



2026:AHC:207097

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 19537 of 2022

Dr. Sanjay Kumar Mishra

.....Petitioner(s)

Versus

State of U.P. and 6 others

.....Respondent(s)

Counsel for Petitioner(s)

: Siddharth Khare, Sr. Advocate, A.k.s.parihar, Alok Singh, Abhishek Mishra, Achal Singh, Adarsh Singh, Aditendra Singh, Akhilendra Singh, Alok Dwivedi, Anand Vikram Singh, Anirudh Singh, Anjani Kumar, Anmol Ratan, Anshul Pathak, Anubhav Dwivedi, Anurag Parihar, Anurag Shukla, Arvind Kumar Verma, Awadhesh Kumar Malviya, Bachchu Lal Yadav, Bajrang Bahadur Singh, Bhawesh Pratap Singh, Bheem Singh, Brijesh Kumar, Brijesh Kumar Verma, Dinesh Kumar Pandey, Gaurang Dwivedi, Grijesh Tiwari, H.k Asthana, Himanshi Srivastava, Himanshu Upadhyay, Indra Raj Singh, Jai Prakash Rao, Jitendra Pratap Singh, Kailash Pati Singh Yadav, Kunwar Aditya Pratap Singh, Kunwar Akhilendra Singh, Madhukar Maurya, Mahendra Singh, Mahesh Sharma, Man Mohan Singh, Manoj Kumar Dwivedi, Mritunjay Mohan Sahai, Mukesh Kumar, Nand Lal Pandey, Narendra Singh, Neha Roy Choudhury, Om Prakash Pandey, Pooja Kusum, Prabhakar Awasthi, Prabhat Chandra Sharma, Prabhat Kumar Singh,

Prashant Shukla, Praveen Kumar Mishra, Purnendu Bajpai, Raghvendra Tripathi, Rahul Jain, Rahul Mishra, Rahul Singh Dahiya, Rajendra Prasad Dubey, Ram Krishna Yadav, Ram Prakash Upadhyay, Ram Sakal Yadav, Ramesh Chandra Dwivedi, Ravi Pratap Singh, Rohit Singh, S.m. Mishra, Sandeep Kumar, Sanjay Kumar Kushwaha, Sanjay Kumar Singh, Satish Chandra Dubey, Satya Prakash Singh, Satyam Mishra, Satyendra Chandra Tripathi, Saurabh Tripathi, Shailesh Pandey, Shashi Kant Mishra, Shilpi Singh, Shivendu Ojha, Shyam Lal, Siddharth Khare, Sneh Pandey, Sr. Advocate, Sunil Kumar Srivastava, Suyash Pandey, Vijay Singh Sengar, Vinod Kumar Singh, Yogendra Kumar Srivastava

Counsel for Respondent(s) : C.S.C., Krishna Kumar Chand, Ramesh Kumar Tiwari, A.k.s.parihar, Aditi Pandey, Anand Kumar Srivastava, Anil Kumar Yadav, Anubhav Dwivedi, Anurag Kumar, Arvind Prabodh Dubey, Ashish Malhotra, Babita Upadhyay, Bajrang Bahadur Singh, Braj Bhushan Singh Chauhan, C.S.C., C.s.c, CSC, D.k.ojha, Hari Kant Shukla, Harikesh, Harish Chandra Yadav, Hridai Narain Pandey, Hritudhwaj Pratap Sahi, Jagannath Maurya, Krishna Kumar, Krishna Kumar Chand, Kushmondeya Shahi, Manish Tiwari, Nikhil Pandey, P.k. Upadhyay, Prabhakar Awasthi, Prabhat Kumar Singh, Pradyumn Kumar, R.r. Pandey, Rajendra Prasad Dubey, Rakesh Kumar Patel, Rakesh Kumar Singh, Ramesh Kumar Tiwari, Rohit Upadhyay, Samarath Singh, Sanjeev Kumar Gaur, Sankalp Narain, Santosh Kumar Yadav, Satya Prakash Singh, Sharad Chandra Upadhyay, Sheetendra Kumar Mishra, Shiv Sagar Singh, Shobhit Chauhan, Sr.

Advocate, Triloki Nath, Umesh Vats, Vashishtha Tiwari, Viajy Kumar Sharma, Vibhanshu Vaibhav, Vikrant Pratap Singh, Vishal Tandon

Along with:

Category-A	
1	Writ - A No. 19762 of 2022: Rakesh Kumar Shukla Versus State of U.P. and 7 others
2	Writ - A No. 20995 of 2022: Sumit Kumar Tyagi Versus State of U.P.. and 5 others
3	Writ - A No. 21988 of 2022: Hari Om Versus State of U.P. and 4 others
4	Writ - A No. 5 of 2023: Narendra Kumar Singh Versus State of U.P. and 4 others
5	Writ - A No. 162 of 2023: Vinod Prakash Singh Versus State of U.P. and 6 others
6	Writ - A No. 224 of 2023: Anil Kumar Versus State of U.P. and 7 others
7	Writ - A No. 231 of 2023: Dr. Ramjeet Versus State of U.P. and 7 others
8	Writ - A No. 308 of 2023: Shiv Dutt Tripathi Versus State of U.P. and 7 others
9	Writ - A No. 347 of 2023: Mukesh Yadav Versus State of U.P. and 4 others
10	Writ - A No. 386 of 2023: Chandra Shekhar Singh Versus State of U P and 7 others
11	Writ - A No. 483 of 2023: Kuldeep Kumar Garg Versus State of U.P. and 6 others

12	Writ - A No. 721 of 2023: Shivendra Kumar Tripathi Versus State of U.P. and 6 others
13	Writ - A No. 802 of 2023: Raj Kumar Versus State of U.P. and 5 others
14	Writ - A No. 1058 of 2023: Anand Kumar Versus U.P. Secondary Education Services Selection Board and 4 others
15	Writ - A No. 1289 of 2023: Shraddha Tondon Versus State of U.P. and 3 others
16	Writ - A No. 2382 of 2023: Hari Om Versus State of U P and 4 others
17	Writ - A No. 3557 of 2023: Jagdish Prasad Versus State of U.P. and 4 others
18	Writ - A No. 12606 of 2026: Dr Krishna Kumar Versus State of U.P. and 4 others
19	Writ - A No. 12608 of 2026: Mahendra Kumar Bhagat Versus State of U.P. and 4 others
20	Writ - A No. 12609 of 2026: Dr. Jitendra Kumar Versus State of U.P. and 4 others

Category- B

21	Writ - A No. 20893 of 2022: Bhanu Prakash Versus State of U P and 4 others
22	Writ - A No. 20914 of 2022: Meenakshi Dua Versus State of U.P. and 8 others
23	Writ - A No. 21182 of 2022: Drigpal @ Dragpal Versus State of U.P. and 4 others

24	Writ - A No. 21973 of 2022: Vijendra Singh Versus State of U.P. and 4 others
25	Writ - A No. 201 of 2023: Smt. Indu Kanchan Versus State of U P and 8 others
26	Writ - A No. 223 of 2023: Satya Narayan Bajpai Versus State of U.P. and 7 others
27	Writ - A No. 304 of 2023: Ram Lakhan Singh Versus State of U.P. and 7 others
28	Writ - A No. 573 of 2023: Rajesh Sivach Versus State of U.P. and 4 others
29	Writ - A No. 777 of 2023: Rajesh Singh Versus State of U.P. and 6 others
30	Writ - A No. 782 of 2023: Shyamveer Singh Versus State of U.P. and 7 others
31	Writ - A No. 789 of 2023: Ajay Mohan Sharma Versus State of U.P. and 5 others
32	Writ - A No. 1926 of 2023: Dinesh Kumar Singh Versus State of U.P. and 4 others
33	Writ - A No. 192 of 2023: Ajay Pal Sharma Versus State of U.P. and 7 others
34	Writ - A No. 127 of 2023: Karam Singh Versus State of U.P. and 6 others
35	Writ - A No. 20014 of 2022: Ram Chandra Singh Sengar Versus State of U P and 7 others
36	Writ - A No. 644 of 2023: Ram Prakash Rathore Versus

	State of U.P. and 7 others
37	Writ - A No. 19725 of 2022: Hari Prakash Narayan Dube Versus State of U.P. and 7 others

Category- C

38	Writ - A No. 661 of 2022: Sushil Kumar Yadav Versus U.P Secondary Education and 4 others
39	Writ - A No. 3159 of 2022: Sushil Kumar Yadav Versus U.P. Secondary Education Services Selection Board and 4 others
40	Writ - A No. 3822 of 2022: Abhishek Pratap Singh Versus U.P. Secondary Education Services Selection Board and 3 others
41	Writ - A No. 19192 of 2022: Om Prakash Verma Versus The State of U P and 4 others
42	Writ - A No. 19584 of 2022: Ruma Versus State of U.P. and 7 others
43	Writ - A No. 19589 of 2022: Pawan Trivedi Versus State of U.P. and 8 others
44	Writ - A No. 19604 of 2022: Rani Srivastava Versus State of U.P. and 7 others
45	Writ - A No. 19666 of 2022: Jitendra Kumar Rahi Versus State of U.P. and 8 others
46	Writ - A No. 20075 of 2022: Kavindra Shukla Versus State of U P and 4 others
47	Writ - A No. 20093 of 2022: Dr. Satya Prakash Singh Versus State of U.P. and 7 others

48	Writ - A No. 20108 of 2022: Smt. Rinu Bharti Versus State of U.P. and 4 others
49	Writ - A No. 20309 of 2022: Mahendra Singh Versus State of U.P. and 7 others
50	Writ - A No. 21146 of 2022: Satish Chandra Mishra Versus State of U.P. and 6 others
51	Writ - A No. 21435 of 2022: Dr Dharmendra Kumar Singh Versus State of U.P. and 5 others
52	Writ - A No. 21545 of 2022: Girja Shankar Versus State of U.P. and 5 others
53	Writ - A No. 21658 of 2022: Uma Shankar Prasad Versus State of U.P. and 6 others
54	Writ - A No. 21662 of 2022: Smt. Rashmi Asthana Versus State of U.P. and 7 others
55	Writ - A No. 21837 of 2022: Narendra Singh Versus State of U.P. and 6 others
56	Writ - A No. 21894 of 2022: Yatendra Kumar Versus State of U.P. and 6 others
57	Writ - A No. 21921 of 2022: Deepti Singh Versus State of U.P. and 6 others
58	Writ - A No. 22077 of 2022: Naresh Kumar Versus State of U.P. and 4 others
59	Writ - A No. 22079 of 2022: Birendra Kumar Versus State of U.P. and 4 others

60	Writ - A No. 22087 of 2022: Anil Kumar Versus State of U.P. and 4 others
61	Writ - A No. 22141 of 2022: Awadhesh Kumar Singh Versus State of U.P. and 8 others
62	Writ - A No. 22253 of 2022: Anil Kumar and another Versus State of U P and 8 others
63	Writ - A No. 50 of 2023: Narsingh Bahadur Singh Versus State of U.P. and 3 others
64	Writ - A No. 99 of 2023: Devendra Pal Singh Versus State of U.P. and 7 others
65	Writ - A No. 100 of 2023: Raman Prakash Versus State of U.P. and 7 others
66	Writ - A No. 101 of 2023: Jagbir Singh Versus State of U.P. and 7 others
67	Writ - A No. 106 of 2023: Pramod Kumar Sharma Versus State of U.P. and 3 others
68	Writ - A No. 113 of 2023: Akhilesh Chandra Yadav Versus State of U.P. and 6 others
69	Writ - A No. 116 of 2023: Kailash Singh Versus State of U.P. and 6 others
70	Writ - A No. 146 of 2023: Jitendra Kumar Versus State of U.P. and 6 others
71	Writ - A No. 158 of 2023: Dinesh Kumar and another Versus State of U.P. and 6 others

72	Writ - A No. 196 of 2023: Smt Mithilesh Kumari Versus State of U.P. and 7 others
73	Writ - A No. 228 of 2023: Arvind Kumar Versus State of U.P. and 6 others
74	Writ - A No. 235 of 2023: Baikunth Nath Versus State of U.P. and 8 others
75	Writ - A No. 290 of 2023: Sushil Kumar Gupta Versus State of U.P. and 7 others
76	Writ - A No. 320 of 2023: Prabhakar Mishra Versus State of U.P. and 8 others
77	Writ - A No. 333 of 2023: Mithilesh Kumar Pandey Versus State of U.P. and 8 others
78	Writ - A No. 339 of 2023: Chandrabhan Yadav Versus State of Uttar Pradesh and 6 others
79	Writ - A No. 344 of 2023: Rajeev Kumar Versus State of U.P. and 4 others
80	Writ - A No. 394 of 2023: Shishu Pal Singh Versus State of U.P. and 7 others
81	Writ - A No. 395 of 2023: Bechan Ram Saroj Versus State of U P and 4 others
82	Writ - A No. 396 of 2023: Rameshwer Dayal Versus State of U.P. and 8 others
83	Writ - A No. 409 of 2023: Jainendra Kumar Versus State of U.P. and 6 others

