



2026:AHC:123192

AFR
Reserved on 27.05.2026
Delivered on 29.05.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 10333 of 2025

Sunil Kumar Jain

.....Petitioner(s)

Versus

State Of U.P. And 5 Others

.....Respondents(s)

Counsel for Petitioners(s)	: Ritesh Upadhyay, Sr. Advocate
Counsel for Respondent(s)	: C.S.C., Nipun Singh, Prateek Rai

Alongwith:

1. Writ-A No. 5941 of 2026

Committee of Management of Digamber Jain Mahavidyalaya and
another Vs. State of U.P. and 3 others

Vs.

State of U.P. and others

2. Writ-A No. 5920 of 2026

Neelu Jain and others

Vs.

State of U.P. and others

Court No. - 32

HON'BLE SAURABH SHYAM SHAMSHERY, J.

1. Writ-A No. 10333 of 2025 was filed by one, Sunil Kumar Jain, claiming himself to be the Treasurer of time barred Committee of Management of Digamber Jain Mahavidyalaya, Baraut, Baghpat, a Minority Institution. The impugned order dated 21.04.2025 was passed by Principal Secretary, Higher Education, State of Uttar Pradesh in pursuance of a judgment passed in a bunch of three writ petitions, leading being, Sunil Kumar Jain vs. State of U.P. and others, 2025:AHC:9341 and in order to place relevant facts and details of earlier round of litigation, it would be appropriate to reproduce said judgment hereinafter in its entirety:

“1. All these writ petitions are arising out of a selection process initiated to fill vacant post of Assistant Professor in Digambar Jain College (Minority Educational Institution), Baraut, Baghpat.

2. Facts, as mentioned in one of the writ petition, are that there was a dispute with regard to Committee of Management of said Minority Institution and earlier attempt to fill up the vacant post does not reach to its logical end due to orders passed by Registrar of Chaudhary Charan Singh University, Meerut.

3. In above background an issue came up before this Court relating to inspection and Committee of Management of said Minority Institution filed Writ-A No. 20415 of 2023, which was disposed of vide order dated 20.12.2023 and relevant part thereof is mentioned hereinafter:

“11. The facts are not in dispute. The only bone of contention in between the parties is relatable to the fact as to whether the said exercise could have been resorted to by the State Government on the basis of the complaint behind the back of the writ petitioners without putting them to notice. The second issue would be whether the source of power of passing the said order would be Section 66-A or Section 40 of the U.P. State Universities Act, 1973. Though learned counsel for the writ petitioners argues that Section 66-A does not provide for such a power to be resorted to in view of the judgments in the case of Rekha Yadav (supra) and Rakesh Ranjan Verma (supra), however, on the other hand the respondents have relied upon Section 40 of the 1973 Act. Section 40 of the U.P. State Universities Act, 1970 provides a procedure, according to which inspection is to be done and further the association of the Committee of Management is also required. It is also apparent from Sub-section (4) of Section 40 that the State Government may communicate to the Management the result of the

inspection or enquiry and may issue a direction as to the action to be taken and the Management shall comply thereof and further Sub-Section (5) provides that the State Government shall inform the Vice-Chancellor about any communication made by it to the Management under sub-section (4) and finally sub-section (6) of Section 40 provides that the State Government may, at any time, call for any information from the Management or Principal of an affiliated or associated college in connection with such inspection or inquiry. Thus in the opinion of the Court, a complete set of procedure has been provided modulating the manner according to which inspection is to be done and follow up action to be taken in that regard. Since the Court finds that the order in question has been passed in violation of the principles of natural justice and further the writ petitioner has raised the issue of jurisdiction, thus in the opinion of the Court the State Government has to specify as to what is the provision, under which it has proceeded to take such an action and whether it is permissible under law.

12. Bearing in mind the aforesaid issues, the writ petition is decided in the following manner: (a) The order dated 22.11.2023 passed by the Joint Secretary, State of U.P., Lucknow, second respondent is set aside. (b) The matter stands remitted back to the second respondent, Joint Secretary, State of U.P., Lucknow, to pass fresh order strictly in accordance with law within a period of two weeks from today.

13. It is open for the affected parties to join themselves post-remand and the second respondent shall pass orders strictly in accordance with law detailing the source of power either under Section 40 or Section 66-A of the State Universities Act 1973 and it is open for the writ petitioners to raise the questions of jurisdiction and all legal and factual issues, which is to be decided by the authorities.

14. With the aforesaid observations, the writ petition stands disposed of.”

4. Before aforesaid order was passed candidates were selected and they were awaiting their appointment letters.

5. In pursuance of above referred order passed by this Court, Joint Secretary, Higher Education, Government of U.P., Lucknow passed order dated 06.05.2024 that since earlier selection of Teachers in Minority Institution was governed by provisions of U.P. Higher Education Services Selection Commission Act, however, now a new Act has been enacted, namely, U.P. Education Service Selection Commission Act, 2023, which came into force on 21.08.2023 and now said selection in Minority Institution is to be governed by said

Commission and since there is a change of procedure of selection, therefore, it was directed that earlier selection process is liable to be cancelled. Relevant part of said order is reproduced hereinafter:

“7- प्रश्नगत प्रकरण में सुनवाई के उपरांत बिंदु विचारणीय है:-

7.1 महाविद्यालय का संचालन करने वाली प्रबंध समिति कालातीत है, प्रबन्ध समिति की वैधता एवं चुनाव को लेकर अनेक रिट याचिकाएं मा० न्यायालय के समक्ष विचाराधीन है।

7.2 क्षेत्रीय उच्च शिक्षा अधिकारी, मेरठ के पत्र संख्या-क्षे०का०मे०/1324-26/2023-2024 दिनांक 10.07.2023 के माध्यम से 05 पदों पर, निदेशक, उच्च शिक्षा, प्रयागराज के पत्र संख्या- डिग्री अर्थ-1/2562/2023-2024 दिनांक 04.08.2023 के माध्यम से 08 पदों पर एवं निदेशक, उच्च शिक्षा, प्रयागराज के पत्र संख्या-डिग्री अर्थ-1/2944/2023-2024 दिनांक 08.08.2023 के माध्यम से 09 पदों पर अर्थात् शिक्षकों के कुल 22 रिक्त पदों पर भर्ती की अनुज्ञा प्रदान की गयी। निदेशक, उच्च शिक्षा, प्रयागराज के उपर्युक्त संदर्भित पत्रों दिनांक 04.08.2023 एवं दिनांक 08.08.2023 में स्पष्ट उल्लिखित है कि " प्रस्तावित शिक्षा सेवा चयन आयोग के अस्तित्व में आने के फलस्वरूप भर्ती प्रक्रिया में कोई बदलाव होता है तो, उक्त अनुज्ञा स्वतः निरस्त समझी जायेगी।"

