

RESERVED ON 14.8.2012
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Case :- SPECIAL APPEAL No. - 25 of 2006
Petitioner :- Smt. Manju Awasthi & Others
Respondent :- State Of U.P. & Others
Petitioner Counsel :- P.N. Ojha,Ashok Khare,N.K. Srivastava,Prabodh Gaur
Respondent Counsel :- C.S.C.,Ashok Kumar Singh,H.N. Singh,R.K. Ojha,R.L. Ojha

WITH

Case :- SPECIAL APPEAL No. - 170 of 2005
Petitioner :- Distt. Basic Education Officer & Another
Respondent :- Sri Krishna Tripathi & Another
Petitioner Counsel :- K. Shahi
Respondent Counsel :- C.S.C.,K.K. Tripathi

WITH

Case :- SPECIAL APPEAL No. - 1468 of 2005
Petitioner :- Surendra Datt Kaushik
Respondent :- State Of U.P. Thr' Secretary Basic Education & Others
Petitioner Counsel :- Shailendra
Respondent Counsel :- C.S.C.,S.K. Mishra

WITH

Case :- SPECIAL APPEAL No. - 842 of 2009
Petitioner :- Malti Verma
Respondent :- State Of U.P. & Others
Petitioner Counsel :- B.L. Yadav,Anil Kumar,V.K. Singh
Respondent Counsel :- C.S.C.,Smt. Manju R. Chauhan

WITH

Case :- SPECIAL APPEAL No. - 1761 of 2010
Petitioner :- Surendra Pal Singh
Respondent :- State Of U.P. & Others
Petitioner Counsel :- S.K. Mishra
Respondent Counsel :- C.S.C.,G.K. Singh

WITH

Case :- SPECIAL APPEAL No. - 1957 of 2010
Petitioner :- C/M, Sri Krishna Vidya Mandir, Etah & Another
Respondent :- State Of U.P. Thru' Secretary Basic Education Lucknow

Petitioner Counsel :- Amit Saxena

Respondent Counsel :- C.S.C., Manju R. Chauhan

Hon'ble Ashok Bhushan, J.

Hon'ble Arun Tandon, J.

(DELIVERED BY HON'BLE ASHOK BHUSHAN, J.)

All these appeals filed against the various judgment and orders of Hon'ble Single Judge, have been heard together and are being decided by this common judgment. Although the main issues raised in the above appeals are common but Special Appeal No. 25 of 2006, Smt. Manju Awasthi Vs. State of U.P. is being treated as a leading appeal and pleadings and issues raised in the said appeals are being noted in some detail.

Special Appeal No. 25 of 2006 Smt. Manju Awasthi Vs. State of U.P. has been filed by two appellants namely; Smt. Manju Awasthi and Committee of Management Sri Dosar Vaish Balika Inter College Cantt. Kanpur Nagar against the judgment and order of Single Judge dated 22.11.2005, passed in writ petition No. 41420 of 2004, Dr. Smt. Sushila Gupta Vs. The Joint Director of Education and others; and writ petition No. 33360 of 2005, Dr. Smt. Sushila Gupta. Vs. State of U.P. And others. Single Judge vide judgment and order dated 22.11.2005 allowed both the writ petitions, against which special appeal has been filed by Smt. Manju Awasthi and Committee of Management, Dosar Vaish Balika Inter College challenging the order passed by Single Judge in writ petition No. 33360 of 2005.

Brief facts giving rise to the writ petitions and thereafter special appeal No. 25 of 2006 now need to be noted. The institution Dosar Vaish Balika Junior High School was recognised as Junior High School within the meaning of U.P. Basic Education Act, 1972

and was also receiving grant-in-aid at Junior High School level. The institution was granted recognition as high school without finance (Vitta Vihin) under section 7A (a) of U.P. Intermediate Education Act, 1921 (hereinafter referred to as '1921 Act') on 1.8.1992. The High School was further recognised as Intermediate college in the year 1995 under section 7A(a) of the Act. No posts were created either at a High School level or Intermediate level after the recognition under the 1921 Act. The permanent Head Mistress as well as other teachers of the Junior High School level continued to receive their salary under the grant-in-aid granted to the institution at Junior High School level. Permanent Head Mistress retired on 30.6.1999 thereafter senior most Assistant Teacher functioned as officiating head Mistress. Smt. Sushila Gupta, the respondent no. 5 to the appeal was next senior most teacher who was not given charge of the officiating head mistress by the management and management passed resolution dated 1.7.1992 giving charge to Smt. Shashi Prabha Misra as officiating Head Mistress whose signature was attested by the District Inspector of Schools on 10.7.2001. District Inspector of Schools passed an order on 16.7.2001 that Smt. Sushila Gupta would function as an officiating Head Mistress against which order, Smt. Shashi Prabha Misra filed writ petition being writ petition No. 30736 of 2001 in which an interim order was passed on 29.8.2001. The signature of Smt. Shashi Prabha Misra was attested on 6.9.2004 by the District Basic Education Officer and an advertisement was also issued by the management on 12.6.2004 inviting applications for appointment on the post of Head Mistress of Dosar Vaish Balika Junior High School. Smt. Sushila Gupta filed writ petition No. 41420 of 2004 in which an interim order was passed on 5.10.2004 restraining the respondents from proceeding with the advertisement. However, in special appeal No. 1393 of 2004 the interim order granted by Single Judge was modified to the extent that selection pursuant to the interim order shall go on and any appointment made shall be

subject to the decision of the writ petition. Selection was thereafter held for the post of Head Mistress and Selection Committee recommended Smt. Manju Awasthi, which was also approved by the District Basic Education Officer on 25.2.2005. Smt. Sushila Gupta filed writ petition being writ petition No. 33360 of 2005 challenging the order of District Basic Education Officer approving the appointment of Smt. Manju Awasthi. Approval of the appointment order was given by the District Basic Education Officer under the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978. Both the writ petitions were allowed by Single Judge by judgment and order dated 22.11.2005. Hon'ble Single Judge held that the institution having been upgraded as High School and Intermediate, appointment on the post of head of the institution has to be made in accordance with the U.P. Intermediate Education Act, 1921 and the regulations framed thereunder as well as under U. P. Secondary Education Service Selection Boards Act, 1982. Advertisement and consequent selection of the appellant as Head Mistress of the Junior High School was set aside. Smt. Manju Awasthi as well as committee of management aggrieved by the aforesaid judgment of Hon'ble Single Judge have filed the appeal.

Special Appeal No. 170 of 2005 District Basic Education Officer and another Vs. Shree Krishna Tripathi has been filed challenging the judgment and order of Hon'ble Single Judge dated 13.1.2005, passed in writ petition No. 29697 of 2004, Shree Krishna Tripathi Vs. State of U.P. Writ petition No. 29697 of 2004 was filed by Shree Krishna Tripathi, who was working as a Clerk in the institution, challenging the order dated 1.7.2004 by which he was superannuated at the age of 58 years. Shree Krishna Tripathi was appointed as clerk in the Junior High School, which Junior High School was upgraded from Junior High School to High School by order dated 19.2.1997. The upgraded institution was not

receiving any grant-in-aid. The writ petitioner after having completed 58 years was directed to be superannuated in accordance with the provisions of the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees) Rules, 1984. The said order was challenged by the writ petitioner contending that institution having been upgraded, his service conditions shall be governed by U.P. Intermediate Education Act, 1921 and the Rules framed thereunder and the date of retirement under the Regulations being 60 years, he cannot be asked to be retired at the age of 58 years. Hon'ble Single Judge allowed the writ petition and quashed the order of retirement at the age of 58 years and directed that writ petitioner should be allowed to continue till 60 years. Hon'ble Single Judge held that after up gradation of institution, the service conditions of the employees shall be governed by U.P. Intermediate Education Act, 1921 and Regulations framed thereunder. The District Basic Education Officer as well as the Assistant Director of Education Basic have filed the Special Appeal challenging the said judgment.

Special Appeal No. 1468 of 2005 Surendra Datt Kaushik Vs. State of U.P. has been filed against the judgment and order dated 24.11.2005, passed by Hon'ble Single Judge in writ petition No. 63578 of 2005, Naresh Pal Singh Vs. State of U.P. and others. Sarvaodaya Mandir Junior High School was a recognised Junior High School receiving grant-in-aid. The institution was upgraded as High School in the year 1993 and Intermediate in the year 1997. However, recognition was without any finance (Vitta Vihin) and the salary was being disbursed at Junior High School level. An advertisement was issued by the management on 24.11.2004 inviting applications for appointment on the post of Head Master, in pursuance of which selection was undertaken which was approved by letter dated 16.9.2005 of District Basic Education Officer

approving Surendra Datt Kaushik as Head Master of Junior High School. Naresh Pal Singh filed writ petition No. 63578 of 2006, challenging the order of District Basic Education Officer approving the appointment. The writ petition has been allowed by Hon'ble Single Judge by the impugned judgment dated 24.11.2005 quashing the order of District Basic Education Officer. Hon'ble Single Judge following his earlier judgment in the case of Dr. Sushila Gupta Vs. Joint Director of Education and others (supra) held that after up gradation of the institution, the appointments has to be made in accordance with the provisions of the U.P. Intermediate Education Act, 1921 and U.P. Act No. 5 of 1982. District Basic Education Officer has no jurisdiction to make any selection.

Special Appeal No. 842 of 2009, Malti Verma vs. State of U.P. has been filed against the judgment and order dated 21.5.2009, passed in writ petition No. 40581 of 2008, Rajendra Pal Singh Vs. State of U.P. and others. Sunasir Nath Junior High School was a recognised Junior High School receiving grant-in-aid. In 1988 the institution was recognised as High School and in the year 1994, as Intermediate college. Vacancy of Head Master of Junior High School was advertised on 3.12.1997 and Malti Verma was selected as Head Mistress, which was approved by District Basic Education Officer vide his letter dated 19.1.2008. The appointment of Smt. Malti Verma has been challenged by Ravindra Pal Singh in writ petition which writ petition was allowed by Hon'ble Single Judge setting aside the appointment order dated 21.1.2008 with the direction that appointment be made in accordance with the provisions of the U.P. Intermediate Education Act, 1921 read with 1982 Act. Malti Verma, the selected candidate has filed the appeal.

Special Appeal No. 1957 of 2010 has been filed against the

judgment and order dated 21.5.2009, passed by Hon'ble Single Judge in writ petition no. 40581 of 2008, Ravendra Pal Singh Vs. State of U.P. which judgment has already challenged by Smt. Malti Verma in special appeal no. 842 of 2009 as noted above. The appeal No. 1957 of 2010 has been filed by the committee of management of two institutions namely; Sri Krishna Vidya Mandir and committee of management Adarsh Sarvajanik Uchchatar Madhyamik Vidyalaya, Angadpur after obtaining leave by this Court to challenge the judgment dated 21.5.2009 on the ground that in view of the said judgment, they are unable to make selection on the post of Principal.

We have heard Sri P.N. Saxena, Sri B.L. Yadav, Sri Anil Kumar, Sri K. Sahi, learned counsel for the appellants, Sri C.B. Yadav, learned Additional Advocate General, Sri S.C. Tripathi, learned Standing Counsel for the State respondents and Sri R.K. Ojha as well as Sri H.N. Singh for the private respondents.

The above appeals filed by the appellants can be divided in three categories:

(a) Appellants who have been selected as Head Master or Head Mistress of Junior High School in a recognised institution under the U.P. Intermediate Education Act, 1921 after approval of the Basic Shiksha Adhikari whose selection has been set aside by Hon'ble Single Judge in writ petition.

(b) Appeals by the committee of management of the institutions which had conducted the selection of Head Mistress at Junior High School level which was set aside by Hon'ble Single Judge including the appeal by committee of management of two institutions which

although had not made any selection but have challenged the order dated 21.5.2009 after obtaining leave of the Court on the ground that judgment affects their right to make selection on the post of Head Mistress of Junior High School.

(c) The appeal by District Basic Education Officer and Assistant Director of Basic have challenging the order passed by Hon'ble Single Judge by which order it has been held that after upgradation of the institution, Basic Shiksha Adhikari has no authority or jurisdiction to make selection on the post of Head Master/ Head Mistress in an upgraded institution.

Learned counsel for the appellants in support of their appeals submitted that the Junior High School which was receiving grant-in-aid were upgraded as High School/Intermediate college under section 7-A(a) of the U.P. Intermediate Education Act, 1921 which recognition clearly contemplated that recognition is without finance (Vitta Vihin) and no post having been created for the High School or Intermediate colleges, only post on which payment of salary is made is post of Head Master of Junior High School, hence, no error has been committed in making selection on the post of Head Master or Head Mistress of Junior High School level as the provisions of 1978 Rules regarding selection and appointment of head master/ Head Mistress still continues and no exception can be taken to selection on the post of Head Master/ Head Mistress of Junior High School. It is submitted that post of Principal of High School or Intermediate college having not been created, no appointment can be made on the post of Principal of Intermediate college under the U.P. Intermediate Education Act, 1921 and U.P. Act No. 5 of 1982. Reliance has also been placed on the Government Order dated 24.11.2001 which provided that administrative control of Basic Shiksha Adhikari shall continue with

regard to the post which were receiving grant-in-aid at the Junior High School level even after upgradation of the institution. It is further submitted that the institution is continued to be managed by the Head Master of the Junior High School even after upgradation who performs all administrative functions. The selection made by the Basic Shiksha Adhikari has been supported by learned counsel for the appellant assailing the judgment of Hon'ble Single Judge allowing the writ petitions. Learned counsel appearing for the District Basic Education Officer, Sri K. Sahi, has also contended that Basic Shiksha Adhikari continues to have administrative control over the institution since salary is being paid from grant-in-aid received by the institution at Junior High School level which is being disbursed by the Basic Shiksha Adhikari.

