



2026:AHC:160862-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD**  
**SPECIAL APPEAL No. - 701 of 2024**

**AFR**

**Reserved on 13.02.2026.**

**Delivered on 03.08.2026**

Kamal Nayan Singh and 9 others

.....Appellant(s)

Versus

State of UP and 2 others

.....Respondent(s)

---

|                           |                                 |
|---------------------------|---------------------------------|
| Counsel for Appellant(s)  | : Siddharth Khare, Sr. Advocate |
| Counsel for Respondent(s) | : C.S.C., Siddharth Singhal     |

---

**Alongwith**

**SPECIAL APPEAL No. - 829 of 2024**

Shree Pati Yadav and 4 others

.....Appellant(s)

Versus

State of UP and 3 others

.....Respondent(s)

---

|                           |                                         |
|---------------------------|-----------------------------------------|
| Counsel for Appellant(s)  | : Mujib Ahmad Siddiqui                  |
| Counsel for Respondent(s) | : C.S.C., M.N. Singh, Siddharth Singhal |

---

**HON'BLE SARAL SRIVASTAVA, J.**  
**HON'BLE SUDHANSHU CHAUHAN, J.**

*(Delivered by Hon'ble Saral Srivastava, J)*

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Umang Srivastava, learned counsel for the appellant, Sri Ashok Mehta, learned Additional Advocate General assisted by Sri Pradeepta Kumar Shahi, learned Additional Chief Standing Counsel and Sri Pradeep Singh, learned Standing Counsel for State- respondent Nos.1 and 2, Sri Akhilesh Kumar Maurya, Advocate holding brief of Sri Siddharth Singhal, learned counsel for Respondent No.3 and Sri Nisheeth Yadav, learned counsel for respondent No. 4-U.P. Public Service Commission.
2. These two Special Appeals arise out of a common judgement dated 30.07.2024 passed by the learned Single Judge dismissing the writ petition being Writ-A No.6738 of 2024 & Writ-A No.7788 of 2024 of the appellants respectively.
3. For convenience, the facts are being delineated from Special Appeal No.701 of 2024. For convenience, the 'appellants' are referred as 'petitioners'.
4. The facts, in brief, are that U.P. Subordinate Services Selection Commission, Lucknow (hereinafter referred to as 'U.P.S.S.S.C.') issued an Advertisement No.22-Examination/2016 notifying Combined Lower Subordinate Services (General Recruitment) Competitive Examination-2016 (II) for filling up several categories of posts in 14 Departments of the State.
5. By the aforesaid Advertisement, U.P.S.S.S.C. also invited application for filling up 69 posts of Librarian under the Director Technical Education, U.P., Kanpur in Grade Pay of Rs.2800/- in the Pay Band of Rs.5200-20,200/-.
6. The qualification for the aforesaid posts was graduation with diploma in Library Science. The last date for submission of application form was 19.12.2016. The U.P.S.S.S.C. conducted the written examination on 28.07.2019 and thereafter, interview was conducted by U.P.S.S.S.C. from 01.12.2020 to 24.12.2020.
7. While the selection process was underway, the All India Council for Technical Education (hereinafter referred to as 'AICTE') in exercise

of power under Section 23(1) read with Section 10(g), (h) & (i) of the All India Council for Technical Education Act, 1987 and after approval of Government of India vide No.1-37/2016-TS.II. Dated 23<sup>rd</sup> January, 2019 and letter of even no. dated 12<sup>th</sup> February, 2019 framed Regulations called as 'The All India Council for Technical Education Pay Scales, Service Conditions and Minimum Qualifications for the Appointment of Teachers and other Academic Staff such as Library and Physical Education Personnel in Technical Institutions and Measures for the Maintenance of Standards in Technical Education-(Diploma) Regulation, 2019 (hereinafter referred to as 'Regulation, 2019') prescribing pay scales, condition of service and minimum qualifications with regard to teaching staff like Librarian and physical education employees.

8. Regulation 5.1 prescribed the minimum qualifications for Assistant Librarian which is as under:-

*"1. Master's Degree in Library Science/Information Science/Documentation Science or an Equivalent Professional Degree with at least First Class or equivalent and a consistently good academic record with knowledge of computerization of library.*

*2. Qualifying in the National Level Test conducted for the purpose by UGC or other equivalent test as approved by the UGC."*

9. By the said Regulation, the post of Assistant Librarian has been upgraded from Group-C (Grade Pay of Rs.2800/- in the Pay Band of Rs.5200-20200/-) to Group-B (Pay Band of Rs.56100/-). The State Government also in exercise of power conferred by the proviso to Article 309 of the Constitution of India came out with the Uttar Pradesh Technical Education (Teaching) Service Rules, 2021 (hereinafter referred to 'Rules, 2021'). Part-III of the Rules, 2021 deals with recruitment. Rule 5 of Rules, 2021 provides the source of recruitment. Rule 8 of Rules, 2021 prescribes that a candidate for direct recruitment to various posts in the service must possess the qualifications as shown in Appendix-II.

10. Item no.6 (Appendix-II) specifies the post of Librarian in Government Polytechnic. The qualification specified is a Master's Degree in Library Science with at least First Class or equivalent and a consistently good academic record having the knowledge of computer and also have qualified National Eligibility Test.

11. The U.P. Public Service Commission (hereinafter referred to as 'UPPSC') issued an Advertisement No.A-7/E-1/2021 dated 15.09.2021 notifying the U.P. Technical Education (Teaching) Service Examination-2021. 87 posts of Librarian were advertised for recruitment under the aforesaid Advertisement. The qualification for the said posts had been specified as Master's Degree in Library Science along with National Eligibility test from University Grants Commission (UGC).

12. The result of the selection held by the U.P.S.S.S.C. pursuant to Advertisement No.22-Examination/2016 was declared on 10.12.2021.

13. The petitioners being aggrieved by the inaction of the State Government for not granting appointment to them on the post of Librarian under the Director-Technical Education, U.P., Kanpur in Grade Pay of Rs.2800/- in the Pay Band of Rs.5200-20200/- approached this Court by filing Writ-A No.5390 of 2022 (Kamal Nayan Singh & 12 Others Vs. State of U.P. & 3 Others) which was decided by this Court after exchange of counter and rejoinder affidavits by the judgement dated 05.12.2022 with a direction to the respondents to grant appointment pursuant to the result declared by U.P.S.S.S.C. dated 10.12.2021 within a month. This Court further granted liberty to the State that if the State Authorities are of another view, such decision may be made within the same time keeping in mind the observations made above. In that event, rights of the parties shall abide by the decision to be made by respondent no.1. The writ petition was allowed in terms of the direction issued above. The relevant finding of the judgement of this Court shall be referred to at the appropriate place.

14. Against the judgement of the learned Single Judge dated 05.12.2022, the State of U.P. through Director of Technical Education

preferred Special Appeal No.65 of 2023, in which the State of U.P. did not get any interim order. The petitioners also preferred Special Appeal (Defective) No.430 of 2024 against the judgement of learned Single Judge dated 05.12.2022 passed in Writ-A No.5390 of 2022.

15. The petitioners preferred contempt petition for compliance of the judgement dated 05.12.2022 passed by this Court in Writ-A No.5390 of 2022. The State Government in compliance of the judgement of this Court passed an order dated 23.03.2024 denying the claim of appointment to the petitioners which order has been impugned by the petitioners in Writ-A No.6738 of 2024 and Writ-A No.7788 of 2024.