84	Writ - A No. 414 of 2023: Jitendra Kumar Chaudhary Versus State of U P and 5 others
85	Writ - A No. 417 of 2023: Narendra Singh Versus State of U.P. and 5 others
86	Writ - A No. 423 of 2023: Rakesh Kumar Versus State of U.P. and 6 others
87	Writ - A No. 489 of 2023: Satendra Kumar Versus State of Uttar Pradesh and 7 others
88	Writ - A No. 490 of 2023: Somesh Chandra Shatma Versus State of U.P. and 4 others
89	Writ - A No. 507 of 2023: Dr. Krishna Kumar Versus State of U.P. and 6 others
90	Writ - A No. 526 of 2023: Chunni Lal Versus State of U.P. and 8 others
91	Writ - A No. 527 of 2023: Shri Pal Versus State of U.P. and 6 others
92	Writ - A No. 537 of 2023: Neeraj Kumar Agarwal Versus State of U P and 6 others
93	Writ - A No. 677 of 2023: Shashi Prakash Gautam Versus State of U P and 6 others
94	Writ - A No. 680 of 2023: Indresh Kumar Versus State of U P and 6 others
95	Writ - A No. 689 of 2023: Lekhraj Singh Versus State of U.P. and 6 others

96	Writ - A No. 737 of 2023: Suraj Pal Singh Versus State of U.P. and 6 others
97	Writ - A No. 833 of 2023: Chandradeep Kumar Singh Versus State of U.P. and 7 others
98	Writ - A No. 872 of 2023: Adarsh Kumar Mishra Versus State of U.P. and 6 others
99	Writ - A No. 949 of 2023: Smt. Praveena Yadav Versus State of U.P. and 7 others
100	Writ - A No. 1268 of 2023: Dr Rajbali Singh Versus State of U.P. and 7 others
101	Writ - A No. 1338 of 2023: Ender Kumar Vasman Versus State of U.P. and 8 others
102	Writ - A No. 1566 of 2023: Rajpal Singh Versus State of U.P. and 7 others
103	Writ - A No. 1951 of 2023: Sunil Kumar Versus State of U.P. and 6 others
104	Writ - A No. 2140 of 2023: Sunita Singh Versus State of U.P. and 7 others
105	Writ - A No. 2190 of 2023: Krishna Mohan Upadhyay Versus State of U.P. and 7 others
106	Writ - A No. 2406 of 2023: Dr. Anshu Singh Versus State of U.P. and 7 others
107	Writ - A No. 4088 of 2023: Shri Narendra Kumar Versus The State of U.P. and 5 others

108	Writ - A No. 4309 of 2023: Abhimanyu Singh Versus State of U.P. and 8 others
109	Writ - A No. 12762 of 2026: Dr. Shashi Shekhar Mishra Versus State of U.P. and 5 others
110	Writ - A No. 12920 of 2026: Manoj Kumar Versus State of U.P. and 4 others
111	Writ - A No. 13719 of 2026: Reena Devi Versus State of U.P. and 4 others
112	Writ - A No. 13779 of 2026: Hira Lal Versus State of U.P. and 4 others
113	Writ - A No. 14464 of 2026: Girija Shankar Versus State of UP and 4 others
114	Writ-A No.14542 of 2026 Pooja Rani Versus State of U.P. and 4 others
115	Writ - A No. 1322 of 2023: Ravendra Versus State of U.P. and 4 others

AFR
Reserved

In Chamber

HON'BLE SIDDHARTH NANDAN, J.

1. Heard Shri Ashok Khare, learned Senior Counsel assisted by Shri Mohd. Yaseen, Advocate, holding brief of Shri Siddharth Khare, Advocate (Writ-A Nos. 19537, 19578, 19589, 19604, 19666 and 20014 of 2022 and 304, 308, 333, 386, 489, 644 and 2406 of 2023, Writ-A No. 19725 of 2022 & Writ-A No. 339 of 2023); Shri P.K. Mishra, Advocate (Writ-A No. 19762 of 2022); Shri Sanjay Kumar Kushwaha, Advocate

(Writ-A No. 21182 of 2022); Shri Anurag Shukla, Advocate (Writ-A Nos. 21662 of 2022 and 2190 of 2023); Shri Raghvendra Tripathi, Advocate (Writ-A No. 21837 of 2022); Shri Rahul Jain, Advocate (Writ-A No. 22141 of 2022); Shri Sandeep Kumar, Advocate (Writ-A Nos. 113, 127, 146, 409, 689 and 737 of 2023); Shri Ram Sakal Yadav, Advocate (Writ-A No. 507 of 2023); Shri Narendra Singh, Advocate (Writ-A No. 949 of 2023); Shri Mahesh Sharma, Advocate (Writ-A No. 1655 of 2023); Shri P.K. Singh, Advocate (Writ-A No. 12762 of 2026); Shri Nand Lal Pandey, Advocate and Shri Suyash Pandey, Advocate (Writ-A No. 13719 of 2026); Shri M.M. Sahai, Advocate (Writ-A No. 21146 of 2022); and Shri Bheem Singh, Advocate and Shri Aalok Singh, Advocate (Writ-A No. 20995 of 2022), learned counsels appearing on behalf of the petitioners.

2. Counsels For the respondents: Shri G.K. Singh, learned Senior Advocate, assisted by Shri Sheetendra Kumar Mishra, Advocate, for the private respondent (Writ-A No. 19725 of 2022); Shri Satyendra Pratap Singh, Advocate, holding brief of Shri Vishal Tandon, Advocate, for respondent no. 8 (Writ-A No. 20093 of 2022); Shri Umesh Vats, Senior Advocate, assisted by Shri Sheetendra Kumar Mishra, Advocate (Writ-A Nos. 339 and 872 of 2023); Shri Umesh Vats, Senior Advocate, assisted by Shri Vikrant Pratap Singh, Advocate, for the private respondent (Writ-A No. 949 of 2023); Shri Vijay Kumar Sharma, Advocate, for O.P. No. 8 (Writ-A Nos. 19537, 19578, 19589, 19604, 19666 and 20014 of 2022 and 304, 308, 333, 386, 489, 644 and 2406 of 2023); and Shri V.K. Singh, Senior Advocate, assisted by Shri Triloki Nath, Advocate (Writ-A No. 21146 of 2022) and learned Standing Counsel for the State-respondents.

3. The present batch of writ petitions has been filed, challenging the notification, publishing the select list, for the post of Principals, published region wise on different dates that is 11.11.2022 and 13.11.2022; in pursuance of Advertisement No. 3 of 2013 issued by the UP Secondary Education Service Selection Board, at the behest of senior

most lecturers of Intermediate Colleges, who are functioning as officiating Principals in the Institution; and after having participated in the interview, not being shown as selected candidates.

4. The writ petitions can be divided in three categories:

(A) By those “Officiating Principals/Headmasters”, who were not eligible on the last date of submission of application form i.e. 25.02.2014. [Shown at Serial No.1 to 20, in the Cause Title]

(B) By those “Officiating Principals/Headmasters”, who have attained the age of superannuation during the pendency of their writ petitions. [Shown at Serial No.21 to 37, in the Cause Title]

(C) By candidates/officiating Principals/Headmasters, who have participated in the Interview but due to lesser marks, they have not been selected. [Shown at Serial No.38 to 115, in the Cause Title]

Facts of the Case

5. Region wise Advertisement was published on 31.12.2013, for the appointment on the post of Principals/Headmasters, for four categories of the Institutions. The said categories are as follows:-

(I). Category - 1 :- Intermediate Boys Institutions.

(II). Category - 2 :- Intermediate Girls Institutions.

(III). Category - 3 :- High Schools Boys Institutions.

(IV). Category - 4 :- High Schools Girls Institutions.

6. On subsequent verification, since some of the posts were not verified, therefore an amended Advertisement, was published and the last date fixed for Application was 25.02.2014.

7. The same became subject matter of challenge and this Court passed an interim order; but however subsequently another corrigendum was issued on 01.01.2022, to proceed with the selection process through

online mode. And the candidates were directed to verify and correct the details, mentioned in the online application forms within a prescribed period.

8. Thereafter in order to address the dispute in aspect of eligibility, another corrigendum was issued on 02.01.2022, mentioning the last date for submission of the application form, that being the date of eligibility.

9. The said corrigendum dated 02.01.2022 was also subjected to challenge; and eventually the same was approved in **Mohan Singh and others vs. State of UP and others**¹.

10. On the basis of the online information verified by the candidates, the interview program was published, vide the communication dated 22.12.2022, with a direction to the candidates to download the interview letter; and without any objections, the candidates participated in the interview. Some petitioners though applied for being considered as a general candidate; but they had chosen to appear and to be considered by virtue of being the Senior Most Teacher, of the Institution. It is not disputed that the claim of 'Senior Most Teachers' is confined to the said Institution in question.

11. "The UP Secondary Education Services Selection Commission Rules 1983²", was replaced by a new set of Rules by the name of "UP Secondary Education Service Selection Commission Rules, 1995³"; and subsequently by the "UP Secondary Education Service Selection Board Rules, 1998⁴."

12. The validity of the said Rules, 1998 was decided by the Apex Court in the case of **Balbir Kaur and another vs. U.P. Secondary Education Services Selection Board, Allahabad and others**⁵. It is not disputed that the post of Principal is to be filled by direct recruitment and there is no avenue by way of regular promotion to the said post; however there

1. Special Appeal No. 515 of 2022

2. Rules, 1983

3. Rule, 1995

4. Rules, 1998

5. 2008 (3) ESC 409 (SC)

are two sources from which the direct recruitment is to be made:- firstly by way of direct candidates, who apply in pursuance of the advertisement; and secondly 'two senior most teachers' of the Institution; where the post of Principal is vacant and same has been advertised by the Commission.

13. A Lecturer who is not amongst the 'two Senior Most Lecturers' of the Institution, so as to fall within the ambit of Rule 11(2)(b) of the Rules 1998, can apply for direct recruitment on the post of Principal.

14. The Uttar Pradesh Secondary Education (Services Selection Boards) Act, 1982⁶ [U.P. Act No.5 of 1982] (As passed by the Uttar Pradesh Legislature and an Act to establish Secondary Education (Service Selection Boards) [Substituted by U.P. Act No.25 of 1998, w.e.f. 27.07.1998] came into effect from 20.04.1998; and since then all the selection of Teachers in Institutions recognized under the Act, 1921 to the post of Principal/Headmasters of an Educational Institution, is to be undertaken by the Board constituted under the Act 1982.

15. On 22.02.2022 the Board notified the schedule of Interview, on its official website, which were scheduled to be held on different dates in the month of March, 2022.

16. For ready reference, the detailed schedule as per the notification dated 22.02.2022, is reproduced below:

क्र०सं०	साक्षात्कार तिथि	साक्षात्कार होने वाले मण्डल का नाम
1-	22.03.2022 से 23.03.2022	लखनऊ एवं अलीगढ़।
2-	24.03.2022 से 25.03.2022	गोरखपुर सहारनपुर एवं चित्रकूट
3-	26.03.2022 से 27.03.2022	प्रयागराज बस्ती बरेली एवं अयोध्या
4-	28.03.2022 से 30.03.2022	आगरा, मुरादाबाद, वाराणसी, मिर्जापुर एवं झाँसी

17. The different Interview boards, were constituted and the interviews accordingly took place as per the schedule notified on 22.02.2022.

18. It is also not disputed that candidates who were recommended, by virtue of their being the two senior-most teachers, also applied as direct

6. Act, 1982

candidates, to be considered as such. On 11.11.2022 and 13.11.2022, a select panel was notified region wise, by the UP Secondary Education Services Selection Board, which is now the subject matter of challenge, in the present batch of writ petitions.

Preliminary Objection

19. A preliminary objection has been raised on behalf of the respondents, that petitioners having participated, in the selection proceedings without any objections, are now estopped, from raising challenge to the procedure adopted by the respondent-Commission being fully aware of the same.

20. It is an admitted fact that the challenge in the writ petitions, to the select list published by the Board, in pursuance of the Advertisement No.3 of 2013, is at the instance of 'Senior Most Lecturers' of Intermediate Colleges, who are functioning as officiating Principal of the Institution; and after having participated in the interview and not having been selected, has now filed the present writ petitions.

21. It is trite in law that the process of recruitment starts from the issuance of Advertisement and ends with the filling up of notified vacancies; and at the various steps like inviting applications, scrutiny of the application, rejection of defective applications and eliminations of ineligible candidates, conducting examination, interviews and preparation of list of successful candidates for appointment, the candidates participating in the recruitment process have a legitimate expectation that the process of selection will be fair and non-arbitrary; which is the basis of doctrine of legitimate expectation.

22. It is an established norm that a public authority's promise or past conduct, will give rise to a legitimate expectation, which is premised on the notion that public authorities, while performing their public duties, ought to honour their promises or past practices.

23. However, the doctrine of legitimate expectation does not impede or hinder the power of the public authority to lay down a policy or

withdraw it; and what the courts have to determine is that, the public interest is compelling and sufficient, to out weight the expectation of the claimant.

