was issued, for payment of higher salary.

10. Then referring to **Narbdeshwar Misra (supra)**, it has been contended that in that case, the ratio in **Dhaneshwar Singh Chauhan (supra)** was applied and followed. Specifically referring to Clause 3 of Regulation 2 of the regulation framed under the first Act, a coordinate bench in **Narbdeshwar Misra (supra)**, further observed that the payment of higher salary would arise upon vacancy continuing beyond 30 days. Thereafter, considering the fact that the claimant petitioner had continued to work in the capacity of Officiating Principal beyond the period of six months, he was found entitled to payment of higher salary.

11. Not only that consistent view had arisen through the pronouncements of the coordinate benches in **Dhaneshwar Singh Chauhan (supra)** and **Narbdeshwar Misra (supra)**, more than 40 years ago, but in **Soloman Morar Jha (supra)**, the said principle was extended to minority institutions, as well. Recently, another coordinate bench has applied the same principle to minority institutions, in the present legislative context. Thus, in **State of U.P. and two others vs. Sakhawat Ullah Khan and another, 2026:AHC:25538:DB**, the decision in **Soloman Morar Jha (supra)** has been followed by a bench, of which one of us was a constituent.

12. As to the statutory provision, Sri Shukla has first referred to Chapter 2, Regulation 2 of the Regulations framed thereunder. Thus, reliance has been placed on Proviso to sub-Clause (1) of Clause 2 of that Regulation. For ready reference, the same is extracted as below:-

"2(1) The post of the Head of Institution shall except as provided in clause (2) be filled by direct recruitment after reference to the Selection Committee constituted under Sub-section (1) of Section 16-F or, as the case may be, under sub-section (1) of Section 16-FF:

Provided that in the case of any institution not being an

institution referred to in Section 16-FF a temporary vacancy caused by the grant of leave to an incumbent for a period not exceeding six months or by death, retirement or suspension of an incumbent occurring during an educational session in the post of the Head of Institution shall be filled by the promotion of the senior most qualified teacher, if any, in the highest grade in the institution.

3) Where the temporary vacancy in the post of head of institution is, for a period not exceeding thirty days, the senior-most teacher in the highest grade may be allowed to work as acting head of institution, but he shall not be entitled to pay in a scale higher than the scale of pay in which he is drawing salary as such teacher."

emphasis supplied.

That legislative scheme was interpreted by the coordinate bench in **Dhaneshwar Singh Chauhan (supra)** and **Narbdeshwar Misra (supra)**.

13. Following the said decision, legislative action followed. The ratio in **Dhaneshwar Singh Chauhan (supra)** and **Narbdeshwar Misra (supra)** found legislative expression upon incorporation of UP Secondary Education Services Selection Board Act, 1982, (hereinafter referred to as the 'Board Act'). Under section 18 of the said Act, a specific provision was made for *Ad-hoc* promotion as principal at Government Intermediate Colleges. For ready reference section 18 of the Board Act reads as below:-

"Section 18: Ad hoc Principals or Headmasters

(1) Where the Management has notified a vacancy to the Board, in accordance with sub-section (1) of Section 10 and the post of the Principal or the Headmaster actually remained vacant for more than two months, the management shall fill such vacancy on purely ad hoc basis by promoting the seniormost teacher.

(a) in the lecturer's grade in respect of a vacancy in the post of the Principal.

(b) in the trained graduate's grade in respect of a vacancy in the post of the Headmaster.

(2) Where the Management fails to promote the senior most teacher under sub-section (1) the inspector shall himself issue the order of promotion of such teacher and the teacher concerned shall be entitled to get his salary as the Principal or the Headmaster, as the case may be, from the date he joins such post in pursuance of such order of promotion.

(3) Where the teacher to whom the order of promotion is issued under sub-section (2) is unable to join the post of the Principal or the Headmaster, as the case may be, due to any act or omission on the part of the management, such teacher may submit his joining report to the Inspector, and shall thereupon be entitled to get his salary as the Principal or the Headmaster, as the case may be, from the date he submits the said report.

(4) Every appointment of an ad hoc Principal or Headmaster under sub-section (1) or sub-section (2) shall cease to have effect from when the candidate recommended by the Board joins the post."