16. Both the aforesaid writ petitions have been decided by the learned Single Judge by a common judgement dated 30.07.2024.

17. Counter affidavit has been filed by respondents contending inter-alia that AICTE Regulation-2019 was notified prescribing pay scales, service conditions and minimum educational qualifications for appointment of teachers and other academic staff such as Librarian and Physical Education Personnel in Technical Institutions as well as measures for maintenance of standards in Technical Education.

18. The State Government also in order to bring necessary changes in the light of Regulation-2019 notified the Rules, 2021 by which the qualification for the post of Assistant Librarian has been enhanced.

19. It is stated that by Directorate's letter dated 14.09.2016, a requisition was sent to the U.P.S.S.S.C. for 69 posts of Librarian along with other posts. However, Directorate vide its letters dated 12.02.2018 and 16.02.2018 respectively requested the U.P.S.S.S.C. to stay the advertisement/selection/ recruitment process for the post of Librarian. Thereafter, the Director of Technical Education wrote several letters dated 28.07.2018, 11.12.2018, 16.12.2018, 30.05.2019, 04.09.2019, 19.02.2021 & 23.10.2021 requesting the Secretary, U.P.S.S.S.C. to stay the advertisement/selection/recruitment process for 69 vacant posts of Librarian in the pay band of Rs.5200-20200/- and grade pay of

Rs.2800/-. However, U.P.S.S.S.C. did not take cognizance of the aforesaid letters of Directorate and proceeded to hold selection.

20. In Writ-A No.6738 of 2024, a personal affidavit of M. Devraj, Principal Secretary, Technical Education, Government of U.P., Lucknow was filed contending inter-alia that U.P.S.S.S.C., Lucknow conducted a written examination for the post of Librarian on 28.07.2019. Thereafter, interview was conducted from 01.12.2020 to 24.12.2020. The U.P.S.S.S.C. declared the final selection result by Notification dated 10.12.2021. It was also stated that till date the U.P.S.S.S.C. had not submitted the recommendation to the department for appointment of selected candidates.

21. It is also stated in the affidavit that some of the petitioners have also applied against 87 posts of Librarian advertised in Advertisement No.A-7/E-1/2021 dated 15.09.2021 of the U.P.P.S.C. Prayagraj. The U.P.P.S.C. issued notification on 05.07.2023, which was also assailed by the petitioner in Writ Petition No.12597(A)/2023 (Kamal Nayan Singh Vs. State of U.P. & Others), in which this Court passed a stay order on 04.08.2023.

22. The U.P.P.S.C. after withholding 13 vacancies vide Press Notification dated 22.03.2024 declared 68 candidates as finally successful against the remaining 74 vacancies of the post of Librarian.

23. It is also averred that one of the petitioners, namely, Kamal Kant (a candidate of Scheduled Caste category) had been selected for the post of Librarian at Serial No.67 in the selection conducted by U.P.P.S.C. It is further stated that the petitioners are estopped in law in challenging the impugned order having participated in the selection against the post advertised by the U.P.P.S.C..

24. It is also stated that the claim of the petitioner is not legally tenable due to revised/upgraded educational qualification and pay scale of the post of Librarian being changed as a result of the implementation of the recommendations of AICTE Regulation-2019 in the Government Polytechnic Institutions under the control of Technical Educational

Department (Diploma Sector) and the provisions contained in rules, 2021.

25. The petitioners filed rejoinder affidavit denying the averments made in the counter affidavit.

26. Learned Single Judge rejected the contention of the petitioner that the order dated 23.03.2024 passed by the State Government was in the teeth of the judgement of this Court in Writ-A No.5390 of 2022 and held that this Court had granted liberty to the respondent-State to decide the claim of the petitioner if the respondent was of another view. The other consideration which weighed with the learned Single Judge in dismissing the writ petition was that since the qualification for the post of Librarian had been enhanced and category of post had been changed from Grade-C to Grade-B and the pay scale had also been enhanced, the State Government had right to appoint persons having better qualifications to enhance the quality of service.

27. The learned Single Judge has also held that since various letters had been written by the State of U.P. to the U.P.S.S.S.C., Lucknow not to proceed with the selection, yet the U.P.S.S.S.C., Lucknow proceeded with the selection process, therefore, it is wrong to say that the State is guilty of inaction.

28. The learned Single Judge held that the judgement of the Apex Court in the case of ***Ramjit Singh Kardam & Others Vs. Sanjeev Kumar & Others (2020) 20 SCC 209*** was a case where it was held that the Selection Commission cannot change the Rules of the game arbitrarily. Consequently, the learned Single Judge was of the view that the ratio of the said judgement does not benefit the petitioners.

29. Challenging the judgement of learned Single Judge, Sri Ashok Khare, learned Senior Counsel for the petitioners has contended that the order dated 23.03.2024 passed by the State Government in compliance of the judgement of this Court dated 05.12.2022 passed in Writ-A No.5390 of 2022 is in the teeth of the said judgement. He submits that the reason set out in the impugned order dated 23.03.2024 for denying

the claim of the petitioners has already been repelled by this Court in its judgement dated 05.12.2022 passed in the aforesaid writ petition, therefore, the impugned order dated 23.03.2024 is nothing but abuse of process of law and amounts to sitting in appeal over the judgement passed by this Court in Writ-A No.5390 of 2022.

30. It is further contended that the finding returned by this Court in Writ-A No.5390 of 2022 is binding upon the parties inasmuch as the State of U.P. has got the Special Appeal No.65 of 2023 preferred against the judgement dated 05.12.2022 dismissed as not pressed. It is submitted that once the finding returned by this Court in Writ-A No.5390 of 2022 has attained finality between the parties, the said findings are binding upon the parties and the parties cannot resile from the said finding. Thus, parties are bound by the consequence of such finding.

31. It is contended that the learned Single Judge while dismissing the writ petition has erroneously held that this Court in judgement dated 05.12.2022 in Writ-A No.5390 of 2022 has given liberty to the State Authority to take independent view of the matter if the State Authorities are of another view. It is contended that the learned Single Judge while recording the said finding ought to have considered the entire operative portion in paragraph no.44 of the judgement which clearly spells out that if the State Authorities were of another view, such decision would be made keeping in mind the observations made in the judgement dated 05.12.2022.

32. It is contended that in the operative portion of the judgement 'another view' was referred to by this Court in the context that if there existed any other rationale ground than the grounds already adjudicated upon under the earlier judgement, the authority may take an independent view, but not in the sense that authority may take same view in rejecting the claim of the petitioners which has been repelled by this Court in its judgement dated 05.12.2022 in deciding Writ-A No.5390 of 2022.

33. He further contends that the learned Single Judge has erred in law in not correctly appreciating the ratio laid down by the Apex Court in the

case of ***Ramjit Singh Kardam (supra)***. It is further contended that mere fact that the post of Librarian stood upgraded at a subsequent point of time in no manner results in nullification of selection proceeding already initiated.

34. Sri Ashok Mehta, learned Additional Advocate General refuting the aforesaid submission has submitted that after the Regulation, 2019 was notified prescribing pay scales, service conditions etc. for the post of Librarian and after promulgation of Rules, 2021, all the posts of Librarian had been upgraded. He submits that the Librarian cadre is not a dying cadre, and that since all the posts of Librarian have been upgraded, and there is no posts of Librarian in the pay band of Rs.5200-20,200/- and grade pay of Rs.2800/-, therefore, petitioners could not be appointed on the said posts. Accordingly, he submits that the judgement of the Apex Court in the case of ***Ramjit Singh Kardam (supra)*** is not applicable in the present case.