24. A reference can also be made to the decision, in the case of **Shivnanda CT and others vs. High Court of Kerala and others**⁷ wherein the Apex Court in para-36 held as follows:-

“36. The doctrine of legitimate expectation does not impede or hinder the power of the public authorities to lay down a policy or withdraw it. The public authority has the discretion to exercise the full range of choices available within its executive power. The public authority often has to take into consideration diverse factors, concerns, and interests before arriving at a particular policy decision. The courts are generally cautious in interfering with a bona fide decision of public authorities which denies a legitimate expectation provided such a decision is taken in the larger public interest. Thus, public interest serves as a limitation on the application of the doctrine of legitimate expectation. Courts have to determine whether the public interest is compelling and sufficient to outweigh the legitimate expectation of the claimant. While performing a balancing exercise, courts have to often grapple with the issues of burden and standard of proof required to dislodge the claim of legitimate expectation.”

25. Shri Ashok Khare, learned Senior Counsel submits that in the present case, the recourse which the authorities have adopted, deviates from the previous norms, as per their case; and the petitioners were wholly unaware of such discrepancy, at any earlier point of time; and for an objection of estoppel, it is essential to demonstrate full knowledge of the facts and according to him the discrepancies are so glaring, no estoppels would apply. He has placed reliance upon the judgements of the Apex Court in the case of **Ramjit Singh Kardam and others vs. Sanjeev Kumar and others**⁸. For ready reference paragraphs-33, 38 to 45 are reproduced below:

“33. From the pleadings on the records and submissions made by the learned counsel for the parties, following points arise for consideration:-

7. 2023 INSC 709

8. 2020 (20) SCC 209

33.1. Whether the respondent writ petitioners who had participated in the selection were estopped from challenging the selection in the facts of the present case?

33.2. Whether the respondent writ petitioners could have challenged the criteria of selection applied by Commission for selection after they had participated in the selection?

33.3 Whether the decision dated 30.06.2008 to cancel the written examination and the decision dated 11.07.2008 to call the candidates for interview 8 times number of vacancies on minimum percentage of marks as fixed therein and the decision dated 31.07.2008 to call all the eligible candidates for interview were arbitrary decision to change selection criteria published on 28.12.2006, which have effect of downgrading the merit in the Selection?

33.4. Whether it was obligatory for the Commission as a body to take all decisions pertaining to Selection on the post of PTI including the decision of not holding written examination, decision to screen on the basis 8 times of vacancies and decision to call all eligible candidates and whether aforesaid decisions were taken by the Chairman alone?

33.5. Whether on 03.08.2008, a decision was taken by the commission fixing the criteria for the selection on the post of PTI which was signed by all the members on 03.08.2008 as claimed by the Commission?

33.6. Whether without there being any specific allegations of mala fide against the Chairman and members of the Commission and without they having been impleaded by name as party respondents, the writ petitioners could have challenged the allocation of marks in viva- voce and High Court was right in accepting the claim that candidates who got highest marks for academic qualifications ranging between 40 to 48.74 marks have been awarded just 7 to 9 marks in the viva-voce and as against it there are hundreds of selected candidates who have been awarded 20 to 27 out of 30 marks in the viva-voce to ensure that they outclass the academically bright candidates?

33.7. Whether no fresh selection can be held as directed by learned Single Judge since as per 2012 Rules, the post of PTI has been declared as a dying cadre and the post has merged into the post of TGT Physical Education?

38. Learned counsel for the appellant at very outset contended that the writ petitions filed by the respondent challenging the select list dated 10.04.2001 ought not to have been entertained by the High Court since the respondent having participated in the selection without any demur or protest, they are estopped from challenging the selection. The submission is refuted by the respondent contending that the above principle of estoppel is not applicable in the facts of the present case. The petitioner being not even aware of the criteria, which was to be applied for selection, which they came to know only after select list

was published, there was no occasion to make any challenge by the respondents before the above date.

39. The preposition that a candidate, who participates in a selection without a demur taking a calculated chance to get selected cannot turn around and challenge the criteria of selection and the constitution of the selection committee is well settled. The appellants have placed reliance on judgment of this Court in Madan Lal and Others Vs. State of J&K and Others, (1995) 3 SCC 486; K.A. Nagamani Vs. Indian Airlines and Others, (2009) 5 SCC 515; Manish Kumar Shahi Vs. State of Bihar and Others, (2010) 12 SCC 576; Madras Institute of Development Studies and Another Vs. K. Sivasubramaniyan and Others, (2016) 1 SCC 454 and Ashok Kumar and Another Vs. State of Bihar and Others, (2017) 4 SCC 357.

40. In Madan Lal and Others(supra), this Court laid down following in paragraph 9:-

“9.It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla, 1986 Supp SCC 285, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.”

41. The above preposition has been reiterated in other judgments of this Court noted above. In the present case, whether the respondents-writ petitioners are estopped from challenging the selection? While noticing the facts of the case, we have noted above that both appellants and the respondents had submitted applications in pursuance of advertisement dated 28.07.2006 No.6/2006. In advertisement, it was provided that the Commission may shortlist the candidates for interview by holding a written examination or on the basis of a rational criteria to be adopted by the Commission. The Commission on 28.12.2006 published the criteria for calling the candidates for interview. Notice dated 28.12.2006 provided that written examination shall be held for post of PTI on 21.01.2007, on 100 objective type multiple choice questions, each question carrying two marks. The notification also prescribed the minimum qualifying marks- 50% for General category, SC BC and ESM 45% and 25% marks was assigned to the viva voce. The above criteria was implemented and written examination was conducted on

21.01.2007, which examination was cancelled citing complaints regarding malpractices in the written examination.

*42. Further notice dated 11.06.2008 was published fixing 20.07.2008 for written examination as per criteria earlier notified. Before the above examination could take place, by public notice dated 30.06.2008, it was cancelled. Another public notice dated 11.07.2008 was published where Commission decided to shortlist eight times the candidates of the advertised post with minimum weightage secured in each category. The said shortlisting was also given up by notice dated 31.07.2009 when it was decided to call all eligible candidates for interview. Commission did not publish any criteria or marks on the basis of which interview was to be held. The criteria, which was published by the Commission on 28.12.2006, 11.06.2008 and 11.07.2008 were given up step by step and no criteria was published for interview, which was scheduled to take place in from 2nd September to 17th October, 2008. When Commission had not published any criteria on the basis of which candidates were going to be subjected for selection process and the candidates participated in the selection without knowing the criteria of selection, they cannot be shut out from challenging the process of selection when ultimately they came to know that Commission step by step has diluted the merit in selection. When candidate is not aware of the criteria of selection under which he was subjected in the process and the said criteria for the first time is published along with final result dated 10.04.2010, he cannot be estopped from challenging the criteria of selection and the entire process of selection. Further when the written examination as notified earlier was scrapped and every eligible candidate was called for interview giving a go bye to a fair and reasonable process for shortlisting the candidates for interview, that too only by Chairman of the Commission whereas decision regarding criteria of selection has to be taken by Commission, the candidates have every right to challenge the entire selection process so conducted. This Court in *Raj Kumar and Others Vs. Shakti Raj and Others*, (1997) 9 SCC 527 held that when glaring illegalities have been committed in the procedure to get the candidates for examination, the principle of estoppel by conduct or acquiescence has no application.*

*43. Referring to judgment of this Court's judgment in *Madan Lal (supra)*, this Court laid down following in paragraph 16:-*

*"16.The entire procedure is also obviously illegal. It is true, as contended by Shri Madhava Reddy, that this Court in *Madan Lal v. State of J&K*, (1995) 3 SCC 486 and other decisions referred therein had held that a candidate having taken a chance to appear in an interview and having remained unsuccessful, cannot turn round and challenge either the constitution of the Selection Board or the method of selection as being illegal; he is estopped to question the correctness of the selection. But in his case, the Government have committed glaring illegalities in the procedure to*

get the candidates for examination under the 1955 Rules, so also in the method of selection and exercise of the power in taking out from the purview of the Board and also conduct of the selection in accordance with the Rules. Therefore, the principle of estoppel by conduct or acquiescence has no application to the facts in this case. Thus, we consider that the procedure offered under the 1955 Rules adopted by the Government or the Committee as well as the action taken by the Government are not correct in law.”

44. One more judgment of this Court which supports the view taken by the High Court is *Bishnu Biswas and others Union of India and others*, (2014) 5 SCC 774. An advertisement was published calling applications for appointment to the post of Group D staff. The Recruitment Rules only provided for a written examination having 50 maximum marks. After holding written examination notice was issued calling the successful candidates for interview. Although such interview was not part of the recruitment process, a select list was published which was challenged in the Tribunal. The Tribunal returned a finding that the manner in which marks have been awarded in the interview to the candidates indicated lack of transparency. The High Court upheld the reasoning of the Tribunal but modified the order to the extent of continuing the recruitment process from the point it stood vitiated. This Court laid down following in paragraphs 19 and 20:

“19. In the instant case, the rules of the game had been changed after conducting the written test and admittedly not at the stage of initiation of the selection process. The marks allocated for the oral interview had been the same as for written test i.e. 50% for each. The manner in which marks have been awarded in the interview to the candidates indicated lack of transparency. The candidate who secured 47 marks out of 50 in the written test had been given only 20 marks in the interview while a large number of candidates got equal marks in the interview as in the written examination. Candidate who secured 34 marks in the written examination was given 45 marks in the interview. Similarly, another candidate who secured 36 marks in the written examination was awarded 45 marks in the interview. The fact that today the so-called selected candidates are not in employment, is also a relevant factor to decide the case finally. If the whole selection is scrapped most of the candidates would be ineligible at least in respect of age as the advertisement was issued more than six years ago.

20. Thus, in the facts of this case the direction of the High Court to continue with the selection process from the point it stood vitiated does not require interference. In view of the above, the appeals are devoid of merit and are accordingly dismissed. No costs.”

45. The Division Bench of the High Court is right in its conclusion that the selection criteria, which saw the light of the day along with

declaration of the selection result could be assailed by the unsuccessful candidates only after it was published. Similarly, selection process which was notified was never followed and the selection criteria which was followed was never notified till the declaration of final result, hence, the writ petitioners cannot be estopped from challenging the selection. We, thus, hold that the writ petitions filed by the petitioners could not have been thrown on the ground of estoppel and the writ petitioners could very well challenge the criteria of selection applied by the Commission, which was declared by the Commission only at the time of declaration of the final result. We, thus, answer point Nos. 1 and 2 as follows:-

(i) The writ petitioners, who had participated in the selection are not estopped from challenging the selection in the facts of the present case.

(ii) The writ petitioners could have very well challenged the criteria of selection, which was declared by the Commission only in the final result declared on 10.04.2010.”

26. In the case of **Ramjit Singh Kardam** (supra), a specific issue of ‘Estoppel’ arose for consideration. The Courts though held that, who participate in a selection without a demur, taking a calculative chance to get selected, cannot turn around and challenged the criteria of selection and the constitution of the selection committee, is well settled; but concluded that in a circumstance where the selection criteria, saw the light of the day, only along with declaration of the selection result, could be assailed by an unsuccessful candidate, only after it was published. A selection process which was notified, if never followed; and the selection criteria which was followed, was never notified, till a point of time when the stage of filing an objection had passed, a candidate cannot be ‘estopped’ from challenging the said selection. (Emphasis added)

27. Reliance has also been placed on the judgement in the case of **Rajasthan High Court and another vs. Rajat Yadav and others**⁹. Having discussed the principle of estoppel, the Apex Court held in the facts of the said case that the advertisement was a representation to the aspirants for public employment and there was no indication that the meritorious reserved category candidates would not be treated as General/Open category candidates, even if they outscored the latter. Accordingly, the

9. 2025 SCC OnLine SC 2931

Court held that, since the petitioning candidates could not have possibly visualized such an approach on the part of the recruiters, the question of such candidates being ‘estopped’ from mounting a challenge to the legality of the process does not and cannot arise. For a reference Para 41 to 47 is reproduced below:

“41. Our examination of the erudite arguments advanced by Mr. Gupta must begin with consideration of the objection to the conduct of the petitioning candidates based on applicability of the principle of ‘estoppel’.

42. There is a long line of decisions of this Court that candidates who participated in a selection process cannot later challenge the procedure adopted merely because the result is not palatable to them. It has been held there, generally, that the principle of estoppel operates against such a candidate who, having taken a calculated chance of selection by participating in the selection process and failed to secure selection, challenges the process of selection in Court on the ground of a flawed procedure being adopted by the recruiting/selecting authority. Profitable reference may be made to some of the decisions of this Court, viz. G. Sarana v. University of Lucknow, (1976) 3 SCC 585, Om Prakash Shukla v. Akhilesh Kumar Shukla, 1986 Supp SCC 285, Madan Lal v. State of Jammu & Kashmir, 1995 (3) SCC 486, K.A. Nagamani v. Indian Airlines, 2009 5 SCC 515, Manish Kumar Shahi v. State of Bihar, 2010 12 SCC 576, Ramesh Chandra Shah v. Anil Joshi, 2013 11 SCC 309 and Ramjit Singh Kardam v. Sanjeev Kumar, 2020 20 SCC 209.

43. However, this rule is not absolute. As elucidated in Meeta Sahai vs. State of Bihar, (2019) 20 SCC 17, participation of a candidate in a selection process implies acceptance of the prescribed procedure, but not of any illegality in the conduct of the said procedure or constitutional infirmity underlying it. Where the challenge pertains to a misconstruction of statutory rules or violation of constitutional principles, the plea of estoppel cannot operate as a bar.