14. That legislative scheme remained in force for more than 40 years. Though upon enforcement of Commission Act, the Board Act has been repealed, at the same time the conditions of service of teachers as were governed under the Intermediate Act and the Regulations have been saved by virtue of Section 16 of the said Act. Referring to Section 31 of the Commission Act, it has been further submitted, while the Board Act has been repealed, the Intermediate Act remains enforce. For ready reference Section 16 and 31 of the Commission Act read as below:-

16. Conditions of Service of Teachers or Instructors-The conditions of service of teacher or instructor can be decided as per the provisions given in the relevant Acts/Service Rules/Regulations/University Statues, as the case may be.

31. Repeal and Savings.-(1) The Uttar Pradesh Higher Education Services Commission Act, 1980, the Uttar Pradesh Secondary Education Service Selection Board Act, 1982 and the Uttar Pradesh Education Service Selection Commission Act, 2019 are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Acts referred to in sub-section (1) shall be deemed to have been done or taken under this Act, as if the provisions of this Act were in force at all material times.

(3) Save as otherwise provided in this Act, the repeal of the

Acts referred to in sub-section (1) shall not have an adverse effect on the general application of section 6 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act no. 1 of 1904) in relation to the enforcement of provisions."

15. Thus, even though the Board Act stands repealed, the principle in law, providing for payment of higher salary, commensurate to the post of Principal- to an Officiating Principal of a grant-in-aid Intermediate College, who may have officiated in that capacity against substantive vacancy, clearly exists, in view of the pre-existing decisions of the coordinate benches in **Dhaneshwar Singh Chauhan (supra)** and **Narbdeshwar Misra (supra)**.

16. Contesting the above submissions, learned Additional Advocate General submits that the situation had completely changed upon enforcement of the Board Act and after it's repeal. Therefore, the judicial principle emanating from **Dhaneshwar Singh Chauhan (supra)** and **Narbdeshwar Misra (supra)**, no longer exists. He has first referred to section 10 and 16 of the Board Act. Those provisions read as below:-

"10. Procedure of selection by direct recruitment. (1) For the purpose of making appointment of a teacher, by direct recruitment, the management shall determine the number of vacancies existing or likely to fall vacant during the year of recruitment and in the case of a post other than the post of Head of the Institution, also the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes, the Scheduled Tribes and other Backward Classes of citizens in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 and notify the vacancies to the Board in such manner and through such officer or authority as may be prescribed.

(2) The procedure of selection of candidates for direct recruitment to the post of teachers shall be such as may be prescribed:

Provided that the Board shall, with a view to inviting talented persons, give wide publicity in the State to the vacancies notified under sub-section (1).

16. Appointment to be made only on the recommendation

of the Board. (1) Notwithstanding anything to the contrary contained in the Intermediate Education Act, 1921 or the regulations made thereunder but 3[subject to the provisions of 4["Sections 12, 18, 21-B, 21-C, 21-D, [21-E, 21-F, 21-G, 33, 33-A, 33-B, 33-C, 33-D, and 33-F and 33-G"], every appointment of a teacher, shall on or after the date of the commencement of the Uttar Pradesh Secondary Education Services Selection Board (Amendment) Act, 2001 be made by the management only on the recommendation of the Board").

17. The above provisions are described to be provisions for regular appointment only. They may have no application to *ad-hoc* appointment and *ad-hoc* promotion against vacancy on the post of Principal. That provision had been specifically made under section 18 of the Board Act.

It read as below:-

“18. Ad hoc Principals or Headmasters.(1) Where the Management has notified a vacancy to the Board, in accordance with sub-section (1) of Section 10 and the post of the Principal or the Headmaster actually remained vacant for more than two months, the management shall fill such vacancy on purely ad hoc basis by promoting the seniormost teacher.

(a) in the lecturer's grade in respect of a vacancy in the post of the Principal.

(b) in the trained graduate's grade in respect of a vacancy in the post of the Headmaster.

(2) Where the Management fails to promote the seniormost teacher under sub-section (1) the inspector shall himself issue the order of pro-motion of such teacher and the teacher concerned shall be entitled to get his salary as the Principal or the Headmaster, as the case may be, from the date he joins such post is pursuance of such order of promotion.

(3) Where the teacher to whom the order of promotion is issued under sub-section (2) is unable to join the post of the Principal or the Headmaster, as the case may be, due to any act or omission on the part of the management, such teacher may submit his joining report to the Inspector, and shall thereupon be entitled to get his salary as the Principal or the Headmaster, as the case may be, from the date he submits the said report.

