

Reserved on 30th March, 2017

Delivered on 30th May, 2017

A.F.R.

Court No. - 21

Case :- SPECIAL APPEAL DEFECTIVE No. - 442 of 2016

Appellant :- Smt. Sadhna

Respondent :- State Of U.P. And 5 Ors.

Counsel for Appellant :- Vijay Kumar Singh, Hritudhwaj Pratap Sahi, Rahul Kumar

Counsel for Respondent :- C.S.C., A.K. Yadav, Anoop Trivedi, C.B. Yadav, Rajesh Kumar Mishra, Shashank Shekhar Singh

Hon'ble V.K. Shukla, J.

Hon'ble Arun Tandon, J.

Hon'ble P.K.S Baghel, J.

Hon'ble Sunita Agarwal, J.

Hon'ble M.C. Tripathi, J.

(Delivered by Arun Tandon, J. on behalf of V.K.Shukla, J., Sunita Agarwal, J. and M.C. Tripathi, J.) (majority view)

A Division Bench of this Court finding it difficult to agree with the Full Bench judgment in the case of **Raesul Hasan versus State of U.P. & Others** reported in 2015 (6) ADJ 778 referred the following questions for being examined by a Larger Bench vide order dated 15th July, 2016:

a. Whether the Full Bench in the case of Raesul Hasan (supra) has laid down the correct law.

b. Whether there can be two different years of recruitment with reference to the posts, which are within the direct recruitment quota and for the posts within the promotion quota under Rules 10, 11 and 14 of the Rules, 1998.

c. Whether Rule 10 of the Rules 1998 read with the proviso attached to it necessarily entails the determination of the number of vacancies to be filled by way of promotion in that year of

recruitment which would end on 30th of June of the succeeding year by adding all the existing and likely vacancies due for retirement so as to make the proviso workable which requires that the vacancies, which may not be filled by promotion be intimated to the Board for direct recruitment by 31 of July of that year.

d. Whether the view taken by the Full bench would result in giving a leverage to the management to decide as to what would be the year of recruitment under Rule 14 of Rules 1998 or determine the 1st day of the year for eligibility requirements for promotion at its whims and fancies and thereby defeat the right of eligible L.T. Grade teachers for promotion on their turn.

e. Whether determination of the quota under which a particular vacancy in Lecturer's grade would fall has necessarily to be so done with reference to the date of occurrence of vacancy in the institution or the management has a right to club all the vacancies of the recruitment year and decide which is to be filled by direct recruitment and which by promotion.”

The Hon'ble The Acting Chief Justice vide order dated 28th July, 2017 constituted this Special Bench for considering the questions so referred.

We have accordingly assembled. We have heard Sri Anoop Trivedi, Advocate on behalf of the respondent no.6-writ petitioner, Sri G.K. Singh, learned Senior Advocate assisted by Sri Hritudhwaj Pratap Sahi, Advocate on behalf of appellant-respondent, Sri Rajesh Kumar Mishra, Advocate on behalf of respondent no.5 and Sri C.B. Yadav, the learned Additional Advocate General assisted by Sri Shashank Shekhar Singh, learned Additional Chief Standing Counsel on behalf of the State-respondents.

The facts relevant for answering the questions, which have been referred, lie in very narrow compass and are as

under:

Mewa Lal Ayodhya Prasad Gupta Smarak Inter College, Soraon, Allahabad (hereinafter referred to as the "institution") is an aided and recognized institution governed under the provisions of the Intermediate Education Act, 1921 (hereinafter referred to as the 'Act, 1921'). The provisions of the Act, 1921 and the regulations framed thereunder as also those of the U.P. Secondary Education Services Selection Board Act 1982 (hereinafter referred to as the Act 1982) and the rules and regulations framed thereunder are applicable to the teachers of the institution.

A post of Lecturer(Hindi) fell vacant in the said institution in the year 2000. The petitioner, Amar Singh was appointed in the said institution on the recommendation of the Selection Board as L.T. grade teacher on 30.11.2004. He moved an application seeking promotion against the said vacancy of lecturer (Hindi) in the year 2012. This application remained pending.

In the meantime, a Full Bench of this Court in the case of **Raesul Hasan Vs. State of U.P. and others** reported in 2015 (6) ADJ 778 held that the eligibility for the post of lecturer as required to be determined under Rule 14 of the U.P. Secondary Education Services Selection Board, Rules 1998 (hereinafter referred to as the "Rules, 1998"), must be with reference to the first day of the year of recruitment in which the Committee of Management decides to make promotion on the said post. That would be the recruitment year for the purpose of promotion.

Based upon the aforesaid judgment the petitioner filed a fresh representation before the educational authority for his promotion, which was not considered. He, therefore, filed Writ Petition No. 59229 of 2015. The writpetition was disposed of

vide judgment and order dated 26.10.2015 requiring the Education Authority to consider and decide the pending claim.

The claim of the petitioner for promotion has been rejected vide order dated 29.4.2016 on the ground that the petitioner did not possess the required experience of five years of teaching in L.T. Grade on the first day of the year of recruitment in the facts of the case 2000-2001, as required under Rule 14 of the 1998 Rules.

Dissatisfied, the petitioner filed Writ A No. 21753 of 2016 (Dr. Amar Singh vs. State of U.P. & 4 Others). The learned Single Judge, following the judgment of the Full Bench in **Raesul Hasan (Supra)** has allowed the writ petition vide judgment and order dated 13th May, 2016. A direction has been issued to the Regional Joint Director of Education to consider the claim of the petitioner for promotion against the vacant post of lecturer (Hindi) in accordance with the Full bench judgment of this Court in the case of **Raesul Hasan (Supra)**. It is against this judgment that an intra-court appeal has been filed.

The appellant before the Court is a lecturer in Nathu Ram Purohit Balika Inter College, Konch, District Jalaun. She moved an application for her transfer in accordance with Regulations 55 to 62 of Chapter-III of the Regulations framed under the Intermediate Education Act, 1921 (hereinafter referred to as the "Act, 1921") to the institution in question against the same vacancy of lecturer in Hindi in the institution.

It may be recorded that Section 16 of Act, 1982 (hereinafter referred to as the "Act, 1982") does contemplate appointment by way of transfer. It is settled law that an order for transfer can only be made under the statutory provisions applicable against a vacancy, which falls within the quota for

direct recruitment only and with the concurrence of the Committee of Management of the two institutions.

According to the appellant, both the respective Committee of Management granted no objection to the transfer of the appellant and ultimately the matter was placed before the Additional Director who accorded his approval.

Now because of the order of the writ court, her claim for transfer stands frustrated. The appellant, therefore, filed the special appeal along with an application seeking leave to appeal on the ground amongst other that she was a necessary party to the writ proceeding and for her non-impleadment, the writ petition was liable to be dismissed.

Appellant's plea is that the judgment of Full Bench in the case of **Raesul Hasan (Supra)** does not lay down the correct law. The issue as to whether a particular post falls within the quota for direct recruitment is required to be determined under Rule 10 of the Rules, 1998 read with Rule 11 of the said Rules. Such determination is to be done in respect of the existing vacancies as well as those which are likely to fall vacant during the course of the year, i.e. up to the last day of the year of recruitment.

Once the vacancies for direct recruitment in an institution are determined, the remaining vacancies would necessarily fall within the quota for promotion. It is explained that the proviso to Rule 10 of Rules, 1998 specifically provides that if in any year of recruitment, any vacancy cannot be filled by promotion on account of non availability of eligible candidate, it has necessarily to be filled by direct recruitment.

This process, according to the appellant, has to be completed with reference to the year of recruitment in which the

determination of the vacancies is done inasmuch as the vacancy within the quota for direct recruitment has to be notified in the manner laid down under Rule 11 of the Rules, 1998. It is further stated that there cannot be two different meanings for the phrase 'years of recruitment', one for the post within the direct recruitment quota and the other for the posts within the quota for promotion in the same institution.

It was lastly explained that Rule 10 and Rule 11 the Rules, 1998 have to be read in conjunction with Rule 14 for determining as to what would be the first day of the 'year of recruitment' on which a teacher in L.T. Grade must possess five years teaching experience so as to make him eligible for promotion on the post which falls within the promotion quota.

It is, therefore, submitted that the law laid down by the full Bench in **Raesul Hasan (supra)** needs to be reconsidered in light of the Rules 10 to 14 of 1998' Rules so as to make the proviso to Rule 10 of the Rules, 1998 workable and to make first day of the year of recruitment certain, as contained in Rule 14 of the Rules '1998.

It was also stated that if the judgment in the case of **Raesul Hasan (supra)** is given effect to, it will lead to a precarious situation where a teacher not even born on the rolls of the institution on the date of occurrence of vacancy (like in the facts of this case) may set up a claim for promotion after decades only because the management of the institution, at the relevant point of time, did not requisition the vacancy for direct recruitment for years together, despite the fact that there was no suitable eligible person available for appointment by promotion and thereby succeeded in keeping the post vacant for an uncertain period.

The respondent-petitioner on the contrary submitted that

the Full Bench of this Court has taken note of all the statutory provisions which are applicable for determination of vacancies and appointment by promotion. The Full Bench has dealt with the statutory provisions including the proviso to Rule 10 and Rule 14 of Rules, 1998 and has come to a definite conclusion that the words "the first day of the year of recruitment" contained in Rule 14 of Rules, 1998 would mean the first day of the year in which the recruitment is made. It has, therefore, been held that the eligibility of candidates has to be determined with reference to the year in which the Committee of Management decides to fill in the vacancy by promotion.