35. He further contends that corrigendum could not be issued for the reason that after the Rules, 2021 was notified, the forum of selection on the post of Librarian has changed as earlier, U.P.S.S.S.C. was authorized to conduct selection in respect of Librarian, but after the promulgation of Rules, 2021, U.P.P.S.C. has been authorized to conduct selection, therefore, there was no occasion for the State to issue any corrigendum in the light of Clause 1.4(f) of the Regulation, 2019.

36. He further contends that there was no obligation upon the State Government to withdraw the requisition dated 14.09.2016 sent to U.P.S.S.S.C. as the State Government several times wrote letters to the U.P.S.S.S.C. not to proceed with the selection. He further contends that mere placement in the select list does not give any indefeasible right of appointment to petitioners, therefore, he contends that the petitioners have failed to make out any case and the present Special Appeal deserves to be dismissed.

37. Sri Ashok Khare, learned Senior Counsel in rejoinder submits that Rule 1(2) of Rules, 2021 states that these Rules namely, Rules, 2021

shall come into force w.e.f. 09.06.2021. He submits that the process of selection of petitioners was over before enforcement of Rules, 2021 as the interview of petitioners was conducted by U.P.S.S.S.C. from 01.12.2020 to 24.12.2020. He further submits that Rule 5 of Rules, 2021 speaks about selection and not in respect of pending selection. He submits that Rules, 2021 is silent about pending selection. He further submits that there is no rule in Rules, 2021 specifying as to what will happen to existing Librarians.

38. He further submits that neither existing Librarians have been upgraded nor their services stands terminated. He submits that there is no averment in the counter affidavit that services of existing Librarians have been upgraded or their services have been terminated, therefore, it is evident that the Librarians in the Pay Band of Rs.5200-20,200/- are continuing. Therefore, the contention of respondents that all the posts of Librarians have been upgraded is incorrect, therefore, claim of the petitioners cannot be denied on the ground that all the posts of Librarians have been upgraded in the light of Rules, 2021.

39. He submits that serial no.6 in column-3 of Appendix-II prescribes the qualification and age limit for direct recruitment to various posts. It is provided that the Librarians who have been deputed between 01.01.1996 to 15.03.2000 in diploma level institution with the existing recruitment Rules to be considered for upgradation under CAS in the next higher grade of senior scale only. Thus, it is evident that the contention of learned counsel for the respondents that all the posts of Librarians have been upgraded is incorrect.

40. He further submits that Rules, 2021 is applicable w.e.f. 09.06.2021 on which date, it has been notified and not retrospectively and if the respondents wanted to implement the Rules, 2021, they should have notified its implementation retrospectively.

41. We have considered the rival submissions of the parties and perused the record.

42. We have delineated necessary facts above, therefore, we do not reiterate the same to unnecessarily burden the judgement.

43. Before dealing with the respective contention of learned counsel for the parties, it would be apposite to state in short the issues and findings recorded by the learned Single Judge in Writ-A No.5390 of 2022 as the entire controversy hinges upon the effect of finding of learned Single Judge in respect of contention advanced by the parties more so when the State of U.P. has withdrawn the Special Appeal No.65 of 2023 preferred by it against the judgement of learned Single Judge in Writ-A No.5390 of 2022 in which the petitioners have prayed for following relief:-

*“(i) A writ, order or direction in the nature of certiorari quashing the advertisement no.A-7/E-1/2021 dated 15.09.2021 (Annexure 8 to the writ petition) issued by the Public Service Commission UP in so far as it pertains to the post of Librarian and all proceedings in pursuance thereto.*

*(ii) A writ, order or direction of a suitable nature commanding the respondent to forthwith grant appointment to the petitioners as Librarian under the Director-Technical Education, UP, Kanpur on the basis of the select list dated 10.12.2021 issued by UP Subordinate Services Selection Commission in pursuance to advertisement no.22-Examination/2016 within a period to be specified by this Hon'ble Court.*

*(iii) A writ, order or direction of a suitable nature commanding the respondent to permit the petitioner to function as Librarian under Director of Technical Education, UP, Kanpur and to pay the petitioners their regular monthly salary on the said post, regularly, every month.*

*(iv) A writ, order or direction in the nature of which this Hon'ble Court may deem fit and proper under the circumstances of the case.*

*(v) Award cost to the humble petitioners throughout of the present writ petition.”*

44. The grounds advanced by the State Government in Writ-A No.5390 of 2022 have been noted by the learned Single Judge in paragraph no.12 of the judgement which in short are as follows:-

(i). After issuance of Regulation, 2019 by notification dated 01.03.2019, the post of Librarian was upgraded making a quantitative change in the prescribed qualifications as also pay conditions etc. of the upgraded post. Therefore, it became impossible for the State to complete the selection process for the advertised post, therefore, it required U.P.S.S.S.C. to withdraw the requisition made and to disband the selection.

(ii). That in any case by mere taking forward selection process and declaration of result did not create any right in favour of petitioners so as to entitle them for issuance of a writ to grant them appointment. In other words, successful candidates do not acquire an indefeasible right to be appointed. It remains within the domain of the competent authority to cancel the requisition and/or the selection process as has been done in the present case.

(iii). It was permissible to alter the selection process upon the change made to the law by the notification and U.P. Rules, 2021. In other words, upon enforcement of the UP Rules, 2021 the recruitment must be conducted and completed in terms of those Rules.

45. The learned Single Judge in paragraph no.15 of the judgement has framed the issue which arose for consideration in the writ petition. Paragraph no.15 of the judgement of this Court in Writ-A No.5390 of 2022 is being reproduced herein below:-

*“15. Having heard learned counsel for the parties and having perused the record, a fundamental aspect that may be first addressed is - whether the requisition made by the State Government and acted upon by the UPSSSC upon issuance of the advertisement dated 26.11.2016 developed an incurable defect as may not have allowed the UPSSSC to continue or complete the process of selection undertaken by it, either upon issuance of Notification dated*

*01.03.2019 (by the AICTE) or upon enforcement of the UP Rules on 09.06.2021.”*

46. All the grounds which have been raised by the respondent-State have been dealt with by the learned Single Judge on the basis of material on record and contentions of the parties. Relevant finding of the learned Single Judge in respect to all the grounds raised by the respondent-State are being referred below.

47. While dealing with the contention with regard to applicability of law on the selection process, the learned Single Judge has recorded that though there is no quarrel with the proposition of law that law on the date of occurrence of vacancy is not the law on which fresh selection may be made. However, by placing reliance upon the judgement of the Apex Court in the case of ***State of Bihar Vs. Mithilesh Kumar (2010) 13 SCC 467***, he held that any and every change made to the law during an ongoing selection process does not automatically attach or govern that selection process, unless the change/amendment to the law is specifically made with retrospective effect. Accordingly, he records that Regulation framed by AICTE, 2019 are statutory law and, therefore, are enforceable, but neither the AICTE nor the State Government seek retrospective enforcement of that law. The State Government framed Rules, 2021 which was enforced prospectively from 09.06.2021.