(4) Every appointment of an ad hoc Principal or Headmaster under sub-section (1) or sub-section (2) shall cease to have effect from when the candidate recommended by the Board joins the post."

18. To give full effect, that provision had to be read along with Rule 11

(4) of the Rules framed under the Board Act. For ready reference Rule 11(4) reads as below:-

“11. Determination and notification of vacancies- (4)
Where, for any year of recruitment, the Management does not notify the vacancies by the date specified in sub-rule(2) or fails to notify them in accordance with the said sub-rule, the Inspector shall on the basis of the record of his office, determine the vacancies in such institution in accordance with sub-section (1) of Section 10 and notify them to the Board in the manner and by the date referred to in the said sub-rule. The vacancies notified to the Board under this sub-rule shall be deemed to be notified”

19. In view of above, it has been submitted, for the purposes of making an *ad-hoc* promotion on the post of Principal, the legislative intent had emerged that the vacancy must first be notified by the Committee of Management of the institution, to the Board. Only in the event of failure on part of the Board to make substantive appointment within next two months, occasion would arise, to provide for *ad-hoc* promotion on the post of Principal. That scheme was materially different from the one that pre-existed, under the Intermediate Act. Then, reference has been made to section 32 of the Board Act. It clearly provides that the provisions of the Intermediate Act, insofar as they may not be inconsistent to the Board Act shall continue to be enforced. To the extent under that Act, no *ad-hoc* promotion/ appointment may have been made on the post of Principal, unless vacancy has been notified by the Committee of Management to the Board, the pre-existing scheme under the Intermediate Act was clearly altered and was therefore rendered unenforceable. Coming to Commission Act, reliance has been placed on the provisions of section 10, which has been described to be a provision parallel to the provision 10 of the Board Act. In absence of any provision parimateria to section 18 of the Board Act (as may have provided for *ad-hoc* promotion/appointment against the post of Principal), it has been submitted that the Commission

Act does not contemplate ad-hoc promotion or appointment.

20. Referring to section 30 of the Commission Act, it has been submitted that provisions of that Act have been given force, notwithstanding anything contrary contained amongst others, in the Intermediate Act. For ready reference provisions of section 30 read as below:-

“30. Overriding Effect of the Act.-Regarding the selection of teachers or instructors, the provisions of this Act shall have effect notwithstanding anything contrary to the rules, regulations, or Statutes contained in the Uttar Pradesh State University Act, 1973, Intermediate Education Act, 1921, Uttar Pradesh Basic Education Act, 1972, Uttar Pradesh Government Industrial Training Institutes (Instructors and Foreman Instructors) Service Rules, 2021.”

21. Thereafter, reference has also been made to section 31(3) of the Commission Act. It reads as below:-

“31. Repeal and Savings.-(1) The Uttar Pradesh Higher Education Services Commission Act, 1980, the Uttar Pradesh Secondary Education Service Selection Board Act, 1982 and the Uttar Pradesh Education Service Selection Commission Act, 2019 are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Acts referred to in sub-section (1) shall be deemed to have been done or taken under this Act, as if the provisions of this Act were in force at all material times.

(3) Save as otherwise provided in this Act, the repeal of the Acts referred to in sub-section (1) shall not have an adverse effect on the general application of section 6 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act no. 1 of 1904) in relation to the enforcement of provisions.”

22. Readwith section 6 of the U.P. General Clauses Act, 1904, it has been submitted that on the date of the repeal of the Board Act, the inconsistent provision of the Intermediate Act did not revive and therefore, the scheme that had been developed under that Act does not survive. Consequently, it has been submitted that the writ court has rightly dismissed the writ petition filed by the original petitioner.

23. By way of clarification and also objection, it has also been stated that the effect of the Commission Act was not raised before the writ court. Consequently, it has not been considered. Therefore, it has been suggested that the issue may not be allowed to be raised for the first time in the present proceedings.

24. Reliance has been placed on the decision of another coordinate bench decision in **Ravindra Singh Niranjana vs. District Inspector of Schools, Jhansi and another, 1988 SCC Online All 4: (1988) 1 AWC 658**, to submit that notification of vacancies under section 18 of the Board Act was a *sine qua non*, to claim higher salary as Officiating Principal. Second, referring to **Munishwar Dutt Pandey vs. Ramjeet Tiwari and others (1997) 3 Supreme Court Cases 599**, it has been further submitted that any appointment made without following the due procedure i.e. notification of vacancy, would remain outside section 18 of the Board Act.