7.3 यहां सबसे महत्वपूर्ण बिंदु यह है कि विधायी अनुभाग-1, उ०प्र० शासन द्वारा निर्गत अधिसूचना संख्या-415/79-वि-1-2023-1-क-14-2023 दिनांक 21.08.2023 के माध्यम से उ०प्र० शिक्षा सेवा चयन आयोग अधिनियम, 2023 प्रख्यापित हुआ। इस आयोग के माध्यम से सहायता प्राप्त अल्पसंख्यक महाविद्यालयों में शिक्षकों की नियुक्त की जानी है। ध्यातव्य है कि सहायता प्राप्त अल्पसंख्यक महाविद्यालयों में शिक्षकों की भर्ती उ०प्र० उच्चतर शिक्षा सेवा चयन आयोग, प्रयागराज की परिधि से बाहर था। अर्थात् उ०प्र० शिक्षा सेवा चयन आयोग, प्रयागरा के गठन के उपरांत अल्पसंख्यक महाविद्यालयों में भर्ती की प्रक्रिया में बदलाव किया गया है। अतः उक्त आधार पर निदेशक, उच्च शिक्षा, प्रयागराज के पत्र दिनांक 04.08.2023 एवं दिनांक 08.08.2023 द्वारा निर्गत अनुज्ञायें स्वतः निरस्त हो गयी हैं। उत्तर प्रदेश शिक्षा सेवा चयन आयोग के गठन के उद्देश्य एवं कारण में यह स्पष्ट उल्लिखित है कि " संस्था स्तरीय चयन समितियों द्वारा संचालित चयन प्रक्रिया में पारदर्शिता का अभाव भी परिलक्षित है, जिसके परिणामस्वरूप मुकदमों की स्थितियां उत्पन्न हो रही है।" प्रश्नगत प्रकरण में भी यही स्थिति परिलक्षित होती है।

7.4 प्रश्नगत प्रकरण में महाविद्यालय प्रबंध समिति द्वारा संचालित भर्ती प्रक्रिया पर वैधता, अनियमितता, भ्रष्टाचार एवं अनेक अन्य आरोप लगाये गये हैं। सूच्य है कि सहायता प्राप्त अल्पसंख्यक महाविद्यालयों के शिक्षकों के वेतन का भुगतान राज्य द्वारा प्रदत्त अनुदान से किया जाता है। लोक निधियों का प्रभावी, कुशल, पारदर्शी एवं शुचितापूर्ण उपयोग सुनिश्चित करना

राज्य सरकार का सबसे महत्वपूर्ण दायित्व है। ऐसी स्थिति में शिक्षकों के चयन की पारदर्शी, निष्पक्ष, शुचितापूर्ण एवं गुणवत्तापूर्ण व्यवस्था के लिये उ०प्र० शिक्षा सेवा चयन आयोग का गठन किये जाने के बाद दिगम्बर जैन कालेज, बडौत, बागपत में शिक्षकों की भर्ती प्रक्रिया, उसी प्रबंधतंत्र से, जिस पर अनेक आरोप लगाये गये हैं, से कराये जाने का कोई औचित्य प्रतीत नहीं होता है। उक्त के अतिरिक्त उ०प्र० शिक्षा सेवा चयन आयोग के गठन के उपरांत कालेज द्वारा भर्ती प्रक्रिया संचालित होने से एक ही समय में दो पृथक प्रक्रियाएँ स्थापित हो जायेंगी, जो विधि विरुद्ध होगा।

8- अतः उपर्युक्त वर्णित स्थिति में रिट याचिका संख्या-20415/2023 कमेटी आफ मैनेजमेंट दिगम्बर जैन महाविद्यालय, बडौत, बागपत व अन्य बनाम उ०प्र० राज्य व 07 अन्य में मा० उच्च न्यायालय, इलाहाबाद द्वारा पारित आदेश दिनांक 20.12.2023 के अनुपालन में उ०प्र० शिक्षा सेवा चयन आयोग के गठन के उपरांत निदेशक, उच्च शिक्षा, प्रयागराज द्वारा निर्गत अनुज्ञाएं स्वतः निरस्त होने की स्थिति में महाविद्यालय- हित, उच्च शिक्षा-हित एवं पारदर्शिता तथा शुचिता सुनिश्चित करने के दृष्टिगत दिगम्बर जैन महाविद्यालय, बडौत, बागपत में असि० प्रोफेसर के 22 पदों पर प्रक्रियारत भर्ती उ०प्र० शिक्षा सेवा चयन आयोग से कराये जाने का निर्णय एतद द्वारा किया जाता है।”

6. *Aforesaid order dated 06.05.2024 was challenged by selected candidates in Writ-A No. 7792 of 2024 and by Committee of Management by way of filing Writ-A No. 7979 of 2024.*

7. *In said two writ petitions counter affidavit was filed by State-Respondents-1, 2 and 3 (The State of U.P. through Secretary, Higher Education, U.P., Lucknow; The Joint Secretary, State of U.P., Lucknow; and The Director of Higher Education, U.P., Prayagraj, respective), sworn by Assistant Director, Office of Directorate, Higher Education at Prayagraj and relevant paragraphs thereof are mentioned hereinafter:*

“ 8. *That it is provided that the Committee of Management managing the institution is time-barred, therefore, various writ petitions filed for validity and for holding the elections of Committee of Management.*

9. *That it is further relevant to mention here that permission was given for recruitment on 05 post by Regional Higher Education Officer, Meerut vide letter dated 10.07.2023, on 08 posts by Director, Higher Education vide letter dated 04.08.2023 and on 09 posts by the Director, Higher Education, Prayagraj, vide letter dated 08.08.2023 i.e. a total of 22 vacant posts of teachers.*

10. *That it is clearly mentioned in the above referred letters dated 04.08.2023 and dated 08.08.2023 of the Director, Higher*

Education, Prayagraj that, “ If there is any change in the recruitment process as a result of the coming into existence of the proposed Education Service Selection Commission, the said permission will automatically deemed to be cancelled. The most important point here is that the Uttar Pradesh Education Service Selection Commission Act, 2023 was promulgated by, Notification dated 21.08.2023 issued by the Uttar Pradesh Government.

11. That in terms of Notification dated 21.08.2023 issued by the Uttar Pradesh Government the teachers are also to be appointed in aided minority colleges by the UP Education Service Selection Commission. It is noteworthy to mention here that the recruitment of teachers in aided minority colleges was outside the purview of UP Higher Education Service Selection Commission, Prayagraj, but, after the formation of UP Education Service Selection Commission, Prayagraj, the process of recruitment in minority colleges has been changed. Therefore, on the above basis, the permissions issued by the Director, Higher Education, Prayagraj vide letter dated 04.08.2023 and dated 08.08.2023 have been automatically stand nullified. It is clearly mentioned in the purpose and reason of constitution of Uttar Pradesh Education Service Selection Commission that lack of transparency is also reflected in the selection process conducted by the institution level selection committees, as a result of which, various litigations have been filed.

