



2026:AHC:180132-DB

Reserved on 07.08.2026
Delivered on 31.08.2026
AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD
SPECIAL APPEAL No. - 444 of 2026

Pradeep Kumar Singh and 35 others

.....Appellant(s)

Versus

State of Uttar Pradesh and 5 others

.....Respondent(s)

Counsel for Appellant(s)	: Siddharth Khare, Sr. AdvocateAjay Kumar Pandey, Ajay Mishra, Arjun Singh Yadav, Artee Gupta, Ashish Kumar Mishra, Lavlesh Kumar Shukla, Ravindra Kumar Pandey, Seemant Singh, Siddharth Khare, Sr. Advocate, Uday Raj, Vinod Kumar Yadav
Counsel for Respondent(s)	: Birendra Kaushik, C.S.C., Sankalp Narain

Along with :

- 1. Special Appeal Defective No. 517 of 2026:**
Upasana Mishra
Versus
State of U.P. and 5 others
- 2. Special Appeal Defective No. 574 of 2026:**
Sanjana Singh
Versus
State of U.P. and 5 others
- 3. Special Appeal No. 464 of 2026:**
Priyanka Pal and 120 others
Versus
State of U.P. and 5 others
- 4. Special Appeal Defective No. 404 of 2026:**
Gopal Ji Sharma and 17 others
Versus

State of U.P. and 5 others

5. Special Appeal No. 469 of 2026:

Mukesh Yadav and 50 others

Versus

State of U.P. and 5 others

6. Special Appeal Defective No. 560 of 2026:

Deepa Yadav and another

Versus

State of U.P. and 4 others

7. Special Appeal No. 656 of 2026:

Anchal Mishra and 3 others

Versus

State of Uttar Pradesh and 4 others

8. Special Appeal No. 553 of 2026:

Kamalesh Kumar and 35 others

Versus

State of U.P. and 4 others

Court No. - 39

HON'BLE SAUMITRA DAYAL SINGH, J.

HON'BLE ARUN KUMAR, J.

(Delivered by Hon'ble Arun Kumar, J.)

Order on applications seeking grant of leave

1. Heard Sri Ashok Khare, learned Senior Advocate assisted by Sri Prajjwal Verma, Sri Seemant Singh, Sri Arjun Singh Yadav and Sri Shubham Kumar Dubey, holding brief of Sri Ashish Kumar Mishra, learned counsels for the appellants, Sri P.K. Srivastava and Sri Ankit Gaur, learned Standing Counsel for the respondent-State and Sri G.K. Singh, learned Senior Advocate assisted by Sri Sankalp Narain, learned counsel for the private respondents.

2. Admittedly, none of the appellants was a party to the writ petitions. They, however, participated in the recruitment process initiated pursuant to the advertisement dated 03.11.2025 and their candidature has been directly affected by the direction contained in the judgment and order dated 19.02.2026, and the notifications dated 09.03.2026 and 15.03.2026 issued pursuant to it, whereby the vacancies relating to

institutions which had been upgraded to High Schools or Intermediate Colleges were directed to be excluded from the recruitment process. The appellants have thus demonstrated a direct and substantial prejudice arising from the judgment under appeal and cannot be said to be persons having merely a remote or indirect interest in the matter. Since they have now been heard at length in the present appeals, and the legality of exclusion of the aforesaid vacancies has been fully examined, we are satisfied that the appellants are persons aggrieved by the judgment under appeal.

3. Accordingly, leave to appeal is granted. Applications are allowed.

Order on Appeals

4. Considering the substantial and serious injustice alleged by the appellants due to the reduction in vacancies in the ongoing recruitment process for Assistant Teachers in recognized aided Junior High Schools, the respective counsel for the parties were heard at length in all the Special Appeals. The appeals are now being decided finally.

5. These intra-court appeals have been filed along with applications seeking leave to appeal against the judgment and order dated 19.02.2026 passed by the learned Single Judge in Writ-A No. 1966 of 2026.

6. Facts of the case giving rise to filing of the present appeals are that there are several recognized aided Junior High Schools in the State of Uttar Pradesh that provide education up to Class 8. The appointment of teachers in these institutions is governed by the U.P. Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as the “Rules of 1978”). The salaries of teachers and other employees of aided institutions are paid under the U.P. Junior High School (Payment of Salaries of Teachers and Other Employees) Act, 1978 (hereinafter referred to as the “Payment of Salaries Act of 1978”).

7. Under the Rules of 1978, teachers and Headmasters were appointed by the Committee of Management of each institution, with the prior approval of the District Basic Education Officer of the concerned district. By the Seventh Amendment to the Rules of 1978, notified on 04.12.2019, the State Government amended the provisions relating to the recruitment of Assistant Teachers in recognized aided Junior High Schools. The entire recruitment process was centralized under the supervision of the Director of Basic Education.

8. Under the amended Rules, namely, the U.P. Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Service of Teachers) (Seventh Amendment) Rules, 2019 (hereinafter referred to as the “Amended Rules of 2019”), all qualified candidates were required to pass a recruitment examination to earn eligibility for selection to the post of Assistant Teacher in a recognized Junior High School

9. A Government Order dated 19.02.2021 was issued for conducting the recruitment examination under Clause (2) of Sub-rule (1) of Rule 10 of the Amended Rules of 2019. Sub-clause (2) of Clause 8 of the Government Order dated 19.02.2021 clearly provided that candidates who passed the Assistant Teacher Recruitment Examination, 2021 would not have a right to appointment or employment because that examination was only to earn eligibility.