25. Having heard learned counsel for the parties and having perused the record, in the first place, we find that the issue raised is purely legal. It does not involve any dispute on facts. Further, the present proceedings have arisen by way of intra-Court appeal. They are continuation of the writ petition. Consequently, the legal submissions advanced as to the effect of the three Acts, on the claim of the original petitioners/appellants, to higher salary, is being considered, in that light. The technical objection raised on behalf of the State in that regard, is rejected. A pure legal issue having arisen before the Court, we propose to decide the same, on its own strength.

26. In the first place, parties are not in dispute that upto the enforcement

of Board Act. The law as laid down by the coordinate bench in **Dhaneshwar Singh Chauhan (supra)** existed. In that coordinate bench had observed as below:-

“The petitioner is a teacher in aided and recognised institution and the liability for the prejoint his salary is on the State Government under the U.P. High School and Intermediate College (Payment of Salary of Teacher and other Employees) Act, 1971. The salary of a teacher in aided and recognised institution is regulated by the regulation framed under the U.P. Intermediate Education Act and the order issued by the State Government from time to time Regulation 46 in Chapter III lays down that employees of an aided and recognised institution shall be given the pay scale sanctioned by the State Government from time to time. The State Government has prescribed the scales of pay for teachers. The State Government issues an order on 18th January 1974 accepting the recommendations of the U.P. Pay Commission prescribing scales of pay for teachers. Paragraph 5(2) of the Government order lays down that a teacher while officiating on the post carrying higher grade is entitled to officiating salary in the higher grade and it further prescribed procedure for determining the salary of officiating teacher in the higher grade. A copy of the Government order was before us by the petitioner. Respondents do not deny the petitioners averment that the State Government issued orders sanctioning officiating pay to a teacher in the higher grade. The petitioners claim for salary in Principals grade was sanctioned by the District Inspector of Schools in pursuance of the aforesaid Government order. Respondents have failed to show any subsequent Government order or rule superseding the direction contained in Government order dated 24-1-74. The respondents have further failed to place any material before the court showing that the petitioner was not entitled to the salary in the Principal's grade while officiating on the post of Principal. The order of the District Inspector of Schools dated 31-8-77 is therefore not sustainable in law.

3. In the result we allow the petition and quash the order of the District Inspector of Schools and direct the respondents to pay salary to the petitioner in the Principals grade for the period during which he has been officiating as Principal in accordance with the orders contained in the letter of the District Inspector of Schools dated 14-4-79. The petitioner is entitled to his cost.”

27. That principle was reiterated by another coordinate bench in **Narbdeshwar Misra (supra)**. In that, it was observed as below:

“7. In Dhaneshwar Singh Chauhan v. District Inspector of

Schools, Badaun 1980 uplbec 286, a Division Bench of this court rules that a teacher officiating on the post of Principal is entitled to receive salary in the Principals grade as provided by the Government Order dated 18-1-1974. This decision does support the petitioners contention.

8. The same conclusion also flows from clause (3) of Regulation No. 2 quoted above. The provision that where the temporary vacancy in the post of the Head of the institution is for a period exceeding thirty days, the senior most teacher may be allowed to work as acting head of the Institution but that he would not be entitled to pay in a scale higher than that in which he was drawing his salary as a teacher clearly suggests that where the vacancy in the post of Principal lasts more than 80 days, the teacher appointed to officiate as the Principal under the aforesaid proviso would entitled to the salary admissible to a Principal.

9. The aforesaid statutory provisions, therefore, clearly point to the conclusion that the petitioner was, as the officiating principal of the College, entitled to be paid the salary of a principal. The respondent no. 1 was consequently not justified in refusing the salary of a Principal to the petitioner on the ground that the petitioner was merely officiating as the Principal.