Learned counsel for the private respondents/ writ petitioners have supported the judgment of Hon'ble Single Judge and contended that after a Junior High School is upgraded as High School/Intermediate college, the identity of Junior High School is lost and the institution is to be governed by the provisions of the U.P. Intermediate Education Act, 1921 and the U.P. Act No. 5 of 1982 and the fact that institution is not receiving grant-in-aid at High School level/ Intermediate level shall not make any difference because the applicability of the U.P. Intermediate Education Act, 1921 and U.P. Act No. 5 of 1982 is not dependent on grant-in-aid which aspect is covered by U.P. Act No. 24 of 1971, but on the fact of granting recognition under the U.P. Intermediate Education Act. It is contended that the appointment on the post of Principal is to be made in accordance with the provisions of U.P. Intermediate Education Act, 1921 and the U.P. Act No. 5 of 1982.

Sri C.B. Yadav, learned Additional Advocate General has appeared on behalf of the State and has made his submissions.

While hearing the appeal No. 25 of 2006, this Court had

noticed the issues which have been raised in the appeal and had allowed time to learned Standing Counsel to obtain instructions and file an affidavit. It is useful to quote the order dated 11.8.2008 passed by this Court in the appeal which is to the following effect.

“Heard Sri Prabodh Gaur, learned counsel for the appellant, Sri R.K. Ojha Advocate and Sri K. Sahi, counsel for the respondent.

One of the questions raised in the present special appeal is that an aided and recognized Junior High School being upgraded as High School and thereafter Intermediate College under self finance, the Headmaster of the Junior High School will continue on the post or not.

To elaborate whether there shall be a separate Principal of the High School/Intermediate College which is unaided and the Headmistress/Headmaster of the Junior High School, which is recognized and aided, shall be entitled to function as the Head of the junior section only and as to whether there shall be two units for running the institution with two head of the institution, learned Standing Counsel appearing for the State prays time to obtain instruction in this regard.

As prayed, put up on 19th August, 2008 for further hearing.

The issues raised in the appeal are general and may effect large number of institutions. Sri G.K. Singh Advocate, who is present in the Court and other members of the Bar, who so desire, may assist the Court in the matter on the next date fixed.”

Subsequently, again hearing the matter on 26.11.2010, the

Court issued notice to the learned Advocate General to assist the Court looking to the importance of the issues raised in the appeal. The order dated 26.11.2010 is to the following effect:

“By an order dated 11.8.2008 we had allowed time to learned Standing Counsel to obtain instruction. One of the question which has been raised in the appeal is that an added and recognized Junior High School being upgraded as High School and thereafter Intermediate College under self finance, the Headmaster of the Junior High School will continue on the post or not.

This appeal is being heard along with the appeal no. 858(defective) of 2010 in which learned Single Judge has taken the view that the status of Junior High School after its upgradation shall come to an end. Reliance by learned Single Judge in this regard has been placed on Division Bench Judgment in Ajay Pratap Rai Vs. District Basic Education 2004 ADJ and two other judgments of learned Single Judge. The correctness of the aforesaid Judgment has been questioned in Appeal No. 858 of 2010. The issues which have arisen in this appeal raise important question and we deem it fit and appropriate to issue notice to learned Advocate General to assist the Court. We also permit the appellant to implead U.P. Secondary Education Service Selection Board through its Secretary, Allahabad as respondent no. 6 and serve copy on the counsel appearing for the selection Board. We also direct that relevant circulars and Government Orders issued in this regard by the State of U.P. be also placed on record by learned Advocate General by an affidavit.

List on 13.12.2010 by 2p.m.”

Again the Division Bench after hearing the parties on 10.1.2011, passed following order:

“Heard Sri P.N. Saxena, learned Senior Advocate and Sri Prabodh Gaur, learned counsel on behalf of appellants, Sri Sattish Chaturvedi, learned Additional Advocate General, assisted by Sri U.S. Mishra, learned Standing Counsel on behalf of the State-respondents.

In pursuance to the order of this Court dated 26th November, 2010, a supplementary affidavit has been filed today by Sri T.N. Verma, Additional Director of Education, U.P. Allahabad on behalf of State. The same is taken on record.

We have perused the affidavit. The same is not to our satisfaction. Various issues are up for consideration in these appeals. A recognised and aided Junior High School has been granted recognition under Section 7-A of the U.P. Intermediate Education Act, 1921. Under Regulation 4 of Chapter II, teachers of Junior High School are not entitled to be considered as teachers of the High School, which is granted recognition under Section 7-A and not under Section 7, in view of the specific language of said Regulation. Similarly, the issues as to (a) who is to act as the authority for the disciplinary action in respect of teachers of the institution after up-gradation, (b) who is to act as the approving authority, (c) which authority would recognize the Committee of Management of the institution after such up-gradation and (d) who is to participate as the principal in the Selection Committee in terms of the Government Order,

2001 regulating the appointment of part time teachers. These are only few of such issues, which have not been examined nor have been clarified. Many more similar issues may arise, which did need address by the State Government at the first instance in view of powers vested under Section 9 of the U.P. Intermediate Education Act, 1921 and other statutory provisions.

Respondent no. 1, Secretary, Department of Secondary, Government of U.P. at Lucknow after examining all aspects of the matter including those referred to above must file a comprehensive affidavit enclosing all relevant materials, which may throw light on the issues involved.

Sri Sattish Chaturvedi, learned Additional Advocate General prays for two weeks' further time to file the affidavit.

Time prayed for is allowed.

List this matter on 28th January, 2011."

An affidavit dated 27.4.2011 of Secretary Department of Secondary Education Government of U.P. has been filed in compliance of the order dated 10.1.2011, in which recommendations made by a committee on various issues raised in the order dated 10.1.2011 have been brought on record. The contents of the affidavit shall be noted in detail, while considering the issues. While hearing the appeals, the Court had also put specific query to learned Advocate General regarding conditions and circumstances under which recognition can be granted under section 7A to an institution as High School/ Intermediate. Specific query was also put as to whether recognition/permission under section 7A is contemplated to be granted to an already recognised

institution under the U.P. Intermediate Education Act or recognition/permission under section 7A can be granted for the first time to an institution under the U.P. Intermediate Education Act, 1921.

Learned Additional Advocate General in his submissions relying on the affidavit of Secretary Department of Secondary Education submitted that after upgradation of Junior High School as High School/ Intermediate, the identity of Junior High School is lost although the teachers who were working at Junior High School level shall be paid salary even after upgradation of Junior High School and the provisions of U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 shall not be applicable. The upgraded institution shall be governed by the approved scheme of administration under U.P. Intermediate Education Act, 1921. Recognition which have been granted under section 7A are recognition without finance (Vitta Vihin) and the institution is to be run by part time teachers appointed under section 7AA of the Act. In so far as part time teachers are concerned no post are created for them and their service conditions are to be governed by the Government Order dated 10.8.2001. The Head Master of the Junior High School however, shall continue to function as Head Master but he shall be receiving the salary of Junior High School level. For disciplinary action against the teachers of the upgraded institutions, the provisions of U.P. Act No. 5 of 1982 shall be applicable only to the teacher who are receiving the grant-in-aid up to Junior High School, further so far as part time teachers are concerned they will be governed by the Government Order dated 10.8.2001. The report which has been brought on record by means of affidavit of the Secretary has also made certain recommendations regarding bringing certain amendments in 1978 Rules and U.P. Act No. 5 of 1982.

We have considered the submissions of learned counsel for the parties and have perused the record.

From the submissions and pleading of the parties, following are the issues which have arisen for consideration in these appeals.

1. Whether after the Junior High School is recognised as High School/Intermediate college, the post of Head Master/ Head Mistress of the Junior High School is to be filled in accordance with the provisions of U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 or selection and appointment to the post of Head Master/Principal of recognised institution is to be made in accordance with the provisions of U.P. Intermediate Education Act, 1921 and U. P. Secondary Education Service Selection Boards Act, 1982?
2. Whether after a Junior High School is recognised as High School/Intermediate college and there being no post created of Head Master/ Principal in the recognised institution, it is the Head Master of the Junior High School, who is to function as Principal of the recognised institution and perform functions and duties which are required to be performed by the principal of the recognised upgrade institution?
3. Whether after recognition is granted under section 7-A (a) to an institution for the first time which recognition is without finance (Vitta Vihin), there is any obligation on the management to make appointment on the post of Head Master /Principal of High School/Intermediate College?

4. Whether under section 7A(a) of the U.P. Intermediate Education Act, 1921, the Board with the prior approval of the State Government can recognise an institution in any new subject or group of subjects or for a higher class; which institution is already a recognised institution under the U.P. Intermediate Education Act, 1921 or such recognition can be granted for the first time under section 7A(a) of the U.P. Intermediate Education Act, 1921 to an institution which is not a recognised institution under U.P. Intermediate Education Act, 1921?

5. Whether the word “institution” occurring in Section 7A(a) of U.P. Intermediate Education Act is to be read as “institution” as defined under section 2(b) of the U.P. Intermediate Education Act, 1921?

Before we proceed to consider the above mentioned issues, which have arisen in these appeals, it is relevant to look into statutory scheme of the 1921 Act specially in context of “recognition”. The 1921 Act was enacted for establishment of a Board of High School and Intermediate Education to take the place of the University in regulating and supervising the system of High School and Intermediate Education in Uttar Pradesh and to prescribe courses therefor. Major amendments were made in the 1921 Act by U.P. Act No.34 of 1958 and U.P. Act No.26 of 1975. Section 2 of the Act contains definition clause. Section 2(a) and 2(b) of the 1921 Act, which are relevant for the present case, are as follows:-

“2. Definitions.- In this Act, and in all regulations made hereunder, unless there is repugnant in the

subject or context,-

(a) "Board" means the Board of High School and Intermediate Education;

.....

(b) "Institution" means a recognised Intermediate College, Higher Secondary School or High School and includes, where the context so requires, a part of an institution, and 'Head of Institution' means the Principal or Head Master, as the case may be, of such institution;"

Section 3 of the 1921 Act provides for constitution of the Board. Section 7 of the 1921 Act provides for power of the Board. Section 7(4) provides for power of the Board to recognise institution for the purposes of examination. Section 7(4) of the 1921 Act is as follows:-

"7. Power of the Board.- *Subject to the provisions of this Act, the Board shall have the following powers, namely:*

(1)
.....

(4) To recognise institution for the purposes of its examination."

Section 9 of the 1921 Act provides for power of the State Government. Section 9(4), which is relevant for the purpose, is as follows:-

"9. Powers of the State Government.- (1)

.....

(2)
.....

(4). Whenever, in the opinion of the State Government, it is necessary or expedient to take immediate action, it may, without making any reference to the Board under the foregoing

provisions, pass such order or to take such other action consistent with the provisions of this Act as it deems necessary, and in particular, may, by such order modify or rescind or make any regulation in respect of any matter and shall forthwith inform the Board accordingly.”

Section 15 of the 1921 Act contains the power of the Board to make Regulations. Section 15(2) enumerates power of the Board to lay down conditions for recognition of the institution for the purposes of examinations. Section 15 sub clause (1) and sub clause 2(c) of the 1921 Act are as follows:-

“15. Power of the Board to make Regulations.”-(1) The Board may make Regulations for the purpose carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Board may make Regulations providing for all or any of the following matters, namely,-

(a)

(b)

(c) the conditions of recognition of institutions for the purposes of its examinations;”

The regulations have been framed by the Board in exercise of power under Section 15 of the Act. After the U.P. Act No.35 of 1958, the regulations were framed by notification dated 24th November, 1959. Chapter-VII of the Regulations provided for “recognition to the institution by the Board”. Various conditions were laid down by the Board to be fulfilled before recognition is granted under the 1921 Act. One of the conditions enumerated by the Board also related to the staff which shall hereinafter be referred to in detail. The conditions mentioned in Chapter-VII enumerates fulfilment of various requirements like fitness of the institution,

endowment, number of students, staff etc. The recognition was to be granted by the Board for preparing the students for examination conducted by the Board after fulfilment of conditions as enumerated in Chapter-VII. What should be the number of teachers required for a recognised institution also was provided in the regulations and subsequently the Manak (the principles) of requirement of number of teachers was laid down by the Government orders issued from time to time.