10. The appellants, along with other qualified candidates, appeared in the recruitment examination held on 17.10.2021. The revised result was published on 06.09.2022.

11. The Director of Education (Basic), U.P., Prayagraj, issued an advertisement/notification dated 03.11.2025, to complete the selection and appointment process for Assistant Teachers under the Amended Rules of 2019. Under the aforesaid Advertisement 1,262 posts of Assistant Teachers in 600 institutions, were notified.

12. The appellants, along with other eligible candidates who had passed the Assistant Teacher Recruitment Examination, 2021, submitted

their application forms. A provisional select list for different subjects was published on 24.12.2025. Thereafter, the Director of Education (Basic), U.P., Lucknow, issued a Circular dated 05.01.2026 for counselling of eligible candidates according to their merit. The counselling was held from 12.01.2026 to 12.02.2026.

13. In the meantime, on 04.02.2026, a writ petition, Writ-A No. 1966 of 2026, was filed by Ram Kumar Bhardwaj challenging the advertisement. The challenge was based on the ground that his appointment at Prem Vidyalaya Higher Secondary School, Shivala, Aligarh, had been cancelled because the selection had been made under the Rules of 1978/Amended Rules of 2019, which were not applicable to the institution after it had been upgraded to a High School. It was argued that selection to vacant posts in recognized aided Junior High Schools that had been upgraded to High Schools or Intermediate Colleges was illegal and unjustified in view of the law laid down by the Division Bench of this Court in **Smt. Manju Awasthi vs. State of U.P. and others**, reported in 2013 (3) ADJ 64/2012 SCC Online All 4643.

14. The aforesaid writ petition was disposed of by judgment and order dated 19.02.2026. The advertisement was cancelled to the extent it related to vacancies in colleges that had been upgraded to High Schools or Intermediate Colleges, with liberty to issue a fresh advertisement. However, the recruitment process relating to other Junior High Schools was allowed to continue in accordance with law.

15. Pursuant to the aforesaid judgment, the Additional Director of Education (Basic), U.P., Prayagraj, issued a notification dated 09.03.2026 separating the vacancies relating to recognised aided Junior High Schools which had subsequently been upgraded as self-financed High Schools or Intermediate Colleges. Thereafter, the Director of Education (Basic), U.P., Lucknow, issued a notification dated 15.03.2026 directing that such upgraded institutions be separated from the ongoing recruitment process.

16. As a result, the total number of vacancies was reduced from 1,262 posts of Assistant Teachers in 600 institutions, as advertised on 03.11.2025, to 634 posts. On 19.03.2026, the final select list was published by the In-charge Deputy Director of Education (Science), Education Directorate, U.P., Prayagraj.

17. Learned Senior Counsel for the appellants contended that the facts of *Smt. Manju Awasthi (supra)* have no similarity with the facts of the present case. It was submitted that, in *Smt. Manju Awasthi (supra)*, the institution was already a recognized High School under Section 7(4) of the Intermediate Education Act, 1921 (hereinafter referred to as the “Act of 1921”). Un-aided recognition had thereafter been granted for higher classes. The main question in that case concerned the procedure for appointing a Headmaster in such an upgraded institution.

18. Relying on paragraphs 50 and 51 of the judgment in *Smt. Manju Awasthi (supra)*, learned Senior Counsel submitted that the Division Bench had held that Section 7-A of the Act of 1921 did not contemplate granting recognition for the first time to an institution for a higher class. The relevant paragraph nos.50 and 51 of the judgment in *Smt. Manju Awasthi (supra)* reads as follows:

“50. In view of the above discussions, we are of the view that recognition/permission under Section 7A of the 1921 Act by the Board with the approval of the State Government is contemplated with regard to an institution already recognised under the 1921 Act and Section 7A of the 1921 Act never contemplated grant of recognition for the first time to an institution. We thus hold that the word “institution” occurring in Section 7A of the 1921 Act has to be read as per definition of the word “institution” in Section 2(b) of the 1921 Act.

51. Learned counsel for the appellants as well as learned Additional Advocate General have submitted that after insertion of Sections 7A and 7AA, large number of institutions have been granted recognition for the first time under Section 7A and they never received any recognition under Section 7(4) of the 1921 Act.”

19. It was further contended that recognition under Section 7-A of the Act of 1921 presupposes an existing recognition under Section 7(4) of the said Act, as held in *Smt. Manju Awasthi (supra)*. According to the

appellants, therefore, the recognition granted to the Junior High Schools in question under Section 7-A was without jurisdiction and, consequently, such institutions could not be treated as having been validly upgraded for the purposes of excluding them from the recruitment under the Rules of 1978.

20. It was therefore submitted that, in view of the law laid down in *Smt. Manju Awasthi* (supra), the recognition of an institution for the first time as a High School or Intermediate College could not have been granted under Section 7-A in the manner in which it was being granted prior to the statutory amendment. It was further submitted that, by the Intermediate Education (Amendment) Act, 2022 (U.P. Act No. 10 of 2022), notified on 06.09.2022, the legislature amended Section 7(4) of the Act of 1921, thereby providing a statutory mechanism for recognition of new self-financed High Schools and Intermediate Colleges. According to the appellants, institutions that had been recognised prior to the said amendment could not, merely on the basis of such recognition, be treated as upgraded institutions for the purposes of the recruitment in question. Accordingly, those could not be excluded from the advertisement dated 03.11.2025 for appointment of Assistant Teachers.