10. As regards the contention of the learned Standing Counsel that under the various Removal of Difficulties Orders the officiating appointment could last only for a period of six months, it is sufficient to say that, that was not the ground on which the payment of salary in the Principals grade was refused by the District Inspector of Schools. On the other hand from annexure 4 to the writ petition which is a copy of the letter of the Deputy Director of Education dated 3rd of July 1981 addressed to the District Inspector of Schools (with a copy forwarded to the petitioner) it is clear 'that the petitioner was still being treated as the officiating Principal of the College, The Deputy Director of Education pointed out the relevant statutory provisions applicable to the payment of salary to officiating Principals and observed that the District Inspector of Schools should comply with those provisions. We, therefore, find no substance in this submission raised by the learned Standing counsel.

11. In the result, the petition succeeds and is allowed. The District Inspector of Schools, Deoria is directed to pay salary to the petitioner admissible to the Principals as long as the petitioner continues to be the officiating Principal of the aforesaid College. We, however, make no orders as to costs."

28. In absence of any dispute as to the correctness of the law laid down by those coordinate benches, it has to be acknowledged that earlier under the Intermediate Act, any teacher who may have officiated as Principal of a

grant-in-aid Intermediate College, would become entitled to payment of higher salary, commensurate to that of a Principal of that institution.

29. Thereafter, upon enforcement of the Board Act, that legal principle was statutorily recognized in the shape and form of section 18 of the said Act (extracted above). Read with rule 11(4) of the Rules framed thereunder, the only difference that emerged was on the own strength of Rule 11(4) of the Rules. Thus, the appointment of ad-hoc principal came to be initiated at the hands of the Committee of Management, in terms of Rule 11(1), read with Rule 11(2). Only in the event of failure on the part of Committee of Management, the D.I.O.S. would himself determine the vacancy at the institution.

30. In that light, the Supreme Court in **Munishwar Dutt Pandey (supra)**, clearly observed that before any appointment may be made under section 18 of the Board Act, the Committee of Management ought to have notified the vacancy. We note that in the said decision, the issue was entirely different. There, the outgoing principal had handed over charge to the senior most lecturer at the institution with prior intimation to the President of the Committee of Management. The Committee of Management did not notify the vacancy. At the same time, the dispute had arisen between the two competing claimants to officiate as Principal. That is not the case here.

31. The submission that the provisions of Intermediate Act, to the extent they were inconsistent to the Board Act, therefore, loses force, is attractive inasmuch as those Regulations did provide for a different method for appointment of Officiating Principal.

32. First, that principle may not govern the fate of this intra-Court appeal

inasmuch as the dispute has arisen not in the context of Board Act, but in view of the enforcement of the Commission Act. That Act, does not provide for appointment or promotion on *ad-hoc* basis, against the substantive vacancies on the post of Principal at Intermediate Colleges under grant-in-aid of the State Government. It only provides for determination of vacancies, requisitions and selections. In that, section 10 of the Commission Act reads as below:-

“10. Determination of Vacancies, Requisition, and Selection Procedure.-(1) *For the purpose of making an appointment of a teacher or instructor by direct recruitment, the Appointing Authority or Management or Authorized Officer shall determine the number of vacancies existing or likely to fall vacant during the year of recruitment and, in the case of a post other than the post of head of the institution, also determine the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes of citizens in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (U.P. Act no. 4 of 1994), and persons belonging to economically weaker sections in accordance with the Uttar Pradesh Public Services (Reservation for Economically Weaker Sections) Act, 2020 (U.P. Act no. 10 of 2020) and other directions issued by the Government from time to time, and notify the vacancies to the Commission in such manner and through such officer or authority as may be prescribed. The Commission shall decide the eligibility and accordingly advertise the vacancies received in the manner as may be prescribed.*

(2) The procedure of selection of candidates for direct recruitment to the posts of teachers or instructors shall be such as may be prescribed.

(3) Regarding appointment in religious and linguistic minority educational institutions for maintaining quality of education, process of selection shall be completed by compulsorily inviting educationist of that particular religion”

33. A bare perusal of the said provision clearly reflects that it exists only for the purposes of determination of substantive vacancies for requisitions to be made for selection against such vacancies and to prescribe the procedure for selection. Read together with Rule 28, the procedure for

determination and notification of the vacancies has been prescribed. For ready reference it reads as below:-

“28. Determination and Notification of Vacancies. (1) *For the purpose of direct recruitment, the Appointing Authority or Management or Authorized Officer shall determine the number of vacancies in accordance with sub-section (1) of section 10 of the Act and notify the vacancies through the Director (Higher Education) or the Director (Secondary Education) or the Director (Basic Education) or the Director (Training and Employment) or the Director General of Atal Residential Schools, as the case may be, to the Commission in the manner hereinafter provided.*