The State Government also used to provide various grants to educational institutions in the State including the primary institutions, Junior High Schools and institutions recognised under the 1921 Act. The grants were provided to the institutions in accordance with the U.P. Education Code and in accordance with the terms and conditions as laid down by the State Government from time to time. The recurring grant provided to the institutions was referred to as maintenance grant. The provisions of the 1921 Act and the regulations framed thereunder did not specifically provide for creation of post after recognition of an institution, however, creation of post was resorted to by the education authorities for purposes of regulating the teaching and other works in an institution. With regard to creation of post, the orders were issued by the State Government from time to time. The power to create the post in higher secondary institution was initially vested in the District Inspector of Schools/Regional Inspectress of Girls Schools. The State Government noticed that unnecessary posts were created by the aforesaid authorities, hence order was issued that no permission for creation of new posts be granted and if it is unavoidable to create a post, approval of the Director of Education be obtained. In this context reference to Government order dated 31st December, 1974 is made which noticed the earlier position and contained the restriction for creation of post. It is useful to quote the Government order dated 31st December, 1974 which is as follows:-

"प्रतिलिपि राजाज्ञा संख्या यू0ओ0
453/पन्द्रह-8-3036/74 जो श्री प्रभाकान्त शुक्ल, उपसचिव,
उत्तर प्रदेश शासन शिक्षा (8) दिनांक 31 दिसम्बर 1974

विषय:- मान्यता प्राप्त अशासकीय उच्चतर माध्यमिक
विद्यालय में शिक्षकों तथा शिक्षणेत्तर कर्मचारियों के पदों का
सृजन।

मुझे यह कहने का निर्देश हुआ है कि सांप्रतिक व्यवस्था के आधीन मान्यता प्राप्त अशासकीय उ० मा० विद्यालयों में शिक्षकों तथा शिक्षणेत्तर कर्मचारियों के पदों के सर्जन की स्वीकृति सम्बन्धित जिला विद्यालय निरीक्षक तथा मण्डलीय बालिका विद्यालय निरीक्षिकाओं द्वारा प्रदान की जाती है। यह देखने में आया है कि उक्त अधिकारी अनावश्यक पदों के सृजन की स्वीकृति देते रहते हैं जिसके परिणामस्वरूप शासन के उपर व्यय भार बढ़ता जाता है। अतः मितव्यता की दृष्टि से यह निर्णय लिया गया है कि इस राजाज्ञा की तिथि के पश्चात शासन के अग्रेत्तर आदेशों तक उक्त अधिकारी किसी नवीन पद के सृजन की स्वीकृति नहीं प्रदान करेंगे। इस सम्बन्ध में यह भी निर्णय लिया गया है कि प्रथमतः कोई नवीन पद का सृजन ही न किया जाये और यदि नवीन पद का सृजन अपरिहार्य हो तो उसकी स्वीकृति शिक्षा निदेशक (मा०) स्वयं प्रदान करेंगे। ऐसी स्थिति में इस विषय पर पूर्व निर्गत समस्त आदेशों को निरस्त करते हुए मुझे यह कहना है कि इस राजाज्ञा का कठोरता पूर्वक अनुपालन किया जाय।"

It is also relevant to note that an enactment, namely, U.P. High Schools and Intermediate Colleges (Payment of Salary to Teachers and other Employees) Act was enacted in the year 1971 (hereinafter referred to as the 1971 Act) which contains Section 9 regarding approval for post. Section 9 of the 1971 Act provides that no institution shall create new post or otherwise except with the prior approval of the Director. Section 9 of the 1971 Act is quoted below:-

"9. Approval for post.- No institution shall create a new post of teacher or other employee except with the previous approval of the Director, or such other officer as may be empowered in that behalf by the Director."

In this context reference of the letter of the Director of Education dated 30th June, 1984 is also relevant which contains

stipulation for creation of post both in aided and non aided institutions. Paragraph 2 of the letter dated 30th June, 1984 is as follows:-

"2- अशासकीय सहायता प्राप्त तथा गैर सहायता प्राप्त उ० मा० वि० में आयोजनात्मक तथा आयोजनेत्तर पक्ष के अन्तर्गत पद सृजन के जो प्रस्ताव क्षेत्रीय अधिकारियों से निर्धारित प्रपत्र पर प्राप्त हुए उनका परीक्षण करने पर यह अनुभव हुआ कि इन प्रस्तावों में जो छात्रसंख्या कक्षावार अंकित कर भेजी जाती है उसका सत्यापन शुल्काय के आधार पर जनपद के सम्बन्धित लेखाधिकारी से नहीं कराया जाता है और सामान्य प्रथानुसार कार्यालय द्वारा प्रस्तुत आख्या पर ही आधारित होकर जनपदीय अधिकारी उसका सत्यापन कर देते हैं। यह स्थिति संतोषजनक नहीं है। इस सामान्य प्रथा से विभाग/शासन पर अनावश्यक व्यय भार पड़ता है और फालतू पदों को कम करने के स्थान पर नवीन पद सृजन की कार्यवाही प्रारम्भ हो जाती है।"

The State Government on 20th November, 1985 had issued a Government order prescribing standard for the teachers in aided institutions which Government order was subsequently modified on 25th May, 1987. The Government order clearly stipulated that the posts shall not be treated to be automatically created as per standard unless they are formally created. From the aforesaid, it is clear that in the institutions, which are aided and non aided, the posts were created by the education authorities from time to time by an order in writing to cope with the teaching and prescribed minimum necessary teachers to man the institution.

The State legislature came with the amendment in 1921 Act by U.P. Act No.18 of 1987 which inserted Sections 7A, 7AA and 7AB (relevant for the purpose of this case) in the 1921 Act. Section 7A provides for recognition of an institution in any new subject, group of subjects or for higher class, Section 7AA provides for employment of part-time teachers or part-time instructors and Section 7AB provides for exemption. Sections 7A, 7AA and 7AB are quoted below:-

"7A. Recognition of an institution in any new subject or for a higher class.- Notwithstanding

anything contained in Clause (4) of Section 7-

(a) the Board may, with the prior approval of the State Government, recognise an institution in any new subject or group of subjects or for a higher class;

(b) the Inspector may permit an Institution to open a new section in an existing class.

7AA. Employment of part-time teachers or part-time instructors.- *(1) Notwithstanding anything contained in this Act, the management of an institution may, from its own resources, employ-*

(i) as an interim measure part-time teachers for imparting instructions in any subject or group of subjects or for a higher class for which recognition is given or in any Section of an existing class for which permission is granted under Section 7-A;

(ii) part-time instructors to impart instructions in moral education or any trade or craft under socially useful productive work or vocational course.

(2) No recognition shall be given and no permission shall be granted under Section 7A, unless the Committee of Management furnishes such security in cash or by way of Bank guarantee to the Inspector as may be specified by the State Government from time to time.

(3) No part-time teacher shall be employed in an institution unless such conditions may be specified by the State Government by order in this behalf are complied with.

(4) No part-time teacher or part-time instructor shall be employed unless he possesses such minimum qualifications as may be prescribed.

(5) A part-time teacher or a part-time instructor shall be paid such honorarium as may be fixed by the State Government by general or special order in this behalf.

(6) *Nothing in this Act shall preclude a person already serving as a teacher in an institution from being employed as a part-time teacher or a part-time instructor under Section 7AA.*

7AB. Exemption.- *Nothing in the Uttar Pradesh High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 (U.P. Act No.24 of 1971), or the Uttar Pradesh Secondary Education Services Selection Boards Act, 1982 (U.P. Act No.5 of 1982), shall apply in relation to part-time teachers and part-time instructors employed in an institution under Section 7AA.”*

The issues, which have arisen in these appeals, include the issue pertaining to interpretation of provisions of Section 7A of the 1921 Act. Section 7A provides that notwithstanding anything contained in Clause (4) of Section 7 the Board may, with the prior approval of the State Government, recognise an institution in any new subject or group of subjects or for a higher class. In the present appeals the Junior High Schools, which were receiving grant-in-aid up to High School level, were granted recognition under Section 7A(a). Whether Section 7A(a) contemplated grant of recognition for the first time under the 1921 Act or Section 7A(a) could be utilised for grant of recognition/permission in an institution already recognised under the 1921 Act, is the core question to be answered.

It is relevant to note that after amendment brought by U.P. Act No.18 of 1987, regulations specially regulations under Chapter-VII, have been amended and the amended regulations contain fulfillment of following requirement also:-

“सामान्य नियम

1, मान्यतार्थ शत प्रतिशत अध्यापक परिषद की योग्यता सूची के अनुसार निर्धारित योग्यता से युक्त होने चाहिये।”

The U.P. Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as the 1982 Act) was enacted to establish Secondary Education Services Selection Board for selection of teachers in the institutions which have been recognised under the 1921 Act. Section 2(e) of the 1982 Act defines the word “institution”, which reads as under:-

“2(e). ‘Institution’ means an Intermediate College or a Higher Secondary School or a High School recognised under the Intermediate Education Act, 1921, and includes institution maintained by a local authority but does not include an institution maintained by the State Government.”

The 1982 Act lays down the procedure for direct recruitment and promotion on the post of teacher. The word “teacher” has been defined in Section 2(k) of the 1982 Act which is as follows:-

“2(k). ‘Teacher’ means a person employed for imparting instruction in an institution and includes a Principal or a Headmaster.”

The 1982 Act, rules and the regulations framed thereunder provide for detail procedure for recruitment, selection and appointment of teachers in recognised institutions.

Now after having noticed the statutory scheme, we proceed to consider the issues as noted above.

Issue Nos.1, 2 and 3 are interrelated and have to be answered together. Issue Nos.4 and 5 are also interrelated and are to be taken first for consideration since the determination of Issue Nos.4 and 5 shall be relevant for answering Issue Nos.1, 2 and 3.

The core question, as noticed above, is as to whether the

word “institution” occurring in Section 7A of the 1921 Act is to be interpreted in accordance with the definition of the word “institution” as given in Section 2(b) or the definition of Section 2(b) is not to be applied while interpreting the word “institution” in Section 7A(a). As noticed above, the 1971 Act specifically contains a prohibition that no new post shall be created without prior approval of the Director. The Government order dated 21st August, 1974, as noticed above, also contained a prohibition that no post shall be created without prior approval of the Director in aided institution. The purpose and object behind the enactment of Section 7A of the 1921 Act is in line with the same legislative policy which was already reflected under Section 9 of the 1971 Act.

Whether the definition of the word “institution” as given in Section 2(b) is to be read in Section 7A(a) of the 1921 Act has to be determined on well established principles of statutory interpretation. Justice G.P. Singh in Chapter-III of the “Principles of Statutory Interpretation (13th Edition)” has elaborated the principles, which is as under:-

“When a word has been defined in the interpretation clause, prima facie that definition governs whenever that word is used in the body of the statute. As observed by Lord Dunedin: “It is a novel and unheard of idea that an interpretation clause which might easily have been so expressed as to cover certain sections and not to cover others should be when expressed in general terms divided up by a sort of theory of applicana singula singulis, so as not to apply to sections where context suggests no difficulty of application.” And as recently stated by LORD LOWRY: “If parliament in a statutory enactment defines its terms (whether by enlarging or by restricting the ordinary meaning of a word or expression), it must intend that, in the absence of a clear indication to the contrary, those terms as defined shall govern what is proposed, authorised or done under or by reference to that enactment.” But where the context makes the definition given in the interpretation clause inapplicable, a defined word when used in the body of the statute may have to be given a meaning different from that contained in the interpretation clause; all definitions given in an interpretation clause are therefore normally enacted

subject to the qualification- 'unless there is anything repugnant in the subject or context', or 'unless the context otherwise requires'. Even in the absence of an express qualification to that effect such a qualification is always implied. However, it is incumbent on those who contend that the definition given in the interpretation clause does not apply to a particular section to show that the context in fact so requires. An argument based on contrary context which will make the inclusive definition inapplicable to any provision in the Act cannot be accepted as it would make the definition entirely useless. Repugnancy of a definition arises only when the definition does not agree with the subject or context; any action not in conformity with the definition will not obviously make it repugnant to subject or context of the provision containing the term defined under which such action is purported to have been taken. When the application of the definition to a term in a provision containing that term makes it unworkable and otiose, it can be said that the definition is not applicable to that provision because of contrary context."

The Apex Court in the case of ***The Vanguard Fire and others vs M/S. Fraser And Ross and another*** reported in A.I.R. 1960 SC 971 has held that when a word has been defined in the interpretation clause prima facie that definition governs whenever that word is used in the body of the statute. Followings are the relevant observations made by the Apex Court in the said judgment:-

"It is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or the context. That is why all definitions in statutes generally begin with the qualifying words similar to the words used in the present case, namely, unless there is anything repugnant in the subject or context."

The Apex Court had again occasion to consider the statutory

interpretation pertaining to definition clause in the case of ***Indian City Properties Ltd. and another v. Municipal Commissioner of Greater Bombay and another*** reported in (2005) 6 SCC 417 and the issue was as to whether the definition of the word “building” is to be read in Section 299(1). The Apex Court, after elaborating the principles of statutory interpretation, held that the definition of “building” is to be read in Section 299. Following was laid down by the Apex Court in paragraph 10 of the said judgment, which is as under:-

“10. The body of the Section however qualifies the definition with the words "unless there be something repugnant in the subject or context". The phrase in Section 3 means precisely what it says namely, that the definition will apply unless excluded expressly or by necessary implication. The onus is on the person alleging such exclusion. It is not the respondent's case that the items found to be permanent existing structures by the Commission of the High Court, would not fall within the general definition of building. The submission is that the word should be read in a more restrictive manner in the context of Section 299. The question then is - has the onus been discharged by the respondent?”

Another judgment relevant to be noticed is the case of ***National Building Construction Corporation vs. Preetam Singh Gill and others*** reported in 1972(2) SCC 1. In the said case the question was as to whether definition of the word “workman” as provided in Section 2(s) is to be applied in Section 33C(2) of the Industrial Disputes Act, 1947. The Apex Court laid down that context and subject matter in connection with the word used in definition clause has to be looked into. The purpose of section has also to be taken into consideration while interpreting. The Apex Court laid down following in paragraph 12 of the said judgment:-

“12. Now, it is noteworthy that s. 2 of the Act,

which is the definition section begins, as is usual with most of the definition sections, with the clause, "unless there is anything repugnant in the subject or context". This clearly indicates that it is always a matter for argument whether or not this statutory definition is to apply to, the word "workman" as used in the particular clause of the Act which is under consideration, for this word may both be restricted or expanded by its subject matter. The context and the subject matter in connection with which the word "workman" is used are accordingly important factors having a bearing on the question. The propriety or necessity of thus construing the word "workman" is obvious because all parts of the Act have to be in harmony with the statutory intent. Keeping this in mind we may turn to the purpose and object of s. 33C of the Act. This section was enacted for the purpose of enabling individual workmen to implement, enforce or execute their existing individual rights against their employers without being compelled to have recourse to s. 10 by raising disputes; and securing a reference which is obviously a lengthy process. Section 33C of the Act has accordingly been described as a provision which clothes the Labour Court with the powers similar to those of an executing court so that the workman concerned receives speedy relief in respect of his existing individual rights. The primary purpose of the section being to provide the aggrieved workman with a form similar to the executing courts, it calls for a broad and beneficial construction consistently with other provisions of the Act, which should serve to advance the remedy and to suppress the mischief. It may appropriately be pointed out that the mischief which s. 33C was designed to suppress was the difficulties faced by individual workmen in getting relief in respect of their existing rights without having resort to s. 10 of the Act. To accept the argument of the appellant, it would always be open to an unfair, unsympathetic and unscrupulous employer to terminate the services of his employee in order to deprive him of the benefit conferred by s. 33C and compel him to have resort to the lengthy procedure by way of reference under s. 10 of the Act thereby defeating the very purpose and object of enacting this provision. This, in our view,

quite clearly brings out the repugnancy visualised in the opening part of s. 2 of the Act and such a position could hardly have been contemplated by the legislature. In order to remove this repugnancy s. 33C(2) must be so construed as to take within its fold a workman, who was employed during the period in respect of which he claims relief, even though he is no longer employed at the time of the application. In other words the term "workman" as used in s. 33C(2) includes all persons whose claim, requiring computation under this sub-section, is in respect of an existing right arising from his relationship as an industrial workman with his employer. By adopting this construction alone can we advance the remedy and suppress the mischief in accordance with the purpose and object of inserting s. 33C in the Act. We are, therefore, inclined to agree with the view taken by the Madras decisions and we approve of their approach. According to Shri Malhotra, in cases where there is no dispute about the employee's right which is not denied, he will be entitled to file a suit. Whether or not the right of suit can be claimed by the employee, we are not persuaded on the basis of this argument, to accept the construction canvassed on behalf of the appellant and deny to a dismissed employee the benefit of speedy remedy under s. 33C(2) of the Act."