21. Learned Senior Counsel for the appellants further submitted that, in view of the law laid down in *Smt. Manju Awasthi* (supra), once an institution is granted recognition for the first time as a High School, the minimum number of posts of teachers and Headmaster required for the institution are contemplated to be created, even if the institution is without financial aid (Vitta Vihin), so that those posts can be filled in accordance with the Act of 1921 and U.P. Act No. 5 of 1982. However, with the enforcement of the U.P. Education Services Selection Commission Act, 2023 (U.P. Act No. 15 of 2023), U.P. Act No. 5 of 1982, which governed the recruitment of teachers in recognized High Schools and Intermediate Colleges, was repealed and replaced by the new Act.

22. Learned Senior Counsel for the appellants submitted that, although the U.P. Education Service Selection Commission Act, 2023 contains provisions relating to the institutions specified in Section 2(1)(g), the self-financed High Schools or Intermediate Colleges in question do not fall within the category of institutions covered by Section 2(1)(g)(ii). It was, therefore, submitted that, after repeal of U.P. Act No. 5 of 1982, there is no provision under the 2023 Act governing recruitment to the vacancies in question.

23. Learned Senior Counsel for the appellants further contended that when the entire selection process was almost complete and only the final select list remained to be published, the reduction in the number of vacancies was unjustified. According to the appellants, this amounted to changing the rules of the recruitment process midway. In support of this contention, reliance was placed on the Constitution Bench judgment of the Hon'ble Supreme Court in **Tej Prakash Pathak Vs. Rajasthan High Court, reported in 2025(2) SCC 1.**

24. Per contra, learned Senior Counsel appearing for the petitioner-respondent contended that the recruitment under challenge relates to recognized aided Junior High Schools. It is governed by the Rules of 1978, as amended in 2019. Under the definition contained in the amended Rules of 1978, a Junior High School is an institution that is not a High School or an Intermediate College. The Assistant Teacher Recruitment Examination, 2021, was held under sub-clause (2) of Sub-rule (1) of Rule 10 of the Amended Rules of 2019. The provision clearly states that before any recruitment, a recruitment examination must be held to determine the eligibility of candidates possessing the minimum required qualifications. After the examination, the Director was required to issue an advertisement for recruitment, which was issued on 03.11.2025.

25. It was further contended that the Government Order dated 19.02.2021 inviting applications for the recruitment examination clearly provided in sub-clause (2) of Clause 8, that that examination was not an

examination for selection or appointment. It was only for determining eligibility and did not guarantee selection.

26. It was also contended that the argument of learned Senior Counsel for the appellants that recognition of institutions for higher classes as High Schools or Intermediate Colleges was contrary to the law laid down in *Smt. Manju Awasthi (supra)* was misplaced. The Division Bench, while being conscious that its decision could affect a large number of students across the State, protected all recognition already granted under Section 7-A(a). Paragraph 52 of the judgment in *Smt. Manju Awasthi (supra)*, relied upon by the respondents, reads as follows:

“52. Be, that as it may, any institution which has already been recognised under Section 7(4) or 7A of the 1921 Act shall be treated as institution duly recognised under the 1921 Act and our observations/order shall not affect any recognition which has already been granted to an institution under Section 7A of the 1921 Act and our order/observation should not be read to the prejudice of any such institution which has already been recognised under Section 7A of the 1921 Act.”

27. Learned Senior Counsel for the respondents further relied upon the Full Bench judgment in the case of **State of U.P. vs. District Judge, Varanasi, 1981 UPLBEC 336**. It was contended that, as far back as 1980, the Full Bench of this Court had held that when a Junior High School is upgraded to a High School or Intermediate College, it loses its identity and ceases to exist as a legal entity. In its place, a new institution with a new legal identity comes into existence. Reliance was placed on paragraph 17 of the Full Bench judgment, which is reproduced below:

“17. A basic school or a Junior High School is thus different from a High School or an Intermediate College. On the plain language of these definitions the same institution cannot be called a basic school or a Junior High School as well as a High School or an Intermediate College. Each one has a distinct legal entity. On a basic school or a Junior High School being upgraded as a High School or an Intermediate College the identity of the institution known as basic school or Junior High School is lost. It ceases to exist as a legal entity and in its place another institution with a new legal entity comes into being. One cannot be equated with the other. In this connection reference may also be made to the decision of the Supreme Court in *Commissioner Lucknow Division v. Km. Prem Lata Misra* (AIR 1971

SC 334). It would further be seen that administration including Constitution of Committee of management of an institution recognized under U.P. Act II of 1921 is to be carried out in accordance with a scheme of Administration prepared under Section 16A of the said Act and this section does not apply to a basic school or a Junior High School. For all these reasons and in the absence of any specific provisions in this behalf none having been pointed out to us, maintenance grant payable to the basic school or Junior High School which has been upgraded as High School cannot and does not automatically become payable to the recognized High School. Suppose after a basic school or Junior High School has been upgraded as a recognized High School, the State Government stops payment of the amount of maintenance grant which was being paid to the basic school, can the recognized High School claim as a matter of right that the said amount has become automatically payable to it. The answer, in the absence of any specific provision, permitting such automatic formation, so to speak till, in our opinion, have to be in the negative. Such a recognized High School will have to wait maintenance grant payable to it as a recognized High School has been fixed as contemplated by Section 2(c) of U.P. Act 24 of 1971. Consequently, even if the maintenance grant payable to a basic school or a Junior High School is continued to be paid to those who were managing the erstwhile basic school or Junior High School it cannot be said that the upgraded recognized High School is receiving any maintenance grant as defined in Section 2(c) of U.P. Act 24 of 1971.”