According to the respondent-petitioner, the date of occurrence of vacancy with reference to the year in which it has caused is wholly irrelevant. He submitted that as the petitioner had completed more than five years of service when his claim for promotion against the post of Lecturer (Hindi) was considered. There is no illegality in the order of the learned Single Judge so as to warrant any interference.

It was also explained to the Court that the Full Bench did not subscribe to the contrary view expressed by the Division Bench in its judgment in the case of **Km. Poonam Vs State of U.P. and others** reported in *2008 (1) ADJ 273 (DB)* and held it to be an incorrect law on the point.

It is on these facts and issues that the aforesaid questions have been referred for consideration to the Larger Bench.

Sri Anoop Trivedi, learned counsel for the writ petitioner raised a preliminary objection with regard to the reference itself being bad.

According to Sri Anoop Trivedi, the Division Bench could

not have doubted the correctness of the Full Bench judgment of this Court in the case of **Raesul Hasan (Supra)**. He has heavily relied upon the judgment of this Court in the case of **Natraj Chhabigarh versus State of U.P. Through Secretary Institutional Finance, U.P. Secretariat, Lucknow & Another** reported in **1997 (30) ALR 24**, wherein it has been held as follows:

“Thus, a necessary corollary the Division Bench is higher Court than the Single Judge Court, and the Full Bench is higher Court than the Division Bench and therefore, correctness of the Division Bench decision cannot be doubted by Single Judge Bench and that of the Full Bench decision cannot be doubted by Division Bench and accordingly judicial propriety demands that the Division Bench decision should not be referred to larger Bench by Single Judge Bench and the Full Bench decision should not be referred to still larger Bench by the Division Bench. It is only for the Benches of coordinate jurisdiction to refer the decisions of equal Benches to the larger Benches, in case they doubt its correctness.”

He would contend that the binding nature of precedents generally and of Full Benches in particular, is the kingpin of our judicial system. It is the bond that binds together what otherwise might well become a thicket of individualistic opinion resulting in a virtual judicial anarchy. According to him this is a self-imposed discipline which rightly is the envy of other Schools of Law. The judgments of the Benches of the same High Court in a limited way are binding in the sense that a judgment cannot be rendered contrary to the earlier decision of a co-equal Bench. At the highest an equivalent Bench can seek reconsideration of the same by a Larger Bench.

Reference has also been made to the order passed by

the Full Bench of the Allahabad High Court in the case of **Rana Pratap Singh versus State of U.P.** Reported in 1995 JIC 1062 (All) (FB). The relevant paragraph whereof reads as follows:

“17. On this aspect another relevant judicial pronouncement comes in Ambika Prasad v. State of U. P. . There, in the context of the U.P. Imposition of Ceilings on Land Holdings Act, 1961, while dealing with the question as to when reconsideration of a judicial precedent is permissible, Krishna Iyer, J. so aptly put it "Every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent".

*19. Implicit, thus, in the disregard by a single Judge or a Division Bench of a binding judicial precedent of a larger Bench or seeking to doubt its correctness for reasons and in circumstances other than those spelt out in Pritam Kaur's case (supra) is what cannot but be treated as going counter to the discipline of law so essential to abide by, for any efficient system of law to function, if not it virtually smacking of judicial impropriety. In other words, it is only within the narrow compass of the rule as stated by the Full Bench in Pritam Kaur's case that **reconsideration of a judgment of a larger Bench can be sought and as has been so expressively put there, such judgments are not "to be blown away by every side wind"**.*

20. We are, with respect, unable to concur or accept as correct these observations, in so far as, they imply that a single Judge can seek, by reference, reconsideration of a binding decision of the Division Bench and much less that the question framed by him, doubting the correctness of a Division Bench, be referred for decision to a Full Bench.”

For the same proposition, Sri Anoop Trivedi, learned

counsel for the writ petitioner has referred the judgment of the Apex Court in the case of **Bharat Petroleum Corporation Ltd. Versus Mumbai Shramik Sangh and Others**, reported in **(2004) 4 SCC 448** and in the case of **Pradip Chandra Parija & Others versus Pramod Chandra Patnayak** reported in **(2002) 1 SCC 1** and **Central Board of Dawoodi Bohra Community and Another versus State of Maharashtra** reported in **(2005) 2 SCC 673**.

On merits, he further submits that it is pertinent to note that the Principal Act specifically sets out distinct provisions for the two sources of appointment, viz direct recruitment and recruitment by promotion.

Further, it is noteworthy that neither Section 10 nor Section 12 of the Principal Act provides for any specific provision which may even remotely be construed to state that the appointing authority is mandated to conduct the recruitment each and every year.

As stated above, the said provisions do not, in any case, provide for any chained system of recruitment.

The proviso to the above stated Rule 10 is apparently subject to the provisions contemplated under Rule 14 of the Rules, 1998 which categorically provides for the procedure for recruitment by promotion. It is pertinent to note that the said proviso can be attracted only once the procedure prescribed under Rule 14 of the Rules, 1998 is followed and an opinion is formed that there are no suitable candidates for recruitment by promotion. In other words, the interplay between Rule 14 and proviso to Rule 10 of Rules, 1998 is that in order to ascertain that no suitable eligible candidates are available for promotion and the recruitment may be done by direct recruitment, the

actual test as set out in Rule 14 of Rules, 1998 must be passed, because it is only through Rule 14 of Rules, 1998, as specifically stated therein, that availability of suitable candidates can be ascertained, and not otherwise.

That from bare perusal of the provisions contemplated under Rule 12 of Rules, 1998, it is quite evident that the legislature, in its wisdom, has not provided any specific timeline for the initiation of recruitment or selection process. Additionally, sub-rule (1) of Rule 2 of Rules, 1998, though obliges the Board to advertise the vacancies in 2 daily newspapers, does not stipulate or provide for any specific date or time period within which the advertisement must be published.

The sub-rule (1) of Rule, 14 of Rules, 1998 provides that the question of eligibility qua the qualification is required to be ascertained on the first day of the year of recruitment and not on the date of occurrence of vacancy. Further, it may be added that the said requirement was earlier there in the 1983 Rules, however, subsequently the Rules were amended and the said requirement was dispensed with.

No time period or time line, whatsoever, has been provided in sub-rule (3) of Rule 14 of Rules, 1998. There is no obligation under Rules, 1998 on the Management to prepare the list of eligible teachers within any particular time or in the same year in which the vacancy arose.

In the light of the above-mentioned, it is thus evidently clear that there was no embargo on the clubbing of vacancies of different years for making recruitment by promotion, under the provisions of Rule 14 of Rules, 1998.

He placed reliance upon the following judgments:

- (i) Balbir Kaur & Another versus U.P. Secondary

Education Services Selection Board, Allahabad & Others; 2008 (12) SCC 1,

- (ii) Jammu and Kashmir Public Service Commission etc versus Dr. Narinder Mohan & Others etc.; 1994 (2) SCC 630,
- (iii) Balbir Chand Atri & Others versus State of J & K; 2008 (2) JKJ 167,
- (iv) Rajasthan Council of Diploma Engineers & Another Vs. The State of Rajasthan & Another; 1991 (2) WLC 597.

Sri Anoop Trivedi, learned counsel for respondent-petitioner has also submitted before us that the basic rule of statutory interpretation is that the words used in statute must be provided their simple meaning. He has placed reliance upon the following judgments:

- (i) D.R. Venkatachalam & Others versus Dy. Transport Commissioner & Others; 1977 (2) SCC 273.
- (ii) Chief Justice of Andhra Pradesh & Others versus L.V.A. Dixitulu & others Vs. V.V.S. Krishnamurthy & Others; 1979 (2) SCC 34.
- (iii) Padma Sundara Rao (dead) & Others versus State of T.N. & Others; 2002 (3) SCC 533.
- (iv) Reserve Bank of India versus Peerless General Finance and Investment Co. Ltd. & Others; 1987 (1) SCC 424.
- (v) Rishabh Agro Industries Ltd. versus P.N.B. Capital Services Ltd.; 2000 (5) SCC 515.
- (vi) Kehar Singh & Others versus State (Delhi Administration); 1988 (3) SCC 609.
- (vii) Shashikant Laxman Kale & Another versus Union of

India & Another; 1990 (4) SCC 366.

- (viii) Ameer Trading Corporation Ltd. versus Shapoorji Data Processing Ltd.; AIR 2004 (1) SCC 355.
- (ix) District Mining Officer & Others versus Tata Iron & Steel Co. & Another; 2001 SCC (7) 358.
- (x) Babu Manmohan Das Shah & Others versus Bishnu Das; 1967 AIR (SC) 643.
- (xi) Kanai Lal Sur versus Paramnidhi Sudhukhan; AIR 1957 SC 907.

Sri Anoop Trivedi has also submitted that the Courts are not required to proceed with any preconceived notions for interpreting/determining the meaning of a particular provision/rule.

He further submitted that the rule of construction that same meaning is implied by the use of the same expression in every part of an Act is only one element of the rule. In deciding the true import of the statutory provision, it is necessary to ascertain the purpose behind the particular provision and its setting in the scheme of the statute.