12. That the same situation is reflected in the case in question and in the case in question, allegations of legality, irregularity, corruption and many other allegations have been made on the recruitment process conducted by the College Management Committee. It is further pointed that the salaries of teachers of aided minority colleges are paid from the grants provided by the state. The most important responsibility of the state governments is to ensure effective, efficient, transparent and fair use of public funds. At this stage, after the constitution of Uttar Pradesh Education Service Selection Commission for a transparent, fair and complete quality system of selection of teachers, the recruitment process of teachers in the institution in question to be done by the same management against which many allegations have been made on which there seem to be any justification.

13. That apart form the above, if the recruitment process is conducted by the college after the formation of Uttar Pradesh Education Service Selection Commission, two separate processes will be established at the same time, which will be against the law. In the above mentioned situation, a writ petition

no. 20415/2023 filed by the petitioner, in which this Hon'ble Court passed order dated 20.12.2023, consequently in compliance with the Hon'ble Court's order dated 20.12.2023 passed in the aforesaid writ petition, after the constitution of Uttar Pradesh Education Service Selection Commission, in the event of automatic cancellation of permissions issued by the Director, Higher Education, Prayagraj, in the interest of the college- interest of higher education and to ensure transparency and purity. Thus, in view of aforesaid backdrop, it has been decided to get the recruitment process for 22 posts of Assistant Professor in the Institution in question done by Uttar Pradesh Education Service Selection Commission."

8. Above referred specific stand of State-Respondents is later on changed and a U-turn was taken and without any permission of this Court or informing the Court, Chief Secretary of Higher Education, issued a Office Memorandum dated 20.11.2024 that earlier order dated 06.05.2024 was recalled on basis of a representation filed by Committee of Management of said Minority Institution dated 16.05.2024. Said order dated 20.11.2024 is reproduced hereinafter:

"उत्तर प्रदेश शासन,
उच्च शिक्षा अनुभाग-2

संख्या:-1/800391 2024 70-2099/52/2023

लखनऊ: दिनांक 20 नवम्बर, 2024

कार्यालय-ज्ञाप

दिगम्बर जैन महाविद्यालय, बडौत, बागपत में असि० प्रोफेसर के 22 पदों पर भर्ती के दिन से सचिव/ प्राचार्य प्रबंध समिति दिगम्बर जैन कालिज बडौत, बागपत के प्रत्यावेदन दिनांक 16.05.2024 पर सम्यक विचारोपरान्त प्रक्रियारत भर्ती का उ०प्र० शिक्षा सेवा चयन आयोग प्रयागराज से कराये जाने संबंधी कार्यालय ज्ञाप संख्या-844/सत्तर- 2-2023-16(117)/2023 दिनांक 06.05.2024 की आध्यता समाप्त की जाती है।

2. उक्त आदेश मा० उच्च न्यायालय में योजित रिट याचिका संख्या-7979/2024 नीलू जैन व 04 अन्य बनाम उ०प्र० राज्य व 05 अन्य तथा रिट याचिका संख्या-7979/2024/कमेटी आफ मैनेजमेंट दिगम्बर जैन महाविद्यालय बडौत बागपत व अन्य बनाम उ०प्र० राज्य व 07 अन्य में मा० उच्च न्यायालय इलाहाबाद द्वारा पारित अंतिम निर्णय के अधीन होगा।

Signed by
Mahendra Prasad Agrawal
Date: 19.11.2024 19.48.22
(एम०पी० अग्रवाल)

प्रमुख सचिव ।"

9. Aforesaid order is challenged by other Petitioner-Sunil Kumar Jain, claiming to be a life member of Committee of Management by

filing Writ-A No. 19843 of 2024. As referred above, aforesaid order has neither referred the contents of representation dated 16.05.2024 filed by Committee of Management nor any reason has been assigned why earlier order dated 06.05.2024 is effectively recalled, despite supported in counter affidavit filed in other connected writ petitions.

10. Sri Anoop Trivedi, learned Senior Advocate assisted by Ms. Shreya Gupta, learned counsel appearing for petitioners (selected candidates) in Writ-A No. 7792 of 2024, mainly, argued that a process once initiated cannot be stopped on basis of some subsequent event, i.e., enactment of U.P. Education Service Selection Commission Act, 2023. Impugned order dated 06.05.2024 does not describe any reasons, therefore, it was rightly recalled by a subsequent order dated 20.11.2024, which is impugned in Writ-A No. 19843 of 2024. It was also referred that challenge to said order in above writ petition is not maintainable since selected candidates, i.e., petitioners in Writ-A No. 7792 of 2024, are not made party.

11. Sri G.K. Singh, learned Senior Advocate assisted by Sri Nipun Singh, learned counsel appearing for petitioners in Writ-A No. 7979 of 2024 filed by Committee of Management of said Minority Institution, has reiterated the similar arguments. He also requested that opportunity be granted to State to file counter affidavit in Writ-A No. 19843 of 2024.

12. As referred above, in aforesaid two writ petitions, i.e., Writ-A Nos. 7792 of 2024 and 7979 of 2024, order impugned is dated 06.05.2024 and as referred above, this order is now recalled by subsequent order dated 20.11.2024, as such both these writ petitions may become infructuous, however, since order dated 20.11.2024 is impugned in Writ-A No. 19843 of 2024, therefore, Court will take note of above submissions also, if required, in later part of judgment.

13. Sri Rakesh Pande, learned Senior Advocate assisted by Sri Chandan Sharma, learned counsel appearing for petitioner in Writ-A No. 19843 of 2024, submitted that the Committee of Management is under dispute, as such any process initiated was a legally incorrect approach. Once order dated 06.05.2024 was under challenge and it was supported by State, then any order to recall it or change it by subsequent order dated 20.11.2024 was illegal.

14. In reply to above submissions, Sri R.K. Tripathi, learned Additional Chief Standing Counsel for State-Respondents, submitted that State was empowered to take a different decision since there was no bar.

15. Heard learned counsel for parties and perused the material available on record.

16. Pleadings are already exchanged in one of the writ petition and all the facts are before this Court, therefore, there is no need to file counter affidavit in Writ-A No. 19843 of 2024.

17. So far as maintainability of Writ-A No. 19843 of 2024 is concerned since selected candidates are not party in it, for that the Court takes note that selected candidates are already before this Court by filing Writ-A No. 7792 of 2024 wherein pleadings are already exchanged as well as now they have filed impleadment application and their version has also been heard.

18. As referred above, there is a dispute with regard to Committee of Management of concerned Minority Institution, however, the Court is not entering into that issue at this stage.