28. Relying on the judgments of this Court in **Sushila Gupta vs. Joint Director of Education, Kanpur Region and others**, 2006 (2) AWC 1561, **Ajay Pratap Rai vs. District Basic Education Officer, Jaunpur**, 2007 (7) ADJ 357, **Shail Kumari Singh vs. State of U.P. and others**, 2008 (5) AWC 945, **Smt. Manju Awasthi (supra)**, **Rana Vijendra Pratap Singh vs. State of U.P. and others**, 2019 (2) ADJ 542, and **C/M Standard Intermediate College Mau Aima Vs. State of U.P. and others**, **Neutral Citation:2019:AHC:137044-DB**, learned Senior Counsel for the respondent contended that this Court has consistently held that when a Junior High School is upgraded to a High School or Intermediate College, it loses its identity as a Junior High School and a new institution comes into existence. It was further submitted that the new upgraded institution is governed by the provisions of the Act of 1921. The teachers of the Junior High School become teachers of the High School or Intermediate College after upgradation.

29. It was further submitted that if a post of Assistant Teacher at an aided Junior High School falls vacant after the institution has been upgraded to a High School, the resulting vacancy is a vacancy at a High School and not at a Junior High School. Therefore, recruitment to such a post cannot be made under the Amended Rules of 2019. It was also submitted that even though U.P. Act No. 5 of 1982 has been repealed by the enforcement of the new U.P. Act No. 15 of 2023, a fresh appointment can still be made under the provisions of the Act of 1921.

30. Having considered the submissions made by the learned Senior Counsel for the parties and after examining the records, the following questions arise for determination in the present appeals:

(i) Whether, upon recognition/upgradation of an aided Junior High School as a High School or Intermediate College under the U.P. Intermediate Education Act, 1921, a vacancy subsequently arising in such upgraded institution can be filled under the provisions of the U.P. Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Service of Teachers) Rules, 1978, as amended in 2019?

(ii) Whether, repeal of the U.P. Secondary Education Services Selection Board Act, 1982, has the effect of reviving or continuing the applicability of the Rules of 1978, to a vacancy arising at such upgraded institution, particularly where the upgraded institution is self-financed and is outside the field of the U.P. Education Service Selection Commission Act, 2023?

(iii) Whether exclusion of such vacancies from the recruitment process initiated pursuant to the advertisement dated 03.11.2025 amounts to alteration of the “rules of the game” in violation of the principle laid down by the Constitution Bench of Hon’ble Supreme Court in *Tej Prakash Pathak v. Rajasthan High Court*, (2025) 2 SCC 1?

31. The first and second questions framed above are interrelated and are, therefore, being considered together. The controversy essentially turns upon the legal consequence of recognition/upgradation of an aided

Junior High School as a High School or Intermediate College and the effect of such upgradation upon a vacancy arising, thereafter. From the material placed before us, it is evident that the institutions in question were originally recognised aided Junior High Schools and were subsequently granted recognition for higher classes under the provisions of the Act of 1921. The validity of such recognition cannot be questioned or doubted, by relying upon the judgment of this Court in *Smt. Manju Awasthi* (supra), in view of the express protection granted (in that coordinate bench decision of this Court), to the recognitions that had already been granted under Section 7-A of the Act of 1921.

32. The relevant observations contained in paragraph 52 of *Smt. Manju Awasthi* (supra), relied upon by the respondents, have already been reproduced hereinabove. In view thereof, the recognitions already granted to the institutions in question cannot, for the purposes of the present proceedings, be treated as non-existent or void merely on the ground that the procedure under Section 7-A was subsequently held to be legally impermissible for grant of recognition, for the first time. Consequently, the institutions in question have to be treated as recognised/upgraded as High Schools or Intermediate Colleges under the Act of 1921. A question that consequently arises is whether, after such recognition/upgradation, a vacancy arising at such an institution could still be treated as a vacancy at an aided Junior High School, for recruitment under the Rules of 1978/Amended Rules of 2019.

33. The answer to the aforesaid question has to be in the negative. The legal consequence of upgradation is not merely an expansion of the classes taught at an institution. Upon recognition as a High School or Intermediate College, such institution becomes subject to the statutory regime governing a secondary educational institution. The fact that the institution was originally an aided Junior High School and that classes up to Class VIII continue to be conducted therein cannot, by itself, preserve any independent legal identity of the erstwhile Junior High School for the purpose of recruitment.

34. The distinction is between the institution as it existed before upgradation and the institution as it exists after recognition as a High School or Intermediate College. The subsequent vacancy has to be considered with reference to the legal status acquired upon recognition granted as High School or Intermediate College, with reference to the original/historical origin or identity of the institution.