According to him, same words may be used in different sense in same statute and even in the same section.

In support of his case, he has placed reliance upon the following judgments:

- (i) Shamrao Vishnu Parulekar versus The District Magistrate, Thana; AIR 1957 SC 23.
- (ii) Jeewanlal (1929) LTD. Calcutta versus Its Workmen; AIR 1961 SC 1567.
- (iii) Commissioner of Income Tax, Bangalore versus Venkateshwar Hatcheries (P) Ltd. etc. etc.; 1999 (3)

SCC 623.

- (iv) Vangaurd Fire & General Insurance Co. Ltd. Madras versus Fraser & Ross & Another; AIR 1960 SC 971.

Sri G.K. Singh, learned Senior Advocate on behalf of appellant-respondent and Sri C.B. Yadav, learned Additional Advocate General on behalf of the State have supported the referring order and contended that the legal position has already been explained by the Full Bench in the case of **Prashant Kumar Katiyar versus State of U.P. & Others** reported in *2013(1) ESC 221 (All) (FB)*.

We have carefully examined the preliminary objection so raised by Anoop Trivedi, learned counsel for the writ petitioner.

In our opinion, the contention so raised proceeds on misreading of the order of reference made by the Division Bench dated 15th July, 2016.

The Division Bench had only opined that the questions as noticed above did need examination by Larger Bench and accordingly opined as follows:

“Let this order be placed before Hon'ble The Acting Chief Justice for consideration of constituting a larger Bench to answer these issues.”

On a simple reading of the aforesaid part of the order of the Division Bench dated 15th July, 2016, it will be seen that it had not expressed any opinion about the matter being referred to a Bench of larger number of Hon'ble Judges than the Full Bench of this Court i.e. 3 Hon'ble Judges. It was Hon'ble The Acting Chief Justice, who had taken a decision that the matter needs to be examined by 5 Hon'ble Judges and, accordingly,

constituted this Bench.

For a Bench of two Judges, its opinion that the questions referred be examined by a Larger Bench means that the same can be looked into by a Bench of 3 Judges or such larger number of Judges as the Chief Justice desires. We may notice that 3 Judges' Bench is also a Larger Bench for the Division Bench.

Judgments, which have been so heavily relied upon by Sri Anoop Trivedi, learned counsel for the writ petitioner in support of his preliminary objection do not lay down anything to the contrary. What has been laid down in the aforesaid judgments is that a Bench of two Hon'ble Judges cannot directly refer the matter to the Larger Bench. If a Division Bench has any doubt about a judgment of a Full Bench, then it can at best direct the matter to be placed before the Chief Justice for being considered by a Bench of such number of Judges as the Chief Justice may deem fit and proper. It flows from the judgments cited at bar in our opinion that a Bench of lesser number of Hon'ble Judges cannot directly overrule the judgment of a Coordinate Bench or of a Larger Bench. In case a Bench finds it difficult to agree with the law laid down by equal number of Hon'ble Judges or by a larger number of Judges, it can at best direct the matter to be placed before the Chief Justice for consideration of the questions referred by such number of Hon'ble Judges as the Chief Justice may decide. The power of the Chief Justice for the matter being heard by a Bench comprising of larger number of Hon'ble Judges or equal number of Hon'ble Judges or such number of Hon'ble Judges as Hon'ble The Chief Justice may decide, is conceded by all the Advocates at bar. It is within the domain of Hon'ble The Chief Justice to constitute a Bench for hearing

such a reference by a Bench comprising of such number of Judges equivalent to the Bench, whose judgment has been doubted or by a Bench of large number of Hon'ble Judges, than the Bench, which had decided the judgment in doubt. Reference in that regard be made to the judgment of the Apex Court in the case of **Central Board of Dawoodi Bohra Community & Another versus State of Maharashtra & Another** reported in (2005) 2 SCC 673. Relevant paragraph-12 of the said judgment reads as follows:

“12. Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms :-

*(1) **The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or co-equal strength.***

*(2) **A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of co- equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co- equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.***

*(3) The above rules are subject to two exceptions : (i) **The abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any***

strength; and”

In order to keep the records straight, it may be noticed that in the case of **Raesul Hasan versus State of U.P. Through its Secretary, Secondary Education, U.P. Civil Secretariat, Lucknow & Others**) itself a doubt was raised by a learned Single Judge vide order dated 20th December, 2016 passed in *Writ Petition No. 1593 (S/S) of 2001* along with connected petitions in respect of Division Bench Judgment in the case of **Km. Poonam versus State of U.P. & Others** reported in *2008 (1) ADJ 273 (DB)*. The Hon'ble The Chief Justice at the relevant time thought it proper to constitute a Bench of three Hon'ble Judges to answer the questions referred instead of referring the same to a Bench of two Hon'ble Judges. It is this Full Bench Judgment which has been doubted and is under consideration before us.

In view of the aforesaid, the preliminary objection raised by Sri Anoop Trivedi, learned counsel for the writ petitioner is overruled.

In order to examine the legal issues which have been so referred to the present Larger Bench, it would be worthwhile to refer to the statutory amendments which have taken place in the relevant provision applicable in the field.

The U.P. Act No. 5 of 1982 referred to as the 'Act, 1982', as was originally passed by the State Legislature, under Section 10 provided for the procedure of selection of a teacher specified in the Schedule and required the notification of the vacancies to the Selection Commission by the Management in such manner through such officer/authority as may be prescribed, in respect of teachers not included in the Schedule, the same procedure for determination of the vacancies was to apply except that intimation was to be sent to the Selection

Board (See Section 15 of Act, 1982).

It may be recorded that the original Act did not define the term “year of recruitment”. The term “year of recruitment” came to be defined for the first time under the U.P. Secondary Education Commission Rules, 1983 i.e. the Rules framed in exercise of powers under Section 35 of the Act, 1982. Rule 2 (i) of Rules, 1983 reads as follows:

“2. Definitions.-----

....

(i) 'year of recruitment' means a period of twelve months commencing from July 1 of a calendar year.”

Rule 4 of Rules, 1983, which deals with the determination/intimation of the vacancies, provided that the determination of the vacancies shall be done by the Management and communicated to the Commission in the *pro forma* as mentioned in the Appendix 'A', which will include the existing vacancies as well as those likely to fall vacant during the year of recruitment. Rule 4 (2) required such statement of vacancies to be submitted by 15th September of the year of recruitment through Inspector and after verification to be forwarded to the Deputy Director by 15th October with an advance copy to the Commission. The Deputy Director in turn was required to forward the same to the Commission by 15th November. Rule 4 (5) of Rules, 1983 contemplated that if any vacancy occurs at any time during the session or after the requisition has already been sent, the Management shall notify the vacancy to the Inspector within 15 days of its occurrence and the Deputy Director was to deal with the same within 10 days of the receipt thereafter.

The Commission was conferred powers to require the Inspector to notify the vacancies, where the Management has

failed to do so.

So far as appointment of a teacher by promotion is concerned, Rule 9 of Rules, 1983 provided as under:

*“9. Procedure for appointment by promotion.
 -----(1) Where any vacancy is to be filled by promotion, all teachers working in L.T. or C.T. grade, who possess the minimum qualifications and have put **in at least 5 years continuous service as teacher on the date of occurrence of vacancy shall be considered for promotion to the Lecturer or L.T. grade as the case may be, without their having applied for the same.***

***Note.**---For the purpose of this sub-rule, service rendered in any other recognised institution shall count for eligibility, unless interrupted by removal, dismissal or rendered to a lower post.*

(2) The criterion for promotion shall be seniority subject to the rejection of unfit.

(3) The management shall prepare a list of teachers, referred to in sub-rule (1), and forward it to the Commission through the Inspector with a copy of seniority list service records (including the character rolls) and a statement in the pro forma given in Appendix 'A'.

.....”

Thus, it will be seen that under Rules of 1983 for being eligible to be considered for promotion, a teacher was required to have put in at least 5 years of continuous service in the feeding cadre on the date of occurrence of the vacancy in the grade concerned. Therefore, for the purposes of promotion, what was relevant was the date of occurrence of vacancy and fulfillment of five years of continuous service on that date along with other minimum qualifications.

Act of 1982 was amended by U.P. Act No. 8 of 1991 i.e. U.P. Secondary Education Services Commission and Selection Boards (Amendment and Validation) Act, 1991. Provision for appointment by way of transfer was introduced by way of

proviso to Section 16 of Act, 1982. Further amendments were made by U.P. Act No. 26 of 1991, whereby Section 33-A was added to the Act, 1982.

By means of U.P. Act No. 1 of 1993, comprehensive amendments were introduced in the Act, 1982 and for the first time 'year of recruitment' was defined by adding Section 2 (l) to the Act, 1982, which reads as follows:

“2.....

(l) 'year of recruitment' means a period of twelve months commencing from first day of July of a calendar year.”