19. The Court is concerned that once an order has been passed by Higher Education Department of State of U.P. in pursuance of an order passed by this Court on 06.05.2024 that the selection process of Teachers in said Minority Institution cannot go further and some reasons were also assigned, which was subject matter of two writ petitions, i.e., Writ-A Nos. 7792 of 2024 and 7979 of 2024 and even a detailed counter affidavit was filed by State-Respondents, supporting the said order with specific averment, then under what circumstances without informing the Court, said order was recalled by a cryptic order dated 20.11.2024. For reference said order dated 20.11.2024 is again reproduced hereinafter:

"उत्तर प्रदेश शासन,

उच्च शिक्षा अनुभाग-2

संख्या:-1/800391 2024 70-2099/52/2023

लखनऊ: दिनांक 20 नवम्बर, 2024

कार्यालय-ज्ञाप

दिगम्बर जैन महाविद्यालय, बडौत, बागपत में असि० प्रोफेसर के 22 पदों पर भर्ती के दिन से सचिव/ प्राचार्य प्रबंध समिति दिगम्बर जैन कालिज बडौत, बागपत के प्रत्यावेदन दिनांक 16.05.2024 पर सम्यक विचारोपरान्त प्रक्रियारत भर्ती का उ०प्र० शिक्षा सेवा चयन आयोग प्रयागराज से कराये जाने संबंधी कार्यालय ज्ञाप संख्या-844/सत्तर- 2-2023-16(117)/2023 दिनांक 06.05.2024 की आध्यता समाप्त की जाती है।

2. उक्त आदेश मा० उच्च न्यायालय में योजित रिट याचिका संख्या-7979/2024 नीलू जैन व 04 अन्य बनाम उ०प्र० राज्य व 05 अन्य तथा रिट याचिका संख्या-7979/2024/कमेटी आफ मैनेजमेंट दिगम्बर जैन महाविद्यालय बडौत बागपत व अन्य बनाम उ०प्र० राज्य व 07 अन्य में मा० उच्च न्यायालय इलाहाबाद द्वारा पारित अंतिम निर्णय के अधीन होगा।

Signed by
Mahendra Prasad Agrawal

Date: 19.11.2024 19.48.22

(एम०पी० अग्रवाल)

प्रमुख सचिव ।"

20. Contents of above order indicates that a very Senior Officer in Higher Education Department, in a very careless manner proceeded with the matter and without taking note of stand of Department before this Court and the fact that matter is sub-judice. The said Higher Officer has not taken pain to inform the Court about order dated 20.11.2024. No reason has been mentioned in above referred order nor any details are mentioned about said representation dated 16.05.2024 submitted by Committee of Management, after a writ petition was filed before this Court, being Writ-A No. 7979 of 2024 on 12.05.2024. Even said Committee of Management has also not informed the Court that any representation was pending before said authority.

21. Aforesaid approach of a Senior Officer of State, i.e., Chief Secretary of Higher Education, was not only casual but inappropriate also. Accordingly, Court is of the considered opinion that there was no justification to pass said order especially when it has assigned no reason.

22. In view of above, impugned order dated 20.11.2024 in Writ-A No. 19843 of 2024, is hereby set aside.

23. So far as order impugned in Writ-A Nos. 7792 of 2024 and 7979 of 2024, i.e., order dated 06.05.2024 is concerned, said order also cannot sustain on ground that it does not take note of other provisions of U.P. Education Service Selection Commission Act, 2023, i.e., Repeal and Savings as provided under Section 31 of Act. It ought to have taken note with regard to eligibility and minimum qualifications, whether there was any difference or not. Court also takes note, as told by learned counsel for parties, that till date U.P. Education Service Selection Commission has not commenced its working. These factors were not even taken note of.

24. In aforesaid circumstances, impugned order dated 06.05.2024 in Writ-A Nos. 7792 of 2024 and 7979 of 2024, is hereby set aside. Concerned respondents are directed to relook into the matter and pass a fresh order. Higher Officials in Department of Higher Education, Government of U.P. are cautioned to remain careful while passing orders, especially when they are recalling any order during pending litigation. Fresh decision shall be taken within a period of four weeks from today. Meanwhile, further procedure of selection shall be kept in abeyance.

25. With aforesaid observations/ directions, all these writ petitions are disposed of."

2. In above background, one of the relevant fact which is necessary to mention herein is that in aforesaid matter judgment was reserved on 10.01.2025 and delivered within a short period of 11 days, i.e., on 21.01.2025.

3. In the garb of “deemed approval” not only appointment letters were issued to selected candidates but they were allowed to join also on 09.01.2025, i.e., a day prior when the writ petitions were listed for final hearing, however, said fact was not disclosed during final hearing, therefore, it is necessary to observe that it was an act of undue haste and, therefore, a direction passed by this Court in above referred judgment that further procedure of selection shall be kept in abeyance, was rendered ineffective.

4. In pursuance of aforesaid judgment dated 21.01.2025, the Principal Secretary, Higher Education, U.P. passed order dated 21.04.2025, whereby it was held that procedure initiated to fill up 22 posts of Assistant Professors at concerned Institution, would continue in accordance with the Uttar Pradesh Secondary Education Services Selection Board Act, 1982 on ground that the advertisements were published on 08.08.2023 and 12.08.2023 whereas U.P. Education Service Selection Commission Act, 2023 (*hereinafter referred to as “Act, 2023”*) was notified in the Gazette of State on 21.08.2023 (wrongly mentioned as 12.12.2023 in impugned order), i.e., the procedure for selection was already initiated before “Act, 2023” came into force as well as that no other irregularity was found in selection process, i.e., due selection procedure was adopted and all candidates were qualified and selected on merit.

5. Aforesaid order dated 21.04.2025 passed by Principal Secretary, Higher Education, Government of U.P., is challenged in first petition, i.e., Writ-A No. 10333 of 2025.

6. Sri V.K. Singh, learned Senior Advocate assisted by Sri Shashank Shekhar Mishra, Advocate appearing for selected candidates, i.e., petitioners in Writ-A No. 5920 of 2026, Sri Nipun Singh, learned Senior

Advocate assisted by Sri Naman Agrawal, Advocate appearing for Committee of Management of College concerned, i.e., petitioners in Writ-A No. 5941 of 2026 and Sri G.K. Singh, learned Senior Advocate assisted by Sri Avneesh Tripathi, learned counsel for University, have submitted that first petition, i.e., writ petition filed by Sunil Kumar Jain, is not maintainable mainly on two grounds.

7. Firstly, petitioner-Sunil Kumar Jain, cannot file writ petition being Treasurer of Committee of Management since it would be a challenge to resolutions passed by said Committee of Management and in support of above submission reliance was placed on the judgments passed by Supreme Court in **Kumari Chitra Ghosh and another vs. Union of India and others**, 1969(2) SCC 228 and **Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra and others**, 2013(4) SCC 465 as well as this Court's judgments in **Desh Deepak Srivastava vs. State of U.P. and others**, 2015(3) ADJ 352 (DB); **Mita Ram Yadav and another vs. State of U.P. and others**, 2021:AHC:19808; and, **Ram Pal Singh vs. State of U.P. and others**, 2019:AHC:217573, that petitioner either in personal capacity or in capacity of Treasurer would not fall within the ambit of a "person aggrieved".

8. Second limb of objection was that in first petition none of the selected candidates were arrayed as a party respondent despite their appointment letters were placed on record and in support of submission, learned Senior Advocates placed reliance on a judgment passed by Supreme Court in **Prabodh Verma and others vs State of Uttar Pradesh and others**, 1984(4) SCC 251.