35. The aforesaid position is no longer *res integra*. A Full Bench of this Court in **State of U.P and others Vs. District Judge, Varanasi and others, 1981 UPLBEC 336**, has categorically held that a Basic School or Junior High School is distinct from a High School or Intermediate College and that, upon upgradation, the identity of the institution as a Basic School or Junior High School is lost and a new institution with a distinct legal identity, comes into existence.

36. Relying on the aforesaid judgment of the Full Bench, another coordinate bench of this Court, in the case of **Ajay Pratap Rai Vs. District Basic Education Officer, Jaunpur and others [2007 SCC OnLine All 1485]**, has observed as under:

"6. Replying to the aforesaid submissions, Shri Khare has taken us to the findings recorded by the learned Single Judge with the aid of the Full Bench decision in the case of State of U.P. and Ors. v. District Judge, Varanasi and Ors. 1981 UPLBEC 336 and the decision of the learned Single Judge in the case of Dr.Smt. Sushila Gupta v. Regional Joint Director of Education (2006) 1 AD 523 and has urged that the entire claim of the appellant has to be rejected in view of the findings recorded by the learned Single Judge and, therefore, the appeal deserves to be dismissed.

7. The learned Standing Counsel has also made his submissions and has Invited the attention of the Court to the various definitions as contained in Act, 1972, the Rules, 1978, the U.P. Junior High School (Payment of Salaries of Teachers and other Employees) Act, 1978, the provisions of the Act, 1921 and the U.P. Secondary Education Selection Boards Act, Services 1982 (hereinafter called the "Act 1982") and has urged that the directions given by the learned Single Judge in respect of the claim on the post of the Head of the Institution do not deserve any interference as no ground has been made out either in law or in fact for any further judicial intervention.

8. Having considered the rival submissions, we find that the learned Single Judge after having noticed the Full Bench decision in the case

of State of U.P. and Ors. (supra) and the judgment of the learned Single Judge in *Sushila Gupta* (supra) has held that once a Junior High School stands upgraded as a High School or an Intermediate College, then in that event the post of the Head of the Institution has to be filled up in accordance with the procedure prescribed under the Act, 1921 read with Act, 1982. It has been held that in such eventuality the Junior High School loses its identity as such and upon upgradation of the Institution, there cannot be any appointment of a Head Master in a Junior High School under Rules 1978. For this, the learned Single Judge has placed reliance upon the decisions referred to therein and has also indicated the ratio of the decision in *Sushila Gupta*'s case to be fully applicable to the facts of the present controversy."

(Emphasis supplied)

37. The same principle was reiterated by another coordinate bench of this Court in *Smt. Manju Awasthi* (supra). Thus, it is indisputable, once the Junior High School ceases to retain a separate legal identity upon its upgradation, the provisions relating to selection and appointment of teachers applicable to a Junior High School do not continue to govern that institution. Upon its upgradation, that institution (as a whole), becomes a secondary educational institution. Therefore, it comes to be governed by the statutory provisions applicable to such institutions. Thus, the fact that the vacancy may relate to a teacher who was originally appointed against the Junior High School section loses relevance and it cannot determine the statutory source from which a successor to that post is to be recruited after upgradation, or the procedure to be applied to fill up such a vacancy.

38. On that reasoning a legal principle emerges that the pre-existing legal identity of the erstwhile Junior High School does not survive/continue independent of its recognition/upgradation as a High School or Intermediate College. The lower section of the institution does not constitute a separate legal entity for the purpose of continuing the applicability of the statutory provisions governing Junior High Schools. The Rules of 1978/Amended Rules of 2019, therefore, cannot continue to govern recruitment against a vacancy arising after such upgradation, merely because the institution was originally recognised and aided as a Junior High School.

39. It is in this context that Section 13-A of the Payment of Salaries Act, 1978 assumes significance. The provision was introduced to meet the transitional difficulty, arising in respect of teachers and other employees of an aided Junior High School whose institution was subsequently upgraded to High School or Intermediate standard. Section 13-A reads as under:

"[13A. Transitory provisions in respect of certain upgraded institutions.-

(1) Notwithstanding anything contained in this Act, the provisions of this Act shall, mutatis mutandis apply, to an institution which is upgraded to High School or Intermediate standard and, to such teachers and other employees thereof in respect of whose employment maintenance grant is paid by the State Government to such institution.

(2) For the purposes of this section the reference to the students wherever they occur in section 5, shall be construed as reference to the students of classes up to junior High School level only.]"

40. A plain reading of Section 13-A shows that the provision operates as a transitional measure, in respect of teachers and other employees of the erstwhile Junior High School in respect of whose employment maintenance grant was being paid by the State Government, earlier i.e. prior to its upgradation as a High School or an Intermediate College. The object of the provision is to protect the salary of existing incumbents, notwithstanding the legal consequences of upgradation of that institution. The provision, however, does not declare that the erstwhile Junior High School continues to exist as an independent legal entity for all purposes. Nor does it provide that the Rules of 1978 shall continue to govern recruitment to every vacancy which may subsequently arise in the upgraded institution. Being a transitional provision, it only seeks to protect the pecuniary benefits etc. of employees who are in existence on the date of upgradation of such an institution.