(2) *The statement of vacancies for each category of post to be filled in by direct recruitment, including the vacancies that are likely to arise due to retirement on the last day of the year of recruitment, shall be sent by the Appointing Authority or Management or Authorized Officer by July 15 of the year of recruitment to the Authorized Officer under sub-rule (1), and the Authorized Officer shall, after verification from the record of his office, prepare consolidated statement of vacancies regarding the vacancies of each category of post, subject wise and reserved category-wise. The consolidated statement so prepared shall be sent by the Authorized Officer to the Commission by July 31 of the same year of recruitment:*

Provided that if the State Government is satisfied that it is expedient to do so, it may, by order in writing, fix other dates for notification of vacancies to the Commission in respect of any particular year of recruitment.

(3) *If, after the vacancies have been notified under sub-rule (2), any vacancy in the post of a teacher or instructor occurs, the Appointing Authority or Management or Authorized Officer shall, within fifteen days of its occurrence, notify the Authorized Officer in accordance with the said sub-rule and the Authorized Officer shall within ten days of its receipt by him send it to the Commission.*

(4) *Where, for any year of recruitment, the Appointing Authority or Management or Authorized Officer does not notify the vacancies by the date specified in sub-rule (2) or fails to notify them in accordance with the said sub-rule, the Authorized Officer shall on the basis of the record in his office, determine the vacancies in such institution in accordance with sub-section (1) of section 10 of the Act and notify them to the Commission in the manner and by the date referred to in the said sub-rule.*

Explanation-The vacancies notified to the Commission under this sub-rule shall be deemed to be notified by the Appointing Authority or Management or Authorized Officer of such

institution.

(5) The posts of notified vacancies shall not be filled by a single transfer: Provided that in special circumstances, if a single transfer is necessary, then it will be necessary to bring the said process to the notice of the Commission as soon as possible, and the vacant posts as a result of the single transfer will be considered included in the posts notified by the Director, and this vacancy will also be covered by the same selection process. After the commencement of the selection process, no single transfer will be done under any circumstances.”

34. From a bare perusal of the said Rule, it transpires that management of the institution is obligated to notify to the Director (Secondary Education), the number of vacancies in accordance with section 10 of the Commission Act. Further, such vacancies are to be notified by 15th of July of the year of recruitment, in which the vacancy arises.

35. Under Sub-Rule 4, upon failure on part of the Management, further obligation has been cast on the Authorised Officers (who would be D.I.O.S. in case of intermediate colleges), to determine the vacancies at each institution on the strength of their record and to notify the same to the Commission. Therefore, as under the Board Act, so under the Commission Act, first obligation exists on the Committee of Management and failing that the D.I.O.S. is obligated to notify the substantive vacancy.

36. In the present set of cases, neither the Committee of Management of the individual Institutions nor the DIOS have acted in the manner prescribed by the law. Against substantive vacancy that had admittedly arisen at individual institutions, (on the post of Principal), neither the Committee of Management of those institutions notified to the Board (under the Board Act), or to the authorized officer/ D.I.O.S. (under the Commission Act) such vacancies, nor the Board or the D.I.O.S. have acted to determine and notify such vacancies at the relevant time. Thus, all the original petitioners/appellants are described to have worked against

substantive vacancies, not notified at the relevant time.

37. Coming to the overriding effect of the Commission Act, it may be noted that under section 30 thereof, that Act has been given overriding effect over the provision of the Intermediate Education Act, 1921, with respect to selection of teachers and instructors, which obviously include Principal (under section 2(n) of the said Act). The submission that, therefore, the provisions of Intermediate Education Act, 1921 and the precedential law (governing the appointment of ad-hoc principals at such institutions) has lost force, is too sweeping to merit acceptance by us.