9. Per contra, Sri R.K. Ojha, learned Senior Advocate assisted by Sri Ritesh Upadhyay, Advocate for petitioner-Sunil Kumar Jain in first petition, submitted that petitioner has already filed earlier writ petitions in the same capacity and without any objection, said writ petitions were considered on merit and were allowed to some extent, with certain directions and on said direction the impugned order was passed, therefore, any objection on locus may not be reopened at this stage.

10. Learned Senior Advocate for petitioner-Sunil Kumar Jain further tried to defend that writ petition may not be rejected on ground of non joinder of parties since selected candidates have also approached this Court subsequently by way of separate writ petition, being Writ-A No. 5920 of 2026. The challenge is to the procedure of selection and on legal advice an application for impleadment of selected candidates was also filed later on.

11. However, Court finds that aforesaid defect of non-joinder of parties goes to the root of case since petitioner cannot deny that he was not aware about subsequent events that selected candidates were already appointed and they have joined at their respective posts as well as University has granted approval also, therefore, it was necessary for petitioner in first petition to array them as a party and in this regard Court takes note of judgments passed by Supreme Court in **Vijay Kumar Kaul and others vs. Union of India and others**, 2012(7) SCC 610; **J.S. Yadav vs. State of U.P. and another**, 2011(6) SCC 570; and, **Public Service Commission of Uttaranchal vs. Mamta Bisht and others**, 2010(12) SCC 204.

12. In above background, first petition can be dismissed on ground of non-joinder of relevant parties, however, the Court takes note that there are two other writ petitions filed by selected candidates and Committee of Management to challenge the subsequent orders passed on basis of an interim order passed in first petition and that a legal issue has also been cropped up that whether recruitment process would be considered to be commenced with effect from publication of advertisement or at the stage of consideration by Competent Authority, i.e., approval of appointment and what would be the effect if meanwhile rules were amended or a new Act was enacted, after publication of advertisement, however, before final consideration. Therefore, for consideration of said issue Court proceed to decide the petitions on merit, ignoring above procedural defect.

13. In first petition, i.e., Writ-A No. 10333 of 2025, following interim order was passed by a Coordinate Bench on 25.07.2025:

“1. The instant writ petition has been filed seeking following main prayers:-

"(I) Issue a writ, order or direction in the nature of certiorari calling for the record of case and to quash the impugned order dated 21.04.2025 passed by Respondent No. 1 i.e. Principal Secretary Higher Education, Government of U.P., Lucknow.

(II) Issue a writ, order or direction in the nature of mandamus commanding the Respondents to fill up the vacant post of Assistant Professor in the institution in accordance with law i.e. through "U.P. Education Service Selection Commission".

2. Sri R.K. Ojha, learned Senior Counsel assisted by Sri Ritesh Upadhyay, learned counsel appearing on behalf of the petitioner submitted that the impugned order dated 21.04.2025 passed by the respondent no.1 in the teeth of the order dated 04.08.2010 passed by the co-ordinate Bench of this Court in Writ-C No.45786 of 2010 (Atul Kumar Jain Vs. State of U.P. and others). It is submitted that the respondent no.1 while passing the impugned order has recorded the wrong finding that the Uttar Pradesh Education Service Selection Commission Act, 2023 (hereinafter referred to as the Act, 2023) is notified/ gazetted on 13.12.2023, while it has been notified on 21.08.2023 much prior to the interview dates commenced with 19.11.2023 to 24.11.2023.

3. Mr. Ojha, learned Senior Counsel has placed the Gazette dated 21.08.2023 before this Court for perusal. The same has been perused and found that the Gazette was published on 21.08.2023 not on 13.12.2023.

4. Mr. Ojha, learned Senior Counsel also submitted that there is no valid Committee of Management in existence in the institution since 1999. It is submitted that the authority concerned by way of making appointments in the institution without following the norms, statutory provision and also some other considerations. It is, therefore, submitted that the entire selection process is illegal, unjust, without sanction of any valid authority and contrary to the law. It is vehemently submitted that the entire selection process of the institution after the notification/ Gazette dated 21.08.2023 by which the recruitment power of the minority institution has been withdrawn by the State Government is deserved to be set aside.

5. Taking into consideration of the submissions made by the learned Senior Counsel appearing on behalf of the petitioner, averments made

in the writ petition and documents on record, prima facie I am of the opinion that matter requires consideration.

6. Issue notices to respondent nos.5 and 6 by ordinary post as well as registered post on payment of PF within a week.

7. Learned Standing Counsel appeared on advance accepted notice on behalf of State-respondents nos.1, 3 and 4.

8. Sri Prateek Rai, learned counsel appeared on advance accepted notice on behalf of respondents no.2.

9. Learned Standing Counsel and learned counsel for respondent no.2 vehemently opposed the petition and prayed four weeks time to file counter affidavits.

10. Let them file counter affidavits within the period as prayed.

11. Rejoinder affidavit, if any, may be filed within two weeks thereafter.

12. List on 19.09.2025.

13. Since the matter kept pending for further consideration, considering the averments made in the petition, I am of the opinion that the operation of the impugned order dated 21.04.2025 should be kept in abeyance till the next date of hearing.

14. Accordingly, the operation of impugned order dated 21.04.2025 passed by the respondent no.1, shall be kept in abeyance till the next date of hearing.”

14. As referred above, aforesaid interim order was passed without taking note that selected candidates were not party. On basis of above interim order, Regional Higher Education Officer, Meerut passed an order dated 26.02.2026 whereby the order of disbursement of salary in favour of selected candidates was stopped with immediate effect and subsequently by an order dated 02.04.2026 Registrar, Chaudhary Charan Singh University, Meerut suspended the order dated 26.07.2025, whereby approval was granted to appointments of selected candidates.

15. Some of the selected candidates, being aggrieved by aforesaid orders dated 26.02.2026 and 02.04.2026, filed Writ-A No. 5920 of 2026 and subsequently Committee of Management of said College has also challenged aforesaid orders by way of filing Writ-A No. 5941 of 2026, which are also connected with first petition filed by petitioner-Sunil Kumar Jain and are being decided finally by present judgment.

16. Now the Court proceed to consider the issue referred in paragraph no. 12 of this judgment.

17. Learned Senior Advocate appearing for petitioner-Sunil Kumar Jain, vehemently referred a recent judgment passed by Supreme Court in the case of **Dr. Manoj Kumar Rawat vs. State of U.P. and others, 2026 INSC 508** wherein following question of law was also considered:

“(ii) Whether, after enforcement of the Uttar Pradesh Education Service Selection Commission Act, 2023 (hereinafter referred as ‘the New Act’), repealing the old Act, the recommendation dated 13.12.2023 and consequential communications and placement order dated 12.01.2024 and 15.01.2025, issued in favour of the appellant can be sustained within the statutory scheme of the New Act?”