41. The protection afforded by Section 13-A must, therefore, be distinguished from the source of recruitment to a vacancy arising after the cessation of service of an existing incumbent. Continuance of salary protection in favour of an existing employee cannot be equated with continuance of the statutory regime applicable to the institution before

its upgradation. In fact the transitory provision seeks to protect the pre-existing vested rights of a few, against the backdrop of changed statutory scheme. Consequently, where an incumbent protected under Section 13-A retires, resigns, dies or otherwise ceases to hold the post, the vacancy so arising cannot automatically be treated as a vacancy at an aided Junior High School merely because the incumbent had originally been appointed in that institution before its upgradation. To do that would be to read the transitory provision as permanent.

42. This conclusion is also consistent with paragraph 77 of *Smt. Manju Awasthi (supra)*, wherein a coordinate bench considered the extent to which the Basic Shiksha Adhikari could exercise administrative control over an upgraded institution. It specifically held except to the limited extent of payment of salary at the Junior High School level, the Basic Shiksha Adhikari could not exercise administrative control or make appointments in the upgraded institution. Para 77 of the judgment in *Manju Awasthi's case (supra)* is extracted hereinafter:

"77. We are of the view that the Government Order dated 24.11.2001 can be supported only to the extent of payment of salary of teachers at the Junior High School level and ancillary power thereunder. However, the Basic Shiksha Adhikari cannot exercise any administrative control over the institution except to the extent of payment of salary nor can make any appointment in view of the applicability of 1921 and 1982 Acts. The judgment of Hon'ble Single Judge in Committee of Management Beni Singh Vaidic Vidyawati Inter College, Baluganj, Agra and others (supra) to that extent cannot be approved. It is relevant to note that against the judgment of Hon'ble Single Judge dated 7.9.2005 in Committee of Management Beni Singh Vaidic Vidyawati Inter College, Baluganj, Agra and others (supra) special appeal No. 1419 of 2005, Agam Prakash Deepak Vs. State of U.P. was filed, which appeal was also dismissed on 29.11.2005."

(Emphasis supplied)

43. The aforesaid authorities, read together, establish the following legal position: upon recognition/upgradation of a Junior High School as a High School or Intermediate College, the institution ceases to retain its separate legal identity as a Junior High School; consequently, the provisions governing recruitment to Junior High Schools, including the

Rules of 1978, cannot be invoked, to fill a vacancy arising thereafter, merely because that institution was originally an aided Junior High School. Section 13-A operates only to protect the existing incumbents falling within its statutory ambit. It does not preserve the status of Junior High School as such, or the recruitment regime to be applied for future vacancies, that arises at such an institution.

44. An incidental aspect may also be noticed. The protection available to an existing incumbent by virtue of Section 13-A, is distinct from the question as to the statutory source of recruitment to a vacancy arising after such incumbent ceases to hold the post. Continuity of service or protection of salary of an existing employee cannot, by itself, determine the legal character of the subsequent vacancy. The resulting vacancy has to be determined with reference to the legal status of the institution and the statutory regime applicable to it, on the date on which the vacancy is sought to be filled.

45. Thus, where an Assistant Teacher appointed in the erstwhile aided Junior High School continues in service after the institution has been upgraded, such incumbent may continue to receive the benefit available under Section 13-A, subject to fulfillment of the statutory conditions. However, when such incumbent ceases to hold the post, the resulting vacancy cannot automatically revert to or be treated as a vacancy in the erstwhile aided Junior High School. The subsequent vacancy is a vacancy in the upgraded institution. Therefore, it cannot be filled under the Rules of 1978, merely on the basis of the historical origin of that institution.

46. The aforesaid position has also been considered by another coordinate bench in **C/M Standard Intermediate College Mau Aima Vs. State of U.P. and others**, Neutral Citation: 2019:AHC:137044-DB. The issue considered therein was whether, after a Junior High School is granted recognition under Section 7-A(a) of the Act of 1921 and

upgraded as High School, a subsequent vacancy of a teacher (at that institution), could be filled under the provisions applicable to Junior High Schools or whether such an institution would thereafter be governed by the statutory provisions applicable to a secondary institution. The aforesaid question was answered by the Bench in paragraphs 17 to 20, which are reproduced as under:

“17. We find that this aspect is covered by a Division Bench Judgment of this Court in *Ajay Pratap Rai Vs. District Basic Education Officer* 2007 (4) ADJ 357 (DB), wherein Court has held that once an Institution is upgraded to High School level, it would cease to exist as a legal entity as a Junior High School and, therefore, provisions applicable to a Junior High School would not be applicable to govern the same and, on the contrary, it would be governed by provisions applicable to a High School. Court in para-10 of the judgment said as under:

“10. From the aforesaid discussions, it is evident that status of an institution after being upgraded loses its significance and the lower section of the school after upgradation completely merges into the upgraded institution. Interpreting the provisions otherwise would lead to complete absurdity and create a chaotic situation even for governance of the different 12 parts of the same institution. An institution cannot have a multiple Code for its governance. There is no provision permitting continued applicability of the laws in relation to a Junior High School even after its upgradation.” (emphasis added)

18. This view is fortified from the fact that legislature had inserted Section 13-A in U.P. Act, 1978 providing for payment of salary to Teachers and other employees which has received grant-in-aid if it is upgraded and recognition is granted upto High School level. This provision was inserted to take care of a situation where without any grant-in-aid, a Junior High School which is in grant-in-aid, is upgraded and recognition is granted upto High School level and since it becomes a secondary educational institution, thereupon provisions of Junior High School will not be applicable, hence to obviate the difficulty in payment of salary to Teachers working upto Junior High School, who were already in grant-in-aid, Section 13-A was inserted and this also supports the view that after upgradation/ recognition granted to a Junior High School upto High School level, Statutes applicable to an institution which is upto Junior High School, become inapplicable.