44. This distinction was earlier recognised by a Bench of three Judges in Raj Kumar v. Shakti Raj, (1997) 9 SCC 527, where despite participation, the Court held that glaring illegalities in the process rendered estoppel inapplicable.

45. Having considered the precedents in the field, to our mind, a candidate would be estopped from challenging a selection process post-participation, unless he can show that despite due diligence, he could not have known earlier of the illegality in the procedure that came to be adopted or that the procedural flaw striking at the root of the selection process was hidden and surfaced only after completion of the process

of selection; hence, no challenge could have been laid by him prior to his participation in the process.

46. In the present case, the advertisement was a representation to the aspirants for public employment that category-wise lists would be prepared. None would question such a condition. There was, however, no indication that meritorious reserved category candidates would not be treated as General/Open category candidates even if they outscore the latter. The illegality lies in the action of the appellants in not treating the meritorious reserved category candidates as General/Open category candidates, despite noticing that the former had outperformed and outshone the latter. Since the petitioning candidates could not have possibly visualised such an approach on the part of the recruiters by projecting their own imagination and discover all facts and circumstances that might be in their contemplation to be adopted while drawing up the merit lists at the time they participated in the preliminary written examination, the question of such candidates being estopped from mounting a challenge to the legality of the process does not and cannot arise. The petitioning candidates paid a price for their merit and having challenged the very legality of the process alleging violation of constitutional norms and legal principles, the plea of estoppel could not have defeated such a challenge.

47. The Division Bench by entertaining the writ petitions and granting relief of the nature noticed above cannot be held to have exercised jurisdiction illegally.”

28. In the case of **Desai Devabhai Geemarbhai vs. Information and Broadcasting Department**¹⁰ the Gujarat High Court, having considered various precedents, held as follows which can be gainfully referred to:-

“76. In the case of Siraj (supra), the Kerala High Court has observed in para 47 and 48 as under: "47. Mr. Giri had presented an argument that on principles of estoppel, the petitioners had no right to challenge the notification, when they had responded thereto. An after thought of filing a Writ Petition, only when it was found that they could not get through the selection process, could not have been entertained. Adverting to certain decisions, the counsel contended that the discretionary jurisdiction, in the case, should not have been exercised, in favour of persons who were sitting on fence. 48. However, principles of estoppel as such might not be applicable in such matters. In the case of selection, option of an aspirant evidently is limited. If we accept the suggestions of the appellant, the candidate had to take a risk of abstaining from the selection and challenge it at the time of notification. This will be too rigid, not to say impractical, as an objection could be raised that a person who had not even responded to the selection had no

10. (2022 SCC online Guj 654)

locus standi. On this point, we are in agreement with the law laid down by a Division Bench of this Court in Sathi v. Cochin University of Science and Technology, (2000) 2 KLT 871. In appropriate cases, when a candidate finds that there was sufficient justification for him to challenge the process of selection, on grounds available to him, participation in the selection as such would not have annulled his rights, since resort to constitutional remedies could not have been defeated or discarded. The observation contrary to the above principle in Remani's case has to be understood in the above background alone."

77. In the case of E.P. Royappa (supra), the Hon'ble Supreme Court has observed in para 85 as under: 85. The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an aspect of the second ground based on violation of 14 and 16. Art. 16 embodies the fundamental guarantee that Arts. 14 as there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Art. 16 is only an instance of the application of the concept of equality enshrined in Art. 14. In other words, Art. 14 is the genus while Art 16 is a species. Art. 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Arts. 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any; attempt to truncate its all-embracing scope and meaning, for to do so Would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action an (ensure fairness and equality of treatment. They require that State action must be based on valent relevant principles applicable alike to all similarly situate and it must not be quided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State

action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would: amount to malafide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of Power and arbitrariness are different lethal radiations emanating from the same vice: in fact the matter comprehends the former. Both are inhibited by Arts'. 14 and 16”.

29. The Apex Court, while considering the principle of estoppel, in the case of **Dr. (Major) Meeta Sahai v. State of Bihar**¹¹, (para16 & 17), held as follows:-

“16. It is well settled that the principle of estoppel prevents a candidate from challenging the selection process after having failed in it as iterated by this Court in a plethora of judgments including Manish Kumar Shahi v. State of Bihar, observing as follows: (SCC p. 584, para 16) "16. We also agree with the High Court⁷ that after having taken part in the process of selection knowing fully well that more than 19% marks have been earmarked for viva voce test, the appellant is not entitled to challenge the criteria or process of selection. Surely, if the appellant's name had appeared in the merit list, he would not have even dreamed of challenging the selection. The [appellant] invoked jurisdiction of the High Court under Article 226 of the Constitution of India only after he found that his name does not figure in the merit list prepared by the Commission. This conduct of the appellant clearly disentitles him from questioning the selection and the High Court did not commit any error by refusing to entertain the writ petition."The underlying objective of this principle is to prevent candidates from trying another shot at consideration, and to avoid an impasse wherein every disgruntled candidate, having failed the selection, challenges it in the hope of getting a second chance.

17. However, we must differentiate from this principle insofar as the candidate by agreeing to participate in the selection process only accepts the prescribed procedure and not the illegality in it. In a situation where a candidate alleges misconstruction of statutory rules and discriminating consequences arising therefrom, the same cannot be condoned merely because a candidate has partaken in it. The constitutional scheme is sacrosanct and its violation in any manner is impermissible. In fact, a candidate may not have locus to assail the incurable illegality or derogation of the provisions of the Constitution, unless he/she participates in the selection process.”

30. From the perusal of the aforesaid judgments it can be deciphered, that the crucial question is, whether the candidates can be said to be

11. (2019) 20 SCC 17

aware of the procedure, so as to make an objection prior to their participation in the process or not; and whether the process notified was followed or changed during the ongoing stages, is also to be seen.?

31. The legitimate expectation, which an incumbent may have, is premised on a settled principle of law that the process of selection will be fair and also that the doctrine prescribing change of rules, midway to the game or after the game is played, is predicated on rule against arbitrariness enshrining in Article 14 of the Constitution of India. The authorities performing their public duties, are to honour the promise or the past practice.

32. The contention or the objections of the petitioners, is premised on a guideline, which was considered by this Court in the case of **Indra Raj Singh Yadava Vs. UP Madhyamik Shiksha Sewa Ayog and others**¹², and as such this Court had approved the guidelines of the Commission viz-a-viz the Rules 1983; and if it is to be considered at this stage, prior to the said consideration, it cannot be said that the petitioners are estopped from raising a challenge to the procedure adopted by the Commission, contrary to the guidelines which was upheld by this Court in the case of **Indra Raj Singh Yadav** (supra), and as such the preliminary objection raised by the respondents has no merits and the petitioners cannot be thrown out of the Court, at this stage itself without examining the issue raised by the petitioners; and the preliminary objection is accordingly rejected.

Issue No. 1:- *Whether the Chairman of the Board, was justified in declaration of the result of the selection, in pursuance of the decision taken by the Committee on 11.11.2022 and 13.11.2022, in absence of the members of the Board, in view of Rule 12(10) of the Rules, 1998 ?*

33. It has not been disputed that at the time of holding the interview, the Commission was fully functional; as the term of five Members of the Board only expires subsequently, as recorded in the proceedings of the Commission dated 28.03.2022; but however at the time of declaration of

12. 1984 SCC OnLine All 1054

the result, all the Members of the Board had retired, but for the Chairman of the Board.

34. It has been contended on behalf of the petitioners that the preparation and declaration of the result, is contrary to the Act, 1982 and Rules and Regulations framed thereunder. They submit that the Board is a multi Member Board consisting of Chairman and ten Members.

35. For ready reference Section 4 of 1982 Act is reproduced below:

“4. Composition of the Board.— (1) The Board shall consist of a chairman and ten members who shall be appointed by the State Government.

(2) A person shall not be qualified for appointment as chairman unless he—

(a) is or has been a Vice-Chancellor of any University established by law; or

(b) is or has been in the opinion of the State Government an outstanding officer or the Administrative service not below the rank of secretary to the State Government or Director of Education, Uttar Pradesh.

(c) is in the opinion of the state government an eminent person having made valuable contribution in the field of education.

(3) Of the members,—

(a) two shall be persons who are educationist having made significant contribution in the field of education;

(b) two shall be persons who are or have been, in the opinion of the State Government, an outstanding officer of the State Educations Service not below the rank of Additional Director;

(c) other shall be persons who,—

(i) have worked as a professor in any university established by law in Uttar Pradesh or as a Reader of any Degree College recognised by or affiliated to such university for a period of not less than ten years; or

(ii) have worked as a Principal of any institution recognized under the Intermediate Education Act, 1921 for a period of not less than ten years; or

(iii) are, in the opinion of the State Government, an eminent educationist having made valuable contribution in the field of education.

(iv) "is interested in the field of Education and a graduate from a recognized University."

(4) Every appointment under this section shall take effect from, the date on which it is notified, by the State Government."

36. Section 9 of the Act, 1982 provides the powers and duties of the Board; and Section 9(d) specifically states that the recommendations regarding the appointment of selected candidates, fall within the powers and duties of the Board.

37. Section 9(d) is reproduced below:

“9. Powers and duties of the Board. The shall have the following powers and duties namely:

a.

b.

c.

d. to make recommendations regarding the appointment of selected candidates;

.....”

38. The procedure for selection by direct recruitment has been provided under Section 10 of the Act, 1982; which is also reproduced below:

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

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

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

39. In the light of the aforesaid, it has been submitted that the power of the Board is to be exercised in accordance with the Regulations framed under Section 34 of the Act, 1982; and the applicable Regulations, 1998 which provides for the procedure to be followed by the Board, for discharging its duties and performing its functions, under the Act.

40. Regulation 4 of “U.P. Secondary Education Services Selection Board (Procedure and Conduct of Business) (First) Regulations, 1998¹³” envisages meeting of the Board, to be convened in accordance with the said provision; and Regulation 4(6) states that the quorum for a meeting shall be one half of the total number of Members for the time being.

41. For ready reference Regulation 4(6) is reproduced below:

“4(6)- The quorum for a meeting shall be one half of the total number of members of the time being:

Provided that no quorum shall be necessary for a meeting adjourned for want of quorum.”

42. Thereafter Regulation 4(9)(a), requires that as far as possible, the decision in a meeting shall be unanimous.

43. For a ready reference Regulation 4(9)(a) is reproduced below:-

“4(9)(a) - The decision in a meeting shall, as far as possible be unanimous. In case of any difference of opinion, the decision shall be taken by a majority of votes of the members present and voting and if no decision can be taken due to equality of votes, the Chairman or the Vice Chairman or the member presiding over the meeting shall have and exercise a casting vote.

44. In view of the aforesaid the contention of the learned counsel for the petitioners, is that the aforesaid statutory provision clearly demonstrates that the Board exercises its functions on the basis of a decision taken in "meeting"; and there cannot be a meeting of a single person.

45. Reliance has also been placed on Chapter 6 of "Shackleton on the Law and Practice of Meetings" (9th Edition) published by "Sweet & Maxwell" to submit that the word “quorum” denotes the number of Members of a ‘body of persons’, whose presence at a meeting is requisite, in order that business may be validly transacted.

46. The word "quorum" means “of whom”. It has further been submitted that the word “quorum” is referable to

13. Regulation, 1998

(i) the concept that a "meeting" must usually consist of more than one person; and

(ii) the necessity, imposed by the regulations of the body concerned, that a minimum number of persons must be present.

47. The said 'number of persons' is to be prescribed under the Rules of that body. However, the aforesaid Rule may not apply, when the Rules are either silent or specifically prescribes that the quorum of one person is sufficient; but however the said exception is generally unknown in local government practice; and as such the declaration by the Chairman alone, violates the mandates of the Rules and Regulations, as referred to herein above.

48. Per contra, Shri G.K. Singh, Senior Counsel appearing on behalf of the respondents and Shri K. Shahi, Advocate appearing on behalf of the respondent Commission have made submissions, by placing reliance on a decision of this Court in **Deepak Kumar Agarwal vs. State of U.P. Through Secretary (Secondary Education) U.P. Lucknow**¹⁴, to the effect that the Chairman alone could constitute the Board; and it is an admitted fact that at the time when the interviews were held, the other Members were available in the Board, they being also present in the Interview Board. The declaration of the result based upon those interviews, was simply a ministerial act and was performed by the Board, at the time when only the Chairman was available.

49. The fact that the Chairman was assisted in that work by the Secretary and the Deputy Secretary of the Board, is of no consequence.

50. It is no doubt that the "quorum" for a meeting was required to be one-half of the total number of members and it is the Chairman who shall preside over the meeting of the Board. It also cannot be deciphered from the Regulations, 1998 that the meeting of the Board could be held with the quorum of only the Chairman; but at the same time there is no embargo otherwise also.