Section 15 as introduced by U.P. Act No. 1 of 1993 read as follows:

*“15. Procedure for selection of teachers---(1) For the purposes of making appointment of a teacher, the Management shall determine the number of vacancies existing or likely to fall vacant during the year of recruitment and in the case of any post, other than the post of head of institution, also the number of vacancies to be reserved for the candidate belonging to the Scheduled Castes, Scheduled Tribes and other categories of persons in accordance with the rules or orders issued by the Government in this behalf in regard to the institution 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 appointment to the post of **such 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). ”

As a consequence to the amendments under Act No. 1 of 1993, Uttar Pradesh Secondary Education Services Commission Rules, 1995 (hereinafter referred to as the Rules,

1995) were published under notification dated 8th May, 1995. Rules, 10, 11 and 14 of the Rules, 1995 relevant for our purpose read as follows:

“10. Source of recruitment. - Recruitment to various categories of teachers shall be made from the following sources :

(a) Principal of an Intermediate College or Headmaster of a High School by direct recruitment.

(b) *Teachers of lecturers grade.* - (i) 50 per cent by direct recruitment;

(ii) 50 per cent by promotion from amongst substantively appointed teachers of the trained graduates (L.T.) grade;

(c) Teachers of trained graduates (L.T.) grade. - (i) 50 per cent by direct recruitment;

(ii) 50 per cent by promotion from amongst the substantively appointed teachers of Certificate of Teaching (C.T.) Grade :

Provided that if in any year of recruitment suitable eligible candidates are not available for recruitment by promotion, the posts may be filled by direct recruitment :

Provided further that if in calculating respective percentage of posts under this rule there comes a fraction then the fraction of the posts to be filled by direct recruitment shall be ignored and the fraction of the posts to be filled by promotion shall be increased to make it one post.

11. Determination and notification of vacancies. - (1) The Management shall determine the number of vacancies in accordance with sub-section (1) of Section 15 of the Act and notify them through the Inspector, to the Commission in the manner hereinafter provided.

(2) The statement of vacancies for each category of post to be filled in by direct recruitment or by promotion, including the vacancies that are likely to arise due to retirement on the last day of the year of recruitment, shall be sent separately 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 lecturers grade, and group-wise in respect of vacancies of trained graduates (L.T.) grade. The consolidated statement so prepared shall, along with the copies of statement received from the Management, be sent by the Inspector to the Commission by July, 31 with a copy thereof to the Deputy 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 Commission in respect of any particular year of recruitment :

Provided further that in respect of the vacancies existing on the date of commencement of these rules as well as the vacancies that are likely to arise on July 30, 1995 the Management shall, unless some other dates are fixed under the preceding proviso, send the statement of vacancies by June 15, 1995 to the Inspector and the Inspector shall send the consolidated statement in accordance with the sub-rule to the Commission by June 30, 1995.

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

(a) *Language Group.* - This group consists of the subjects of Hindi, Sanskrit, Urdu, Persian and Arabic;

(b) *Science Group.* - This group consists of the subjects of Science and Mathematics;

(c) *Art and Craft group;*

(d) *Music Group;*

(e) *Agriculture Group;*

(f) *Home Science Group;*

(g) *Physical Education Group;* and

(h) *General Group.* - This group consists of the subjects not covered in any of the foregoing groups.

(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 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 Commission.

(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 15 of the Act and notify them to the Commission in the manner and by the date referred to in the said sub-rule. The vacancies notified to the Commission under this sub-rule shall be deemed to be notified by the Management of such institution.

....

14. Procedure for recruitment by promotion. - (1) Where any vacancy is to be filled by promotion all teachers working in trained graduates (L.T.) grade or Certificate of Teaching (C.T.) grade, if any, **who possess the qualifications prescribed for the post and have completed five years continuous service as such on the first day of the year of recruitment shall be considered for promotion to the lecturers grade** or the trained graduates (L.T.) grade, as the case may be, without their having applied for the same.

Note. - For the purposes of this sub-rule, regular service rendered in any other recognised institution shall be counted for eligibility, unless interrupted by removal, dismissal or reduction to a lower post.

(2) The criterion for promotion shall be seniority subject to the rejection of unfit.

(3) The Management shall prepare a list of teachers referred to in sub-rule (3), and forward it to the Commission through the Inspector with a copy of seniority list, service records, including the character rolls, and a statement in the *pro forma* given in Appendix 'A'.

(4) Within three weeks of the receipt of the list from the management under sub-rule (3), the Inspector shall verify the facts from the record of his office and

forward the list to the Commission.

(5) The Commission shall consider the cases of the candidates on the basis of the records referred to in sub-rule (3) and may call such additional information as it may consider necessary. The Commission shall forward the panel of selected candidates within the one month to the Inspector with a copy thereof to the Deputy Director.

(6) Within ten days of the receipt of the panel from the Commission under sub-rule (5), the Inspector shall send the name of the selected candidate to the management of the institution which has notified the vacancy and the management shall accordingly on authorisation under its resolution issue the appointment in the *pro forma* given in Appendix 'E' to such candidate.”

Amendments were introduced in Act, 1982 vide U.P. Act No. 15 of 1995, which was notified in the official gazette on 8th August, 1995. Section 10 of the Act provided for determination of the vacancies existing or likely to fall vacant during the year of recruitment to be notified to the Commission in such manner and through such officer or authority as may be prescribed.

It is needless to emphasize that since Rules, 1995 were in existence, which took care of the determination etc. of the vacancies, no amendments were made in the Rules subsequent to enforcement of Act, 1995, at least none has been brought to our notice.

Further amendments were made in the Act, 1982 by means of U.P. Act No. 25 of 1998. By this amending Act, with the substitution of Chapter II changes were introduced in the definition Clause under Section 2 and Sections 3 to 11 of Act, 1982 as well as Chapter III Section 12, Section 16 and Section 18 were amended. Sections 33-C and 33-D were introduced.

Corresponding amendments were also introduced by

framing and notifying the U.P. Secondary Education Services Selection Board Rules, 1998 (hereinafter referred to as the "Rules, 1998").

Rules of 1998 as far as relevant for our all purposes are Rules, 10, 11 and 14, which are being quoted herein below:

"10. Source of recruitment.--Recruitment to various categories of teachers shall be made from the following sources:

(a)	<i>Principal of an Intermediate College or Headmaster of a High School</i>	<i>By direct recruitment</i>
(b)	<i>Teachers for lecturer's grade</i>	<i>50 per cent by direct recruitment: (ii) 50 per cent by promotion from amongst substantively appointed teachers of the trained graduates grade.</i>
(c)	<i>Teachers of trained graduates grade</i>	<i>(i) 100 per cent by direct recruitment except the category of institutions mentioned below in 2(ii); (ii) Those Intermediate colleges and High Schools in which teachers of attached primary section are getting salary under the provisions of U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, 75 per cent posts shall be filled by direct recruitment and the remaining 25 per cent posts shall be filled by promotion from amongst those trained graduate teachers of attached primary section who have completed 5 years of satisfactory service.</i>

Provided that **if any year of recruitment** suitable eligible candidates are not available for recruitment by promotion, the posts, may be filled in by direct recruitment:

Provided further that if in calculating respective percentages of posts under this rule, there comes a fraction then the fraction of the posts to be filled by direct recruitment shall be ignored and the fraction of the posts to be filled by promotion shall be increased to make it one post.

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, in 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 proforma 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 group-wise 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 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 group-wise in respect of the trained graduate's grade means in accordance with the following groups, namely.

(b) *With regard to the post of Principal or Headmaster, the Management shall also forward the names of two senior-most 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 'senior-most teachers' mean the senior-most 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 the sub-rule shall be deemed to be notified by the Management of such institution"*

.....
14. "Procedure for recruitment by promotion.--

(1) *Where any vacancy is to be filled by **promotion all teachers working in trained graduates** grade or Certificate of Teaching grade, if any, who possess the qualifications, prescribed for the post and have completed five years continuous regular service as such **on the first day of the year of recruitment** shall be considered for promotion to the lecturers grade or the trained graduates grade, as the case may be, without their having applied for the same.*

(2) *The criterion for promotion shall be seniority subject to the rejection of unfit.*

(3) *The Management shall prepare a list teachers referred to in sub-rule (1), and forward it to the Inspector with a copy of seniority list, service records, including the character rolls, and a statement in the pro forma given in Appendix 'A'.*

(4) *Within three weeks of the receipt of the list from the management under sub-rule (3), the Inspector shall verify the facts from the record of his office and forward the list to the*

Joint Director.

(5) The Joint Director shall consider the cases of the candidates on the basis of the records referred to in sub-rule (3) and may call such additional information as it may consider necessary. The Joint Director shall place the records before the Selection Committee referred to in sub section (1) of section 12 and after the committee's recommendation, shall forward the panel of selected candidates within one month to the Inspector with a copy thereof to the Management.

(6) Within ten days of the receipt of the panel from the Joint Director under sub-rule (5), the Inspector shall send the name of the selected candidates to the management of the institution which has notified the vacancy and the management shall accordingly on authorization under its resolution issue the appointment order in the proforma given in Appendix 'F' to such candidate."