Now it is to be looked into as to whether there is contrary intention in Section 7A to exclude the applicability of definition of the word "institution" as given in Section 2(b) of the 1921 Act. Section 7A contemplates recognition by the Board with the prior approval of the State Government in following three situations:-

- (i) recognise an institution in any new subject,
- (ii) recognise an institution in group of subjects, or
- (iii) recognise an institution in higher class.

Section 7A(b) of the 1921 Act also contains a provision empowering the Inspector to permit an institution to open a new section in an existing class.

Taking Section 7(b) of the 1921 Act first, the permission by Inspector to open a new section in existing class does not admit any construction except that permission to open a new section in an existing class has to mean an existing class in a recognised institution under the 1921 Act. The right of Inspector to permit opening of new section in existing class presupposes the existence of a class which is part of the recognised institution. Thus Section 7A(b) clearly admits the same meaning of the word “institution” as provided in Section 2(b) of the 1921 Act.

Now we proceed to consider three phrases used in Section 7A of the 1921 Act as noted above. Taking first clause (i) i.e. recognise an institution in any new subject, again presupposes existence of some subject already recognised as recognition in a new subject can be only in addition to subjects already recognised. Thus the definition of Section 2(b) is clearly attracted in interpreting the aforesaid phrase. The phrase (ii) i.e. recognise an institution in group of subjects, is also to be interpreted similarly as phrase (i). Now remains the interpretation of phrase (iii) i.e. recognise an institution **for higher class**. The question is whether recognition in a higher class has to be with respect to an institution recognised under the 1921 Act or recognition of higher class refers to an institution which is not recognised under the 1921 Act. The words “higher class” presupposes existence of a class in an institution. Thus the words “higher class” has to be read to mean classes higher to one which has already received recognition and the same has to be in an institution which has already been recognised under the 1921 Act.

Had the legislature intended that Section 7A of the 1921 Act shall also regulate recognition for the first time to an institution, it would not have qualified the grant of such recognition by three phrases as noted above. The legislature clearly intended to give

restrictive meaning to Section 7A and therefore mentioned the three phrases in the said section. The legislature never contemplated a very wide meaning to higher classes i.e. to admit recognition for the first time of an institution under the 1921 Act.

There is one more reason for accepting the above interpretation. All the three phrases occurring in Section 7A(a) of the 1921 Act have to be interpreted **ejusdem-generis**. All the three phrases are of the same kind and the same nature i.e. recognition in a new subject, group of subjects or higher classes. They belong to same class or genus and have to be interpreted in the same manner. Elaborating the principles of ejusdem-generis, the Apex Court in the case of **M/s Siddeshwari Cotton Mills (P) Ltd. vs. Union of India and another** reported in (1989)2 SCC 458 has laid down the principles of statutory interpretation in paragraphs 12 to 19, which are quoted below:-

12. *The expression ejus-dem-generis, 'of the same kind or nature'--signifies a principle of construction whereby words in a statute which are otherwise wide but are associated in the text with more limited words are, by implication, given a restricted operation and are limited to matters of the same class or genus as preceding. If a list or string or family of genus-describing terms are followed by wider or residuary or sweeping-up words, then the verbal context and the linguistic implications of the preceding words limit the scope of such words.*

13. *In 'Statutory Interpretation' Rupert Cross says:*

" The draftsman must be taken to have inserted the general words in case something which ought to have been included among the specifically enumerated items had been omitted

14. *The principle underlying this approach to statutory construction is that the subsequent*

general words were only intended to guard against some accidental omission in the objects of the kind mentioned earlier and were not intended to extend to objects of a wholly different kind. This is a presumption and operates unless there is some contrary indication. But the preceding words or expressions of restricted meaning must be susceptible of the import that they represent a class. If no class can be found, *ejus-dem-generis* rule is not attracted and such broad construction as the subsequent words may admit will be favoured. As a learned author puts it:

" if a class can be found, but the specific words exhaust the class, then rejection of the rule may be favoured because its adoption would make the general words unnecessary; if, however, the specific words do not exhaust the class, then adoption of the rule may be favoured because its rejection would make the specific words unnecessary."

15. Francis Bennion in his *Statutory Construction* page 829 and 830]. Francis Bennion in his *Statutory Construction* observed: "For the *ejus dem generis* principle to apply there must be a sufficient indication of a category that can properly be described as a class or genus, even though not specified as such in the enactment. Furthermore the genus must be narrower than the words it is said to regulate. The nature of the genus is gathered by implication from the express words which suggest it "

It is necessary to be able to formulate the genus; for if it cannot be formulated it does not exist. 'Unless you can find a category', said Farwell L J, 'there is no room for the application of the *ejus dem generis* doctrine'."

16. In *SS. Magnild (Owners) v. Macintyre Bros. & Co.*, [1920] Mc Cardie J said:

"So far as I can see the only test seems to be whether the specified things which precede the general words can be placed under some common category. By this I understand that the

specified things must possess some common and dominant feature."

17. *In Tribhuban Parkash Nayyar v. Union of India, [1970] 2 SCR 732 the Court said:*

" This rule reflects an attempt to reconcile incompatibility between the specific and general words, in view of the other rules of interpretation, that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous "

In U.P.S.E. Board v. Hari Shanker, AIR 1979 SC 65 it was observed:

" The true scope of the rule of "ejus dem generis" is that words of a general nature (following specific and particular words should be construed as limited to things which are of the same nature as those specified. But the rule is one which has to be "applied with caution and not pushed too far..... "

19. *The preceding words in the statutory provision which, under this particular rule of construction, control and limit the meaning of the subsequent words must represent a genus or a family which admits of a number of species or members. If there is only one species it cannot supply the idea of a genus."*

The Apex Court in the case of **Assistant Collector of Central Excise, Guntur vs. Ramdev Tobacco Company** reported in (1991)2 SCC 119 had again occasion to consider the principles of ejusdem generis. The Apex Court had to interpret subsection (2) of Section 40 of the Central Excise and Salt Act, 1944. The words used in Section 40(2) of were "suit proceeding" and "other legal proceeding". The Court had to assign the meaning of the words "other legal proceeding". The argument raised that the words "other legal proceeding" must be read ejusdem generis with the preceding expressions "suit" and "proceeding", was accepted.

Following was laid down by the Apex Court in paragraphs 5 and 8 of the said judgment:-

“5. The rule of ejusdem generis is generally invoked where the scope and ambit of the general words which follow certain specific words (which have some common characteristic and constitute a genus) is required to be determined. By the application of this rule the scope and ambit of the general words which follow certain specific words constituting a genus is restricted to things ejusdem generis with those preceding them, unless the context otherwise requires. General words must ordinarily bear their natural and larger meaning and need not be confined ejusdem generis to things previously enumerated unless the language of the statute spells out an intention to that effect. Courts have also limited the scope of the general words in cases where a larger meaning is likely to lead to absurd and unforeseen results. To put it differently, the general expression has to be read to comprehend things of the same kind as those referred to by the preceding specific things constituting a genus, unless of course from the language of the statute it can be inferred that the general words were not intended to be so limited and no absurdity or unintended and unforeseen complication is likely to result if they are allowed to take their natural meaning. The cardinal rule of interpretation is to allow the general words to take their natural wide meaning unless the language of the statute gives a different indication or such meaning is likely to lead to absurd results in which case their meaning can be restricted by the application of this rule and they may be required to fall in line with the specific things designated by the preceding words. But unless there is genus which can be comprehended from the preceding words, there can be no question of invoking this rule. Nor can this rule have any application where the general words precede specific words.

8. We have given our careful consideration to the submission made on behalf of the appellant, reinforced by the view expressed in the aforesaid

two decisions. In considering the scope of the expression 'other legal proceeding' we have confined ourselves to the language of sub-section (2) of section 40 of the Act before its amendment by Act 22 of 1973 and should not be understood to express any view on the amended provision. On careful consideration we are in respectful agreement with the view expressed in the aforesaid decisions that the wide expression 'other legal proceeding' must be read ejusdem generis with the preceding words 'suit' and 'prosecution' as they constitute a genus. In this view of the matter we must uphold the contention of the learned Additional Solicitor General that the penalty and adjudication proceedings in question did not fall within the expression 'other legal proceeding' employed in section 40 (2) of the Act as it stood prior to its amendment by Act 22 of 1973 and therefore, the said proceedings were not subject to the limitation prescribed by the said sub-section."

There is one more aspect of the matter which supports our interpretation to Section 7A(a). We have noticed above that recognition of an institution under the 1921 Act presupposes creation of posts for manning the institution. There is no dispute that prior to U.P. Act No.18 of 1987, the posts were created both for aided institutions and unaided institutions by the education authorities which is clear from the Government orders, U.P. Act No. 24 of 1971 and regulations as noted above. After 1987 Amendment by which Sections 7A and 7AA were inserted, Chapter-VII of the regulations have also been amended and the general condition for recognition that teachers should be possessed of minimum qualifications as provided under the 1921 Act is still there. The recognition of an institution presupposes existence of teacher possessing minimum prescribed qualification under the 1921 Act. Section 7AA of the 1921 Act, as quoted above, contemplates appointment of part time teachers or instructors after recognition is given in any new subject or group of subjects or in higher class. Thus the employment of part-time teacher is contemplated

subsequent to the recognition in a new subject, group of subjects or higher class. The aforesaid clearly indicate that when institution is recognised for the first time under the 1921 Act, there have to be teachers possessing minimum qualification to man the institution and it cannot be accepted that a fresh recognition under Section 7A of the 1921 Act can be granted where there are no teacher existing in the institution having minimum qualification and the school is to subsequently run only by part-time teachers who are to be appointed under Section 7AA of the 1921 Act. The above clearly indicate that recognition under Section 7A(a) of the 1921 Act has to be recognition in an already existing recognised institution and the word “institution” as used in Section 7A(a) and (b) has to be read according to the definition as given in Section 2(b) of the 1921 Act.

There is one more principle which reinforces our interpretation. The word “institution” has been used in Section 7A(a) and 7A(b) both. There cannot be any doubt or debate that word “institution” in Section 7A (b) refers to an already recognised institution because sub clause (b) of Section 7A contemplates opening of a new section in existing class. The existing class thus has to be in a recognised institution. We cannot construe that legislature intended to give different meaning in clauses (a) and (b) of Section 7A. When a word is used twice or more in the same section, the same meaning has to be assigned to the said word wherever it has been used in the said section. When the word is used in two places in same section different meaning cannot be assigned to the word to different clauses of the same section. A statute has to be construed in a manner as to make it effective and operative. The object for inserting Section 7A and 7AA in the 1921 Act, was for relieving the financial burden of the State from providing finance to recognition or permission with regard to any new subject, group of subjects or higher classes in an existing institution.

The “statement of objects and reasons” of Ordinance No. 6 of 1987 by which Section 7A was first brought in the Statute book throws considerable light on the intent of Legislature. The following is the “statement of objects and reasons” as published in U.P. Gazette Extraordinary dated 13.4.1987.

“उद्देश्य और कारण

शिल्प व्यापार और अन्य विषयों ने स्थानीय प्रतिभा सम्पन्न व्यक्तियों और विशेषज्ञों की सेवा उपयुक्त मानदेय देकर स्वेच्छिक आधार पर उपलब्ध कराने के उद्देश्य से और व्यवसायों तथा समाजिक दृष्टि से उपयोगी उत्पादक कार्य में शिक्षा देने के लिए लचीली व्यवस्था सुनिश्चित करने और इस प्रयोजन के लिए संसाधन जुटाने में स्थानीय समुदाय की भागीदारी की और अधिक प्रोत्साहन देने और समर्थ बनाने हेतु यह विनिश्चय किया गया था कि इण्टरमीडिएट शिक्षा अधिनियम 1921 संयुक्त प्रोन्नत अधिनियम संख्या 2 सन 1921 का संशोधन करके संस्थाओं के प्रबंधविकरण को इस बात की अनुज्ञा देने की व्यवस्था की जाए कि वह प्रयोगिक आधार पर नये अतिरिक्त अनुभाग खोलें ता अपने संस्थाओं से अंशकालिक अनुदेशको शिक्षकों की नैतिक शिक्षा या समाजिक दृष्टि से उपयोगी उत्पादक कार्य के लिए किसी व्यवसाय अथवा शिक्षण के फलस्वरूप अनुज्ञा दी जाए पढ़ाने के लिए ऐसी मानदेय देकर और ऐसी शर्तों पर जैसे राज्य सरकार द्वारा निश्चित या विनिश्चित की जाए नियुक्त करे!