48. By recording the aforesaid finding, the learned Single Judge repelled the contention of the State Government that after promulgation of U.P. Rules, 2021, the process of selection for the post of Librarian must be conducted and completed as per procedure provided in Rules, 2021 and the State Government was right in not giving effect to the selection conducted by U.P.S.S.C.

49. So far as the issuance of corrigendum is concerned, the learned Single Judge in paragraph nos.20 & 21 of the judgement has elaborated the reasons to conclude as to when the changed law would become applicable. Paragraph nos.20 & 21 of the judgement are being reproduced herein-below:-

*“20. Second, under Clause 1.4 (f), in case/s where interview stage had not been conducted, the AICTE directed all institutes/employers to first 'publish corrigendum' and process the pending applications (for selection), according to the amended law. Thus, a conditional enforcement of the amended/changed law was contemplated by the AICTE. Only, after the State Government published a 'corrigendum' to the Advertisement, the changed law would become applicable to the pending selection process, for the advertised posts and not otherwise.*

*21. Therefore, even to the present case, though selection process was pending before the stage of interview, the changed eligibility prescribed under the Notification could not be enforced on its own. Before it could be enforced and applied to the impugned selection process (already underway), the employer i.e., the State Government was required to decide to apply it to the pending selection process and publish its decision through a corrigendum advertisement, to that effect. That was never done. In absence of publication of the corrigendum by the State Government, the pre-condition prescribed to be fulfilled to apply the amended law (under the Notification), to pending/impugned selection process was never fulfilled. Hence, Regulation 1.4 (f) did not become enforceable to the impugned selection process.”*

50. The learned Single Judge further in paragraph no.22 has recorded reasons that Rules, 2021 does not affect the selection process. Paragraph no.22 of the judgement is being reproduced herein-below:-

*“22. Mere enforcement of the UP Rules also had no adverse effect on the impugned selection process. Those being statutory Rules, they contain no recital or intent to enforce them retrospectively. Plainly, they are wholly prospective.”*

51. The learned Single Judge after considering the effect of various provisions of Regulation, 2019 in paragraph no.24 has categorically recorded that Regulation, 2019 notification did not treat any ongoing selection process (under the unamended law), inherently or

fundamentally or incurably defective. Paragraph no.24 of the judgement is reproduced herein-below:-

*“24. Thus, the Notification did not treat any ongoing selection process (under the unamended law), inherently or fundamentally or incurably defective. Rather, it sought to protect those selection processes, as noted above. That equitable principle, legislatively incorporated into the Notification, must be given full effect. Its consequences cannot be avoided or lightly brushed away. Consequently, in absence of any inherent defect in the law (as per the amended law), shown to exist in the selection process, the Court may not rush to recognize such defect to treat annulled, the selection process though, the State Government has not taken any step to apply that amended law to the impugned selection process. To that extent, the equitable principle contained in clause 1.4(f) of the Notification is being recognized in favour of the petitioners.”*

52. The learned Single Judge further discussed in detail in paragraph nos.29 & 30 of the judgement the effect of non-withdrawal of requisition, and in paragraph no.31 also the effect of letters written by the Director, Technical Education to the Secretary, U.P.S.S.S.C. to the effect that the said expert examination body namely, U.P.S.S.S.C. may withdraw the requisition. Paragraph nos. 29 to 32 of the judgement are being reproduced herein-below:-

*“29. Here, it must be noted, learned Standing Counsel has not been able to establish - the State authorities withdrew the requisition at any stage of the proceedings. It is true, a mere selection does not vest any right in the selected candidate to seek appointment and this Court may not readily issue a positive writ in that regard yet, the selection process cannot be allowed to be stalled or wasted on its own for reason of mere administrative inefficiency or incompleteness of administrative action.*

*30. Once, the law stood amended, it was for the State authorities to consider its effect and impact on the ongoing selection. Inasmuch as there exists a principle, duly recognized by the Supreme Court in Ramjit Singh Kardam & Ors. Vs. Sanjeev Kumar & Ors. (supra),*

*whereunder merely because the cadre under which the post may have been advertised would become a dying cadre, it may not automatically defeat the selection process (on such post for such dying cadre), a conscious decision making was required by the administrative authorities' vis-a-vis the claim of the petitioners, after evaluating the impact of that decision.*

*31. Plainly, not only the State authorities failed to take that decision and publish the corrigendum, unfortunately and unwittingly, they unsuccessfully attempted to shift that responsibility and function on the UPSSSC and or/the UPPSC. The letters written by the state authorities namely the Secretary to the Director Technical Education and the letter written by the Director Technical Education to the Secretary UPSSSC are to the effect that the said expert examination body may itself withdraw the requisition. That function jurisdiction or authority, it did not have. It was never exercised by the State Government - the authority vested with such jurisdiction.*

*32. As noted above, in face of specific legal obligation cast on the State Government to publish the corrigendum of Regulation 1.4(f) and, in absence of any delegation or sub-delegation of that essential function on the UPSSSC, the latter was never authorised or enabled to do cancel the requisition or to modify it. Therefore, there is no inherent or other defect in the conduct of the UPSSSC, in having continued and completed the selection process.”*

53. After recording the aforesaid finding, the learned Single Judge further detailed the reason in paragraph no.34 onwards in allowing the writ petition. Relevant Paragraph no.44 of the judgement which contains directions to the respondent-State is being reproduced below:-

“44. Accordingly, the respondent may proceed to grant the appointments, pursuant to the result declared by the UPSSSC dated 10.12.2021 within a month (as there is no legal impediment to that). If however, the State authorities are of another view, such decision may be made within the same time, keeping in mind the observations made above. In that event, rights of the parties shall abide by the decision to

be made by respondent no.1. The writ petition is allowed, in terms of the direction issued above. No order as to costs.”

54. After the judgement of this Court in Writ-A No.5390 of 2022, the State Government preferred Special Appeal No.65 of 2023 challenging the judgement of learned Single Judge in Writ-A No.5390 of 2022. However, the State Government did not succeed in obtaining any stay order against the judgement of learned Single Judge dated 05.12.2022 in Special Appeal No.65 of 2023. The grounds on which the State Government preferred the Special Appeal No.65 of 2023 are being reproduced below:-

*“I. Because, the instant Special Appeal is being preferred assailing the validity and veracity of the Judgment and Order dated 05.12.2022 passed by the Hon'ble Mr. Justice Saumitra Dayal Singh, J. in Civil Misc. Writ Petition (A) No.5390 of 2022 (Kamal Nayan Singh And Others Vs. State of U.P. And Others), whereby the Learned Single Judge has allowed the writ petition and directed the State-Respondents to proceed to grant appointment pursuant to the result declared by the U.P. Subordinate Services Selection Commission on 10.12.2021 within a month.*

*II. Because, the learned Single Judge while allowing the writ petition has held that there was no fundamental defect in the selection process and proceeded to direct the respondents to grant the appointments to the petitioners pursuant to the result declared by the U.P. Subordinate Services Selection Commission dated 10.12.2021.*

*III. Because, the Learned Single Judge while allowing the writ petition has held that there was no rational to allow the State Authorities the discretion to stall the selection process midway.*

*IV. Because, the Writ Petition No.13727 of 1991 (Federation of Indian Polytechnic Teachers Organization, Allahabad And Others Vs. Director, Technical Education, U.P. Kanpur And Others) was disposed of by this Hon'ble Court by its judgment and order dated 11.04.2001 with the direction to the respondents to implement the four tiers staff structure in the State of U.P. in accordance with law,*