Since the intimation of the vacancies for direct recruitment under Rule 11 (2) of Rules, 1998 and details for promotion under Rule 14 of Rules, 1998 are to be provided by the Management in Appendix "A" to Rules, 1998, it is worthwhile to reproduce Appendix "A", which reads as follows:

"APPENDIX "A"

[See Rules 11 (2) and 14 (3)]

Requisition Form for the Recruitment of Candidates for Appointment

to the post of Teacher/Principal/Headmaster

(To be sent in quadruplicate)

1. (i) *Name of the Institution.....*
- (ii) *Place.....*
- (iii) *District.....*
- (iv) *Number of Students..... Class..... Section*
.....No
- (v) *Names of Subjects; High*
School/Intermediate.....
- (vi) *Number of Teachers*
2. (i) *Name(s) of the post(s) to which selection is to be*
made
- (ii) *Number of posts*
- (iii) *Qualification for the post(s).....*

- (iv) *Pay scale of the post.....*
3. *Where the post for which selection to be made is of Lecturer Trained Graduate grade;*
- (i) *Total number of sanctioned posts.....*
- (ii) *Number of posts already filled by—*
- (a) *direct recruitment.*
- (b) *promotion.*
- (iii) **Total number of vacancies determined by the Management to be filled by—**
- (a) **direct recruitment.**
- (b) **promotion.**
4. **Number of posts, if any, reserved for—**
- (a) **Scheduled Castes.**
- (b) **Scheduled Tribes.**
- (c) **Other Backward Classes of citizens.**
5. **Names of all candidates eligible for promotion, their qualification and length of service from date of regular appointment in the grade from which promotion is to be made.**
6. *Any other information, that the Board may desire to have certified that the above information is correctly recorded and verified from the relevant documents.*
- *This information shall be given in case of promotion and required under sub-rule (3) of Rule 14.*

Manager

Verified and forwarded to the Secretary, Uttar Pradesh Secondary Education Services Selection Board, Allahabad (in case of appointment by direct recruitment) and to Joint Director in case of appointment by promotion.

District Inspector of Schools”

It is also worthwhile to record that the C.T. Grade was declared a dying cadre under the Government Order dated 11th August, 1989. The Government Order provides that on substantive vacancies being caused in C.T. Grade subsequent to 11th August, 1989, the same shall be deemed to be converted into L.T. Grade. Section 33-D which was added to the Act, 1982 vide U.P. Act No. 25 of 1998 provides that all those who have completed ten years of continuous service in C.T. Grade would be deemed to be teachers in L.T. grade. For ready reference Section 33-D of Rules, 1998 is being quoted herein below:

"33 D. Special provision for certificate of Teaching grade teachers.--Every teacher in the Certificate of Teaching grade, who is a trained graduate and,

(a) has completed ten years continuous satisfactory service in the said grade on or before January 1, 1986 shall, with effect from January 1, 1986 ; or

(b) completes the said service of ten years after January 1, 1986 shall with effect from the date of completion of the said service of ten years ; be deemed to have been appointed in the Trained Graduate Grade."

The amendments, which had been made in the Act, 1982 and the Rules from time to time had following effect:

Under Section 10 of the Parent Act, the Management had to notify the vacancies to the Commission for making appointment of teachers specified in Schedule while in respect of teachers other than those specified in Schedule, the Management had to notify the vacancies to the Selection Board as is clear from Section 15 of the Parent Act.

For the first time under the U.P. Act 1 of 1993 the concept of determination of vacancies by the Management of the institution, was provided for, with a direction that the vacancies likely to fall vacant during year of recruitment shall be included in such determination.

This procedure continued under U.P. Act No. 15 of 1995, except that under amended Section 10, the provision for intimation of the vacancies of teachers not mentioned in Schedule of Act, 1982 to the Board was done away with, as C.T. Cadre had been declared to be a dying cadre.

Section 10 as amended by U.P. Act No. 1998 required

determination of vacancies but restricted such determination to be in respect of the post to be filled by direct recruitment, while Section 12 provided for constitution of Selection Committee for each region for promotion.

Percentage of posts of Lecturers' grade and L.T. grade to be filled by direct recruitment and by promotion has been provided under Rule 10 of Rules, 1998, referred to herein above. The power was given to the management to determine the number of vacancies existing or likely to fall vacant during the year of recruitment. Thus the initial task of determining the vacancy is on the management by identifying the number of vacancies that are existing or are likely to fall vacant, on account of retirement etc. during the year of recruitment.

The procedure to ascertain the quota in which a vacancy would fall is regulated by the Act and Rules, inasmuch as, this would involve the nature of the vacancy and the post that was held by the earlier incumbent. This would mean as to what subject was taught by the earlier incumbent and the current requirement of the institution. Rule 10 of the 1998 Rules clearly provides for the appointment in the Lecturers Grade 50% by direct recruitment and 50% by promotion from amongst substantively appointed teachers of the Trained Graduate Grade (L.T. Grade).

The vacancies of Trained Graduate Grade (L.T. Grade) are to be filled by direct recruitment except for 25% by promotion as per Rule 10(c)(ii) of 1998 Rules.

After the vacancies for direct recruitment are determined, the management is also obliged to calculate the applicability of reservation for the candidates belonging to the reserved category for the purpose of giving benefit to eligible candidates.

The aforesaid calculation therefore has to be in accordance with the rules provided for reservation namely the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 Act, as applicable in the State of U.P.

This determination by the management in respect of direct recruitment is to be made under Rule 11 of the 1998 Rules quoted herein above. The statement of the vacancies so determined by the management has to be sent to the District Inspector of Schools by 15th of July of the year of recruitment **in proforma given in Appendix "A"**, and the Inspector, after verifying it from the records of his office, has to prepare a consolidated statement of the vacancies of all the institutions in the district subject-wise and group-wise in respect of Trained Graduate Grade posts. The statement so prepared by the Inspector must be sent by 31st of July of the year of recruitment with a copy thereof to the Joint Director of Education. The State Government has however, been given the power to fix other dates for notification in respect of any particular year of recruitment.

On this exercise being completed by 31st of July, if any other vacancy occurs thereafter, for example by death or resignation then the management within 15 days of its occurrence, shall notify the said vacancy to the District Inspector of Schools. The Inspector within 10 days of receipt of such information send it to the U.P. Secondary Education Services Selection Board for being notified. It is this procedure which has to be followed for the notification/intimation of the vacancies to the Board as per Section 10 of the 1982 Act read with Rule 11 of the 1998 Rules.

The provisions of Sub-Rule (4) of Rule 11 also provide for

the alternative arrangement where there is a failure on the part of the management to notify the vacancies by the date fixed. The said rule authorizes the District Inspector of Schools to determine the vacancies on the basis of the records that are available in his office and notify it to the Board which shall be deemed to be notified by the management of such institution.

It will be seen that determination of number of vacancies is the responsibility of the Management at the first instance and such determination has to be for the “year of recruitment” under Rule 11(2) of Rules, 1998.

Rule 14 of Rules, 1998 which deals with the procedure of recruitment by promotion does not require any fresh determination of vacancies for the purposes of promotion, it only requires that where the vacancies are required to be filled by direct recruitment, details of teachers working in the feeding cadre, who have completed five years of continuous service on the **“first day of year recruitment”** and is possessed of the requisite qualifications on that date be provided in proforma given in Appendix 'A' to the Joint Director of Education.

On a simple reading of the aforesaid provisions, it will be seen that the words “year of recruitment” have been used in (a) first proviso to Rule 10 of Rules, 1998 relevant part whereof reads as “if in any year of recruitment”, (b) in Rule 11 (2) relevant part whereof reads as “on the last day of year of recruitment”, (c) in 11 (4) relevant part whereof reads as “for any year of recruitment” and (d) in Rule 14 (1) relevant part whereof reads as “on the first day of the year of recruitment”.

The issue with regard to the determination of vacancies under Rules 10 and 11 of Rules, 1998 has been subject matter of consideration before the Full Bench of this Court in the case

of Prashant Kumar Katiyar (Supra) and in paragraph nos. 36 to 40 it has been held as follows:

“36. It is this entire exercise with regard to determination that has to be performed mandatorily by the management and the District Inspector of Schools, to enable the Board to advertise the vacancy as notified which shall be done through wide publicity as provided for under Section 10(2) of the 1982 Act read with Rule 12(1) as quoted herein above.

37. The controversy raised in this reference is vis a vis the impact of the action taken by the management and the District Inspector of Schools for determination of the vacancies and the consequential advertisement made by the Board and any attempt to alter the same by adopting the exceptional modes of appointment.

38. In our opinion if the management has determined the vacancy or the District Inspector of Schools has done it as per Rule 11(4) then in that event the alteration of such determination and intimation is controlled only to the extent as provided by sub-rule (3) of Rule 11 which authorises the management and the Inspector to notify any fresh vacancy that may have occurred after such notification. The management or the District Inspector of Schools therefore has not been empowered under the rules to reverse the determination and it can only add to it, subject to the contingency as contemplated under sub-rule (3) of Rule 11. This however does not take away the power to correct any arithmetical or calculative errors that may have crept into such determination.