18. Above referred question of law was answered by the Supreme Court in following manner:

“21. At this stage, it also imperative to refer to the judgement of this Court in Kamlesh Kumar Sharma (Supra) wherein this Court had the occasion to deal with the interpretation of the word ‘otherwise’ in Section 13(4) of the Old Act. In the said judgement, it was held that if a wider interpretation is given, it would run contrary to the very object of the Old Act and permit filling of vacancy which was never advertised and a person, who did not apply, would inadvertently be absorbed on such vacancy. The relevant portion of the judgement is reproduced as thus:—

“13. We find, after giving our careful consideration that in case the appellant's argument is accepted by giving wider interpretation to the word “otherwise”, it would thwart the very object of the Act. In other words it would permit the filling of the vacancy occurring which was never advertised and a person in the select list panel, even though not applying for any vacancy, would be absorbed. Hence it would be limiting the sphere of selection in contradiction to the object of the provision to draw larger applicants by advertising every vacancy to be filled in. We have no hesitation to say that any appointment to be made on a vacancy occurring in the succeeding year in question for which there is no advertisement under the provisions of sub-section (4) of Section 12, the person on the panel list of preceding academic year in question, cannot be absorbed or be appointed. The word “otherwise” has to be read as ejusdem generis, that is to say, in group similar to death, resignation, long leave vacancy, invalidation, person not joining after being duly selected. In other words, it would be a case of

unforeseen vacancies which could not be conceived under Section 12(2). Section 12(2) conceives of a vacancy which is existing on the date the vacancy is to be advertised and which is likely to be caused in future but constricted for a period ending in the ensuing academic year in question. The words “likely to be caused” under Section 12(2) are followed by the words “during the course of the ensuing academic year” that is any person likely to retire by the end of the academic year in question. In other words, such vacancies could be foreseen and not unforeseen. While vacancies under Section 13(4) are unforeseen vacancies which fall under the group, death and/or resignation. Hence the word “otherwise” cannot be given the wide and liberal interpretation which would exclude a large number of expected applicants who could be waiting to apply for the vacancies occurring in the succeeding year in question.”

22. In view of the above, it is observed that under the scheme of Old Act, the act done was issuance of recommendation dated 03.08.2022 by the Director. Simultaneously, in response to the appellant's representation dated 26.06.2023, the Director vide letter dated 17.08.2023 to the Special Secretary has unequivocally made it clear that after issuance of the previous recommendation on 03.08.2022 under the government instructions and applicable law, no arrangement for changing the place of posting can be made. In such a scenario, prior to the commencement of the New Act on 21.08.2023, the act done by the authorities was issuing the recommendation dated 03.08.2022, which remained valid and no further action was recommended vide letter dated 17.08.2023. Therefore, in furtherance to the repeal and saving clause under Section 31(2) of the New Act, the act done will be treated only to the extent indicated above.

23. It is even more surprising that after the letter dated 17.08.2023 and commencement of the New Act, the Joint Secretary, Government of Uttar Pradesh, on his own accord, issued order dated 12.01.2024 recommending the name of the appellant for being posted as Principal of Meerut College. In our view, after commencement of the New Act, the validity of the list/panel under the Old Act will automatically lapse and the authorities are duty bound to follow the procedure under Sections 10 and 11 of the New Act to take steps for appointment on the post of Principal. Thus, the concerned authorities could not have issued the letter dated 13.12.2023 on the basis of the list prepared under the Old Act and thereafter, passed the consequential orders on 12.01.2024 and 15.01.2024, to effectively recommend and appoint the appellant on the post of Principal of Meerut College.

24. At this stage and in to understand the real intent of Section 31 of the New Act, it is necessary to refer Section 6 of the Uttar Pradesh General Clauses Act, 1904 dealing with the ‘Effect of repeal’, whereby

it is clear that in case any Uttar Pradesh Act repeals any enactment hitherto or hereafter, then unless a different intention appears, the repeal shall not revive anything not in force or existing at the time at which the repeal takes effect. Further, it shall not affect anything duly done, suffered or incurred under any enactment so repealed. Therefore, the act done, as also indicated above, was the recommendation dated 03.08.2022, which could not be implemented. The authorities have clearly intended that after issuance of the recommendation dated 03.08.2022, no subsequent change in the place of posting can be made in terms of the letter dated 17.08.2023. Thereafter, on 21.08.2023, the New Act came into force. Thus, there was no occasion for the authorities to issue the order dated 13.12.2023 and, consequent recommendation dated 12.01.2024 and order dated 15.01.2024 in favour of the appellant, under the pretext of Section 13(4) of the Old Act indicating that the position had otherwise fallen vacant. Therefore, with the assistance of Section 6 of the Uttar Pradesh General Clauses Act 1904, the effect of repeal of the Old Act is clear insofar as it will not revive the previous list or the act done under the Old Act, which is having the effect of repeal.” (Emphasis supplied)

19. Learned Senior Advocate has also referred another judgment of Supreme Court passed in the case of **State of U.P. and others vs. Rachna Hills and others**, 2023 SCC OnLine SC 506 and relevant part thereof is mentioned hereinafter:

“Re issue no. 3 : Whether the posts of teachers could be filled as per the Rules and Regulations that existed when the vacancies arose and not as per the amended Regulations?”

28. The Division Bench, as well as the Single Judge of the High Court, accepted the submission of the selected candidates that the vacancies to the post of teachers could be filled only as per the Rules and Regulations that operated when the vacancies arose and not as per the Regulations that came to be amended thereafter.

29. We have already held that approval of DIOS is mandatory and that the Act injuncts the appointment of a Teacher without such approval. We have also held that the legal regime concerning the appointment of Teachers does not contemplate any concept of deemed appointment if the DIOS does not decide upon the proposal within 15 days. Under these circumstances, the reference to and reliance on the principle that Rules that existed at the time when vacancies arose will govern the appointments is misplaced.

30. In any event, it is now a settled principle of law that a candidate has a right to be considered in the light of existing Rules, which implies Rules in force as on the date of consideration. This principle is affirmed

by this Court in *Deepak Agarwal v. State of U.P.* (2011)6 SCC 725, as below:

“26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the “rule in force” on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Y.V. Rangaiah case lays down any particular time-frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants has been taken away by the amendment.”

31. While reaffirming the above referred principle, in a subsequent case of *Rajasthan State Sports Council v. Uma Dadhich*, (2019)4 SCC 316, (in which one of us was a member Dr. D.Y. Chandrachud, J., as he then was). This Court noted:

“5. There is merit in the submission which has been urged on behalf of the appellants that the respondent had no vested right to promotion but only a right to be considered in accordance with the rules as they existed on the date when the case for promotion was taken up. This principle has been reiterated in several decisions of this Court. (See H.S. Grewal v. Union of India, Deepak Agarwal v. State of U.P., State of Tripura v. Nikhil Ranjan Chakraborty and Union of India v. Krishna Kumar.”