*norms and standard laid down by the All India Council for Technical Education (AICTE).*

*V. Because, the Judgment and order dated 11.04.2001 was challenged by the State of U.P. in Special Appeal No.63 of 2003 in which same was dismissed by the judgment and order dated 23.03.2011. The State of U.P. preferred Civil Appeal No. 6271 of 2012 (State of U.P. And Another Vs. Federation of Indian Polytechnic Teachers Organization, Allahabad And Others) before the Hon'ble Supreme Court. The Civil Appeal No.6271 of 2012 was disposed by the Hon'ble Apex Court by its judgment and order dated 01.02.2017 and All India Council for Technical Education was directed to take decision in the matter in accordance with law.*

*VI. Because, the State Government had by its letter dated 18.01.2018 to the Secretary, U.P. Public Services Selection Commission, Allahabad that the process for implementation of the recommendation of the All India Council for Technical Education is in progress and if the aforesaid recommendations are implemented in the Department, the discrepancy will be arrived in the selection process and therefore, forbid the selection process of the concerned post.*

*VII. Because, the State Government has issued Government Order dated 03.05.2018 for implementing the All India Council for Technical Education Regulations in the Government Polytechnic Institutions whereby the educational institutions, pay scale and selection process to the post of Librarian has been changed and also the Grade Pay of the said post has been enhanced from Rs 2800-5400 and as such they said post has come within the purview of Class B from Class C post.*

*VIII. Because, the post of Librarian in the Government Polytechnic Institutions having been upgraded to Class B, the selection was to be made by the U.P. Public Services Commission and the UP Subordinate Services Commission was not entitled to continue the selection process.*

*IX Because, vide a Government Order dated 15.12.2014 the State Government has clarified that all the posts of direct recruitment which have Grade Pay of Rs. 1900/ or above but less than Rs. 4600/- are within the purview of the U.P. Subordinate Services Selection Commission. Due to the aforesaid decision of the State Government, the post of Librarian in the Government Polytechnic is within the purview of the Class B post and the selection process for the aforesaid post is to be done by the U.P. Public Service Commission.*

*X. Because, the Advertisement No.22-Exam-2016 was conducted by the U.P. Subordinate Services Selection Commission and the written exam was held on 28.07.2019 and the result were declared on 30.10.2020 and the interview took place in December, 2020.*

*XI. Because the Commission was already communicated vide a letter dated 30.05.2019 to forbid the selection process on the 69 posts of Librarian.*

*XII. Because, vide a letter dated 23.10.2021 and 28.02.2022, the Commission was requested for cancellation of the requisition with regard to 69 posts of Librarian.*

*XIII. Because, the State Government has framed U.P. Technical Education (Teaching) Services Rules, 2021 vide a notification dated 09.06.2021 and the selection process for the post of Librarian is governed by the aforesaid Rules, 2021 and the vide Government Order dated 23.06 2021 requisition for selection of 87 posts of Librarian has been sent to the U.P. Public Service Commission, Prayagraj.*

*XIV. Because, the once the request has been made to the U.P. Subordinate Services Selection Commission to forbid the selection process vide a letter dated 30.05.2019, the U.P. Subordinate Services Selection Commission ought to have kept the selection process in abeyance but proceeded to hold the written exam on 28.07.2019, the results of which were declared on 13.10.2020 and the interview took place in the month of December, 2020.*

*XV Because, the successful candidates do not acquired an indefeasible right to appoint and it remains within the domain of the*

*Competent Authority to cancel the requisition and or the selection process.*

*XVI. Because, the U.P. Technical Education (Teaching) Services Rules, 2021 has been framed by the State Government vide a notification dated 09.06.2021 and the selection process for the post of Librarian is governed by the aforesaid Rules, 2021 and on 10.12.2021 when the select list was issued, the Service Rules, 2021 were in operation.*

*XVII. Because, the Hon'ble Apex Court in the case of State of Himanchal Pradesh Vs. Raj Kumar And Others has held that the law on the date of occurrence of vacancy is not the law of which fresh selection may be made.*

*XVIII. Because, the instant case during ongoing selection process, no amendment has been made to the selection norms rather the entire selection process has been virtually cancelled and request to forbid the selection process has been sent to the U.P. Subordinate Services Selection Commission.*

*XIX. Because, in any view of the matter the Impugned Judgment and Order dated 05.12.2022 passed by the Hon ble Mr Justice Saumitra Dayal Singh, J. in Civil Misc. Writ Petition (A) No.5390 of 2022 (Kamal Nayan Singh And Others Vs. State of U.P. And Others) is liable to be set-aside.”*

55. The petitioners also preferred Special Appeal Defective No.430 of 2024 against the judgement of learned Single Judge dated 05.12.2022 to the extent liberty was granted to the State Government to take a decision, if it was of other view, with regard to appointment of petitioners.

56. However, the State Government did not comply with the judgement of the learned Single Judge dated 05.12.2022 which led the petitioners to prefer contempt petition. During the pendency of contempt petition, the State Government passed an order dated 23.03.2024 rejecting the claim of the petitioners for appointment on the post of Librarian pursuant to the result declared on 10.12.2021.

57. After the rejection of claim of petitioners by order dated 23.03.2024, petitioners preferred Writ-A No.6738 of 2024 which was dismissed by the learned Single Judge by judgement dated 30.07.2024.

58. The Special Appeal No.701 of 2024 and Special Appeal No. 829 of 2024 preferred by the petitioners against the judgement dated 30.07.2024 were clubbed with Special Appeal No.65 of 2023 preferred by the State of U.P. and Special Appeal Defective No.430 of 2024 filed by the petitioners against the judgement of learned Single Judge dated 05.12.2022.

59. All the aforesaid Special Appeals were listed on February 9, 2026. Sri Ashok Mehta, learned Additional Advocate General got the Special Appeal No.65 of 2023 dismissed as not pressed on account of the fact that the State Government has passed an order in compliance of the judgement of the learned Single Judge dated 05.12.2022 passed in Writ-A No.5390 of 2022. The order of this Court passed in Special Appeal No.65 of 2023 is reproduced below:-

*“Sri Ashok Mehta, learned Additional Advocate General states that petitioner-State of U.P. does not want to press the present appeal as the authority has passed an order in compliance of the judgement passed by the learned Single Judge and prays that same may be dismissed as not pressed.*

*Accordingly, present appeal is dismissed as not pressed.”*

60. The petitioners also got their Special Appeal Defective No.430 of 2024 dismissed as not pressed as the State of U.P. has not pressed the Special Appeal No.65 of 2023.

61. After the State of U.P. got its Special Appeal No.65 of 2023 dismissed as withdrawn against the judgement of learned Single Judge dated 05.12.2022 in Writ-A No.5390 of 2022, the moot question which arises for consideration is whether on the principle of *res judicata*, the State of U.P. is estopped in law from re-agitating the grounds on which it contested the selection of petitioners in Writ-A No.5390 of 2022, and whether the finding returned by the learned Single Judge in Writ-A

No.5390 of 2022 are binding upon the State Government for the reason that the finding recorded by learned Single Judge in Writ-A No.5390 of 2022 has attained finality after dismissal of Special Appeal No.65 of 2023 filed by State of U.P. against the judgement dated 05.12.2022.