39. To our mind, the function of the management and the District Inspector of Schools, therefore, has to follow this procedure and it is trite law that if a statute requires a thing to be done in a particular manner then it should be done in that manner alone and not otherwise. The procedure under the Act and Rules is mandatory and it has to be done in that manner alone. Reference be had to Para 20 and 23 of the division bench judgment in the case of Km. Poonam Vs. State of

*U.P. 2008 (3) AWC Pg. 2852 and to Para 24 of the decision in the case of U.P. Secondary Education Service Selection Board Vs. State of U.P. 2011 (3) ADJ Pg. 340. **The rules have been framed consciously by making a provision of limited alteration in the determination by adding to the vacancies on account of any fresh occurrence during the year of recruitment itself.** Thus impliedly no power has been conferred for altering the vacancies already determined and intimated to the Board for the purpose of notification under the Act and Rules. **The requisition to fill up the vacancies after having sent to the Board therefore becomes unalterable as the Board proceeds with the advertisement under Rule 12 by publishing the vacancy in accordance with reservation rules and in accordance with the subject-wise and group-wise vacancies against which appointments are to be made inviting applications from candidates giving their preference of the institution** which choice has to be indicated by the candidate. At this stage, to upset the procedure after advertisement by giving any further leverage would be to disturb the entire process of selection and **if such a concession is given, the management can indulge into motivated manipulations which are not uncommon and give rise to uncalled for controversies ending up in litigation.***

40. **We would also like to put a note of caution for the District Inspector of Schools while performing his duty of verification of the determination of vacancies. There can be cases where the management deliberately modifies a requirement in the name of extending benefit to some candidate/teacher who may be desirous of seeking promotion but otherwise not eligible within the year of recruitment. The management can withhold such information and it is at this stage that the District Inspector of Schools has to exercise his powers under sub-rule (4).** The management at times may not cooperate with the District Inspector of Schools and therefore the District Inspector of Schools has to determine the vacancy as per the records available in his office and

inform the Board. The responsibility therefore rests on the District Inspector of Schools to undertake this exercise by putting the management to clear notice during the year of recruitment itself. The District Inspector of Schools on coming to know of any additional vacancy if any that arises or the management having withheld such information is obliged to take action forthwith and disallow the management from taking any undue advantage in such situations. The vacancy that has occurred during the year of recruitment has to be mandatorily informed as noted herein above as no selection can be held except through the Board.

Again, in paragraph 48 it has been held as under:

“There is no difficulty with regard to the calculation of a post to be filled up by absorption or by promotion which can also be done by the management before determining the vacancies in the year of recruitment. The calculation has to be made for the year of recruitment and sent by 31st of July. Thus any claim thereafter having arisen will have to wait for the vacancy to occur thereafter. The calculation is not in respect of all possible claims that may arise in future. This aspect is clearly governed by the expression "year of recruitment" as explained hereinabove and by the calendar fixed under the rules. Accordingly the same reasoning as in the case of transfers would apply here and neither the management nor the District Inspector of Schools can be permitted to alter the process of recruitment/appointment by taking recourse to the provisos under Section 16 after the vacancies have been determined and notified to the Board under the provisions referred to hereina bove.”

The relevant question referred and which has been answered by the Full Bench in the case of **Prashant Kumar Katiyar (Supra)** as contained in paragraph-93 (d) reads as

follows:

“93. In view of what has been said above, our answer to the questions (a) and (c) referred to us is as follows:-

.....

D) The view expressed by the learned Single Judge in Raja Ram's case (supra) and affirmed by the division bench in U. P. Secondary Education Services Selection Board (supra) in so far as it relates to other modes of appointment is approved and the judgments to that extent are affirmed.”

It is clear from simple reading of the three provisions, namely, Rule 10, Rule 11 and Rule 14 of Rules, 1998 that the rules contemplate determination of the vacancies for direct recruitment within the quota prescribed for the post of Lecturer and L.T. grade as per Rule 10 of Rules, 1998. As a logical consequence of such determination of the posts for direct recruitment, the remaining vacancies, if any, would fall within the promotion quota, inasmuch as Rule 10 of Rules, 1998 contemplates only two sources of recruitment for the post of Lecturer and L.T. grade teacher, namely, direct recruitment and promotion. Therefore, determination of the vacancies within the direct recruitment quota would necessarily entail that the remaining posts are within the quota for other mode of appointment i.e. promotion.

It is at this point of determination of posts for direct recruitment that the proviso to Section 10 comes into play, all the vacancies, which cannot be filled by way of promotion may be filled by direct recruitment.

One of the cardinal principle of interpretation is that where the draftsman uses the same word/phrase in similar

contexts, he must be presumed to intend it in each place to bear the same meaning (Reference **Chairman Indore Vikas Pradhikaran versus Pure Industrial Coke and Chemicals Ltd.**; [(2007) 8 SCC 705 Pr. 70].

Relevant paragraph of the judgment of the Apex Court in the case of **Chairman Indore Vikash Pradhikaran (Supra)** reads as follows:

*“76. It is also well-settled that in the absence of any context indicating a contrary intention, the same meaning would be attached to the word used in the later as is given to them in the earlier statute. It is trite that the words or expression used in a statute before and after amendment should be given the same meaning. **It is a settled law that when the legislature uses the same words in a similar connection, it is to be presumed that in the absence of any context indicating a contrary intention, the same meaning should attach to the words.** [See *Lenhon v. Gobson & Howes Ltd.*, (1919) AC 709 at 711, *Craies on Statute Law, Seventh Edition*, page 141 and *G.P. Singh's Principles of Statutory Interpretation, Tenth edition*, page 278].”*

The words are generally used in same sense throughout in a Statute unless there is something repugnant in the context (Reference **Bhogi Lal Chunni Lal Pandya versus State of Bombay**; AIR 1959 SC 356).

Logically the same meaning is to be attached to the same words/phrases throughout the Statute unless of course something repugnant is found in the context which requires for taking a different view.

We may record that absolutely nothing could be shown to the Court by the learned counsel for the respondent-petitioner to suggest any repugnancy in reading phrase “year of recruitment” at all the four places i.e. in Rule-10, Rule-11 (2), Rule-11 (4) and Rule-14 of Rules, 1998 in the same manner.

In our opinion, **“the last day of year of recruitment”** as provided for under Rule 11 (2) of Rules, 1998 would mean “the last day of 12 calendar month” starting from “1st July” and ending on “30th June” following which would be 30th June, likewise “first day of year of recruitment” as provided for under Rule 14 would mean “the first day” i.e. of the 12 calendar months starting from first July and ending on 30th June following i.e. 1st July.

The provisions cannot be read to mean that while determining the vacancies for direct recruitment under Rule 11 (2), year of recruitment would be 12 calendar months starting from 1st July of a different calendar year, while under Rule 14 of Rules, 1998 the phrase “year of recruitment” would mean a period of 12 calendar months starting from 1st of July of a different calendar year. The provisions of Rules, 10, 11 and 14 of Rules, 1998 have to be read as a continuous chain of different determinations/actions. The year of recruitment has to be one and the same for the proviso to Rule 10, Rule 11 (2), Rule 11(4) and Rule 14 (2) of Rules, 1998 i.e. 12 calendar months starting from 1st of July of the same calendar year.

Another important aspect of the matter which needs mention is that in respect of the vacancies to be filled by direct recruitment, intimation has to be forwarded to the Commission in proforma given in Appendix 'A' while in respect of vacancies to be filled by way of promotion, under Rule 12 information in respect of teachers eligible for promotion has to be provided in

same proforma given in Appendix 'A' to the Joint Director of Education.

Clause '3' of proforma in Appendix 'A' requires specially the disclosure of the vacancies by the Management for direct recruitment as well as of the vacancies for promotion. Proforma in Appendix 'A' to be supplied by the Management in the matter of direct recruitment under Rule 11 (2) (a) of Rules, 1998 has to be *pari materia* to the information to be supplied in proforma in Appendix 'A' to the Joint Director of Education under Rule 14 (2) of Rules, 1998 for promotion.

The proforma given in Appendix 'A' necessarily requires disclosure of the fact as to what number of vacancies have been determined by the Management to be filled by direct recruitment and those to be filled by promotion. In our opinion, there cannot be any variance in the proforma which has to be supplied by the Management in respect of the vacancies determined to be filled by direct recruitment under Rule 11 (2) of Rules, 1998 and the details of the teachers, who are to be considered for promotion in proforma given in Appendix 'A' to the Joint Director of Education. Information in that regard has to be common. Otherwise the same may lead to a precarious situation, where the same vacancy may be notified to the Board for direct recruitment as well as for promotion to the Joint Director of Education or a vacancy being not notified either to the Selection Board for direct recruitment or for promotion to the Joint Director of Education.

Even otherwise, we are of the opinion that keeping of first day of year of recruitment under Rule 12 fluid, to be determined on the whims and discretion of the Management would lead to nepotism and favoritism as has been highlighted by the Full Bench of this Court in the case of **Prashant Kumar Katiyar**

(Supra), in paragraph 33 quoted above with which we respectfully agree.

It is settled rule of statutory interpretation that anomalies, injustice and absurdities have to be avoided while reading a statutory provision.

Reference may also be had to the judgment of the Apex Court in the case of **Aswini Kumar Ghosh vs. Arabinda Bose**; 1953 SCR Page-1, where-under it has been held as under:

“At times the intention of the legislature is found to be clear but the un-skillfulness of the draftsman in introducing certain words in the statute results in apparent ineffectiveness of the language and in such a situation, it is permissible for the Court to read the statute so as to make it effective.”