चूंकि राज्य विधान मण्डल सत्र में नहीं था और इस विषय में तत्काल विधायी कार्यवाही करना आवश्यक था इसलिए राज्य द्वारा राष्ट्रपति का अनुदेश प्राप्त करने के पश्चात 14 अक्टूबर 1986 को इण्टरमीडिएट शिक्षा संशोधन अध्यादेश 1986 उत्तर प्रदेश अध्यादेश संख्या 10 सन 1986 प्रकाशित किया गया था!

तदनुसार उपयुक्त अध्यादेश को प्रतिस्थापित करने के लिए इण्टरमीडिएट शिक्षा संशोधन निदेशक 1987 पर स्थापित किया जाता है। ”

For interpreting Section 7A of the 1921 Act, the above “statement of objects and reasons” throws considerable light which reinforces our view that object of 7A was not to grant recognition to an institution for the first time but object was to (i) make available services of local specified experts on honorarium for giving encouragement to trades and socially useful subjects and (iii) to provide a flexible scheme.

Section 7A of the 1921 Act was never meant to grant recognition for the first time to an institution. For taking an institution for the first time under the 1921 Act there are several requirements including the requisite staff to man the institution. The legislature intended to lesser its financial burden by providing for employment of part-time teacher while inserting Section 7A(a) and (b) in the

1921 Act. The Apex Court in the case of **Commissioner of Income Tax vs. Hindustan Bulk Carriers** reported in (2003)3 SCC 57, has laid down that a statute or any enacting provision therein must be so construed as to make it effect and operative. Following was laid down by the Apex Court in paragraphs 14 and 21 which are as follows:-

“14. A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in maxim ut res magis valeat quam pereat i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties. (See Broom's Legal Maxims (10th Edition), page 361, Craies on Statutes (7th Edition) page 95 and Maxwell on Statutes (11th Edition) page 221.

21. The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a 'useless lumber' or 'dead letter' is not a harmonised construction. To harmonise is not to destroy.”

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

Learned counsel for the appellants as well as learned Additional Advocate General have submitted that after insertion of

Sections 7A and 7AA, large number of institutions have been granted recognition for the first time under Section 7A and they never received any recognition under Section 7(4) of the 1921 Act.

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

Issues No. 1,2 and 3 being interconnected are taken together for consideration. We first take the issue as to whether there has to be post of Head Master of High School even if the institution has been granted recognition as Vitta Vihin. As notice above, after insertion of Section 7A and 7A(a), the recognition for the first time to a Junior High School as a High School was being granted under section 7A Vitta Vihin hence, neither there was any occasion for creation of any post in the Vitta Vihin High School recognised nor there was any contemplation for regular appointment for the post of Head Master or any post of Assistant Teacher. We have noticed above that prior to 1986 Act, the recognitions were being granted to an institution under section 7(4) of the 1921 Act and thereafter whether the institution was aided or unaided, the educational authorities used to take steps for creation of post to man the institution according to the Manak prescribed in the Regulation/ Government Orders issued from time to time. The various Government Orders noted above, clearly depicts the above position and it was only after U.P. Act No. 18 of 1987 that all recognitions were started to be granted under section 7A (Vitta Vihin) without there being any step for creation of posts.

In the regulations framed under 1921 Act, Chapter VII contained the detail provisions pertaining to grant of recognition to an institution. U.P. High School and Intermediate Board vide its decision dated 28/29th April, 1961 had laid down the conditions to be strictly observed by the recognition Committee. The said decision contained condition no. 4 which was with regard to Staff of the institution which is seeking recognition. It is useful to quote paragraph 4 of the said decision of the Board which is to the following effect:

“4. staff-(a) One qualified Principal.

(b) Qualified teachers for all subjects including physical Training in which the institutions recognised.

(c) The strength of the tutorial staff should be such that no teacher is required normally to do teaching work for not more than 30 periods out of 42 working periods per week.

(d) One clerk in a High School and three Clerks including a librarian in an Intermediate College and additional clerks, if necessary, with the approval of the Director.”

Chapter VII of the Regulations were amended from time to time and the amendments in Chapter VII were made even after insertion of Section 7-A and 7A(a) in the 1921 Act. Chapter VII of the Regulations still contains a stipulation of teachers having qualifications prescribed under the 1921 Act for the purpose of recognition. A perusal of Chapter VII indicates that for recognition of the institution under 1921 Act, large number of requirements are contemplated including qualifications and pay scale of the teachers. It is useful to quote Regulation 5 and condition No. 1 of Samanya Niyam which is to the following effect:

“5. मान्यता के लिए आवेदन पत्र में निम्नलिखित विवरण विस्तार से रहेंगे, जिन पर निरीक्षण प्राधिकारी अपनी आख्या एवं संस्तुति देंगे—

(ए) क्या उस स्थान में संस्था के लिए वास्तविक आवश्यकता है

(बी) प्रबंध निकाय का संविधान ,यदि कोई हो,

(सी) प्रबन्धकद्ध मंत्री अथवा पत्र—व्यवहार करने वाले का नाम, जैसी स्थिति हो,

- (डी) अध्यापको की योग्यताएं तथा उनके वेतन की दरे
- (ई) परीक्षा अथवा परीक्षायेँ जिसके लएँ मान्यता अपेक्षित है
- (एफ) शिक्षण के विषय अथवा विषयों के नाम, संस्था जिनकी व्यवस्था करना चाहती है
- (जी) कक्षाओं तथा छात्रालयों में स्थान की व्यवस्था
- (एच) छात्रों के स्वास्थ्य, मनोरंजन और अनुशासन तथा क्रीडा-क्षेत्र की व्यवस्था
- (आई) संस्था की वित्तीय स्थिति तथा आय के स्रोत एवं धनराशि
- (जे) लिए जाने वाले शुल्क की दर तथा निर्धन छात्रों के प्रवेश के लिए प्राविधान, यदि कोई हो
- (के) प्रत्येक कक्षा अथवा कक्षा के खंड में छात्रों की संख्या
- (एल) साज-सज्जा तथा उपस्कर का विवरण
- (एम) पर्याप्त पुस्तकालय का प्राविधान

सामान्य नियम

1— मान्यतार्थ शत प्रतिशत अध्यापक परिषद की योग्यता सूची के अनुसार निर्धारित योग्यता से युक्त होने चाहिए!"

Thus, the regulations do not obviate the requirement of teachers to man the institution. As held above, the appointment of part time teachers under section 7AA is contemplated only after recognition is granted under section 7A. Thus, those part time teachers are not contemplated to be in existence at the time the school seeks recognition. We have already come to the conclusion that the first recognition of an institution as High School under the 1921 Act cannot be granted under section 7A and recognition under section 7A is a recognition of an existing recognised institution under the 1921 Act. Thus, where a recognition is granted under section 7A as per the conditions mentioned in Section 7A, the institution is already in existence as a recognised institution. The existing institution has to be envisaged along with skeleton teachers to man the high school. Thus, the requirement of creation of post when an institution is recognised for the first time is very

much there. It is another thing that Government may not take any financial responsibility for payment of salary to such teachers when an institution is recognised for the first time and it is always open to the Government to grant recognition vitta Vihin or not to take the institution on grant-in-aid but whether an institution is taken on aid or not taken on aid has nothing to do with the standard with which an educational institution is to maintain or inspire. We are thus, of the clear view that when an institution is recognised for the first time, the institution contemplates creation of skeleton of post to man the institution and when a Junior High School is recognised as High School under the 1921 act for the first time, the post of Principal Head Master has to be there whether the institution receives an aid or does not receive an aid, which factor is immaterial.

There has to be a Head Master of the High School, is reinforced by looking to the scheme of employment of part time teachers or part time instructors under section 7AA. Section 7A contemplates recognition in following three circumstances:

- (i) Recognition of an institution in any new subject.
- (ii) Recognition of institution in group of subjects
- (iii) recognition of an institution for higher class.

The appointments of part time teachers under section 7AA is contemplated in above three circumstances and when an inspector permit to open new section in existing class also there can be appointment of part time teachers. When a recognition is granted for any new subjects or group of subjects or for higher class only teachers are required to man the classes and Section 7AA satisfies the requirement by engagement of teachers or part time instructors by the management, who are to be paid salary from their own

resources but section 7AA does not contemplated an appointment of Head Master of the High School nor when an institution is recognised under section 7A any Head Master is contemplated to be appointed under section 7AA. However, existence of an institution cannot be envisaged without there being head of the institution. In the regulations framed under the U.P. Intermediate Education Act, it was envisaged that when a Junior High School is recognised as High School under section 7, the Head Master of Junior High School may be promoted as Head Master of the High School. Thus, the post of Head Master of the High School was very much contemplated and provided for under regulation 2 of Chapter II, which provides for Appointment of Heads of Institutions and Teachers. Regulation 2 (2)(a) of Chapter II is as follows:

“(2)(a) Where an institution is raised from a High School to an Intermediate College, the post of Principal of such college shall be filled by promotion of the Headmaster of such High School, if he was duly appointed as Headmaster in substantive capacity in accordance with law for the time being in force and possesses a good record of service and the minimum qualifications prescribed in that behalf or has been granted exemption from such qualifications by the Board.”

After the enforcement of U.P. Act No. 5 of 1982 also it was contemplated in U.P. Secondary Education Services Commission (Removal of Difficulties) Order 1981 clause 4 (1) (C) that in the case a Junior High School is raised to the level of a High School, the post of Principal be filled by the Head Master of such Junior High School by adhoc appointment by promotion. Thus, 1982 Act also contemplated filling up of the post of Head Master of a High School by promotion of Head Master of Junior High School on

ad hoc basis. However, scheme of 1982 Act contemplated the regular appointment on the post of head of the institution thereafter. Thus, the post of head of institution after recognition under section 1921 Act has to be filled up and no situation can be contemplated where post has to remain vacant or there has to be no post of head of institution in the High School. We have already held that recognition under section 7A cannot be granted for the first time to an institution as a High School and the said recognition under section 7A has to be for an institution which is already recognised under the 1921 Act within the meaning of section 2(b) of 1921 Act. Thus, when a request is prayed for and granted under section 7A there is an already recognised institution contemplating a head of institution since no appointment on the post of head of institution is contemplated under section 7AA. There has to be full time Head Master of a High School and above interpretation is in accordance with the statutory scheme as delineated by 1921 Act, Regulations framed thereunder and 1982 Act.

Thus, we are of the view that there has to be a Head Master of the High School when it is recognised for the first time and requiring a Head Master to be appointed clearly contemplated a post of Head Master and the said post is to be created by educational authorities irrespective of the fact whether State is giving any aid or not. State can very well recognise an institution as High School (vitta vihin) but that itself does not absolve the requirement of having of a post of head of institution or creating the said post. When a post is contemplated in an institution either of Head Master or teacher which is required to be granted on Manak fixed by the Government for the purpose of recognising an institution for the first time, management cannot be absolved from its responsibility to make appointment of qualified teachers to man the minimum post of teachers required for establishing an institution or for recognising an institution in the High School and it cannot be

absolved from its responsibility to make the payment of their salary as has already been laid down in various Government Orders from time to time.

Now we come to section 9 of the Payment of Salaries Act, 1971 which provided that no institution shall create a new post of teacher or other employee except with the previous approval of the Director. Reading of Section 9 clearly indicates prohibition on creation of new post of teacher in an institution. The word 'institution' has been defined under Section 2(b) of the 1971 Act. Section 2(b) and Section 2(c) of 1971 Act are quoted below:

“2(b) 'Institution' means a recognised institution for the time being receiving maintenance grant from the State Government;”

2(c) 'maintenance grant' means such grant-in-aid of an institution, as the State Government by general or special order in that behalf direct to be treated as maintenance grant appropriate to the level of the institution.”

Section 9 of the 1971 Act contemplates creation of post of teacher or other employee in an aided institution with the approval of Director. Section 9 has no application with regard to an institution which is not receiving maintenance grant from the State. At this juncture, it is relevant to notice the Full Bench judgment of this Court in (1991) 1UPLBEC1 **Gopal Dubey vs District Inspector Of Schools, Mahraj Ganj**. The facts giving rise to reference to the Full Bench need also to be noted for appreciating the ratio of the Full Bench. Janta Intermediate College, Maharajganj was a recognised Intermediate College. Education Secretary vide letter dated 24.6.1980 permitted running of Intermediate classes in six subjects including the subject of sociology. The Institution was receiving grant-in-aid from the State

Government. Committee of Management took a decision to promote the petitioner Gopal Dubey, who was an Assistant Teacher L.T. grade in the Institution as Lecturer in Sociology by its resolution dated 30.12.1990. The papers were sent to the Inspector for payment of salary to the petitioner vide letter dated 15.1.1991. The Inspector informed the management that since the post of Lecturer in Sociology had not been created therefore, he would not sanction the salary. The Committee contended that since the Board had granted recognition for teaching 6 subjects including Sociology it had to be assumed that it was open to the Committee of Management to appoint Lecturer in that subject. The writ petition was filed by Gopal Dubey under Article 226 of the constitution of India seeking mandamus directing the respondents to pay his salary from 30.12.1990. When the matter came before Hon'ble Single Judge, finding a conflict between two Division Benches namely; **Karunapati Misra v. District Inspector of Schools, Jaunpur and others**, 1986 UPLBEC 172, wherein it has been held that when the Board of High School and Intermediate Education. U. P. has granted recognition for a particular subject, it has to be assumed that the College can appoint a Lecturer in that subject and another judgment in **Mahipal Singh Pawar v. State of U. P.**, (1992) 2 UPLBEC 1497, wherein it was held that it is the sole domain of the Director of Education to sanction and create posts of teachers and other staff as provided under Section 9 of the 1971 Act. Following was referred by Hon'ble Single Judge for determination:

“Whether on recognition being granted by the Board in respect of a subject in an Institution under Section 7A of the U. P. Intermediate Education Act. 1921 (U. P. Act No. II of 1921) (hereinafter referred to as the Intermediate Education Act), it will be presumed that the post of Lecturer in such subject stands sanctioned by the Director of Education

under Section 9 of the Payment of Salaries Act?”