(emphasis supplied)

32. In a recent decision, in *State of Himachal Pradesh v. Raj Kumar*, 2022 SCC OnLine SC 680, after reviewing a number of decisions on the same subject, this Court formulated the following principles:

“70. A review of the fifteen cases that have distinguished Rangaiah would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in Rangaiah. The findings in these judgments, that have a direct bearing on the proposition formulated by Rangaiah are as under:

1. *There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, Rangaiah's case*

must be understood in the context of the rules involved therein.

2. *It is now a settled proposition of law that a candidate has a right to be considered in the light of the existed rules, which implies the “rule in force” as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates.*
3. *The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government. There is no obligation for the Government to make appointments as per the old rules in the event of restructuring of the cadre is intended for efficient working of the unit. The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14.*
4. *The principle in Rangaiah need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.*
5. *When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases.”*

(emphasis supplied)

33. In view of the clear enunciation of the law, we have no hesitation in rejecting the submission made by the learned counsels for the Respondents, that the vacancies that existed prior to the amendment of Regulation 17 of Chapter II, must be governed by unamended rules.”

(Emphasis supplied)

20. Learned Senior Advocate also submitted that permission to initiate process of selection was granted by Director of Higher Education by letters 04.08.2023 and 08.08.2023, however, it was with a specific condition that in case the proposed Education Service Selection Commission came into existence and resultantly there would be any change in process, permission would be deemed to be cancelled. By referring said condition, learned Senior Advocate further submitted that

immediately after the advertisement new “Act, 2023” was came into force, therefore, permission to initiate earlier process was deemed to be cancelled and any process subsequent to it, which led to appointment of selected candidates, would be non-est.

21. Learned Senior Advocate also submitted that a litigation with regard to dispute of Committee of Management is still pending before this Court in Writ-C No. 45786 of 2010, wherein an interim order was passed on 04.08.2010 that no election shall be conducted and, therefore, a time barred Committee of Management was not even empowered to initiate process of selection, as such, permission would have not been granted vide an order dated 04.08.2023, however, later on said order was recalled by a subsequent order dated 06.05.2024, which was subject matter of earlier round of litigation and that effect of said interim order is still in existence.

22. Per contra, learned Senior Advocate appearing on behalf of petitioners in Writ-A No. 5920 of 2026, i.e., writ petition filed by selected candidates, submitted that once a process was already initiated with due permission and advertisement was also published then such act would be protected though subsequently “Act, 2023” came into force and for that learned Senior Advocate has referred Section 31 of Act, 2023, i.e., “Repeal and Savings” and in support of his submission placed reliance on a judgment passed by a Full Bench of this Court in **Santosh Kumar Singh vs. State of U.P. and others**, 2015(7) ADJ 179 (FB) and referred the questions framed therein as well as answer given to said questions, which are reproduced hereinafter:

“(a) Whether even after the rescission of Removal of Difficulties Orders under Section 33-E of the Uttar Pradesh Secondary Education Services Selection Board Act, 1982 (Act) (U.P. Act No. 5 of 1982), with effect from 25 January 1999, the Committee of Management retains the power to make ad hoc appointment against short term vacancies only because it had published an advertisement for the purpose prior to 25 January 1999;

(b) Whether on enforcement of Section 33-E of the Act rescinding the Removal of Difficulties Orders issued earlier, the Committee of

Management has lost all powers to make ad hoc appointment against short term vacancies;

(c) Whether under Section 16-E of the Intermediate Education Act 1921 (Act of 1921), there is a power with the Committee of Management to make ad hoc appointment against short term vacancies and if so then for what period; and

(d) Whether the Division Bench in the case of Subhash Chandra Tripathi v. State of U.P., Writ-A No. 70721 of 2010, decided on 14 July, 2014, has laid down the correct law.”

“20. We consequently answer the reference in the following terms:

(a) Despite the rescission of the Removal of Difficulties Orders by Section 33-E of U.P. Act No. 13 of 1999 with effect from 25 January 1999, the power of the Committee of Management to make appointments against short term vacancies, where the process of appointment had been initiated prior to 25 January 1999 by the publication of an advertisement, would continue to be preserved;

(b) On the enforcement of the provisions of Section 33-E, the power of a Committee of Management to make ad hoc appointments against short term vacancies would not stand abrogated in a case where the process of selection had been initiated prior to 25 January 1999;

(c) Under Section 16-E of the Intermediate Education Act, 1921, the Committee of Management is empowered to make an appointment against a temporary vacancy caused by the grant of leave to an incumbent for a period not exceeding six months or in the case of death, termination or otherwise, of an incumbent occurring during an educational session. An appointment made under sub-section (11) of Section 16-E as provided in the proviso thereto shall, in any case, not continue beyond the end of educational session during which the appointment was made; and

(d) The judgment of the Division Bench in Subhash Chandra Tripathi (supra) is affirmed as laying down a correct interpretation of the judgment in A A Calton (supra).” (Emphasis supplied)

23. Learned Senior Advocate also placed reliance on a judgment passed by a Coordinate Bench of this Court in **Rajiv Kumar vs. State of U.P. and others, 2024 SCC OnLine All 5843**, wherein similar view was taken.

24. With regard to submission that recruitment process would consider to begin with issuance of advertisement, learned Senior Advocate for selected candidates referred a judgment passed by a Constitution Bench of Supreme Court in **Tej Prakash Pathak and others vs. Rajasthan High Court and others, 2025(2) SCC 1** and relevant part thereof is reproduced hereinafter:

“13. The process of recruitment begins with the issuance of advertisement and ends with the filling up of notified vacancies. It consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment.”

XXXX

“65.1 Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;” (Emphasis supplied)

25. Learned Senior Advocate further submitted that in case of any ambiguity in the opinion rendered by a Bench of lesser strength even of Supreme Court, this Court would be legally entitled to follow a judgment passed by a Larger Bench of the Supreme Court, i.e., in present case the judgment passed by Constitution Bench in **Tej Prakash Pathak (supra)**, so far as above issue is concerned.

26. Learned Senior Advocate also submitted that it may be a case of haste by giving appointment letter but haste may not be considered an illegality and at the most it could be an irregularity, which can be ignored, if otherwise the process was legally sustainable. Merely on a ground that no election of Committee of Management was undertaken for last many years, there would not be a vacuum and students of College should not suffer due to non availability of Teachers.

27. Sri G.K. Singh, learned Senior Advocate assisted by Sri Avneesh Tripathi, learned counsel for University has adopted above referred arguments of learned Senior Advocate for selected candidates and submitted that Writ-A No. 10333 of 2025 filed by petitioner-Sunil

Kumar Jain is liable to be dismissed not only on locus but on ground of misjoinder of parties also. The University has already granted approval to appointments and interim order was granted, without disclosing misjoinder of parties.