It is important to note the stand of the State Government, as is reflected from the affidavit filed on 15th February, 2017 by Principal Secretary, Secondary Education, Government of U. P. at Lucknow. Along with affidavit, the Principal Secretary of the State, has enclosed a letter of the Secretary, U.P. Secondary Education Services Selection Board, Allahabad dated 13th December, 1999, which reads as under:

“प्रेषक, सेवा मे,
सचिव, समस्त जिला विद्यालय निरीक्षक
मा० शिक्षा सेवा चयन उत्तर प्रदेश
बोर्ड इलाहाबाद। उ० प्र०

पत्रांक— मा० शि० च० बो०/अधि०/1828-1949/99-2000

दिनांक 13 दिसम्बर 1999

विषय— सीधी भर्ती एवं पदोन्नति के संदर्भ मे भर्ती के विषय की स्थिति स्पष्ट करने के सम्बन्ध मे।

उपर्युक्त विषयक के सन्दर्भ मे मुझे यह

कहने का निर्देश हुआ है कि उत्तर प्रदेश माध्यमिक शिक्षा सेवा चयन बोर्ड नियमावली 1998 के नियम 10 में उल्लिखित है कि भर्ती के किसी वर्ष में पदोन्नति द्वारा भर्ती के लिए उपयुक्त पात्र अभ्यर्थी उपलब्ध न हो तो पदों को सीधी भर्ती द्वारा भरा जा सकता है।

सीधी भर्ती के लिए नियमावली के नियम 11 में अवधारण एवं अधिसूचित किये जाने के व्यवस्था है। इसी के उपनियम (1) में प्रबन्धक द्वारा रिक्तियों निरीक्षक के माध्यम से बोर्ड को अधिसूचित की जानी है। नियमावली के नियम 11 के उपनियम (2) (क) में सीधी भर्ती द्वारा भरे जाने वाले प्रत्येक श्रेणी के पद के लिए भर्ती के वर्ष के अन्तिम दिनांक को सेवा निवृत्ति होने वाली सम्भावित व्यक्तियों को सम्मिलित करने के लिए रिक्तियों को विवरण परिशिष्ट 'क' में दिये गये प्रपत्र में भर्ती के वर्ष की 15 जुलाई तक निरीक्षक को भेजने तथा निरीक्षक द्वारा इसे 31 जुलाई तक चयन बोर्ड को उपलब्ध कराने के निर्देश हैं।

उक्त नियम से स्पष्ट है कि भर्ती के वर्ष के अन्तिम दिनांक अर्थात् 30 जून 2000 को सेवा निवृत्ति के कारण सम्भावित रिक्तियों को सम्मिलित करते हुए भर्ती के वर्ष की 15 जुलाई अर्थात् 15 जुलाई 1999 तक प्रबन्धतन्त्र निरीक्षक को 4 प्रतियों में अधियाचन प्रेषित करेगा और 31 जुलाई 1999 तक निरीक्षक चयन बोर्ड को यथा निर्दिष्ट व्यवस्था के अनुसार भेजेगा।

उक्त स्थिति से यह स्पष्ट है कि जो रिक्ति 30 जून 2000 को भी हो रही है उसकी भर्ती का वर्ष 1 जुलाई 1999 से लेकर 30 जून 2000 तक का माना गया है। नियमावली के नियम 10 के परन्तुक में सीधी भर्ती के अधियाचन भेजने के पूर्व यह भी देखना है कि पदोन्नति के लिए 50 प्रतिशत कोटे के अन्तर्गत पात्र अभ्यर्थी उपलब्ध है या नहीं। यदि नहीं तो सीधी भर्ती से भरने का अधियाचन चयन बोर्ड को भेजना है।

उ० प्र० माध्यमिक शिक्षा सेवा आयोग अधिनियम

1982 को जो अध्यादेश सं० 31 दिनांक 28.9.1994 तथा अध्यादेश संख्या 13 सन् 1995 द्वारा संशोधित किया गया कि धारा 2 में भर्ती की वर्ष की परिभाषा निम्नवत अंकित है।

“भर्ती का वर्ष का तात्पर्य किसी कलेन्डर वर्ष की जुलाई के प्रथम दिवस से प्रारम्भ होने वाले 12 मास की अवधि से है।

स्पष्टतः प्रत्येक वर्ष भर्ती का वर्ष 1 जुलाई को प्रारम्भ होकर 30 जून तक होगा।

पदोन्नति के लिए अर्हता स्पष्ट करते हुए उत्तर प्रदेश माध्यमिक शिक्षा सेवा चयन बोर्ड नियमावली 1998 के नियम 14 (1) के अन्तर्गत पदोन्नति द्वारा भर्ती हेतु उन व्यक्तियों को जो प्रशिक्षित स्नातक श्रेणी या अध्यापक प्रमाण-पत्र श्रेणी, यदि कोई हो जो पदोन्नति के लिए विहित अर्हताये रखते हो और **ऐसी भर्ती के वर्ष के प्रथम दिनांक को इस रूप में 5 वर्ष की निरन्तर नियमित सेवा की हो** यथास्थिति प्रवक्ता श्रेणी या प्रशिक्षित स्नातक श्रेणी की पदोन्नति के लिए विचार किये जाने की व्यवस्था है।

उक्त स्थिति में यह स्पष्ट है कि—

(1) विद्यालय में मौलिक रिक्ति होनी चाहिए और वह पदोन्नति कोटे की होनी चाहिये।

(2) प्रशिक्षित स्नातक श्रेणी या अध्यापक प्रमाण पत्र श्रेणी में कार्यरत हो तथा पद के लिए विहित शैक्षिक एवं प्रशिक्षण अर्हता के साथ-साथ उन व्यक्तियों की **भर्ती के वर्ष के प्रथम दिनांक को** इस रूप में 5 वर्ष की निरन्तर नियमित सेवा भी होनी चाहिए। पदोन्नति हेतु उन पर विचार किया जायेगा अन्यथा नहीं।

इस नियमावली के नियम 14 के उपनियम (1) **के तहत भर्ती के वर्ष के प्रथम दिनांक को 5 वर्ष की निरन्तर नियमित सेवा अनिवार्य है।** सीधी भर्ती से अध्याचन भेजने के समय पदोन्नति हेतु पात्र अभ्यर्थी के उपलब्धता के सम्बन्ध में यह देखना आवश्यक होगा कि जो विहित अर्हता रखते हो उन सभी अध्यापकों की भर्ती के वर्ष के प्रथम दिनांक 1 जुलाई को 5 वर्ष की नियमित सेवा पूर्ण हो गयी हो। अर्थात् **यदि कोई पद 30 जून 2000 को रिक्त होगा और इस पर पदोन्नति के लिए पात्र अभ्यर्थी तभी अर्ह होंगे**

जबकि उनकी 1 जुलाई 1999 को 5 वर्ष की निरन्तर नियमित सेवा पूर्ण हो गयी हो। इस प्रकार प्रत्येक वर्ष की 1 जुलाई से लेकर 30 जून तक की अवधि में जो भी कोई रिक्ति हुई है या होगी उसके लिए पदोन्नति के लिए उस वर्ष की 1 जुलाई को 5 वर्ष की निरन्तर नियमित सेवा आवश्यक है। यदि ऐसे पात्र अभ्यर्थी नहीं हैं तो रिक्तियों को सीधी भर्ती से भरने का अधियाचन प्रेषित किया जाना चाहिये।

कृपया उक्त के परिप्रेक्ष्य में रिक्तियों का अवधारण कर जो रिक्तियाँ सीधी भर्ती से भरी जानी हो उनका अधियाचन चयन बोर्ड को विहित व्यवस्था के अनुसार भेजने की व्यवस्था सुनिश्चित की जाये।

भवदीय

अवध नरेश शर्मा

सचिव”

It has been explained that the year of recruitment has to be the year of determination of the vacancies under Rule 10 read with Rule 11 of Rules, 1998 and first day of the year of recruitment as provided for under Rule 12 would be 1st July of the year referable to Rule 10 of Rules, 1998.

Judgments cited by Sri Anoop Trivedi, learned counsel for the respondent-petitioner in the matter of interpretation of statute do not lay down anything contrary to what has been noticed herein above by us.

The legal principles cited above by Sri Anoop Trivedi, learned counsel for the respondent-petitioner at bar are unquestionable and are well established.

Now coming to the judgment of the Full Bench in the case of **Raesul Hasan (Supra)**, it is worthwhile to mention that the earlier Full Bench judgment of this Court in the case of

Prashant Kumar Katiyar (Supra) has gone unnoticed. It has completely escaped the attention of the Full Bench in the case of **Raeesul Hasan (Supra)**. Because of this, the law laid down by the Full Bench in the case of **Prashant Kumar Katiyar (Supra)** to the effect that the exercise for determination of the vacancies has to be performed mandatorily by the Management at the first instance and, in case of failure, by the District Inspector of Schools, as per the time table fixed under Rule 11 of Rules, 1983 has gone unnoticed. The reasons recorded in paragraph-40 by the Full Bench in the case of **Prashant Kumar Katiyar (Supra)**, for leaving the “year of recruitment” for promotion at the discretion of the Management are that it may permit the management to take undue advantage and show favoritism to chosen few. The Full Bench in the case of **Prashant Kumar Katiyar (Supra)** has further observed that if the law requires something to be done in a particular manner, then it has to be done in that manner alone and not otherwise and in paragraph-29 has laid down that the procedure under the Act and Rules is mandatory and it has to be performed in that manner alone.