The Full Bench of this Court answered the question. The Full Bench held that recognition being granted by the Board in respect of a subject in an institution under section 7A, it will not be presumed that the post of Lecturer in such subject is sanctioned. Following was laid down by the Full Bench in paragraph 22:

“22. In view of the above discussion, the answer to the question formulated by us is that on recognition being granted by the Board in respect of a subject in an Institution under Section 7A of the U. P. Intermediate Education Act. 1921, it will not be presumed that the post of Lecturer in such subject stands sanctioned by the Director of Education under Section 9 of the Payment of Salaries Act.”

Full Bench proceeded on the premise that permission for running institution was granted after 1986 Act under section 7A. The institution was an aided institution hence, 1971 Act was fully applicable and under section 9 of the 1971 Act no post could have been created without prior sanction of the Director. Full Bench after considering section 9 of the 1971 Act has held that no post can be treated sanctioned unless it is sanctioned under section 9. It is useful to quote paragraphs 15,16,17,18 and 19 as follows:

“15. In Section 7A, which was substituted in the statute by amendment with effect from 14.10.1986 by U. P. Act No. XVIII of 1987, it is laid down that notwithstanding anything contained In clause (4) of Section 7, (a) the Board may, with the prior approval of the State Government, recognise an institution in any new subject or group of

subjects or for a higher class ; (b) the Inspector may permit an Institution to open a new section in an existing class.

16. *Section 7AA, which was inserted by U. P. Act XVIII of 1987 makes provision for employment of part time teachers or part lime instructors. It provides, infer alia, that notwithstanding anything contained in this Act the management of an institution may from its own resources employ : (i) as an interim measure part time teachers for Imparting instructions in any subject or group of subjects or for a higher class for which recognition is given or in any section of an existing class for which permission is granted under Section 7A ; (ii) part time instructors to impart instructions in moral education or any trade or craft under socially or useful productive work or vocational course. Sub-sections (2) to (5) lay down preconditions for appointment of a part time teacher. In sub-section (6) of Section 7AA it is provided that nothing in the Act shall preclude a person already serving as a teacher in an institution from being employed as a part time teacher or a part time instructor under Section 7AA. In this connection a provision in the Regulations framed under the Intermediate Education Act is relevant. In Regulation 19 under Chapter II of the Regulations, it is laid down that where any person is appointed as, or any promotion is made on any post of head of Institution or teacher in contravention of the provisions of this Chapter or against any post other than a sanctioned post, the Inspector shall decline to pay salary and other allowances, if any, to such person where the Institution is covered by the provisions of the U. P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees)*

Act. 1971 and in other case shall decline to give grant for the salary and allowance in respect of such person. At this stage it is relevant to note that as the statement of the object of the Act states the statute was enacted to establish a Board to take the place of the Allahabad University in regulating and supervising the system of High School and Intermediate Education in the United Provinces, and to prescribe courses therefor.

17. From the provisions of the two Acts and the Regulations noted above, the scheme of things that emerges is that the Board constituted under the U. P. Intermediate Education Act is the competent authority to accord recognition to an institution for the purposes of its examinations in subjects specified in the sanction order as provided in Section 7. The Board is also empowered under Section 7A to accord recognition to an institution in any new subject or group of subjects or of a higher class with prior approval of the State Government.

18. The Payment of Salaries Act, on the other hand, is an Act to regulate the payment of salaries of teachers and other employees of High Schools and Intermediate Colleges receiving aid out of the State funds and to provide for matters connected therewith. An Institution under the said Act means a recognised institution for the time being receiving maintenance grant/grant-in-aid from the State Government. In respect of such an institution, the State Government takes the liability to pay salary to the teachers and the other employees of the institution. A teacher or employee, in order to claim the benefit of payment of salary under the said Act has to fulfil certain

conditions prescribed under the statute. The Management of the Institution, in order to claim reimbursement of salary of its teachers and employees, is also to fulfil the conditions prescribed under the Act. In, Section 9 of the Act. it is mandated that no Institution shall create a new post of teacher or other employee except with the prior approval of the Director or such other officer as may be empowered in that behalf by the Director. In the present case the distinction between a new post and an existing post is not relevant because it is not disputed that the post of Lecturer to which the petitioner claims to be promoted/ appointed is a new post created in the year 1990. No dispute was raised before us regarding applicability of Section 9 to the case.

19. *The argument of Sri S. K. Verma, learned Senior Advocate appearing for the petitioner, was that since the Director of Education is ex officio Chairman of the Board under the Intermediate Education Act and the Board has accorded recognition to the Institution with Sociology as one of the subjects, it is to be presumed that he (the Director) has sanctioned the post of Lecturer for the subject. This contention does not commend acceptance. Section 9 of the Payment of Salaries Act expressly mandates that no Institution shall create a new post of teacher or other employee except with the previous approval of the Director or such other officer as may be empowered in that behalf by the Director. Since the statute requires the thing to be done in a particular manner, then it has to be done in that manner or not at all. It follows, therefore, that prior approval of the Director in writing must be obtained before the management creates a new post of teacher in the recognised*

Institution. The requirement of the statute cannot be presumed because the Director happens to be the authority or one of the authorities concerned in the matter of accord of recognition for opening a new subject in a College. It is relevant to note here that recognition for opening a subject in a College is accorded by the Director under the provisions of the Intermediate Education Act, which is a statute to establish a Board to regulate and supervise the system of High School and Intermediate Education in Uttar Pradesh, prescribe courses therefor and oversee related activities ; whereas the Payment of Salaries Act is enacted to regulate the payment of salaries to teachers and other employees of the High Schools and Intermediate Colleges and to provide for matters connected therewith. The two statutes, in our considered view, operate in different fields. While dealing with matters like recognition and payment of salary of teachers and other employees relevant matters to be taken into consideration are different. Regarding recognition, the authority has to satisfy itself about necessary infrastructure, the facilities available in the Educational Institution, the benefit to the students of the locality in opening the new subject in the Institution, the potentiality of the Institution to cater to the needs of the students of the locality, etc. While dealing with the question of granting approval for creation of a post of a teacher or other employee in an Institution, the primary consideration is the preparedness of the State Government to bear the financial liability of the new post proposed to be created. It follows, therefore, that the contention that since the Director is associated with the matter regarding grant of permission/ recognition for opening new subject in the Institution, it is presumed that

he has given his consent for creating new posts of teachers and other employees for that subject is not correct. This contention, if accepted, may lead to situation that the management creates posts of teachers and other employees in connection with the new subject and the State Government is compelled to bear the financial liability without any further involvement in the matter. Such a situation, as we read the provisions of the two enactments, is not contemplated. It also does not appeal to common logic. The result is that for the purpose of creating a new post of teacher or other employee for/in connection with a new subject, which it has been permitted to open, the management has to obtain prior approval of the Director as required, under Section 9 of the Payment of Salaries Act. This statutory mandate cannot be said to have been satisfied by raising a presumption on the basis of recognition granted for that subject.”

The Full Bench also approved the ratio of **Mahipal Singh Pawar and others v. State of U. P. and others** (supra) and disapproved the ratio of **Karunapati Misra v. District Inspector of Schools, Jaunpur and others** (supra). The said judgment laid down the proposition that in an aided institution, no post can be sanctioned without prior approval of the Director but so far as unaided institution which has received Vitta Vihin recognition under section 7A (a) of the 1921 Act there is no prohibition on creation of post by any authority who may be Director or any other authority.

It is relevant to notice Section 13A of the U.P. Junior High School (Payment of Salaries of Teachers and Other Employees) Act, 1978 provides for payment of salaries to the teachers and

other employees of Junior High Schools which is receiving grant-in-aid. Difficulty arose regarding payment of salary to teachers of Junior High School who were receiving salary under the 1978 Act in the circumstance when the Junior High School was recognised as High School and institution was not receiving grant-in-aid at High School level. For removing the difficulty in payment of salary to those teachers of Junior High School who were receiving grant-in-aid, the Legislature inserted Section 13A which is to the following effect:

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

(2) For the purpose of this section the reference to the students wherever they occur in Section 5, shall be construed as reference to the students of classes up to Junior High School level only.”

Section 13-A is a statutory scheme which contemplated an extension to the provisions of 1978 Act for the purpose of payment of salaries to those teachers and employees who were receiving salary at Junior High School level from grant-in-aid. The extension to the provisions of 1978 Act for payment of salaries to teachers of Junior High School level which institution is upgraded and recognised as High School level does not mean that even after the institution is upgraded as High School, other provisions of the U.P. Basic Education Act and Rules framed thereunder including the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 still applies to

teachers of High School. The question came for consideration before a Full Bench in **State of U.P. and others Vs. District Judge, Varanasi and others**, reported in 1981UPLBEC 336. The question was as to whether the maintenance grant which was being received by teachers at Junior High School can be treated to be a maintenance grant within 1971 Act. The question was answered in negative. The questions framed have been noted in paragraph 1 of the judgment which is as follows:

“ Question No. 1.-

when an institution receiving maintenance grant as a Junior High School is recognised as a High School under the provisions of Intermediate Education Act, 1921 but is not paid any maintenance grant as such High School, it is governed by the provisions of Uttar Pradesh High School and Intermediate Colleges (Payment of Salaries to Teachers and other Employees) Act, 1971 ?”.

Question No. 2.-

Whether the maintenance grant received by the institution as a Junior High School can, when the institution is raised to the level of High School be treated to be a maintenance grant as defined by Section 2(c) of the U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 ?.”

Although the questions were answered in negative yet the Full Bench had laid down that a basic school or a Junior High School is thus different from a High School or an Intermediate College. Full Bench further held that after a basic school or a Junior High School is upgraded as a High School or an Intermediate College the identity of the institution known as basic school or

Junior High School is lost. It ceases to exist as a legal entity and in its place another institution with a new legal entity comes into being. Following was laid down in paragraph 17.

“17. A basic school or a Junior High School is thus different from a High School or an Intermediate College. On the plain language of these definitions the same institution cannot be called a basic school or a Junior High School as well as a High School or an Intermediate College. Each one has a distinct legal entity. On a basic school or a Junior High School being upgraded as a High School or an Intermediate College the identity of the institution known as basic school or Junior High School is lost. It ceases to exist as a legal entity and in its place another institution with a new legal entity comes into being. One cannot be equated with the other. In this connection reference may also be made to the decision of the Supreme Court in Commissioner Lucknow Division v. Km. Prem Lata Mtera MANU/SC/0064/1976 : AIR 1977 SC 334. It would further be seen that administration including constitution of Committee of Management of an institution recognized under U, P. Act II of 1921 is to be carried out in accordance with a Scheme of Administration prepared under Section 16-A of the said Act and this Section does not apply to basic school or a Junior High School. For all these persons and in the absence of any specific provisions in this behalf-none having been pointed out to us-maintenance grant payable to the basic school or Junior High School which has been upgraded as High School cannot and does not automatically become payable to the recognised High School. Suppose after a Basic School or a Junior High School has been upgraded as a recognised High School,

the State Government stops payment of the amount of maintenance grant which was being paid to the Basic School or the Junior High School, can the recognized High School claim as a matter of right that the said amount has become automatically payable to it. The answer, in the absence of any specific provision permitting such automatic transformation, so to speak will, in our opinion, have to be in the negative. Such a recognized High School will have to wait till maintenance grant payable to it as a recognized High School has been fixed as contemplated by Section 2(c) of U.P. Act 24 of 1971. Consequently, even if the maintenance grant payable to a Basic School or a Junior High School is continued to be paid to those who were managing the erstwhile Basic School or Junior High School it cannot be said that the upgraded recognized High School is receiving any maintenance grant as defined in Section 2(c) of U.P. Act 24 of 1971.”

After the Full Bench judgment, the Legislature inserted Section 13-A, the consequence of which is for limited purpose that is for payment of salary, the provisions of 1978 Act applies and the service conditions of teachers of High School have to be governed by 1921 Act and 1982 Act. Before the Division Bench in **Ajay Pratap Rai Vs. District Basic Education Officer & others** 2007(4) ADJ 357, the issue as to whether after upgradation of an institution as High School, U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 shall apply or appointment is to be made in accordance with 1921 Act and 1982 Act came for consideration. Following was laid down by the Division Bench in paragraphs 8,10,11 and 16:

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

10. The issue raised by the appellant, therefore, in respect of the status of the institution as still to be that of a Junior High School for the purposes of appointment on the post of Head of the Institution, has to be rejected for the reasons given by the learned Single Judge with which we find ourselves to be in full agreement with, The word "upgradation" in its normal connotation means improvement; enhancement of status; more efficient. The word "grade" is derived from the latin word 'gradus' which means degree, step. In Hari Nandan Sharan Bhatnagar v. S.N. Dixit and Anr. MANU/SC/0430/1969 : [1970]1SCR421 ; and A.K. Subraman v. Union of India and Ors. MANU/SC/0360/1974 : (1975)ILLJ338SC , the Apex Court held 'grade' means rank, position in a scale, a class or position in a class according to the value. It means a degree in the scale of rank, dignity, proficiency etc. (Section 15 of Code of Civil Procedure, 1908). The word 'upgradation' therefore means improvement in degree, raising of status, rank, quality or in value. It is an

improvement in proficiency and reflects a rising gradient. The institution was admittedly a Junior High School and was raised to the status of a High School in 1993 and to that of Intermediate College in the year 1999. It is undisputed that upon being upgraded as a High School, the institution has been recognized as such under the provisions of Act, 1921. This undisputed position, therefore, clearly establishes that the institution ceases to be a Junior High School and for the purposes of appointment of Head of the Institution, the appointment can only be made by resorting to the provisions as indicated in the judgment rendered in Sushila Gupta's case (supra). The observations made by the Full Bench in the case of State of U.P. v. District Judge Varanasi (supra), which have been quoted in detail by the learned Single Judge are worth reiterating to the effect that Basic School or a Junior High School is different from a High School or an Intermediate College as the same institution cannot be called Basic School or a Junior High School as well as a High School or an Intermediate College. The Full Bench above referred to held as under:

On a Basic School or a Junior High School being upgraded as a High School or Intermediate College, the identity of the institution known as Basic School or a Junior High School is lost and it ceases to exist as a legal entity and in its place another institution with a legal entity comes into being. One cannot be equated with the other.