14. (Writ A No. 133 of 2022)

51. A co-ordinate Bench of this Court in the case of Deepak Kumar Agarwal (Supra) was seized with a matter, wherein also due to an exigency, the Chairman alone had acted as a member, when there existed no other appointed Member of the Board. The aforesaid judgment demonstrate that a decision for according approval to the punishment against an employee was to be taken; and the Court having considered the doctrine of necessity, gave it's approval in the backdrop that any interpretation otherwise, in absence of availability of Members, the entire functioning of the Board would come to a standstill.

52. In the case of **Election Commission of India and another vs. Dr. Subramanian Swamy and others**¹⁵, the 'doctrine of necessity' was expounded; and it was held that it is well settled that the law permits certain things to be done as a matter of necessity, which it would otherwise not countenance on the touchstone of judicial propriety.

53. It has also been contended on behalf of the petitioners that the said 'doctrine of necessity' can be invoked in cases of bias, where there is no other authority or Judge to decide the issue; and in the present case the Commission being defunct, the Chairman was not justified in discharging the duties of the Board i.e. the declaration of the panel alone, especially when there was not even a single Member functioning. For ready reference Para-16 of the said judgment is reproduced below:

"16. We must have a clear conception of the doctrine. It is well settled that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. Stated differently, the doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It is often invoked in cases of bias where there is no other authority or Judge to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit therefrom. Take the case of a certain taxing statute which taxes certain perquisites allowed to Judges. If the validity of such a provision is challenged who but the members of the judiciary must decide it. If all the Judges are disqualified on the plea that striking down of such a legislation would benefit them, a stalemate situation may develop. In such cases the doctrine of necessity comes into play. If the choice is between allowing

15. 1996 (4) SCC 104

biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision-making. In the present case also if the two Election Commissioners are able to reach a unanimous decision, there is no need for the Chief. Election Commissioner to participate, if not the doctrine of necessity may have to be he invoked.”

54. In **Lalit Kumar Modi Vs. Board of Control of Cricket in India**¹⁶, the doctrine of necessity was invoked to rule that, the law did not contemplate a vacuum and a solution had to be found, rather than allowing the problem to boil over. For ready reference Para-38 is reproduced below:

“38. The doctrine of necessity is a common law doctrine, and is applied to tide over the situations where there are difficulties. Law does not contemplate a vacuum, and a solution has to be found out rather than allowing the problem to boil over. Otherwise, as proposed by Shri Jethmalani one will have to wait for one more year for a new President to be elected, which submission cannot be accepted.”

55. The doctrine of necessity, was further considered in the case of **Babasaheb Wasade and others vs. Manohar Gangadhar Muddeshwar and others**¹⁷.

56. For ready reference paragraphs 15, 16, 17, 18, 19 and 20 are reproduced below:-

“15. There is a doctrine of necessity where under given circumstances an action is required to be taken under compelling circumstances. One of the earlier proponents of the doctrine of necessity in Common Law was William Blackstone, who in his book, Commentaries on the Laws of England, “Book I Of the Rights of Persons”, discusses the meeting of the convention—Parliament before Charles II's return, noting that it was an extraordinary measure taken out of necessity. He describes the use of the doctrine of necessity to justify actions that would otherwise be outside the norm due to the urgent need to restore order. He describes another instance during the Glorious Revolution when the Lords and Commons assembled and acted without the usual royal summons, justified by the extraordinary circumstance of a perceived vacant throne and the urgent need to address the governance of the country.

16. 1996 (4) SCC 104

17. (2024) 11 Supreme Court cases 705

“It is also true, that the convention—Parliament, which restored King Charles the Second, met above a month before his return; the lords by their own authority, and the commons in pursuance of writs issued in the name of the keepers of the liberty of England by authority of Parliament: and that the said Parliament sat till the twenty-ninth of December, full seven months after the restoration; and enacted many laws, several of which are still in force. But this was for the necessity of the thing, which supersedes all law; for if they had not so met, it was morally impossible that the kingdom should have been settled in peace. And the first thing done after the king's return, was to pass an act declaring this to be a good Parliament, notwithstanding the defect of the king's writs. So that, as the royal prerogative was chiefly wounded by their so meeting, and as the king himself, who alone had a right to object, consented to wave the objection, this cannot be drawn into an example in prejudice of the rights of the crown. Besides we should also remember, that it was at that time a great doubt among the lawyers, whether even this healing act made it a good Parliament; and held by very many in the negative: though it seems to have been too nice a scruple.

It is likewise true, that at the time of the revolution, AD 1688, the Lords and Commons by their own authority, and upon the summons of the Prince of Orange, (afterwards King William) met in a convention and therein disposed of the crown and kingdom. But it must be remembered, that this assembling was upon a like principle of necessity as at the restoration; that is, upon an apprehension that King James the second had abdicated the government, and that the throne was thereby vacant: which apprehension of theirs was confirmed by their concurrent resolution, when they actually came together. And in such a case as the palpable vacancy of a throne, it follows ex necessitate rei, that the form of the royal writs must be laid aside, otherwise no Parliament can ever meet again. For, let us put another possible case, and suppose, for the sake of argument, that the whole royal line should at any time fail, and become extinct, which would indisputably vacate the throne: in this situation it seems reasonable to presume, that the body of the nation, consisting of Lords and Commons, would have a right to meet and settle the government; otherwise there must be no government at all. And upon this and no other principle did the convention in 1688 assemble. The vacancy of the throne was precedent to their meeting without any royal summons, not a consequence of it. They did not assemble without writ, and then make the throne vacant; but the throne being previously vacant by the king's abdication, they assembled without writ, as they must do if they assembled at all. Had the throne been full, their meeting would

not have been regular; but, as it was really empty, such meeting became absolutely necessary. And accordingly it is declared by statute 1 W & M. st. 1. c. 1. that this convention was really the two Houses of Parliament, notwithstanding the want of writs or other defects of form. So that, notwithstanding these two capital exceptions, which were justifiable only on a principle of necessity, (and each of which, by the way, induced a revolution in the government) the rule laid down is in general certain, that the king, only, can convoke a Parliament.”

16. The doctrine of necessity has been elucidated by a Constitution Bench of this Court in Charan Lal Sahu v. Union of India [Charan Lal Sahu v. Union of India, (1990) 1 SCC 613, para 105] as follows: (SCC pp. 694-95, para 105)

“105. The question whether there is scope for the Union of India being responsible or liable as a joint tortfeasor is a difficult and different question. But even assuming that it was possible that the Central Government might be liable in a case of this nature, the learned Attorney General was right in contending that it was only proper that the Central Government should be able and authorised to represent the victims. In such a situation, there will be no scope of the violation of the principles of natural justice. The doctrine of necessity would be applicable in a situation of this nature. The doctrine has been elaborated, in Halsbury's Laws of England, 4th Edn., p. 89, Para 73, where it was reiterated that even if all the members of the Tribunal competent to determine a matter were subject to disqualification, they might be authorised and obliged to hear that matter by virtue of the operation of the common law doctrine of necessity. An adjudicator who is subject to disqualification on the ground of bias or interest in the matter which he has to decide may in certain circumstances be required to adjudicate if there is no other person who is competent or authorised to be adjudicator or if a quorum cannot be formed without him or if no other competent tribunal can be constituted. In the circumstances of the case, as mentioned hereinbefore, the Government of India is only capable to represent the victims as a party. The adjudication, however, of the claims would be done by the court. In those circumstances, we are unable to accept the challenge on the ground of the violation of principles of natural justice on this score. The learned Attorney General, however, sought to advance, as we have indicated before, his contention on the ground of de facto validity. He referred to certain decisions. We are of the opinion that this principle will not be applicable. We are also not impressed by the plea of the doctrine of bona fide representation of the interests of victims in all these proceedings. We are of the opinion that the doctrine of bona fide representation would not be quite relevant and as such the

decisions cited by the learned Attorney General need not be considered.”

17. The applicability of the doctrine of necessity was further clarified by this Court in Election Commission of India v. Subramaniam Swamy [Election Commission of India v. Subramaniam Swamy, (1996) 4 SCC 104] as follows: (SCC pp. 117-18, para 16)

“16. We must have a clear conception of the doctrine. It is well settled that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. Stated differently, the doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It is often invoked in cases of bias where there is no other authority or Judge to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit therefrom. Take the case of a certain taxing statute which taxes certain perquisites allowed to Judges. If the validity of such a provision is challenged who but the members of the judiciary must decide it. If all the Judges are disqualified on the plea that striking down of such a legislation would benefit them, a stalemate situation may develop. In such cases the doctrine of necessity comes into play. If the choice is between allowing a biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision-making. In the present case also if the two Election Commissioners are able to reach a unanimous decision, there is no need for the Chief Election Commissioner to participate, if not the doctrine of necessity may have to be invoked.”

18. In the present case, had the Working President not convened the meeting, the elections of the Executive Body would have been in limbo for an unreasonable amount of time. The convening of the meeting by the Working President upon the requests by the 16 surviving members was a “necessity” at the time.

19. There is one more aspect of the matter to be discussed here with respect to the duties of the “Working President”. Clause 11 of the Bye-laws recognises a Working President and also defines his rights and duties. The same is reproduced below:

“11. “Working President”—

The Rights and Duties of Working President:

1. To complete the work as per the written instructions of the President of the Shikshan Prasarak Mandal, the Executive Body of the Mandal and the General Body of the Mandal.

2. Make efforts from the point of extending the area of operation of the Shikshan Prasarak Mandal.”

As per the above clause, the “Working President” was to act on the directions of the President, Executive Body and the General Body. In the present case, the recognition was by almost all the members of the General Body. He had no option but to call for a general body meeting in accordance with the rights and duties conferred upon him.

20. In the present case, it was not only appropriate but also legal for the surviving members to request for convening a meeting. Further in the present case, as many as 16 members had requested in writing for convening the meeting. If the submission of the objectors is to be accepted that the Working President could not convene the meeting, then no alternative has been suggested by the objectors as to who could convene the meeting. Alternatively, the President and Secretary who were authorised under the bye-laws had died and no election had been held for replacing them. Even the Vice-President and the Joint Secretary had also passed away and they had also not been replaced by any fresh elections. The only person who could be said to be managing the affairs of the Society was the Working President Mr Wasade, and in particular, when all the 16 surviving and valid members had made a request for convening a meeting, no fault could be found with the decision of the Working President Mr Wasade to convene the meeting. The other option could have been that all the 16 members could have themselves nominated any one of the members to chair the meeting of the Executive Body and thereafter they could have proceeded to take appropriate decisions. In such situation, we are of the view that the convening of the meeting for holding the elections on 8-9-2002 cannot be faulted with. Question 1 is answered accordingly in favour of the appellants.”

57. In the facts of the present case, there existed an administrative exigency and it is no doubt that it is the power and duty of the Board to make recommendation, regarding the appointment of selected candidates; but however there exist no provision under the Statute or the Regulation, containing a negative clause, to prevent the Chairman alone to act as a Board when there exists no other Member appointed to the Board. In case the doctrine of necessity is not invoked, the entire exercise which was initiated in the year 2013 and was sought to be concluded in the year 2022, would have become a futile exercise, since admittedly the Members of the Board were not present.

58. Though the argument of the learned counsel for the petitioners appears to be attractive at the first blush; that the doctrine of necessity can be invoked only when the facet of bias is present; but after careful considerations, in the opinion of the Court, the doctrine of necessity cannot be curtailed, to have its applicability only when there is a facet of bias; but it has also to be seen in a proper spectrum, when in cases of administrative exigencies and in performance of a public duty by any authority, a situation arises when there is a possibility of a vacuum and the entire administrative exercise to be rendered as a futile exercise, in order to save the process, the doctrine of necessity can very well be invoked, as has been done in the present case, where though at the time of interview, members were available and only by the time Select Panel was to be declared, the exigency arose and the Chairman alone had to declare the same; and merely the presence of ministerial and administrative staff, alone would not vitiate the entire exercise.

59. In the present case, when the interviews were held and the results were collated, the members of the Board were present in the interview Board and made recommendations; and thereafter though it was the onerous duty of the Board to make recommendations of the selected candidates also; but on account of all the Members having been retired till that point of time, the declaration of the result by the Chairman alone, cannot be said to be beyond the spectrum of the doctrine of necessity; and any interpretation to the contrary may hamper the vital functionary of the States and in the special facts and circumstances of the case, it cannot be said that by merely including certain officers of the Commission, the declaration/recommendation of the selected candidates, by the Chairman in the capacity of the Board, stands vitiated. Accordingly, the issue stands decided in favour of the Commission.

Issue No.2:- *Whether the guidelines which were framed by the Commission and as upheld in the case of Inderraj Singh Yadav (Supra) were required to be followed in the scheme of the Regulations, 1998;*

and a departure from the same would breach the legitimate expectations of the candidates ?

60. Shri Ashok Khare, learned Senior Counsel appearing on behalf of the petitioners, contends that the provisions of the Act, 1982 and the Rules framed thereunder, from time to time provides for the selections and the procedure to be followed; and one of such requirement, even as per the guidelines of the Commission, was to consider the ‘two Senior-Most Teachers’ of the Institution, along with five candidates for each individual Institution, who were thereafter subjected to interview along with the said two Senior-Most Teachers. He submits that such a provision, which stands incorporated in the guidelines of the Commission and as approved in the case of **Indra Raj Singh Yadav** (supra), also exist under the U.P. Intermediate Education Act, 1921 [hereinafter referred to as Act 1921].