19. Further this issue that a Junior High School when upgraded or recognized upto High School loses its identity as Junior High School has also been considered by a Full Bench in State of U.P. and others Vs. District Judge, Varanasi and others 1981 UPLBEC 336, and it has been held that after a basic school or a Junior High School is upgraded as a High School or an Intermediate College, the identity of Institution as basic school or Junior High School is lost. It ceases to

exist as a legal entity and in its place another institution with a new legal entity comes into being. In fact Section 13-A was inserted after the aforesaid judgment of Full Bench so as to continue payment of salary from State Exchequer under the provisions of Act, 1978.

20. The view taken by Division Bench in Ajay Pratap Rai Vs. District Basic Education Officer (supra) has been reiterated by another Division Bench in Manju Awasthi and others Vs. State of U.P. and others 2013 (3) ADJ 64 (DB). Once a Junior High School ceased to continue with a separate entity, provisions relating to selection and appointment of Teachers applicable to Junior High School will not apply and entire Institution as a whole will be a Secondary Educational Institution and governed by provisions of Statute applicable to a Secondary Institution. Therefore, the view taken by learned Single Judge, we find, is consistent with the authorities discussed above. We find no legal infirmity therein so as to warrant interference in these appeals.”

(Emphasis supplied)

47. The aforesaid decision is significant for the present controversy because it expressly recognises that, after upgradation, the provisions applicable to the Junior High School cease to govern the institution. The decision further notices the purpose of Section 13-A and treats the provision as having been introduced to protect the salary of existing teachers of the erstwhile aided Junior High School notwithstanding the fact that, upon upgradation, the institution becomes subject to the statutory regime applicable to a secondary educational institution. The principle flowing from the aforesaid authorities is, therefore, clear, Section 13-A protects the existing incumbents; it does not preserve the Rules of 1978 as a source of recruitment to future vacancies in the upgraded institution.

48. The aforesaid legal position, however, has to be considered in the context of the statutory regime presently in force. The U.P. Education Service Selection Commission Act, 2023 subsequently repealed the U.P. Secondary Education Services Selection Board Act, 1982. The applicability of the 2023 Act depends upon the institution and the post falling within the statutory expression “institution” as defined therein. In the present case, the institutions in question, having been upgraded as self-financed High Schools or Intermediate Colleges, do not fall within the category of institutions covered by Section 2(1)(g)(ii) of the 2023

Act. Consequently, the 2023 Act does not govern recruitment to the vacancies in question. The exclusion of such institutions from the field of the 2023 Act, however, cannot have the effect of reviving the Rules of 1978. The repeal of the 1982 Act does not restore the applicability of a recruitment regime which had ceased to apply to the institution upon its upgradation.

49. In other words, the repeal of the U.P. Secondary Education Services Selection Board Act, 1982 cannot alter the legal character of the institution or revive the separate identity of the erstwhile Junior High School. The repeal also does not revive the Rules of 1978 in respect of a vacancy arising in an institution which, by reason of upgradation, has ceased to be a recognised aided Junior High School. We are not required in the present appeals to determine the precise statutory mechanism, if any, by which a future vacancy in such self-financed upgraded institution may be filled. For the purposes of the present appeals, it is sufficient to hold that such vacancy could not be included in the recruitment process undertaken under the Rules of 1978.

50. In view of the aforesaid discussion, **Issue No. I is answered in the negative.** A vacancy of Headmaster or Assistant Teacher arising in an institution after it has been upgraded and recognised as a High School or Intermediate College does not continue to be a vacancy at a recognised aided Junior High School, for the purposes of selection and appointment under the Rules of 1978, as amended by the Amended Rules of 2019.

51. **Issue No. II is accordingly answered in the negative.** The repeal of the U.P. Secondary Education Services Selection Board Act, 1982 does not revive or continue the applicability of the Rules of 1978 to a vacancy arising in an institution which has already ceased to be a Junior High School by reason of upgradation.

52. For determination of the third issue, the law laid down by the Constitution Bench of the Hon'ble Supreme Court in **Tej Prakash Pathak Vs. Rajasthan High Court, (2025) 2 SCC 1**, is relevant. While answering

the reference as to whether, once the recruitment process commences, the State or its instrumentality can tinker with the “rules of the game”, particularly with regard to eligibility criteria, the Constitution Bench laid down the following principles:

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

(2) Eligibility criteria for being placed in the Select List, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;

(3) The decision in *K. Manjusree (supra)* lays down good law and is not in conflict with the decision in *Subash Chander Marwaha (supra)*. *Subash Chander Marwaha (supra)* deals with the right to be appointed from the Select List whereas *K. Manjusree (supra)* deals with the right to be placed in the Select List. The two cases therefore deal with altogether different issues;

(4) Recruiting bodies, subject to the extant Rules, may devise appropriate procedure for bringing the recruitment process to its logical end provided the procedure so adopted is transparent, non-discriminatory/ non arbitrary and has a rational nexus to the object sought to be achieved;

(5) Extant Rules having statutory force are binding on the recruiting body both in terms of procedure and eligibility. However, where the Rules are non-existent, or silent, administrative instructions may fill in the gaps;

(6) Placement in the select list gives no indefeasible right to appointment. The State or its instrumentality for bona fide reasons may choose not to fill up the vacancies. However, if vacancies exist, the State or its instrumentality cannot arbitrarily deny appointment to a person within the zone of consideration in the select list.”