11. *The aforesaid observations of the Full Bench as explained in the judgment Sushila Gupta's case, therefore, leave no room for doubt that the selection and appointment on the post of Head of the Institution which*

has been cognized as a High School and Intermediate College cannot be made under the provisions which are applicable to a Junior High School. In Sushila Gupta (supra), the learned Single Judge considered all the Amendment made in the Statute and held that in spite of so many amendments to the statutory provisions, the proposition of law laid down by the above referred to Full Bench remained the same. Mr. Saxena has not brought to our notice any provision which have altered the legal position.

16. *The contention with regard to the direction of the learned Single Judge in respect of lodging a First Information Report also does not deserve to be interfered with as the learned Single Judge having recorded his finding in respect of the manipulations in the publication in the newspaper, has concluded that the same requires to be investigated by an investigating agency. We do not find any error in the same as, prima facie, there was ample material before the learned Single Judge to have arrived at the aforesaid conclusion. We have ourselves also perused the two copies of the Hindi Daily "Dainik Manyavar" alleged to have been published on Monday, the sixth of January, 2003. On page two of the said newspaper there is a clear difference as the same space in one copy carries a news item of arrest of two persons whereas the other copy contains the advertisement under scrutiny. The same therefore leaves no room for a genuine doubt that fraud has been apparently practiced. Both copies at page four disclose the name of the Editor Sri Om Prakash Jaiswal and recite the name and address of Mamta Printers, Khwajgi Tola, Jaunpur as Publishers. The same further discloses the name of the*

printing press as Bharatdoot Press, 6 Rampuri, Varanasi. The telephonic and E-mail address are also indicated therein. The Investigating agency shall also take notice of the above while initiating proceedings and copies of the newspapers shall be made available and obtained for the said purpose as the involvement of the publishing and printing agency in this matter cannot be ruled out. The investigation shall forthwith be set into motion as per the directions of the learned Single Judge.”

Thus, the question that a Junior High School after recognition of High School, the service conditions of teachers and employees shall be governed by 1921 Act and 1982 Act is no more res-integra and has been clearly answered in the aforesaid two judgements. At this juncture, it is also relevant to note another Division Bench judgment of this Court in **Shiksha Prasara Samiti Vs. State of U.P. and others** 1986 UPLBEC 477, where the question arose for consideration as to whether U.P. Act No. 5 of 1982 is applicable to the institution not getting grant-in-aid. Following was laid down in paragraphs 9, 13,14,15,16 and 17 :

“ 9. The contention of the Petitioner that U.P. Act No. V of 1982 is not applicable to the institution in question is equally without merit. The applicability of the Act is not dependent upon the institution being on the list of grants-in-aid institutions. Whether it receives or does not receive any grant from the Government is immaterial. What is material is that it should be a recognised institution.

13. *Learned Counsel for the Petitioner has next contended that Sri Ram Prakash Misra, who was already working as Head Master of the Junior High School would*

be deemed to have become the Head Master of the upgraded Janta High School. For this purpose he has placed reliance on regulation contained in Chapter II of the Regulations. The relevant portion of the said regulation has been quoted in para 14 of the petition which is reproduced here:

Regulation 4. Where any Junior High School is recognised as a High School under Section 7, a permanent or temporary teacher of such school possessing the minimum qualifications under Regulation 1, shall be deemed to be permanent or temporary teacher, as the case may be, of such High School provided that the service of a temporary teacher who is not selected for appointment in accordance with the provisions of the Act and the regulations shall be dispensed with after giving him one months notice in that behalf or one months pay in lieu of such notice.

14. *Learned Counsel for the Petitioner has contended that regulation 4 does not speak of the head of the institution but lays down that where a Junior High School is recognised as High School, the permanent or temporary teacher of such school would become the permanent or temporary teacher of the High School. The word 'teacher' in regulation 4 should, it is contended, be treated to include head of the institution also or else the provision will have to be struck down as bad inasmuch as a teacher under regulation 4 would become the teacher of the High School, the Head Master of the Junior High School would not become the Head Master of the High School so that the provision in its applicability to teachers of Junior High School raised to a High School would be*

discriminatory in character. He has also drawn our attention to Regulation 2-A(2)(a) which provides that where an institution is raised from High School to Intermediate College, the post of Principal of such college shall be filled by promotion of the Head Master of such High School provided he possesses the minimum qualification prescribed in that behalf or has been granted exemption from such qualification by the Board. It is pointed out by the Learned Counsel for the Petitioner that there should have been a similar provision for the post of the head of the institution raised to High School and that a provision should have been made that the Head Master of Junior High School would become the Head Master of the High School or Higher Secondary School. We are not prepared to accept the contention of the Learned Counsel for the Petitioner the provisions of regulation 4 are not discriminatory and, therefore, they cannot be struck down as being bad. As a matter of fact, the whole argument has been made in complete ignorance of the provisions of Regulation 2(2)(g) of Chapter II of the Regulations Clause (g) of the said regulation which is the relevant clause is quoted below:

(g) A Head Master of a High School who is not found fit for promotion as Principal of the upgraded Intermediate College or a Headmaster of a Junior High School who on its being raised as a High School, is not selected by the Selection Committee for the post of the Headmaster of the upgraded High School shall be retained as an assistant teacher on the highest post for which he is qualified, provided that his pay scale shall not be reduced.

Explanation--Nothing in this Sub-clause shall apply to a person who was not permanent or was not duly appointed in accordance with law on the date on which the institution was raised to the level of a High School or an Intermediate College, as the case may be.

15. A perusal of the provisions quoted above would indicate that even under the regulations, the Head Master of a Junior High School does not become the Principal or Head Master of such High School on its being raised to High School. He has to be selected by the Selection Committee for the post of Head Master of the upgraded High School or else he would be retained as an Assistant Teacher on the highest post for which he is qualified and there would be no reduction in the scale of his pay. Since even under the regulations framed under the, Intermediate Education Act the post of the Head Master of the upgraded High School was to be filled up and was not to be treated as already filled up by the automatic appointment on that post of the Head Master of the Junior High School, the said post, after the enforcement of U.P. Act V of 1982, came within the purview of that Act and consequently on that post also the appointment can be made only through the Commission constituted under that Act. This will also be clear from a perusal of para 4 of the U.P. Secondary Education Service Commission (Removal of Difficulties) Order, 1981. This para is headed as 'ad hoc appointment by promotion'. The relevant portion is quoted below:

4 Ad hoc appointment by promotion:--(1) Every

vacancy of the Head of an institution may be filled by promotion:

(a) in the case of an Intermediate College, by the senior most teacher of the institution in the lecturer's grade;

(b) in the case of a High School raised to the level of an Intermediate College, by the Head Master of such High School;

(c) in the case of a Junior High School raised to the level of a High School, by the Headmaster of such High School.

16. *The provisions contained in para 4(c) quoted above would indicate that it is only in adhoc capacity that promotion can be made on the post of Head Master of an upgraded High School. The Removal of Difficulties Order, 1981 might not be applicable to the instant case but the legislative intent is clear and it is obvious that a regular appointment on that post can be made only through the agency of the Commission. In this situation, therefore, the Commission was fully justified in advertising the post in question and detecting the opposite-parties to appoint Sri Ras Behari Misra (opposite party No. 5) as the Principal of the upgraded Janta Higher Secondary School as he was a duly selected candidate.*

17. *Learned Counsel for the Petitioner has contended*

that Sri Ram Prakash Misra, who was working as Head Master of the Junior High School was being paid his salary in the scale of Rs. 450-490 even after the upgradation of the said School into a High School but opposite-party No. 5 who has been directed by the Commission to be appointed as Principal of the Janta Higher Secondary School would have to be paid his salary in the scale of Rs. 770-1600. This, it is contended by the Learned Counsel for the Petitioner, cannot be done as the institution, as stated earlier, does not receive any grant from the Government and consequently it was free to pay the salary of the head of the institution in an scale of its own choice, particularly as the provisions of the U.P. High Schools and Intermediate Colleges (Payment of Salaries to the Teachers and other Employees) Act, 1971 was not applicable. The Commission by directing the appointment of opposite party No. 5 on the post of the head of the institution was indirectly compelling the Petitioner to pay the salary in a higher scale and was thereby applying the provisions of the Payment of Salaries Act to the institution in question. The contention cannot be accepted. The scale of pay of the Head Master of a High School has been fixed under the provisions of the U.P. Intermediate Education Act which, as found earlier, is applicable to all recognised institutions. The Petitioner's institution unquestionably is a recognised institution and consequently it has also to pay the salary for the post of the Principle in the scale in which it has been fixed. the Petitioner's institution cannot make a departure by not paying the salary in that scale or else it would be violating the provisions of the Immediate Education Act as also the Regulations made thereunder so as to render itself to be 1 derecognised."

Learned counsel for the appellant have placed reliance on a Government Order dated 24.11.2001, issued by the State Government which has been brought on record of Special Appeal No. 25 of 2006 as Annexure-13 to the affidavit. The Government Order is relevant which is extracted as follows:

“(1).उत्तर प्रदेश अशासकीय जूनियर हाई स्कूल/पूर्व माध्यमिक विद्यालयों में कार्यरत के नियमित बनाये गये वेतन वितर अधिनियम 1978 से आच्छादित अध्यापकों एवं कर्मचारियों का समस्त प्रकरण पूर्ववत जिला बेसिक शिक्षा अधिकारी द्वारा व्यवहृत किये जावेंगे इन विद्यालयों में कार्यरत अध्यापकों एवं कर्मचारियों के त्यागपत्र मृत/सेवा निवृत्त सेवा सम्बन्धित प्रकरण अथवा अन्य कारणों से हुई रिक्तियों को उत्तर प्रदेश मान्यता बेसिक शिक्षा स्कूल

(जू0 हा0 स्कूल के अध्यापकों की उक्त भर्ती और सेवा का शर्त) नियमावली -1978 प्राविधानों के अनुसार सक्षम अधिकारी द्वारा आवश्यक कार्यवाही की जावेगी!

(2) मृतक आश्रितों की नियुक्ति सम्बन्धित शासनादेश संख्या 231/15-6-97- 28 66/90 दिनांक 31-1-1977 के प्राविधान उक्त अधिनियम द्वारा आच्छादित शैक्षिक शिक्षणेत्तर कर्मचारियों पर लागू होंगे!

3 उन विद्यालयों में किसी प्रकार जन शक्ति में वृद्धि नहीं की जावेगी तथा अनुशासनित मान्यता होगी जो विद्यालय को हाई स्कूल की मान्यता के समय जू0 हा0 स्कूल पर वेतन वितरण अधिनियम के अंतर्गत अनुमन्य थी!

(4) वित्तविहीन मान्यता प्राप्त हाई स्कूल इण्टरमीडिएट कालेजों को शासन द्वारा न कोई वित्तीय सहायता प्रदान की जाती है और न ही उन पर वेतन वितरण अधिनियम 1971 लागू होता है से विद्यालय में जन शक्ति का निर्धारण पद सृजन भी शासन विभाग द्वारा नहीं होता है उ0 प्र0 मा0 शि0 अधि0 1921 के अंतर्गत वित्त विहीन मान्यतायें प्रदान करने और माध्यमिक शिक्षा परिषद की परीक्षाओं के संचालन के अतिरिक्त अन्य कोई नियंत्रण शासन विभाग स्तर से नहीं किया जाता ऐसे सहायता प्राप्त जू0 हा0 स्कूल इण्टरमीडिएट की वित्त विहीन मान्यता प्राप्त करने की दशा में हाई स्कूल इण्टरमीडिएट से संबंधित कार्य जिला विद्यालय निरीक्षक द्वारा पूर्ववत सम्पादित किये जावेंगे!”

The said Government Order thus, contemplate that teachers and staffs of private Junior High School/High School, whose services are governed by 1978 Act, Payment of Salaries Act shall continue to be dealt with by Basic Shiksha Adhikari and provisions

of U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 shall also be applicable. As noticed above, by virtue of Section 13A inserted in 1978 Act by U.P. Act No. 34 of 2000, the provisions of 1978 Act shall apply to an institution which is upgraded High School or Intermediate college. 1978 Act relates to payment of salary. Thus, in so far as payment of salary part is concerned by virtue of statutory provisions, 1978 Act shall apply and the Government Order dated 24.11.2001 in so far as powers regarding payment of salary is concerned can be exercised by the said Government Order. However, whether the administrative control of Basic Shiksha Adhikari shall still be exercised after the institution is upgraded as High School, is the question which is to be answered. The Government Order dated 24.11.2001 came for consideration before this Court in two judgements. First judgment delivered by Hon'ble Single Judge of this Court was in writ petition No. 17422 of 2003 **Ramesh Singh Vs. State of U.P. and others** decided on 23.5.2003. The writ petition was filed by the Manager of the committee of management challenging the authority/jurisdiction of the Basic Shiksha Adhikari deciding the question of no confidence motion. The institution which was Junior High School and was receiving grant-in-aid and governed by provisions of Payment of Salaries Act, 1978 was upgraded in 1997 as High School Vitta Vihin institution. The institution was not brought on salaries Act, 1971. An order passed by Basic Shiksha Adhikari dated 5.1.2003 was under challenge. Reliance was placed on the Government Order dated 24.11.2001 by the petitioner stating that Basic Shiksha Adhikari retains the administrative control by virtue of the said Government Order. The Hon'ble Single Judge considered the Government Order and held that the power of administrative control in Basic Shiksha Adhikari is totally destructive of the very scheme. Hon'ble Single Judge held that paragraph 5 of the Government Order is ultravires to the provisions of section 16A. Following was laid down by

Hon'ble Single Judge at pages 5 and 7:

“ A bare perusal of the item No. 5 of the G.O. Dated 24.11.2001 would go to show that this fact has been accepted therein that institution in question is one and the same, but the same has been directed to be treated as a separate unit for administrative purposes. This notification is not at all consistent with the provisions of U.P. Intermediate Education Act, 1921; inasmuch as, nowhere under the U.P. Intermediate Education Act, 1921, the District Basic Education Officer has been vested with any administrative control, this direction is totally destructive of the very scheme.