61. Regulation 10(dd) of Chapter II of Regulations framed under the Act, 1921 reads as follows:

“(dd) Where the post advertised under Clause (a) is that of Principal of an institution the two seniormost teachers of such institution in the Lecturer's grade and where the post advertised is that of Headmaster for an institution the two seniormost teachers of such institution in the L.T. Grade who possess the prescribed minimum qualification for such post and have to their credit a mini-mum of ten years continuous service in the respective grade, including the period, if any, during which they have worked temporarily as principal/ Headmaster shall also be entitled to be called for interview for that post even if they do not come within the first seven places under Clause (d).”

62. The said procedure was even followed after the enforcement of Act, 1982 and continued under Rules, 1983 and Rules, 1998; and at no point of time there existed any provision, as to how the inter-se comparison of two senior-most teachers would be made, with reference to the direct applicants.

63. By placing reliance on para-21 of the **Indra Raj Singh Yadav** (supra), the learned counsel for the petitioners submits that the method required preparation of a list of five candidates for each individual Institution,

who were thereafter subjected to interview along with two Senior Most Teachers.

64. In case of 'Senior Most Teacher' secures the highest marks amongst such seven persons, he was declared selected, failing which the Institution was thrown open and was to be filled up from amongst direct applicants, on the basis of merits and preferences expressed by them.

65. He further submits that the aforesaid guidelines were issued with a view to balance the competing claims of direct applicants and the two Senior Most Teachers. However, in the impugned selection process, no such pool of seven candidates, including the two Senior Most Teachers of the Institution in question, was prepared; rather, in material departure from the aforesaid guidelines, the respondents prepared an overall merit list comprising of all the candidates, including the two Senior Most Teachers; and based on such merit list, the final select list was published. As a result, very few or none of the 'Senior Most Teachers' were included in the select panels of the different divisions, for e.g. in the case of Aligarh Division, not even a single Senior-Most Teacher was selected.

66. Shri Ashok Khare, learned Senior Counsel, vehemently submitted that the procedure approved by the Division Bench judgment in the case of **Indra Raj Singh Yadav (supra)** has consistently been followed even after the enforcement of the Rules, 1998, namely, by making an *inter se* comparison between the 'Senior-Most Teacher' and the 'direct applicants.'

67. He further submits that no subsequent guidelines have been brought on record by the Commission, envisaging the procedure which has been followed, and the proceedings of the Commission dated 17.11.2021, 16.12.2021, 02.03.2022 and 28.03.2023, upon which reliance has been placed by the respondents, do not indicate any such departure from its earlier guidelines. As a matter of fact, the decisions dated 02.03.2022 and 28.03.2023 are subsequent in point of time and, as such, no reliance can be placed upon the same, as the law is well settled that the rules of

the game cannot be changed midway. (**Reference: Tej Prakash Pathak v. Rajasthan High Court**,¹⁸)

68. Per contra, Shri K. Shahi, learned Advocate appearing on behalf of the Commission, submits that the petitioners were well aware of the said procedure and were given 21 days' notice of the interview programme, which was published vide communication dated 22.02.2022. After downloading the interview letters from the official website, they participated in the selection process without raising any objection. He further submits that the claim of the Senior-Most Teacher is confined only to the Institution in question and that, in case he secures higher marks than the other candidates who have applied through direct recruitment, having given the first preference to the said Institution, he would have an opportunity to be considered for appointment in the said Institution.

69. In response to the argument, pertaining to the guidelines framed by the Commission and as considered by this Court in the case of **Indra Raj Singh Yadav (supra)**, he submits that under Rules 4, 6 and 7 of the Rules, 1983, and Regulations 6 and 8 of the Regulations, 1983, there was no provision for the preparation of a merit list or for prescribing any guidelines for conducting Interviews. Therefore, in the aforesaid circumstances, the Commission framed guidelines for conducting the then selection process, which were approved by this Court in the case of **Indra Raj Singh Yadav (supra)**. The Rules, 1995 were thereafter framed, whereby the criteria for selection was changed in the following manner:-

(a) Quality Point Marks were prescribed in Appendix 'E', as contemplated under Rule 12(2), which had not been prescribed under the Rules, 1983.

(b) After conducting the interview, the options exercised by the candidates were to be considered for preparation of the panel, as contemplated under Rule 12(3).

70. The selections made by the Commission under the Rules, 1995 were challenged by the Officiating Principals in the case of **Balak Singh**

¹⁸ (2025) 2 SCC 1

Kushwaha vs. State of U.P.¹⁹ which challenge was dismissed, and the criteria prescribed under Rule 12 of the Rules, 1995 was upheld.

71. By way of U.P. Act No. 25 of 1998, a new set of Rules, 1998 was framed, and the validity thereof was also upheld up to the stage of the Apex Court in the case of **Balbir Kaur (supra)**. The criteria for selection was approved in the following manner:-

- (a) Region-wise selection is permissible.
- (b) The experience prescribed under the Regulations framed under the U.P. Intermediate Education Act, is not applicable in view of the proviso contained in Rule 12(5) of the Rules, 1998.
- (c) Reservation is not applicable to the post of Principal.

Under the Rules, 1998, a detailed procedure has been prescribed in the following manner:

“A. Publication of advertisement

B. Preparations of merit list in accordance with the provision mentioned in Clause i to iv of Sub Rule 5 of Rule 12 for short listing the five times candidates.

C. Experience other than mentioned in the Note of Clause iv of Sub Rule 5 of Rule 12 has been excluded.

D. Detail guidelines for providing the marks in interview has been mentioned in Clause v of Sub Rule 5 of Rule 12

E. Thereafter preparation of merit after adding the marks provided in clause iv and v of Sub Rule 5 of Rule 12

F. Sub Rule 7 of Rules 12 provides the non disclosure of the merit.

G. Thereafter panel shall be prepared after considering the options submitted by the candidates in accordance with the provision contained in Sub Rule 8 of Rule 12.

H. Thereafter a detail procedure has been prescribed for allocation of the Institution under Sub Rule 10 of Rule 12. H.

I. Therefore the selection has been made on the basis of the provision contained under Rule 12.”

72. In view of the aforesaid, he submits that the guidelines which find mention in the case of **Indra Raj Singh Yadav (supra)** are not applicable

19 1998 SCC Online All 674

after the enforcement of the Rules, 1995 and the Rules, 1998, the validity of which has been upheld up to the stage of the Apex Court in the cases of **Balak Singh Kushwaha (supra)** and **Balveer Kaur (supra)**, respectively.

73. He maintains that the procedure which has been followed emanates from the Rules, 1998; and the petitioners have not been able to point out any provision contained in the Rules, 1998, which has been changed during the selection process. As regards the guidelines framed by the Commission, he submits that the same was issued under the framework of the Rules, 1983; and were confined to a particular selection, which was the subject matter of consideration before this Court, in the case of **Indra Raj Singh Yadav (supra)**. The said guidelines, therefore, cannot be said to be applicable to the present selection as well or construed as a promise.

74. The petitioners participated in the selection proceedings without raising any objection. Therefore, in view of the settled principle of law, the present writ petition is not maintainable.

75. Sri G.K. Singh, learned Senior Advocate, who also appears on behalf of the selected candidates in the connected petition, submits that certain candidates (**Civil Misc. Writ-A No. 19725 of 2022, Hari Prakaash Narain v. State of U.P.**) have already superannuated and are continuing as Officiating Principals, under the extension granted to teachers/Principals under the Regulations.

76. He further submits that the said candidates could officiate as Principals only until a regularly selected candidate from the Board was appointed, and that no candidate has a vested right to continue in the post till the end of the academic session. He has placed reliance upon the decision in the case of **R.L. Prasad v. State of U.P. and others**²⁰.

77. He further submits that once a regularly selected candidate has been appointed to the post of Principal and the incumbents have attained the age of superannuation, no further appointment can be granted to such

²⁰ 1987 EWC 1314

candidates, as held by this Court in the case of **Committee of Management, Jagdish Saran Rajvanshi Kanya Inter College, Meerut & Anr. v. Joint Director of Education & Ors.**²¹. For ready reference para 12 is reproduced below:-

“From the aforesaid discussions it is clear that once a teacher has attained the age of superannuation, in other words age of 60 years or 58 years, as the case may be, he has no vested right to continue in service. The order of appointment, thus, could not be issued in favour of such teacher though selected for the post by the Commission, after attaining the age of superannuation. In our opinion, the educational authorities as well as committee of management were not justified in issuing the letter of appointment in favour of teacher for the post of Principal who had already attained the age of superannuation. Under no provision of the Act or the Rules or the Regulations such action can be justified as the panel became ineffective and it was not required to be implemented in respect of candidate who had already attained the age of superannuation. The only step required by the authorities of the education department and the committee of management was to issue the letter of appointment in favour of the next candidates shown in the order of preference.”

78. In view of the aforesaid, he submits that a challenge to the selection process at the behest of such a candidate cannot be maintained, and the said writ petition has become infructuous. In support of the aforesaid proposition of law, he has placed reliance upon the decisions reported in the case of **Kumari Chitra Ghosh and another v. Union of India and others**²²

“12. The other question which was canvassed before the High Court and which has been pressed before us relates to the merits of the nominations made to the reserved seats. It seems to us that the appellants do not have any right to challenge the nominations made by the Central Government. They do not compete for the reserved seats and have no locus standi in the matter of nomination to such seats. The assumption that if nominations to reserved seats are not in accordance with the rules all such seats as have not been properly filled up would be thrown open to the general pool is wholly unfounded. The Central Government is under no obligation to release those seats to the general pool. It may in the larger interest of giving maximum benefit to candidates belonging to the non-reserved seats release them but it cannot be compelled to do so and the instance of students who have applied for admission from out of the categories for whom seats have

21 (2000) 2 UPLBEC 1161

22 1969 (2) SCC 228

not been reserved. In our opinion the High Court was in error in going into the question and holding that out of the nine seats filled by nomination to had been filled contrary to the admission rules and these would be converted into the general pool. Since no appeal has been filed against that part of the order we refrain from making any further observations in the matter.”

79. In the case of **Dr. N.C. Singhal v. Union of India and others**,²³ the Supreme Court held as below:-

“21. Having examined the challenge to the promotion of respondents 4 to 24 on merits, it must be made clear that the appellant is least qualified to question their promotions. Each one of them was promoted to a post in supertime grade II in a speciality other than Ophthalmology and appellant admittedly was not qualified for any of these posts. Even if their promotions are struck down appellant will not get any post. Incidentally High Court also upheld their promotions observing that by the time the petition was heard each one of them had requisite service qualification and, therefore, the promotions could not be struck down. Once the challenge on merits fails the second string to the bow need not be examined. Having said all this appellant is least competent to challenge their promotions. In a slightly comparable situation this Court in Chitra Ghosh v. Union of India (1970) 1 SCR 413 at p. 420 : (AIR 1970 SC 35), observed as under :

"The other question which was canvassed before the High Court and which has been pressed before us relates to the merits of the nominations made to the reserved seats. It seems to us that the appellants do not have any right to challenge the nominations made by the Central Government. They do not compete for the reserved seats and have no locus standi in the matter of nomination to such seats. The assumption that if nominations to reserved seats are not in accordance with the rules all such seats as have not been properly filled up would be thrown open to the general pool is wholly unfounded".

80. In the case of **Khalid Hussain (Minor) v. Commissioner and Secretary to Government of Tamil Nadu, Health Department, Madras and others**,²⁴ the Supreme Court held as under:-

“7. The remaining contention does not merit consideration. The learned Judges although inclined to the view that respondent No. 6 had really not participated in a National tournament, were entitled to take the view that the Court ought not to, in the facts and circumstances of the case, exercise its discretionary powers under Art. 226 of the Constitution at the instance of the petitioner who was not entitled to any relief merely

23 AIR 1980 SC 1255

24 AIR 1987 SC 2074

because the Selection Committee was wrong in its view that respondent No. 6 had played in a National tournament although he had in fact played in a zonal tournament. Any other view would have been manifestly unjust as respondent No. 6 though admitted to the Regional Engineering College, Kurukshetra had given up his seat there on his being admitted to the M.B.B.S. course and had already undergone his course of studies for more than six months. The learned Judges rightly observe that it is not obligatory for the Court to interfere in all cases unless justice of the case so demands.”

81. Shri G.K. Singh, learned Senior Advocate, while responding to the arguments advanced by the counsel for the petitioners, submits that the judgment in the case of **Indra Raj Singh Yadav (supra)**, having approved the guidelines framed by the Commission, is not required to be followed by the Board while making the present selection, as the Rules, 1998 themselves lay down a detailed procedure, which was not available under the Rules, 1983.

82. While placing reliance upon Rule 6 of the Rules, 1983, he submits that only broad parameters were provided under the said Rules, on the basis whereof the selections were to be made. However, the said provision lacked necessary details. It is for this reason that a set of guidelines was framed by the Commission for making selections to the post of Principal. These guidelines were under consideration before this Court in the case of **Indra Raj Singh Yadav (supra)**, which fact would be evident from a bare perusal of **paragraph 6** onwards of the said judgment.