53. The aforesaid principles have to be applied having regard to the nature of the alteration made in the present case. The advertisement dated 03.11.2025 was issued for recruitment to the posts of Assistant Teachers in recognised aided Junior High Schools under the Amended Rules of 2019. There has been no alteration in the educational qualifications, recruitment examination, merit criteria, reservation,

counselling procedure or any other condition governing the candidature of the appellants. What has been altered is the number and identity of vacancies to which the recruitment process could lawfully extend. The distinction between alteration of eligibility or selection criteria and correction of the legally available vacancy position is material. The former changes the conditions on which candidates compete; the latter determines whether a particular post could lawfully be filled under the statutory regime invoked in the advertisement. The appellants were not rendered ineligible by the subsequent action; rather, the posts against which they sought consideration were found to be posts which could not lawfully be filled under the Rules, invoked in the advertisement.

54. In the present case, the vacancies arising at institutions that had already been upgraded and recognised as High Schools or Intermediate Colleges were, for the reasons recorded hereinabove, outside the statutory field of recruitment under the Rules of 1978/Amended Rules of 2019. Their inclusion in the advertisement dated 03.11.2025 could not confer upon the candidates an enforceable right to appointment against posts which the recruiting authority was not legally competent to fill under those Rules. The subsequent exclusion of such vacancies was, therefore, not a change in the eligibility criteria or method of selection. It was a correction of the vacancy position so as to bring the recruitment process in conformity with the statutory framework governing the institutions concerned.

55. The Constitution Bench of the Supreme Court, in **Shankarsan Dash Vs. Union of India, 1991 (3) SCC 47**, while considering whether inclusion of a candidate's name in a merit list creates an indefeasible right to appointment, held as under:

“It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it

does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted.....”

56. The aforesaid principle has also been reiterated by the Supreme Court in **Anupal Singh Vs. State of U.P. and others, 2020 (2) SCC 173**. Thus, mere inclusion of a candidate in a provisional select list or participation in counselling does not create an indefeasible right to appointment.

57. At the same time, this principle does not authorize the State to act arbitrarily in relation to vacancies that are legally available for recruitment. The power to correct the vacancy position must be exercised *bona fide*, uniformly and for a legally sustainable reason. In the present case, the exclusion of the vacancies was based upon the legal status of the institutions concerned and upon the conclusion that those vacancies were outside the field of the Rules of 1978/Amended Rules of 2019. The action, therefore, cannot be characterized as arbitrary merely because it resulted in reduction in the number of vacancies available to the candidates.

58. It is also relevant that the candidates had been expressly informed, under the Government Order dated 19.02.2021, that the Assistant Teacher Recruitment Examination, 2021 was only an eligibility examination and mere success therein did not confer any right to appointment. The subsequent provisional select list and counselling were also subject to the availability of vacancies that could lawfully be filled under the applicable statutory rules. The participation of the appellants in the recruitment process, therefore, could not confer upon them a right to appointment against a vacancy (that was found, on a proper examination of the statutory scheme), outside the field of the Rules of 1978/Amended Rules of 2019.

59. Accordingly, **Issue No. III is answered in the negative**. The exclusion of vacancies arising in the upgraded High Schools or

Intermediate Colleges from the recruitment initiated pursuant to the advertisement dated 03.11.2025 did not amount to an impermissible alteration of the “rules of the game” within the meaning of the principle laid down in *Tej Prakash Pathak* (supra).

60. For the reasons recorded hereinabove, we find no legal infirmity in the judgment and order dated 19.02.2026, passed by the learned Single Judge, insofar as it directs exclusion from the recruitment initiated pursuant to the advertisement dated 03.11.2025 of vacancies arising in institutions which had already been upgraded and recognised as High Schools or Intermediate Colleges and which, consequently, did not fall within the field of recruitment under the Rules of 1978/Amended Rules of 2019.

61. The notifications dated 09.03.2026 and 15.03.2026, issued in implementation of the aforesaid judgment, are accordingly upheld to the aforesaid extent. The present judgment shall not affect vacancies in institutions that continued to be recognized aided Junior High Schools (as on 03.11.2025), and otherwise fell within the field of the Rules of 1978/Amended Rules of 2019, which shall remain governed by the applicable statutory rules and the notified recruitment process.

62. The appellants, merely by reason of their participation in the recruitment process; inclusion in the provisional select list; participation in counselling, did not acquire an indefeasible right to appointment against vacancies that were not legally available for recruitment under the Rules of 1978.

63. The appeals are, accordingly, **dismissed**. There shall be no order as to costs.

(Arun Kumar, J.) (Saumitra Dayal Singh, J.)

August 31, 2026

Ashok Kr.