38. To the extent, the Commission Act does not specifically provide for appointment of *ad-hoc* Principals, it cannot be accepted that therefore the legislature has done away with the requirement of *ad-hoc* Principals, in entirety. The need to provide for *ad-hoc* Principals arises not on the whims and fancies of the individual Committees of Management or on the desire of the senior most lecturers at such Institution. On the contrary, it is too fundamental to be doubted that no educational institution may function or exist without its administrative head who is described as the Principal with respect to Intermediate Colleges and Headmaster at High Schools. His functions and duties are defined under the Intermediate Act. Commonly, the conditions of services are governed by the provisions of section 16G of the U.P. Intermediate Education Act 1921 read with the Regulations framed there under. He is the disciplinary authority for Class IV employee of the institution. He has the power to sanction leave to the teaching faculty and also to assign their duties and supervise the academic and other activities of the institution. With respect to the conduct of the examination including Board examinations, he represents the institution as the statutory authority, besides discharging other day-to-day functions,

that ensure the functioning of any Intermediate College.

39. Therefore, it is not possible to accept as true that an Intermediate College can exist without any person appointed as its Principal or without any person being authorized to discharge the functions of a Principal, in an *ad-hoc* capacity, in the absence of a duly appointed Principal. Chapter 1 of the Regulation framed under the U.P. Intermediate Education Act, 1921, Clause 9, 10, 11 and 12 reads as below:-

“9. Powers, duties and functions of the Principals or Headmaster.-*The Headmaster or the Principal shall perform in addition to all duties of a Headmaster or Principal all such duties as appertain to his post and shall be responsible to the Committee of Management through the Manager of the institution for the due discharge of such duties, for which he shall have the necessary powers.*

10. *The Headmaster or the Principal shall be solely responsible and shall have necessary powers for the internal management and discipline of his institution including:*

(i) Admissions and withdrawals of students and their punishment including expulsion or recommendation for rustication; selection of text books, books and magazines for the library, reading room and prizes; arrangement of time-table and allocation of duties of members of the staff relating to the school time-table; holding of examinations and test; students promotion and, detention, maintenance of all forms and schools registers and progress reports of students and sending the same to their guardians; preparation of requisition for furniture, equipment and apparatus needed for the school and for their repair and replacement; organization of games and other co-curricular activities; making provision for health and medical treatment of students; utilizing the services of the staff for educational purposes and activities inside or outside the school premises; appointment, promotion, control and punishment including removal and dismissal of the inferior servants, control of the hostel through its Superintendent.

(ii) Maintenance of service books and character rolls of teachers, clerks, librarians and inferior staff; making entries in their character rolls and communicating adverse entries to the person concerned; control and supervision of the clerks and librarians; their suspension, and making recommendations for their confirmation, promotion and crossing of efficiency bar, granting of casual leave to the staff of the institution; recommending disciplinary action against teachers, clerk and librarians to the Committee of

Management; recommending to the Committee their applications for permission to appear in, academic examination, permitting teachers to undertake private tuitions.

(iii) Control and administration of all Boys Funds; it shall be the duty of the Principal to see to it that each such fund is spent only for that item for which it is allowed; and if there is saving on any item, the stoppage of fee realised for that fund; granting freeship and half-freeship within the number sanctioned by the Management; drawing and disbursing of stipend and scholarship money.

11. In financial and other matters for which he is not solely responsible the Headmaster or Principal shall follow the directions of the Committee of Management as issued to him through the Manager.

12. The Headmaster or Principal shall be the channel of correspondence between the staff of the institution and Management.”

40. Therefore, it cannot be recognized in law that in absence of a direct provision for appointment of an *ad-hoc* Principal at an Intermediate College, the legislative intent has been expressed to not provide any *ad-hoc*/Officiating Principal, in all circumstances. In fact, the provisions of Commission Act are silent to that effect, but not inconsistent to the Intermediate Act. While they provide for regular appointments, the legislature, in its wisdom has not provided for *ad-hoc*/Officiating arrangements to be made, as was done under the Board Act. However, that does not create any difficulty while interpreting the law in that regard inasmuch as prior to enforcement of the Board Act, a similar position existed. In absence of any contrary provision, the provisions of the Regulation were interpreted and read to provide that such interim arrangements may be made for which a commensurate salary payments may also arise.

41. To that extent, the Commission Act is silent, it does not negate the provisions for appointment on *ad-hoc*/Officiating Principal at Intermediate College under the grant-in-aid scheme of the State

Government. We are inclined to read the words 'regarding the selection of teachers' appearing in section 30 of the Commission Act restrictively- to only imply and refer to regular selections of such teachers. To that extent, the provisions of the Commission Act would override the provisions of the Intermediate Act. Consequently, to that extent, any person authorised to function as an Officiating Principal, may never claim after right to continue on such substantive post, after the appointment of a regular principal. That provision may only provide for the interregnum- arising out of exigency and not volition of the Committee of Management of such institution. Therefore, that arrangement made may remain protected from the harsh consequences of section 30 of the Commission Act. For the above reason, section 31(3) of that Act may also not affect the rights claimed by the original petitioners/appellants.