62. Before advertng to the aforesaid question, it would be apposite to have a glance on some judgements of the Apex Court laying down the principles of *res judicata*.

63. The Apex Court in the case of ***Satyadhyan Ghoshal and others Vs. Deorajin Debi (Smt) and Another AIR (1960) SC 941*** has eloquently explained the principles of *res judicata* in paragraph nos.7 & 8 of the judgement which are being reproduced herein-below:-

*“7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter-whether on a question of fact or a question of law-has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.*

*8. The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Does this however mean that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way and no appeal has been taken*

*therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again ?”*

64. The Apex Court in the case of ***Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy 1970 (1) SCC 613*** has held that the mixed facts and law decisions bind future litigation but pure question of law do not constitute *res judicata* if the cause of action differ. It has been clarified in the said judgement that a decision on an issue will be *res judicata* in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceedings is the same as in previous proceeding. Paragraph nos.5 & 11 of the said judgement are being reproduced below:-

*“5. But the doctrine of res judicata belongs to the domain of procedure: it cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment affecting the jurisdiction of a Court finally between them, even though no question of fact or mixed question of law and fact and relating to the right in dispute between the parties has been determined thereby. A decision of a competent Court on a matter in issue may be res judicata in another proceeding between the same parties: the "matter in issue" may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent Court is finally determined between the parties and cannot be re-opened between them in another proceeding. The previous decision on a matter in issue alone is res judicata: the reasons for the decision are not res judicata. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent Court on facts*

*which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is res judicata. A previous decision on a matter in issue is a composite decision: the decision of law can not be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law.*

*11. It is true that in determining the application of the rule of res judicata the Court is not concerned with the correctness or otherwise of the earlier judgment. The matter in issue, if it is one purely of fact, deciding the earlier proceeding by a competent Court must in a subsequent litigation between the same parties be regarded as finally decided and cannot be reopened. A mixed question of law and fact determined in the earlier proceeding between the same parties may not, for the same reason, be questioned in a subsequent proceeding between the same parties. But, where the decision is on a question law, i.e., the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same for the expression "the matter in issue" in Section 11, Code of Civil Procedure means the right litigated between the parties, i.e., the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land."*

65. The Apex Court in the case of ***Forward Construction Company and Others Vs. Prabhat Mandal (Regd.) Andheri and Others, (1986) 1 SCC 100*** has explained Explanation IV to Section 11 of C.P.C. Paragraph no.20 of the said judgement is being reproduced below:-

*“20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to Section 11 C.P.C. provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force.”*

66. In the context of present case, paragraph no.24 of the judgement of the Apex Court in the case of ***Supreme Court Employees’ Welfare Association Vs. Union of India and Another, (1989) 4 SCC 187*** is also relevant and is being reproduced below:-

*“24. Thus, a decision on an abstract question of law unrelated to facts which give rise to a right, cannot operate as res judicata. Nor also can a decision on the question of jurisdiction be res judicata in a subsequent suit or proceeding. But, if the question of law is related to the fact in issue, an erroneous decision on such a question of law may operate as*

*res judicata between the parties in a subsequent suit or proceeding, if the cause of action is the same. The Delhi High Court judgments do not decide any abstract question of law and there is also no question of jurisdiction involved. Assuming that the judgments of the Delhi High Court are erroneous, such judgments being on questions of fact would still operate as res judicata between the same parties in a subsequent suit or proceeding over the same cause of action.”*

67. The aforesaid judgements of the Apex Court succinctly explain the necessary ingredients of principles of *res judicata*. If the following conditions are satisfied, the principle of *res judicata* is attracted in subsequent proceeding. These ingredients are:-

- (i) The matter in subsequent proceeding must be directly and substantially same as in the former proceeding.
- (ii) The former proceeding must have been between the same parties or between the parties under whom they or any of them claim.
- (iii) The parties must be litigating under the same title in both former and subsequent proceeding.
- (iv) The Court that decided the former proceeding must have had jurisdiction to try the subsequent proceeding or the proceeding in which such issue has been raised.
- (v) The matter in issue must have been heard and finally decided on merits by former Court.

68. Now, the Court proceeds to consider as to whether after withdrawal of the Special Appeal No.65 of 2023, it is open to the State of U.P. to urge the same grounds in the present appeal which have been urged by the State of U.P. opposing petitioners' selection and was rejected by the learned Single Judge in Writ-A No.5390 of 2022.

69. We have already noted the contentions urged by the State Government in refuting the claim of the petitioners above. We have also noted the grounds urged by the State Government in Writ-A No.5390 of

2022 before the learned Single Judge, which have been turned down by the learned Single Judge in its judgement.

70. It is pertinent to note that it is not in dispute that the parties in the earlier Writ-A No.5390 of 2022 and the present Writ-A No.6738 of 2024 out of which the Special Appeal No.701 of 2024 has been filed are the same.

71. The cause of action in the earlier writ petition i.e. Writ-A No.5390 of 2022 and the subsequent Writ-A No.6738 of 2024 are also same inasmuch as in both the writ petitions, petitioners have claimed appointment on the basis of result declared on 10.12.2021 pursuant to the Advertisement No.22-Examination/2016.

72. The earlier petition i.e. Writ-A No.5390 of 2022 has been heard and finally decided by a competent Court having jurisdiction to decide the writ petition, and that Court had jurisdiction to decide the Writ-A No.6738 of 2024.

73. We have noted the submissions urged by Sri Ashok Mehta, learned Additional Advocate General in paragraph nos.36 to 38 of the judgement and in the light of aforesaid submission, if we take a glance at the judgement of learned Single Judge in Writ-A No.5390 of 2022, it reflects that all the submissions urged by State of U.P. noted above contesting the claim of petitioners for appointment as Librarian had also been urged before the learned Single Judge in Writ-A No.5390 of 2022, and the learned Single Judge had repelled all the contentions urged by the State of U.P. in the present appeal.

74. So far as the reason for non-issuing the corrigendum urged in the present appeal by the learned counsel for State of U.P., which has also been urged in Writ-A No.5390 of 2022, have been dealt with by the learned Single Judge in paragraph nos.20 & 21 of the judgement which we have reproduced in paragraph no.49 of the present judgement and as the said finding has attained finality in view of withdrawal of Special Appeal No.65 of 2023, therefore, it cannot be re-agitated or reopened now.

75. So far as the contention of learned Additional Advocate General that State was not under obligation to withdraw the requisition dated 14.09.2016 is concerned, the same has also been dealt with by the learned Single Judge in paragraph nos.31 & 32 of the judgement which we have noted in paragraph no.52 of the present judgement and learned Single Judge has categorically held that U.P.S.S.S.C. was never authorised or enabled to cancel the requisition or to modify it.

76. In this respect, paragraph no.36 of the judgement of learned Single Judge in Writ-A No.5390 of 2022 is also relevant and is being reproduced below:-

*“36. The only other event that may have led to disruption of the process of selection (that was incubating with the UPSSSC) could be if the State Government had itself aborted the incubation process, by cancelling the requisition made. That power has remained not exercised by the State Government. Consequently, the UPSSSC never became obligated to comply with or show subservience to the communication dated 16.02.2018 etc. and to place in abeyance the selection process, underway. That document carried no legal force.”*

77. It has also been contended by the learned counsel for the respondents that mere selection does not give any indefeasible right for appointment to the selected candidates, therefore, the petitioners by mere selection cannot claim for appointment.