83. Shri G.K. Singh, learned Senior Counsel, submits that the selection under challenge has been made in accordance with the Rules, 1998. Rule 11 provides that the names of the two Senior-Most Teachers shall be forwarded by the Committee of Management to the Board, who would be considered for appointment to the post of Principal along with the direct applicants. The procedure for direct recruitment has been laid down under Rule 12 of the Rules, 1998. For ready reference **Rules 11 & 12 of Rules, 1998** are reproduced below:-

“11. Determination and notification of vacancies.--

(1) For the purposes of direct recruitment to the post of teacher, the Management shall determine the number of vacancies in accordance with sub-section (1) of Section 10 and notify the vacancies through the Inspector, to the Board in the manner hereinafter provided.

(2) (a) The statement of vacancies for each category of posts to be filled in by direct recruitment including the vacancies that are likely to arise due to retirement on the last day of the year of recruitment, shall be sent in quadruplicate, in the pro forma given in Appendix "A" by the Management to the Inspector by July 15 of the year of recruitment and the Inspector shall, after verification from the record of his office, prepare consolidated statement of vacancies of the district subject wise in respect of the vacancies of lecturer grade, and GroupWise in respect of vacancies of trained graduates grade. The consolidated statement so prepared shall, along with the copies of statement received from the Management, be sent by the Inspector to the Board by July 31 with a copy thereof to the Joint Director:

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

Provided further that in respect of the vacancies existing on the date of the commencement of these rules as well as the vacancies that are likely to arise on June 30, 1998, the Management shall, unless some other dates are fixed under the preceding proviso, send the statement of vacancies by July 20, 1998 to the Inspector and the Inspector shall send the consolidated statement in accordance with this sub-rule to the Board by July 25, 1998.

Explanation.--For the purposes of this sub-rule the word GroupWise in respect of the trained graduates grade means in accordance with the following groups, namely :

<i>(a) Language</i>	<i>This group consists of the subjects of Hindi, Sanskrit, Urdu, Persian and Arabic;</i>
<i>(b) Science</i>	<i>This group consists of the subjects of Science and Mathematics;</i>
<i>(c) Art and Craft</i>	
<i>(d) Music</i>	
<i>(e) Agriculture</i>	
<i>(f) Home Science</i>	
<i>(g) Physical Education</i>	
<i>(h) General</i>	<i>This group consists of the subjects</i>

	<i>not covered in any of the foregoing groups.</i>
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(b) With regard to the post of Principal or Headmaster, the Management shall also forward the names of two seniormost teachers, along with copies of their service records (including character rolls) and such other records or particulars as the Board may require from time to time.

Explanation.--For the purpose of this sub-rule "seniormost teacher" means the seniormost teachers in the post of the highest grade in the institution, irrespective of total service put in the institution.

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

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

12. Procedure for direct recruitment.—

(1) The Board shall, in respect of the vacancies to be filled by direct recruitment, advertise the vacancies including those reserved for candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes and other reserved categories as applicable to Government service from time to time, in at least two daily newspapers, having wide circulation in the State; and call for the applications through online or offline (OMR Application form) or both for being considered for selection in the Pro-forma published in the advertisement. The pro-forma of the application shall be on OMR sheet which shall be sold through Nationalized bank or post office. For the post of Principal of an Intermediate College or the Headmaster of a High School, the name and place of the Institution shall also be mentioned in the advertisement and the candidates shall be required to give the choice of not more than three institutions in order of preference for any particular Institution or institutions and for no other institution, he may mention the fact in his application.

(2) The Board shall scrutinize the applications and in respect of the post of teacher in Lecturers, Trained Graduates Grade and attached primary section shall conduct written examination. The written examination shall consist of one paper of general aptitude test of two hours, based on the subject. The centres for conducting written examination shall be fixed in district headquarters only and the invigilators shall be paid honorarium at such rate as the Board may like to fix.

(3) The Board shall evaluate the answer sheets through examiner to be appointed by the Board or through Computer and the examiner shall be paid honorarium at the rate to be fixed by the Board.

(4) The Board shall, having regard to the need for securing due representation of the candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens, call for interview such candidates who have secured the maximum marks under sub-clause (2) above in such manner that the number of candidates shall not be less than three and not more than five times of the number of vacancies.

(5) The Board shall, having regard to the need for securing due representation of the candidates belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens, in respect of the post of Principal/Headmaster, call for interview such candidates who have secured maximum marks under the quality points specified in Appendix 'D' in such manner that the number of candidates shall not be less than three and not more than five times of the number of vacancies.

(6) The Board, having regard to the need for securing due representation of the candidates belonging to the Scheduled Castes/Scheduled Tribes and Other Backward Classes of citizens in respect of the post of teacher in Lecturers and Trained graduates grade, call for interview such candidates who have secured the maximum marks under sub-clause (4) above/and for the post of Principal/Headmaster, call for interview such candidates who have secured maximum marks under sub-clause (5) above in such manner that the number of candidates shall not be less than three and not more than five times of the number of vacancies:

Provided that *in respect of the post of the Principal or Headmaster of an Institution, the Board shall also in addition call for interview two senior-most teachers of the Institution whose names are forwarded by the Management through Inspector under clause (b) of sub-rule (2) of Rule 11.*

(7) The marks obtained in the quality points as referred to in sub-rule (5) by the eligible candidates shall not be disclosed to the members of the interview board.

(8) The Board then, for each category of post, prepare panel of those found most suitable for appointment in order of merit as disclosed by the marks obtained by them after adding the marks obtained under sub-clause (4) or sub-clause (5) above, as the case may be, with the marks obtained in the interview. The panel for the post of Principal or Headmaster shall be prepared institution-wise after giving due regard to the preference given by a candidate, if any, for appointment in a particular Institution whereas for the posts in the Lecturers and Trained graduates grade, it shall be prepared subject-wise and group-wise respectively. If two or more candidates obtain equal marks, the name of the candidate who has higher quality points shall be placed higher in the panel and if the marks obtained in the quality points are also equal, then the name of the candidate who is older in age shall be placed higher. In the panel for the post of Principal or Headmaster, the number of names shall be three-times of the number of the vacancy and for the post of teachers in the Lecturers and Trained graduate grade, it shall be larger (but not larger than twenty-five per cent) than the number of vacancies.

Explanation.— *For the purposes of this sub-rule the word “group-wise” means in accordance with the groups specified in the Explanation to sub-rule (2) of Rule 11.*

(9) In the case of Lecturer grade, the Board shall at the time of interview after showing the lists of institutions which have notified the vacancy to it, require the candidates to give, if she/he so desires, the choice of not more than five, such institutions in order of preference where if selected, he/she may wish to be appointed and in the case of teachers in Trained Graduate grade and attached primary teachers such choices shall be given to candidates after preparation of merit list on the basis of written examination by the Board.

(10) The Board shall after preparing the panel in accordance with sub-rule (8), allocate the institutions to the selected candidates in respect of the posts of teachers in Lecturers and Trained graduates grade in such manner that the candidate whose name appears at the top of the panel shall be allocated the Institution of his first preference given in accordance with sub-rule (9). Where a selected candidate cannot be allocated any of the institutions of his preference on the ground that the candidates placed higher in the panel have already been allocated such institutions and there remains no vacancy in them, the Board may allocate any Institution to him as it may deem fit.

(11) The Board shall forward the panel prepared under sub-rule (8) along with the name of the Institution allocated to selected candidates in accordance with sub-rule (10) to the Inspector with a

copy thereof to the Joint Director and also notify them on its notice board. ”

84. A perusal of the aforesaid Rule would indicate that Rule 12(2), provides that the Board shall scrutinize the applications in respect of the posts of Teacher and Lecturer and shall conduct a written examination, whereafter a list of candidates in each category of post shall be prepared on the basis of the marks obtained in the written examination and the marks for special merit, as provided under Rule 12(4). Thereafter, under sub-rule (5), the selection for the post of Headmaster/Principal shall be made, with 60% of the marks being awarded on the basis of the Quality Point Marks specified in Appendix 'A'.

85. It is noteworthy that the Rules, 1983 did not provide for the manner in which Quality Point Marks were to be awarded in the case of a Principal, whereas the Rules, 1998 make specific provision in this regard. Not only this, the Rules, 1998 further provide for the marks to be awarded during the interview, which are divided into three categories, namely, 6% on the basis of subject/general knowledge, 4% on the basis of personality test, and 5% on the basis of ability of expression.

86. Sub-rule (6) provides for the interview of candidates who have secured the maximum marks under sub-clause (v), and stipulates that the number of candidates to be called for interview shall not be less than three times and not more than five times, the number of vacancies.

87. The proviso to the said Rule further lays down that the two Senior-Most Teachers, whose names have been forwarded by the Management, shall also be called for interview. Rule 12(7) provides that the marks obtained on the basis of Quality Point Marks, as referred to in sub-rule (5), by an eligible candidate shall not be disclosed to the members of the Interview Board. Rule 12(8) further requires a panel of candidates found suitable for appointment to be prepared in the order determined on the basis of the marks obtained under clauses (iv) and (v). The said panel for the post of Principal/Headmaster is to be prepared Institution-wise, having due regard to the preferences indicated by the candidates.

88. In view of the aforesaid, he submits that once the Rules, 1998 provide for an elaborate procedure, which was absent under the earlier Rules, 1983, there remains no occasion for the Commission to continue with the guidelines which were framed under the Rules, 1983. He further submits that the aforesaid procedure provides a wider spectrum of opportunity to candidates who deserve to be selected on the basis of merit.

89. He submits that, in case the argument of the petitioners is accepted, by balancing the competing interests of the two Senior-Most Teachers with those of the five direct-recruitment candidates, the same procedure would be detrimental to the remaining candidates, who would be excluded even before the interview. In such an eventuality, the marks obtained in the Interview would become redundant, as such candidates would not get an opportunity to be allotted an Institution of their choice, even if they secure higher marks than the said five candidates who, according to the petitioners, are required to be called for interview vis-à-vis the Institution in question.

90. The preference cannot be determined merely on the basis of Quality Point Marks; rather, all candidates who have opted for a particular Institution should be given a fair opportunity to compete for a position in the said Institution on the basis of their Quality Point Marks and the marks obtained in the interview. He submits that there is a difference of almost 99 marks between respondent No. 7 and the Petitioner, namely, Hari Prakash Narain Dubey, and, as such, the Petitioner is no match for the selected candidate.

91. In response to the aforesaid argument, Shri Ashok Khare, learned Senior Advocate appearing for the Petitioners, submits that the guidelines clearly required the competing interests of the two senior-most candidates to be considered vis-à-vis the five direct recruits. However, in a case where all the direct-recruitment applicants give their first preference to the Institution from which the two Senior-Most Teachers have been recommended, there would be no occasion to accord

any preference to the candidature of the said two Senior-Most Teachers. On the contrary, the said two Senior-Most Teachers would be placed at an inequitable position, since their candidature would be considered only against the said Institution and not against any other institution.

92. As a matter of fact, if the Senior-Most Teachers apply through direct recruitment, giving their first preference to the Institution in question, they would not only be considered for the said Institution on the basis of their preference but also for other Institutions in respect of which they have exercised a preference. As such, he submits that, if the arguments advanced by the respondents are accepted, there would be no preference whatsoever in favour of the Senior-Most Teachers of the Institution in question vis-à-vis the said institution.

93. In view of the aforesaid rival contentions of the parties, the core issue that primarily requires examination is whether the guidelines formulated under the Rules, 1983 and approved by this Court in the case of **Indra Raj Singh Yadav (supra)** are required to be followed notwithstanding the subsequent enforcement of the Rules, 1998. For determining the aforesaid issue, it would be necessary to examine the Rules, 1983 and the decision of this Court in the case of **Indra Raj Singh Yadav (supra)**.

94. The Division Bench of this Court, upon consideration of the matter, found that the methodology adopted by the Commission by way of the guidelines in question, after the occurrence of a vacancy in an Institution and intimation thereof by the Management to the Commission, as required under Rule 4 of the Rules, 1983, was as follows:

“All requisitions made by the Institutions for filling up the posts of Heads of Institutions falling within the region were pooled together and, upon receipt of applications from the general candidates, a graded list was prepared on the basis of Quality Point Marks. The applications submitted by the candidates included their preferences in respect of particular Institutions, each Institution being treated as a separate unit. Thereafter, five candidates were selected from the top of the graded list prepared for each such unit, along with the “teacher candidate” of the

concerned unit, and they were required to appear before an Interview Board constituted for that unit, the candidates being selected by lottery on the date of the interview.”

95. From the aforesaid, it is evident that, along with the two Senior-Most Teachers, only five candidates from the top of the graded list were permitted to participate in the interview. In case one of the two Senior-Most Teachers secured the highest marks, he would stand selected, and only thereafter would the other candidates have an opportunity to be considered.

96. However, under the present scheme, it is not only the top five direct-recruitment candidates who are called for the interview; rather, a merit list is prepared in respect of all candidates who have given their first preference to the Institution in question. Thus, a broader field of consideration is taken into account, instead of limiting the consideration to the top five candidates in the graded list.