....The District Basic Education Officer has got no authority or jurisdiction to deal with upgraded junior High School, inasmuch as the entire entity of the institution changes, but only on account of payment being made to teaching and non-teaching staff under U.P. Act No. 6 of 1979. The District Basic Education Officer has role to play within the four corner of provisions of U.P. Act No. 6 of 1979 i.e. the District Basic Education Officer can exercise and invoke power under Sections 3(3), 5(1), 6(3) of U.P. Act No. 6 of 1979, in case pre-requisite terms and conditions for exercising and invoking aforementioned power in question is in existence and apart from this the District Basic Education Officer has got no authority or jurisdiction to go into question of validity of elections or continuance of manager or office bearers. Even otherwise total anomalous situation would be created in case, in respect of same Committee of Management, treating them separate unit, both District Basic Education

Officer and District Inspector of Schools are permitted to adjudicate the question of validity of elections and continuance of office bearers.”

The next judgment which considered the Government Order dated 24.11.2001 is judgment reported in 2005(66)ALR 398 **Committee of Management Beni Singh Vaidic Vidyawati Inter College, Baluganj, Agra and others**. The institution was earlier Junior High School governed by 1978 Payment of Salaries Act. The institution was recognised on 21.12.1988 as unaided High School. The institution was granted recognition for Intermediate classes Vitta Vihin on 16.10.1995. Five teachers of the Junior High School level retired and thereafter committee of management initiated process for selection but no selection could be undertaken on account of the objection of the Basic Shiksha Adhikari that institution has been upgraded, hence no selection can be undertaken treating the institution as a Junior High School. The Basic Shiksha Adhikari has however, passed an order on 6.6.2002, directing the committee of management to appoint one Agam Prakash Deepak in the institution on compassionate ground. The committee of management objected to the order of the Basic Shiksha Adhikari and filed writ petition. One of the questions for consideration was as to whether after upgradaton, Basic Shiksha Adhikari has administrative control for payment of salary under the 1978 Act and whether he can direct a compassionate appointment to be made. The contention of the petitioner was that Basic Shiksha Adhikari could have administrative control only up to payment of salary and has no administrative control over the appointment. Hon'ble Single Judge noticed the Full Bench judgment in **State of U.P. Vs. District Judge** as well as **Ramesh Singh Vs. State of U.P.** and observed that the aforesaid judgements were in context of management dispute and distinguished the said judgment. Following was laid down in paragraphs 13,14,15 and 16:

“13. The up gradation of an aided Junior High School as unaided High School/Intermediate College does not take away the institution from the financial control of the Basic Shiksha Adhikari. The power of the State Government to issue Government Order dated 24.11.2001 can be traced to Section 9 (iv) of U.P. Intermediate Education Act 1921. In order to remove difficulties and smooth functioning of the powers, where they are not so clearly defined the State Government can always, fill in the gap. The Basic Education Officer as such does not cease to have administrative or financial control over the institution. He, however, ceases to have control over the management in so far as it touches and deals with the scheme of administration and the functioning of the High School and Intermediate classes are concerned.

14. The petitioner does not have any teaching qualification. He was appointed without consent and resolution of the committee of management of the institution. The District Basic Education Officer has defended his action under Government Order dated 31.1.1997, which provides for compassionate appointment. Para 3 of this Government Order provides with such appointment can be given even to untrained teachers provided he completes the training after he is appointed.

15. I find substance in the submission of .learned counsel for the petitioner that the Government Order dated 31.1.1997 is in conflict with Rule 4 of the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Services of Teachers)

Rules 1978 which provides for educational qualification for appointment as assistant teachers in Junior High School including the teaching qualifications. These rules do not provide for any exception from the teaching qualifications. Further, I find that after enforcement of National Council of Teachers Education Act 1993 no untrained teacher can be appointed even on compassionate grounds in any school receiving grant-in-aid from the State Government.

16. *Learned counsel for respondent No. 6 has relied upon Rule 8 of the U.P. Appointments of Dependents of Government Servant Dying in Harness Rules 1974. A perusal of the Rule 8 shows, it refers to age and the procedure for appointment to be relaxed, but no relaxation is provided for minimum qualification for the post. There is no provision under these rules to relaxing essential educational, qualification and training qualification. The respondent No. 6 as such could not be appointed as Assistant Teacher in the institution and to that extent 1 hold that the Para 3 of the Government Order dated 31.1.1998 is ultra, vires Rule 14 of U.P. Recognised Basic-Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules 1978 as well as the provisions of Section 14 of the National Council of Teachers Education Act 1993.”*

We are of the view that the Government Order dated 24.11.2011 can be supported only to the extent of payment of salary of teachers at the Junior High School level and ancillary power thereunder. However, the Basic Shiksha Adhikari cannot exercise any administrative control over the institution except to the

extent of payment of salary nor can make any appointment in view of the applicability of 1921 and 1982 Acts. The judgment of Hon'ble Single Judge in **Committee of Management Beni Singh Vaidic Vidyawati Inter College, Baluganj, Agra and others** (supra) to that extent cannot be approved. It is relevant to note that against the judgment of Hon'ble Single Judge dated 7.9.2005 in **Committee of Management Beni Singh Vaidic Vidyawati Inter College, Baluganj, Agra and others** (supra) special appeal No. 1419 of 2005, **Agam Prakash Deepak Vs. State of U.P.** was filed, which appeal was also dismissed on 29.11.2005.

The Special Appellate bench considered the submissions of the appellant only qua the qualifications of the Assistant Teacher and laid down that Assistant Teacher must possess the training course recognised by the State Government hence, the appellant could not have been appointed as Assistant Teacher hence, the appeal was dismissed. No other ratio was laid down in the said judgment.

Another judgment of Hon'ble Single Judge is **Smt. Shail Kumari Singh Vs. State of U.P.** 2008(1) ESC 365. In the aforesaid case, the Court has held that after upgradation of Junior High School, management has to make the appointment of Principal of High School. Paragraphs 15 and 16 of the judgment is quoted below:

“15. Coming to the second issue, in my view Section 7-AA and 7-AB of 1921 Act would be applicable when the management of the institution after recognition having been granted under Section 7-A intends to make appointment of part-time teachers or instructors as an

interim measure. In such cases, the management has power to make appointment on its own without following the procedure laid down under 1982 Act but where the appointments are to be made on full time regular basis, neither Section 7-AA has any application nor the management can bypass the procedure laid down in 1982 Act merely on the ground that upgraded institution is unaided for the reason that application of 1982 Act is not dependent on the fact whether the institution is aided or unaided. This issue has also been considered by a Division Bench in Special Appeal No. 1408 of 2005 Narendra Singh v. State of U.P. and Ors. decided on 28.11.2005 wherein it has been held:

“Section 16 of 1982 Act prohibits any appointment of teacher in the institution unless it is recommended by the commission. Neither in the definition clause nor under Section 16 of the 1982 Act, teachers of the recognised or unaided institution are excluded. The institutions excluded from the purview of 1982 Act, are those, which are maintained by the State Government, otherwise all recognised institutions have been restrained from making any appointment of teachers in their institution unless it is recommended by the commission irrespective of the fact that they are aided or unaided. Sections 7-A, 7-AA and 7-AB of the Act also nowhere mentions the word "aided or unaided", as is being suggested by the learned Counsel for the appellant. A bare reading of Sections 7-A, 7-AA and 7-AB of the Act show that the management of an institution, whether aided or unaided, if intends to make appointment of part-time teachers, as an interim measure, it may do so from

its own resources. Meaning thereby, the payment of salary or wages or honorarium to such part-time teachers shall be arranged by the management from its own financial resources and the provisions of the, U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 are not applicable in such case. Similarly, for appointment of such part-time teachers, whether in aided or unaided institution, the provisions, of 1982 Act are also inapplicable. This shows that in respect of such institution also, where appointment of teachers have to be made under 1982 Act, if the management intends to make only part-time appointment, it may be made without having any recommendation from the Commission but the payment shall, be made by the management from its own resources.

Admittedly, the petitioner, in the present case, was appointed in the year 1993 by the management on its own although under 1982 Act an appointment could have been made by the management only on the recommendation of the commission. Therefore, we are of the view that the Hon'ble Single Judge has rightly held that the management had no power to make appointment of the teacher, which is not part-time, in the year 1993. Learned Counsel for the appellant stated that date of appointment, mentioned in the order, as 1983, is not correct since he was actually appointed by the order dated 8.6.1993. Be that as it may, it will not improve the case of the appellant, since in both the contingencies, the management did not have power to make

appointment without having any recommendation from the commission under 1982 Act. In the circumstances, there is no error in the order passed by the Hon'ble Single Judge.”

16. *In the case in hand, while granting recognition as High School, the Board clearly imposed a condition that the management has to make appointment of Principal of High School. Obviously, such appointment was not to be made as an interim measure or on part-time basis and, therefore, the appointment of Principal has to be in respect of upgraded institution as per the procedure prescribed in 1982 Act and the management could not have made appointment by resorting to the provisions applicable to Junior High School, since after upgradation as High School, no appointment of Headmaster/Headmistress of Junior High School could have been made in law as the post of Headmaster/Headmistress of Junior High School becomes inoperative after upgradation since only one head of the institution could have continued at a time. Therefore, there could be only one Principal and that too of High School. This is what has been held by Division Bench in Ajay Pratap Rai (Supra) also and in my view, that is the only cogent and practical solution in such cases otherwise it would create a chaotic situation. Issue No. 2 is decided accordingly.”*

The judgment of Hon'ble Single Judge which is impugned in the leading appeal being Special appeal No. 25 of 2006 relying on the Full Bench in **State of U.P. Vs. District Judge** (Supra) and Division Bench judgment in **Shiksha Prasara Samiti Vs. State of U.P. and others** as well as after considering the relevant provisions

of U.P. Intermediate Education Act, 1921, Sections 2(b) 2(d) and 7A as well as provisions of 1982 Act, held that after a Junior High School is upgraded as High School, the provisions of U.P. Intermediate Education 1921 and U.P. Act No. 5 of 1982 are applicable and selection made by the Basic Shiksha Adhikari of appellant Manju Awasthi was quashed. We are of the view that judgment of Hon'ble Single Judge cannot be faulted and we do not find any good ground in the appeal to interfere with the impugned judgment.

Other judgements of Hon'ble Single Judges which are under challenge place reliance on the judgment of Smt. Sushila Gupta which was subject matter of challenge in appeal no. 25 of 2006. We having endorsed the view taken by Hon'ble Single Judge in Smt. Sushila Gupta's case do not find any fault with the judgements of Hon'ble Single Judge which are under challenge in this appeal.

The selections made by the Basic Shiksha Adhikari under the provisions of U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978, have rightly been quashed in the writ petitions by Hon'ble Single Judge on the ground that after upgradation of a Junior High School, selection/appointment is to be made in accordance with 1921 Act and U.P. Act No. 5 of 1982. As noticed above, we have found that the State Government as well as the educational authorities have not been properly construing the provisions of Section 7A and under the misconception, they have granted recognition to the institution under section 7A, for the first time whereas recognition under section 7A is to be granted to an existing recognised institution within the meaning of section 2(b). We thus, feel that certain directions are necessary to be issued in this context. We have already observed that our observations and interpretation of

Section 7A in no manner shall affect any recognition already granted to an institution under section 7A and institution which has been granted recognition shall be treated to be duly recognised but necessary action which has not yet been taken with respect to the said institution is required to be taken by the educational authorities as per our observation. The appeals are disposed of with following directions:

1. The judgment of Hon'ble Single Judge impugned in the appeal holding that after upgradation of a Junior High School to High School, appointment and selection on the post of Head Master shall be made in accordance with 1921 Act and U.P. Act No. 5 of 1982 are upheld and prayer of the appellant to set aside the judgment of Hon'ble Single Judge is refused.
2. The recognition/permission under section 7A shall be granted to an institution which is already recognised institution within meaning of section 2(b) of 1921 Act.
3. Recognition to a junior high school as High School is to be granted in accordance with the provisions of section 7(4) of 1921 Act.
4. The State is fully empowered to grant recognition under section 7(4) or Section 7A without finance (Vitta vihin).
5. After an institution is granted recognition for the first time as a High School minimum necessary post of teachers and Head Master is contemplated to be created even though without finance(Vitta Vihin) so as to fill up those posts in accordance with 1921 Act and 1982 Act.
6. Against the recognition/permission granted under section 7A, the appointment of a part time teacher or instructor as contemplated under section 7A(a) shall be continued to be made by the management as per the Government Orders

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issued from time to time regulating their terms and conditions.

All the appeals are disposed of accordingly.

Parties shall bear their own costs.

Order Date :- .6.11.2012

LA/-