78. Sri Ashok Mehta, learned Additional Advocate General has placed reliance upon the Constitution Bench Judgement of Apex Court in ***Civil Appeal No.2634 of 2013 (Tej Prakash Pathak & Others Vs. Rajasthan High Court & Others)*** in support of the aforesaid contention.

79. There is no quarrel of proposition laid down in the said judgement in paragraph no.42(6) which has been heavily relied upon by Sri Ashok Mehta, learned Additional Advocate General, but the said argument was raised by the respondent-State in Writ-A No.5390 of 2022 and has been noted by learned Single Judge in paragraph no.12 of the judgement. The said argument has been dealt with by the learned Single Judge in

paragraph no.29 of the judgement and repelled the same by recording the finding that *'It is true, a mere selection does not vest any right in the selected candidate to seek appointment and this Court may not readily issue a positive writ in that regard yet, the selection process cannot be allowed to be stalled or wasted on its own for reason of mere administrative inefficiency or incompleteness of administrative action.*

80. Thus, for the reasons stated above, the aforesaid judgement relied upon by Sri Ashok Mehta, learned Additional Advocate General does not help the respondent.

81. So far as the contention of Sri Ashok Mehta, learned Additional Advocate General that all the posts of Librarian had been upgraded and now there is no post of Librarian in grade pay of Rs.2800/- in the pay band of Rs.5200-20,200/- are concerned, if we take a glance at paragraph no.12 of the judgement of learned Single Judge in Writ-A No.5390 of 2022, we find that no such ground was urged before the learned Single Judge.

82. It was open to the State Government to plead the said ground in that writ petition, but it had not done so. Learned counsel for the petitioners has also urged that said ground was not raised in the counter affidavit in the present writ petition. Even otherwise, he submits that said contention is not open to the respondents to raise at this stage which has not been raised in the earlier petition i.e. Writ-A No.5390 of 2022 and in the present writ petition i.e. Writ-A No.6738 of 2024.

83. We have perused the counter affidavit and find no such pleading that petitioners cannot be appointed since there is no vacancy of Librarian in the grade pay of Rs.2800/- in the pay band of Rs.5200-20,200/-.

84. We repel the said contention for two reasons; firstly, because of principle of constructive *res judicata* as enshrined in Explanation IV of Section 11 of C.P.C. as has been eloquently explained by Apex Court in the case of ***Forward Construction Company (supra)*** which we have reproduced in paragraph no.65 of the present judgement is attracted;

secondly, learned Single Judge in Writ-A No.5390 of 2022 relying upon the judgement of the Apex Court in the case of **Ramjit Singh Kardam (supra)** has held in paragraph no.30 that “*merely because the cadre under which the post may have been advertised would become a dying cadre, it may not automatically defeat the selection process (on such post for such dying cadre), a conscious decision making was required by the administrative authorities’ vis-a-vis the claim of the petitioners, after evaluating the impact of that decision*”.

85. At this stage, it is apposite to refer to the judgement of the Apex Court in the case of **State of West Bengal Vs. Hemant Kumar Bhattacharjee and Others AIR 1966 SC 1061** wherein the Apex Court has laid down that a wrong decision by a Court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher Tribunals or other procedure like review which the law provides.

86. The law is settled that Court cannot go beyond the reasons ascribed in the impugned order in denying a claim. Therefore, the ground of non-availability of vacancy is not open to be raised by the State Government also for the reason that the claim of the petitioners had not been rejected by the State on the said ground which is evident from the impugned order dated 23.03.2024 passed by the State Authorities.

87. We also find substance in the submission of Sri Ashok Khare, learned Senior Counsel for the petitioners that all the posts of Librarian have not upgraded and the existing Librarians are continuing which is also evident from Appendix-II to Rules, 2021 prescribing qualifications and age limit for direct recruitment to various posts. In this respect, qualification of Librarian has been prescribed at Serial No.6 of Appendix-II which is reproduced below:-

|   |                                                                              |                                                                                                                |             |             |
|---|------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|-------------|-------------|
| 6 | Librarian<br>Government/Rural/Boys/Girls Polytechnics/<br>Government Leather | 1. Master’s Degree in Library Science with at least First Class or equivalent and a consistently good academic | 21<br>years | 40<br>years |
|---|------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|-------------|-------------|

|  |                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |  |
|--|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
|  | <i>Institute/Northern Regional Institute of Printing Technology</i> | <i>record, having the knowledge of computer.</i><br><br><i>2. Qualifying in the National Level Test conducted for the purpose by UGC or other equivalent test as approved by the UGC.</i><br><br><i>For Diploma Level Institutions:</i><br><br><i>Librarians who have been recruited between 01.01.1996 and 15.03.2000 in the Diploma Level Institutions, with the existing recruitment rules to be considered for upgradation under CAS in the next higher grade of Senior Scale only. However, for further upward movement under CAS, they are required to acquire minimum educational qualification in a manner similar to that as laid down in AICTE notification 2000 (Degree) and in subsequent Clarifications/Notifications.</i><br><br><i>(b) For Degree Level Institutions: same as above.</i> |  |  |
|--|---------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|

88. If we take a glance at no.2 in column 3 of the table reproduced above prescribing qualification, it is provided that Librarians who have been recruited between 01.01.1996 and 15.03.2000 in the Diploma Level Institutions with the existing recruitment rules to be considered for upgradation under CAS in the next higher grade of Senior Scale only. So the existing Librarians are to be considered for upgradation under CAS in the next higher higher grade of Senior Scale only, but for further upward movement under CAS, they are required to acquire minimum educational qualification similar to that as laid down in subsequent Clarifications/Notifications.

89. The aforesaid provision clearly discloses that while advancing the qualification of the post of Librarian and upgrading the category of

Librarian from Group-C to Group-B, existing Librarians have been continued, therefore, for this reason also we find that contention of respondent that all the posts of Librarian have been upgraded is incorrect.

90. The Apex Court in the case of ***Mohinder Singh Gill & Another Vs. The Chief Election Commissioner, New Delhi & Others (1978) 1 SCC 405*** has held that correctness of the order is to be adjudged by the reasons stated in the order and not on the basis of supplementary reasons. Paragraph no.8 of the said judgement is reproduced below:-

*“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:*

*Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”*

91. Now, coming to the impugned order dated 23.03.2024 passed by the State Authorities in compliance of the judgement of this Court in Writ-A No.5390 of 2022, we find that the claim of the petitioners have been rejected on the same grounds which had been urged by the State of U.P. contesting the claim of the petitioners in Writ-A No.5390 of 2022 and had been repelled by the learned Single Judge.

92. The law is settled that an authority cannot sit in appeal or review the order passed by a competent Court. Perusal of the impugned order

dated 23.03.2024 reveals that the said order amounts to sitting over in appeal against the judgement of learned Single Judge in Writ-A No.5390 of 2022 which jurisdiction the authorities do not have. Therefore, it was not open to the State of U.P. to reject the claim of the petitioners for appointment on the grounds which had already been rejected by the learned Single Judge in Writ-A No.5390 of 2022. We may further record that learned Single Judge while dismissing the Writ-A No.6738 of 2024 of the petitioners have ignored this aspect of the matter.