97. For ready reference, paragraphs 26, 27, 28 and 29 of **Indra Raj Singh Yadav (supra)** are reproduced below:-

“26. Having given the matter a careful consideration we find that the above contentions are devoid of any substance. The methodology adopted by the Commission has been elaborated in the short counter-affidavit filed on behalf of the respondents referred to above according to which after the occurrence of a vacancy in an Institution and intimation of the same by the Management to the Commission as required under Rule 4, all the requisitions made by various institutions for filling up the posts of heads of institutions falling in a region are pooled together and the various applications received by the general candidates are processed and a graded list prepared on the basis of quality point marks, the details of which are given in Annexure-CA-1 and have been outlined hereinabove. These quality point marks are determined with reference to the criteria as regards the academic record, teaching and administrative experience and the marks allocated are worked out on the basis of the methodology and guidelines indicated in the said annexure. The preference given by each applicant in respect of an Institution treating it as separate unit is also noted. This process is thereafter computerised according to the information supplied by the candidates in their respective formats. After that first five candidates are picked up from the top of the graded list prepared in the unit in the manner indicated above, these along with the teacher candidates of the unit are required to appear before the interview board

constituted for the unit on lottery system on the date of the interview. The board is manned by three experts drawn in accordance with the rules and two members of the Commission. Every candidate is then interviewed by the Board, the interview lasting on an average fifteen to twenty minutes for each candidate. Marks are allotted by individual members of the Board by the method of grading at the end of the interview on the basis of the criteria which has been indicated in Annexure-CA-2 which reads thus:—

"Madhyamik Shiksha Ayog.

The candidates called for interview have to be adjudged by members of the Board for 75 marks, keeping in view the following factors.

- 1. Personality,*
- 2. Knowledge of the subject,*
- 3. Knowledge of current ideas and problems of the educational work and diagnostic attitude towards them.*
- 4. General knowledge.*
- 5. Administrative ability regarding school management.*
- 6. Self expressive and impressive views.*
- 7. Achievement in curricular activities of the regional and State levels."*

27. After the seven candidates referred to have been interviewed the average of the marks given by the members of the Board is calculated and the average for each general candidates is assigned as their respective marks in the interview.

28. In the case of teacher candidates the methodology adopted for computing the marks obtained, by them at the interview may be set out in the own words of the respondents as disclosed in paragraph 4(e) of the short counter-affidavit:-

"In case of two teacher candidates their service record and experience is evaluated by the two members of the commission in the Board on the basis of the guidelines fixed by the Commission. According to which some marks in a definite proportion are availed of the maximum marks fixed for the interview and the service record and experience of the teacher candidate is evaluated against such marks in a manner prescribed by the Commission. The marks obtained thus by the teacher candidates is modulated in the same proportion with the marks obtained by the teacher candidates in interview along with the general candidates. On doing so, of the two marks obtained by the teacher candidates that which stands to the advantage of the teacher candidate is taken into account and accordingly marks so

obtained are assigned to the teacher candidates as their marks in the interview.”

29. As a result of the marks allocated to the seven candidates if it is found that the teacher candidate secured the top position he is selected as the head of the Institution straightway. In case the teacher candidate does not secure the top position, the Institution is thrown open for the general candidates. In the latter case for every Institution so opened for general candidates a graded list is prepared for the unit on the basis of the total marks arrived at by adding the quality point marks to the marks obtained by them at the Interview and the preference given by the general candidates in the category. The first three candidates on the top of such a list are set out in the panel of the Institution and the same is sent to the Deputy Director of Education and the District Inspector of Schools in accordance with the provisions of the Act and the rules made thereunder.”

98. I may also refer to the notification dated 01.01.2022.

For ready reference, paragraph 11 thereof, extracted in the form of paragraphs 4 and 5, is reproduced below:-

“4. प्रश्नगत विज्ञापन में संस्था प्रधान पदों के सापेक्ष आफलाइन प्राप्त आवेदन-पत्रों को बोर्ड द्वारा आनलाइन किया गया है तथा उसमें अंकित सूचनाओं का सत्यापन सम्बन्धित अभ्यर्थियों से कराये जाने का निर्णय बोर्ड द्वारा लिया गया है। आफलाइन आवेदनों के आनलाइन संस्करण के सत्यापन हेतु चयन बोर्ड की वेबसाइट पर विस्तृत अनुदेश, यूजर मैनुअल / प्रक्रिया तथा पोर्टल का लिंक प्रदर्शित है।

5. सम्बन्धित अभ्यर्थी कृपया अनुदेशों का भली भाँति अध्ययन कर यूजर मैनुअल में निर्दिष्ट प्रक्रिया का पालन करते हुये अपने आवेदन की सूचनाओं की सत्यता का सत्यापन कर लें। किसी त्रुटि / मिन्नता की दशा में उसे साक्ष्य सहित अद्यतन करते हुये आवेदित मण्डल के विज्ञापित संस्थाओं में से यथाआवश्यकता नियमानुसार 03 संस्थाओं की अधिमानता का विकल्प भी पोर्टल पर भरें। इस हेतु पोर्टल दिनांक 08.01.2022 तक ही क्रियाशील रहेगा”

99. A perusal of the aforesaid indicates that the applications were submitted online and were required to be verified by the candidates. The website also contained the user manual and the procedure to be followed, and the candidates were required to verify the details and indicate three preferences on the portal by 08.01.2022.

100. It is not the case of the Petitioners that they had not exercised any preference on the online portal or that the consideration was confined to the candidature of the two senior-most lecturers.

101. In view of the aforesaid, the contention that the Petitioners were not aware of the procedure adopted by the Commission after the enforcement of the Rules, 1998 cannot be accepted.

102. It is also necessary to examine whether there has been any departure from the Rules, 1998. Under the Rules, 1998, the manner in which vacancies are to be notified to the Board has been prescribed, and the procedure for selection of candidates for direct recruitment to the post of Principal/Headmaster has also been prescribed. As per Rule 10, the post of Principal of an Intermediate College or Headmaster of a High School is to be filled by direct recruitment.

103. Rule 11 provides for the determination and notification of vacancies. Rule 11(2)(a) deals with the statement of vacancies, whereas Rule 11(2)(b) provides that the Management shall forward the names of the two Senior-Most Teachers, along with copies of their service records, etc., and that they may also apply for direct recruitment to the post of Principal.

104. A reading of Rule 11(2)(b) makes it evident that, while forwarding the statement of vacancies for the posts of teachers, including the post of Principal/Headmaster, as referred to in sub-rule (2)(a), the Management shall also forward the names of the two Senior-Most Teachers. The use of the words “may also” makes it clear that the names of the two Senior-Most Teachers are required to be sent along with the statement of vacancies. The entire exercise has to be undertaken at the commencement of the year of recruitment. It naturally follows that the two Senior-Most Teachers, as existing at the relevant time, when the requisition is sent during the year of recruitment, fall within the zone of consideration under Rule 11(2)(b) of the Rules, 1998, just as was the position under Rule 4(2) of the Rules, 1983. The said position has not been altered; and it is also not the case, that the names of the two Senior-Most Teachers were not forwarded.

105. However, in the context of Rule 4(1) of the Rules, 1983, there was no Appendix 'A' prescribing the manner in which Quality Point Marks

were to be awarded, and it was for this reason that the guidelines were framed by the Commission, as discussed herein above. It is also not the case of the petitioners that the names of the two Senior-Most Teachers were not forwarded by the Management. Their objection, in essence, is that, instead of confining the consideration to the top five candidates in the graded list, all candidates who had given their first preference to the Institution in question, were considered. Further, under the Rules, 1998, the manner in which Quality Point Marks are to be awarded has been specifically detailed in the Appendix. Not only this, three categories have also been prescribed as guidelines, for the allocation of marks during the interview. Thereafter, in terms of Rule 12(8), the Board is required to prepare a panel of candidates found suitable for appointment in the order of merit, as determined on the basis of the marks obtained by them, after adding the marks obtained under sub-clause (iv) or sub-clause (v), as the case may be, to the marks obtained in the interview.

106. The said panel for the post of Principal/Headmaster is prepared Institution-wise, after giving due regard to the preference, if any, expressed by the candidate for appointment to a particular Institution. In terms of the aforesaid criteria laid down under Rule 12, the Commission prepared the panel for the post of Principal/Headmaster Institution-wise, after giving due regard to the preference expressed by the candidate.

107. In view of the aforesaid mandate of the Rules, 1998, the argument advanced by learned counsel for the petitioners that the guidelines framed by the Commission require only the top five candidates from the graded list to be invited for interview cannot be sustained, as Rule 12(8) clearly provides that the panel is to be prepared Institution-wise, after giving due regard to the preference expressed by a candidate for appointment to a particular Institution. As such, restricting the panel to the top five candidates in the graded list would be contrary to, and in contravention of, the mandate of Rule 12(8) of the Rules, 1998.

108. In view of the aforesaid, another argument that, if the two Senior-Most Teachers apply directly, giving first preference to the Institution in

question, they would also be considered only on the basis of merit, and that no preference would thereafter remain in their favour by virtue of their names being recommended by the Management along with the statement of vacancies on the basis of their seniority, also requires examination in the light of Rule 12(8) of the Rules, 1998.

109. It is no doubt, true that the requirement for the Management to forward the names of the two Senior-Most Teachers of the Institution at the time of notifying the vacancies is also a mandate of the Rules, 1998. However, merely on the basis of the said requirement, it cannot be said that any preference is to be given to such candidates. Their candidature is to be considered irrespective of whether they exercise a preference for the Institution in question. As regards the option available to such candidates, to be considered against other Institutions, there is no bar under the Rules, 1998 preventing them from making an application for consideration against the three preferences, as is required of a direct candidate.

110. Accordingly, the apprehension of the petitioners that they would only be considered on the basis of the merit and no preference would thereafter remain in their favour by virtue of their names being recommended by the Management, is also misplaced; as the Rules specifically provides that the Management shall forward their names, by virtue of them being the two senior-most Lecturers in the Institutions; and in case they desired to be considered for any other Institution, in the said case also there is no embargo upon such candidates to appear as direct candidates; and their application shall be considered according to their preference.

111. However in view of Rule 12(8) of the Rules, 1998, the Board is required to prepare a panel of candidates in order of merit, as determined on basis of the marks obtained by them, after adding the marks obtained under Sub-Clause (iv) or Sub-Clause (v), as the case may be; and therefore no preference can be accorded vis-a-vis the direct applicants, for the said preference contrary to the Rule 12 of the Rules, 1998 as

claimed by the petitioners, who are amongst the two senior-most Lecturers and any interpretation to the contrary shall do violence to the statutory provision.

112. The said option was available to the candidates and, admittedly, the Senior-Most Teachers have also submitted their applications online in pursuance of the notification dated 01.01.2022, while complying with the guidelines notified thereunder. It, therefore, cannot be said that they were unaware of the procedure emanating from the Rules, 1998.

113. In view of the aforesaid, the challenge to the selection in question cannot be sustained on the premise that the Commission was required to follow the guidelines which were upheld in the case of **Indra Raj Singh Yadav (supra)**, as the said guidelines pertained to the selection which was under challenge before this Court at a time when the Rules, 1983 were in vogue.

114. The present selection, admittedly, is governed by the Rules, 1998 and, therefore, cannot be faulted in view of the scheme of the Rules, 1998, as discussed herein above. As such, no good ground has been made out for interference in exercise of the power under Article 226 of the Constitution of India.

115. I, may also refer to the three categories of writ petitions, which were mentioned at the inception.

116. The batch of writ petitions categorized as “Category-A” has been filed by the candidates who were not eligible on the last date of filing of the application, i.e. 25.02.2014; and the objection which was being raised by the counsel for the respondents regarding the maintainability of the writ petitions has also not been refuted by any of the counsels appearing in the batch of writ petitions from serial no. 1 to 20 in the cause title. The eligibility is to be seen on the last date of application and as such the said petitioners being not eligible, has no cause of action to challenge or assail the impugned Select List.

117. Sri G.K. Singh, learned Senior Counsel, had also raised a precise contention that the candidates who had reached the age of

superannuation or are working on the extension granted, under the regulations also do not have a vested right to continue till the end of the academic session, and further, no appointment can be granted to such a candidate, as held by this Court in the cases of **Hari Prakash Narain (supra)**, **R.L. Prasad (supra)**, and **Km. Chitra Ghosh (supra)**. This Court finds force in the argument.

118. There was no contention to the contrary raised by the petitioners in the batch of writ petitions which has been shown under Category-B, from serial no. 21 to 37 in the cause title; and as far as the claim of the candidates under Category-C, i.e. from serial no. 38 to serial no. 115 in the cause title, is concerned, their arguments and contentions having been considered, this Court is of the view that the said writ petitions deserve to be dismissed, likewise, on the facts and circumstances stated herein above.

119. Before parting with the judgment, this Court deems it appropriate to place on record its appreciation for the research undertaken by Ms. Pratibha Verma, Research Associate.

120. In view of the above, the entire batch of Petitions, stand dismissed; and the consequences shall follow, while the selection which was initiated in the year 2013, shall be brought to its logical end. However, there shall be no order as to costs.

(Siddharth Nandan,J.)

October 5, 2026
S.Prakash/Piyush