28. Learned Senior Advocate appearing for Committee of Management in Writ-A No. 5941 of 2026, has also adopted above referred arguments made on behalf of selected candidates as well as University that there was no illegality in selection process. Committee of Management has took a decision for granting appointment on basis of deeming clause since Vice Chancellor of University concerned has not granted approval within stipulated time and, therefore, in terms of proviso to Section 31(11)(c) of U.P. State Universities Act, 1973 that there was a deemed approval for appointment of selected candidates, approval was deemed to be granted. Selected candidates have already joined and subsequently vide order dated 15.01.2025 Vice Chancellor of the University has accorded approval also, therefore, at this stage at the behest of petitioner-Sunil Kumar Jain, selected candidates cannot be ousted specifically when there is no allegation that they were not duly qualified or requisite procedure for selection was not followed.

29. Sri Sanjeev Singh, learned Additional Advocate General assisted by Sri D.K. Singh, learned Additional Chief Standing Counsel and Sri Saurabh, learned Standing Counsel appearing for State-Respondents, and assisted the Court on legal issue, whether impugned order assailed in first petition was legally sustainable or not. Learned Additional Advocate General submitted that impugned order whereby selection process was found to be legal since commenced prior to Act, 2023 came into force, would not survive in the light of a judgment passed by Supreme Court in **Rachna Hills (supra)** and he referred the discussion in reference to issue no. 3 therein, which is already quoted in earlier paragraph of this judgment. Learned Additional Advocate General has fairly placed reliance on a judgment passed by Supreme Court in **Government of Andhra Pradesh and others vs. Sri Sevadas Vidyamandir High School**

and others, 2011(9) SCC 613 that in case recruitment process was already begin, it may be protected.

30. Learned Senior Advocates for selected candidates, University and Committee of Management, have objected the submission of learned Additional Advocate General, being contrary to the counter affidavit filed on behalf of State.

31. Now the Court proceeds to consider above submissions of respective parties on referred issue.

32. There is no dispute so far as dates are concerned that Director, Higher Education has accorded permission vide orders dated 04.08.2023 and 08.08.2023 to fill up 22 posts of Assistant Professors in College concerned. In pursuance of permission the concerned College issued advertisements on 08.08.2023 and 12.08.2023. Said permission was recalled subsequently vide order dated 06.05.2024 passed by Secretary, Higher Education, Government of U.P., which was subject matter of challenge in earlier round of litigation and during pendency of said litigation order dated 06.05.2024 was recalled by a subsequent order dated 20.11.2024 and that Act, 2023 came into force with effect from its gazette notification on 21.08.2023, i.e., subsequent to advertisement.

33. As referred above, in earlier round of litigation both orders whereby permission was recalled and subsequent order whereby said order was recalled were set aside and matter was remitted back to concerned State Authority to pass a fresh order taking note of relevant factors including the effect of repeal.

34. In above background, an order dated 21.04.2025 was passed by the Principal Secretary, Higher Education, which is impugned in first petition, whereby it was held that since publication of advertisement was prior to enforcement of Act, 2023, therefore, it would not be illegal to continue with selection process in terms of earlier Act of 1982 and not by “Act, 2023”.

35. After considering rival submissions and judgments placed on record, the Court finds that in **Dr. Manoj Kumar Rawat (supra)** an issue was considered of fresh recommendation to change the place of posting of a wait listed candidate and in such circumstance it was held that earlier recommendation would not be protected after considering the issue of effect of repeal of old Act and enforcement of new Act as well as in terms of Section 6 of U.P. General Clauses Act, whereas in the present case issue is process of a selection which was admittedly commenced after due permission by publishing advertisement before “Act, 2023” came into existence, therefore, the Court finds that the facts of **Dr. Manoj Kumar Rawat (supra)** may not be applicable in the present case.

36. Now the Court takes note of **Rachna Hills (supra)**, however, finds that it is distinguishable on facts and law as well. In present case there is a “deemed approval” also, therefore, approval of Vice Chancellor of University may not be necessary after stipulated time, whereas in **Rachna Hills (supra)** there was no “deeming clause”. Further, in present case it is the stand of State that selection procedure can be continued as per old procedure even after Act, 2023 came into force, whereas in **Rachna Hills (supra)** the opposition was of the Government. Other distinguishable features are that in present case selection was started with prior permission and in **Rachna Hills (supra)**, there was an amendment in the Act, whereas in present case a new Act, namely, Act, 2023 was enforced and earlier selection process can still be protected under Repeal and Saving clause, which was done by the order impugned.

37. The Court finds that in given circumstances above referred both judgments are not applicable.

38. Otherwise also there is a judgment passed by a Constitution Bench in **Tej Prakash Pathak (supra)** wherein issue involved in present case was considered and it was held that process of recruitment begins with issuance of advertisement and ends with filling of notified vacancies and rules of game cannot be changed after it commenced, therefore, the

Court finds that in given circumstances there would be no difficulty to follow the judgment passed by Constitution Bench of Supreme Court in **Tej Prakash Pathak (supra)** that recruitment process would commence from the date of advertisement.

39. In aforesaid circumstances, the Court finds that in strict interpretation the first petition filed by petitioner-Sunil Kumar Jain is not maintainable on ground of non-joinder of parties. Still the referred issue is answered that in facts and circumstances of present case, this Court follows the judgment passed by a Constitution Bench of Supreme Court in **Tej Prakash Pathak (supra)** and that the judgments passed by Supreme Court in **Dr. Manoj Kumar Rawat (supra)** and **Rachna Hills (supra)** would not be applicable in the present case. There is no allegation that selected candidates were not qualified. Only on a ground that a writ petition is pending from 2010 on a dispute of Committee of Management, there may not be a vacuum as well as students of the College concerned cannot be forced to suffer in absence of teaching staff. The conditions imposed in permission was in anticipation and as discussed above, the selection process was protected by provisions “Repeal and Savings” of Act, 2023, therefore, such condition has no legal consequence. No candidate has come forward being aggrieved by the impugned decision, therefore, the Court finds that there is no illegality in impugned order dated 21.04.2025. Since advertisements were issued before Act, 2023 was enforced, therefore, procedure applicable earlier vide Act of 2019 was followed and selection process was found to be legal. Further, since approval has also been granted and selected candidates are working, therefore, the outcome of above discussion, on facts and law, is that no interference be caused in order impugned in first petition.

40. In view of above, Writ-A No. 10333 of 2025 filed by petitioner-Sunil Kumar Jain is dismissed. Interim order therein is vacated.

41. Consequently, orders impugned in Writ-A Nos. 5941 of 2026 and 5920 of 2026, i.e., orders dated 02.04.2026 and 26.02.2026 become non-

est since they were passed on basis of interim order passed in Writ-A No. 10333 of 2025 and its legal consequence shall follow.

42. Writ-A Nos. 5941 of 2026 and 5920 of 2026 are accordingly disposed of.

43. Writ-C No. 45787 of 2010 (Atul Kumar Jain vs. State of U.P. and others) be listed in third week of July at 12.30 PM before appropriate Bench for final hearing.

May 29, 2026
AK

(Saurabh Shyam Shamshery,J.)