42. For purposes of clarity, it may also be noted that the continuance of Officiating Principal for whatever duration, may create no rights in the such person other than right to receive higher salary for the period for which he may officiate on the post of Principal. Thus, we find that the principle of law laid down by the coordinate bench in **Dhaneshwar Singh Chauhan (supra)** as reaffirmed in **Narbdeshwar Misra (supra)** as has consistently been applied (in the circumstances noted above), for over 40 years, requires no change. It at all, it requires re-affirmation as that principle is equally well founded, in equity. Having recognized that a person is required to officiate as Principal of an intermediate college by way of necessity existing in law and he is required to perform higher and more onerous duties, than that of any other teacher at such institution, his right to receive higher salary commensurate to such duties discharged, may never be defeated.

43. No negative circumstance has been shown to exist, to defeat that equitable right, either. In fact it may find confirmation occasioned by long duration for which such persons have officiated as Principal.

44. The further objection raised by the State that initial appointment of the original petitioner/appellant was invalid in absence of any notification made by the Committee of Management either to the Board or to the authorized officer/DIOS, also does not impress us. As has been noticed above, though the point of initiation of the exercise (to appoint an Officiating Principal), arises at the hands of the Committee of Management- that must notify the vacancy as soon as it occurs, at the same time in the scheme of things it remains undenied that all service record of teachers including Principal of Intermediate Colleges are available and are regularly maintained by the statutory authorities including the D.I.O.S., having territorial jurisdiction. Therefore, occurrence of substantive vacancies is not an unforeseen event either for the Committee of Management or the Board or the DIOS. Except in cases of resignation, death etc., all other vacancies are known to all, from before. In any case, both under the Board Act, and now in Commission Act, it is not the scheme of the statutory law that unless the Committee of Management notifies the vacancies, no vacancy may ever arise or be notified at an Intermediate College. On the contrary, the legislative mandate remains, if the Committee of Management fails to notify such vacancy by 15 July of the recruitment year in question (under the Commission Act), the DIOS/authorized officer, is obligated to notify such vacancy.

45. Also, direct evidence of knowledge of such vacancy with the DIOS

exists in each of these case, inasmuch as the signature of the original petitioners/appellants have been attested by the Competent Authority, before allowing them to Officiate as Principal of their respective colleges. Once that action was performed and corresponding duties came to be discharged without any objection being raised ever, there remains no doubt that existence of vacancies was known to the statutory authorities including the D.I.O.S./Authorized officer.

46. Therefore, the failure on the part of the Committee of Management to notify such vacancies, may not be looked at in isolation, to defeat the right of the original petitioners /appellants- to be paid higher salary. Equally, the D.I.O.S./authorized officers are to be blamed. Long time passed before vacancies may have been notified. Even then it remains further admitted to the respondent State, that no fresh regular appointments have yet been made- as may disentitle any of the petitioners/appellants, to continue to officiate as Principal at their respective Intermediate College. Therefore, the claim made in the writ petition was well founded in law and also in equity.

47. To the extent the learned single judge has interpreted the provisions of Commission Act, which defeats the rights of the petitioners, it may remain at variance to the one we have offered. Hence the order of the learned single judge is set aside, on principle.

48. As to the relief to be delivered-

- (i) It is first declared that the original petitioners/appellants shall be entitled to continue as Officiating Principal of their respective Intermediate Colleges, till any regularly appointed candidate is

made available, to such institutions.

(ii) For the duration of their continuance as Officiating Principal, the original petitioners/appellants shall be entitled to payment of higher salary of Principal, without any other or further relief.

(iii) For the purpose of computation of period for which the higher payment of salary has to be made, the original petitioners/appellants would be entitled to receive such higher salary from the expiry of three months from the date of their signature being attested, as *ad-hoc* Principal. That amount may be computed and paid out to the original petitioners/appellants, within a period of three months from today.

49. The Special Appeals are allowed. No order as to cost.

(Swarupama Chaturvedi,J.) (Saumitra Dayal Singh,J.)

March 25, 2026

Bhanu