Another important aspect of the matter which has escaped the attention of the Full Bench in the case of **Raeesul Hasan (Supra)** is the intimation of the vacancies in proforma in Appendix 'A' for the purposes of direct recruitment to the Selection Board as well as intimation of the names of the persons to be appointed by way of promotion in the same proforma given in Appendix 'A' to the Joint Director of Education in Clause-3 of Appendix 'A' requires disclosure of vacancies determined for direct recruitment and promotion both.

We are also of the opinion that the view of the Full Bench

in the case of **Raesul Hasan (Supra)**, while holding that the purpose for deletion of the words “by promotion” in Rule 11 of Rules 1998 in juxtaposition with Rule 11 (2) of Rules, 1995, is that no time limit has been fixed in the matter of intimation of vacancies for which promotion is to be made, is not correct. Rule 10 provides for two sources of appointment only i.e by direct recruitment and promotion only, determination of number of vacancies for direct recruitment in a recruitment year would necessarily entail the determination of the vacancies which would fall for promotion in the same recruitment year. Once the vacancies for direct recruitment are determined, remaining vacancies, if any, would fall within the promotion quota.

It has escaped the attention of Full Bench that there had been a departure in the matter of procedure to be adopted for direct recruitment/promotion as per Rules of 1995, vis-a-vis, the procedure for promotion under Rule 12 of Rules, 1998. This change was necessitated because of amendments made in Section 10 and addition of Chapter III which includes Section 12 by the Act, 1998. Under Rule 11 (2) of Rules, 1998 intimation of the vacancies is to be ultimately communicated to the Selection Board for advertisement for direct recruitment in the proforma given in Appendix 'A' while list of teachers eligible for promotion is to be communicated to the Joint Director of Education in the proforma given in Appendix 'A'. It is for this reason that the determination and intimation of vacancies for promotion quota to the Selection Board, as provided under Rule 11 (2) of Rules, 1995 was done away. The authority for promotion has been identified as Regional Selection Committee of which the Joint Director of Education is the Chairman in place of Selection Board as provided earlier.

So far as the judgment of the Apex Court in the case of

Balbir Singh & Another versus U.P. Secondary Education Services Selection Board, Allahabad & Others reported in 2008 (3) ESC 409 (SC) relied upon by the Full Bench in the case of **Raesul Hasan (Supra)** is concerned, it may be noticed that in the judgment of the High Court in the case of **Anand Narain Singh versus Uttar Pradesh Secondary Education Service, Selection Board** reported in 2003 (2) UPLBEC 899, giving rise to the appeal before the Apex Court itself in the case of **Balbir Singh (Supra)**, there is a specific recital in paragraph nos. 64 and 129 (iv) to the following effect:

*“64. The facts here are different than the two cases previously mentioned in paragraph 58. **These cases are of direct appointment unlike cases cited by the petitioners (paragraph 58) on this point. Those cases related to promotion.** The vacancies in case of direct appointments are notified by an advertisement and all the vacancies as mentioned in the advertisement have to be filled up. They are not required to be filled up year-wise: at least there is nothing in the Act or in the Rules to warrant this.*

.....

129. My conclusions and directions are as follows:

.....

*(iv) **In the present case, the appointments are being made by direct recruitment and not by promotion.***

Vacancies need not be marked separately for any particular recruitment year;

They could be clubbed together.

While filling these vacancies, the law as applicable on the occurrence of vacancy need not be applied.

.....”

It is, thus, clear that the Apex Court was considering the matter pertaining to the appointment by direct recruitment only

and was not considering any issue with regard to the posts which are to be filled by promotion.

It will be seen that the observations made by the Apex Court in paragraph 30 to the effect that neither Section 10 nor 11 of the Principal Act nor Rules, 1998 mandate that selection or determination of vacancies must be year wise and therefore, all the vacancies which are “existing or which are likely to fall vacant during the year of recruitment” can be clubbed together for being filled by the Selection Board is in the background that the number of vacancies received by the Selection Board from the various institutions could be advertised together. The issue of actual determination of the vacancies institution-wise for direct recruitment and resultant by way of promotion in the year year of recruitment was not subject matter of consideration before the Apex Court in the case of **Balbir Singh (Supra)**.

The judgment of the Apex Court in the case of **Balbir Singh (Supra)** has to be read in the background, it was dealing with the issue of clubbing of vacancies for direct recruitment of different years by the Selection Board while making the advertisement under challenge and nothing beyond it.

It has been repeatedly held by the Apex Court that a little difference in the facts or additional facts may make a lot of difference in the precedential value of a judgment [Reference **Bhavnagar University vs. Palitana Sugar Mills (P) Ltd. & Ors.** reported in 2003 (2) SCC, 111, which has been followed in the case of **Rajveer Singh vs. Chaudhary Devi Lal**, reported in AIR 2008 SCW 5817].

The Full Bench of this Court in the case of **Raeesul Hasan (Supra)** has also failed to take notice of the circular issued by the Secretary, U.P. Government at Lucknow dated

23rd January, 1998, which has been quoted herein above, which specifically clarified the position with regard to the “first day of year of recruitment” as provided for under Rule 14 of Rules, 1998. The said circular was very much on record of the connected writ petitions giving rise to the present reference in the case of **Raesul Hasan (Supra)**.

From the amendments which have been effected, it will be seen that earlier an incumbent was required to possess prescribed minimum qualification on the date of occurrence of vacancy. This requirement was amended in the year 1995 by requiring the candidate to possess the qualification and requisite experience on the first date of the year of recruitment which provision has been maintained under Rules, 1998. This became necessary as under Act, 1995, a provision for determination of the vacancies by the Management was introduced. This determination had to be done in respect of the vacancies pertaining to the year of recruitment both under Rules, 1995 and Rules, 1998 in a time bound manner at the start of the year itself. Further proviso was added that any vacancy which cannot be filled by promotion may be filled by direct recruitment, which was not the position earlier.

In order to keep the determination of vacancies certain specifically with reference to the posts which fall within the promotion quota but could not be filled because of absence of suitable candidate, it was decided that the date on which the teacher of feeding cadre must possess the requisite qualification must also be fixed well in advance i.e. a date prior to the date on which the actual determination of the vacancies for direct recruitment, which will include the vacancies within promotion quota, which cannot be filled by promotion for want of eligible candidate in the feeding cadre is made mandatorily

by the Management i.e. 15th July of the recruitment year. It is in this background that Rule framing Authority decided to fix the first day of year of recruitment as the crucial date for examining as to whether a candidate within the feeding cadre is available for promotion or not, inasmuch as in absence of any suitable candidate, the post has to be requisitioned for direct recruitment.

It has to be kept in mind that the purpose for enactment of Act, 1982 was to ensure that suitable teacher becomes available in the institution at the earliest so that the main objective of the institution i.e. teaching does not suffer.

Even otherwise fixation of a particular date i.e. when a candidate from feeding cadre is to be judged to be eligible or not has to be fixed rather than being kept fluid at the whims and fancies of the private Management.

We are, therefore, of the considered opinion that the Full Bench in the case of **Raesul Hasan (Supra)** does not lay down the correct law.

For the aforesaid reasons, the answer to the questions as referred is as under:

(a) The year of recruitment both for the determination of vacancies for direct recruitment and for the purpose of Rule, 14 of Rules, 1998 for determining the eligibility of the candidates for promotion has to be one and the same. Full Bench judgment in the case of **Raesul Hasan (Supra)** does not lay down the correct law

(b) With the determination of the vacancies for direct recruitment, the number of posts within the promotion quota stands determined and it is at this stage that the Committee with reference to Rule 14 of Rules, 1998 has to decide as to whether an eligible candidate for promotion within feeding cadre is available or not. If the answer is in negative,

the vacancy has to be included within the quota for direct recruitment.

(c) The Full Bench in the case of **Prashant Kumar Katiyar (Supra)** has correctly held that the Management cannot be provided leverage in the matter of determination of the year of recruitment and in the matter of promotion, as it will lead to nepotism and favoritism.

(d) Determination of the vacancies for direct recruitment along with reservation to be applied has to be done by the Management within the time frame fixed under Rule 11 (2) of Rules, 1998.

(e) So far as the post within the promotion quota is concerned, the post remaining after determination of direct recruitment quota would fall therein.

(Sunita Agarwal, J.)

I agree.

(Arun Tandon, J.)

I agree.

(V.K. Shukla, J.)

I agree.

(M.C. Tripathi, J.)

I agree.

Order Date :- 30.05.2017

Sushil/-

Court No. - 21**Case :-** SPECIAL APPEAL DEFECTIVE No. - 442 of 2016**Appellant :-** Smt. Sadhna**Respondent :-** State Of U.P. And 5 Ors.**Counsel for Appellant :-** Vijay Kumar Singh, Hritudhwaj Pratap Sahi, Rahul Kumar**Counsel for Respondent :-** C.S.C., A.K. Yadav, Anoop Trivedi, C.B. Yadav, Rajesh Kumar Mishra, Shashank Shekhar Singh**Hon'ble V.K. Shukla, J.****Hon'ble Arun Tandon, J.****Hon'ble P.K.S Baghel, J.****Hon'ble Sunita Agarwal, J.****Hon'ble M.C. Tripathi, J.**

For orders, see our order of date passed on the separate sheets.

Order Date :- 30.05.2017

Sushil/-