93. The State by getting Special Appeal No.65 of 2023 dismissed as not pressed has acquiesced to the finding of this Court in Writ-A No.5390 of 2022 and, thus, is estopped in law from raising those plea again. In this respect, it would be useful to have a glance at paragraph nos.59 & 60 of the judgement of Apex Court in the case of ***Satluj Jal Vidyut Nigam Vs. Raj Kumar Rajinder Singh (Dead) through Legal Representatives and Others (2019) 14 SCC 449*** in which Apex Court has explained the principle of estoppel, acquiesce and waiver. Paragraph nos.59 & 60 of the said judgement are being reproduced below:-

*59. A Single Bench of the High Court dismissed the suit on merits and had recorded the finding that the land was not under personal cultivation and it had vested in the State and it was the "land" as defined in Section 2(5) of the Abolition Act. Thereafter, the regular first appeal which was preferred before the Division Bench was dismissed as infructuous and suit was withdrawn by the aforesaid order dated 23-6-1986 on the ground that compensation had been received under the Ceiling Act, and land has been declared surplus. It is clear that once land has been declared surplus and compensation had been paid under the Ceiling Act. It was not the reason for withdrawal of Civil Suit No. 15 of 1970 by the plaintiff Rajinder Singh that the land was personally cultivated by him. It was not at all open to Rajinder Singh or his LRs to take inconsistent stands and contend in the present proceedings that land was under personal cultivation. They are estopped from doing it not only by conduct but by way of abandonment of the plea, having not taken it in CS No.15 of 1970. It was not the ground made for withdrawal of*

*suit that land was under personal cultivation. The effect is that order of vesting has attained finality even otherwise withdrawal of suit does not check running of limitation as provided in Order 23 Rule 2 CPC. It is futile and too late in the day to allow the respondent to lay such a claim.*

*60. As a matter of fact, the withdrawal of Civil Suit No.15 of 1970 was made on the statement of the learned counsel on behalf of the plaintiff Rajinder Singh that disputed land had been declared as surplus in the ceiling proceedings, compensation had been received and under the provisions of the Ceiling Act. The suit was permitted to be withdrawn with liberty to file fresh suit whereas there was no such formal defect. Be that as it may. Once suit has been withdrawn on the ground that land had been declared surplus and compensation had been received it would create estoppel against the plaintiff to contend to the contrary and from claiming compensation under the LA Act notwithstanding permission to file suit because as a matter of fact also, the disputed land had been declared surplus on 30-6-1980 and additional land in 1993. The land declared as surplus in 1980 attained finality, as well as order of the Financial Commissioner on 5-9-1985. Both the orders also attained finality. Thus, the order of remand dated 5-9-1985 having attained finality, and it would not be possible to reopen it at any subsequent stage. Thus, the orders dated 30-6-1980 and 5-9-1985 having attained finality vis-à-vis Rajinder Singh and compensation having been received, as the land in question was declared surplus under the Ceiling Act. No right, title or interest survived with Rajinder Singh or his successors to claim compensation under the Land Acquisition Act.*

94. It is pertinent to note that on the date when learned Single Judge heard Writ-A No.6738 of 2024, judgement of this Court in Writ-A No.5390 of 2022 was in existence as there was no stay order staying the operation of the judgement dated 05.12.2022 passed in Writ-A No.5390 of 2022 nor the judgement dated 05.12.2022 in Writ-A No.5390 of 2022 was set aside, and in such view of the fact, the finding returned by this Court in Writ-A No.5390 of 2022 was binding in subsequent proceedings

between the parties, and learned Single Judge had no jurisdiction to annul the finding recorded in the earlier judgement i.e. Writ-A No.5390 of 2022 and reject the claim of petitioners on the grounds which had already been discarded by this Court in earlier Writ-A No.5390 of 2022.

95. The impugned judgement reveals that the learned Single Judge also while affirming the order of State-authorities dated 23.03.2024 had sat in appeal over the judgement passed by this Court in Writ-A No.5390 of 2022 and had dismissed the claim of petitioners on those grounds which had been rejected by this Court in Writ-A No.5390 of 2022.

96. The learned Single Judge in dismissing Writ-A No.6738 of 2024 has also recorded a finding that since this Court in earlier Writ-A No.5390 of 2022 had granted liberty that if, State of U.P. was of another view, it was at liberty to take a decision, therefore, State was well within its right to consider the claim of petitioners afresh. We respectfully disagree with the aforesaid finding of learned Single Judge for reasons delineated below.

97. The direction contained in paragraph no.44 of the earlier judgement dated 05.12.2022 of this Court cannot be segregated and has to be read as a whole. The perusal of paragraph no.44 discloses that though this Court permitted the authorities to take the decision if they were of other view, but also obligated the authority to take the decision in the light of observations made in the judgement. Therefore, till the judgement of this Court dated 05.12.2022 in Writ-A No.5390 of 2022 is set aside, findings of the said judgement were binding upon the authorities. So, the authorities were under obligation to take a decision in the light of observations made in the judgement dated 05.12.2022 in Writ-A No.5390 of 2022 and could reject the claim of petitioners on any other rationale ground but not on those grounds on which the State contested the claim of petitioners in Writ-A No.5390 of 2022 which had been adjudicated and rejected by this Court.

98. We have reproduced the grounds of Special Appeal No.65 of 2023 on which the State of U.P. had assailed the judgement dated 05.12.2022

passed in Writ-A No.5390 of 2022, and perusal of grounds of Special Appeal No.65 of 2023 reflects that State Government was aggrieved by the rejection of contention raised by it before the learned Single Judge in earlier Writ-A No.5390 of 2022, which led the State Government to file Special Appeal No.65 of 2023. However, after withdrawal of Special Appeal No.65 of 2023 by the State of U.P., the State of U.P. cannot resile from the finding returned by the learned Single Judge in Writ-A No.5390 of 2022 and is bound by the finding of the judgement dated 05.12.2022 in Writ-A No.5390 of 2022. The learned Single Judge has failed to consider this aspect of the matter and proceeded to reject the claim of petitioners on the same ground which had been repelled by this Court in earlier writ petition i.e. Writ-A No.5390 of 2022 which was not open to the learned Single Judge.

99. Thus, for the reasons given above, we are of the view that the judgement dated 30.07.2024 passed in Writ-A No.6738 of 2024 cannot be sustained in law, and is accordingly, set aside. Consequently, the Special Appeal No.701 of 2024 is *allowed*.

100. We further direct the respondents to comply with the direction of this Court in earlier Writ-A No.5390 of 2022 and to grant appointment to the petitioners on the post of Librarian in the pay-band of Rs.5200-20200/- with the grade pay of Rs.2800/- within one month from the date of production of certified copy of this order.

101. So far as the Special Appeal No.829 of 2024 is concerned, though appellants are not the petitioners in Writ-A No.5390 of 2022 and there was no direction for appointment in their favour, but since they stand on same footing on which the petitioners in Special Appeal No.701 of 2024 stand and considering the fact that their case is identical, therefore, appellants are also entitled to same relief which we have granted to petitioners in Special Appeal No.701 of 2024. Consequently, we set aside the judgement of learned Single Judge dated 30.07.2024 passed in Writ-A No.7788 of 2024 and *allow* Special Appeal No.829 of 2024 with

direction to the State Government to grant appointment to petitioners on the post of Librarian.

**(Sudhanshu Chauhan,J.) (Saral Srivastava,J.)**

**August 3, 2026**  
Sattyarth/NS