

A.F.R.

Reserved on: 10.03.2021

Delivered on: 16.06.2021

Court No. - 12/In Chamber

Case :- SERVICE SINGLE No. - 3458 of 2009

Petitioner :- U.P.Senior Basic Shiksha Sangh,
Respondent :- State Of U.P.Through Principal Secretary Basic
Education,
Counsel for Petitioner :- C.B.Pandey,Dr.Lalta Prasad
Mishra,Girish Chandra Verma,Rohit Tripathi
Counsel for Respondent :- C.S.C.

with

Case :- SERVICE SINGLE No. - 21360 of 2018

Petitioner :- Kameshwer Prasad Dwivedi
Respondent :- State Of U.P. Thru. Prin. Secy. Basic Edu. And
Ors.
Counsel for Petitioner :- Ram Kumar Maurya,Prasiddha Narayan
Singh,Rajnish Maurya
Counsel for Respondent :- C.S.C.,Jyoti Sikka

with

Case :- SERVICE SINGLE No. - 4239 of 2012
Petitioner :- Siya Ram Yadav
Respondent :- State Of U.P. Thru Prin. Secy. Basic Education
Deptt. & Ors
Counsel for Petitioner :- Dr. V.K. Singh,Manisha Singh
Counsel for Respondent :- C.S.C.,J.B.S. Rathaur,Prabhakar
Vardhan Chaudha,Prashant Arora

with

Case :- SERVICE SINGLE No. - 6146 of 2009

Petitioner :- Anant Raj Mishra, S/O-Sri Hari Charan Mishra,
Respondent :- State Of U.P. Thru. Principal Secy.,Education
Department,
Counsel for Petitioner :- Dr. L.P.Mishra,Deepanshu Dass
Counsel for Respondent :- C.S.C.,Jitendra Kr. Pandey,Jogendra
Nath Verma,Jyotinjay Verma

with

Case :- SERVICE SINGLE No. - 8353 of 2019

Petitioner :- Ramakant Dwivedi

Respondent :- State Of U.P. Thru Secy. Basic Edu. Lucknow & Ors.

Counsel for Petitioner :- Vinay Misra, Mukesh Kumar Tiwari

Counsel for Respondent :- C.S.C., P.K. Singh Bishen

with

Case :- SERVICE SINGLE No. - 8934 of 2019

Petitioner :- Shobh Nath Yadav

Respondent :- State Of U.P. Thru. Secy. Basic Education & Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C., Prashant Arora

with

Case :- SERVICE SINGLE No. - 9566 of 2019

Petitioner :- Vishwamitra Tiwari

Respondent :- State Of U.P. Thru. Secy. Basic Education & Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C., Jaibind Singh Rathour

with

Case :- SERVICE SINGLE No. - 9568 of 2019

Petitioner :- Devi Prasad Pandey

Respondent :- State Of U.P. Thru. Secy. Basic Education & Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C., Jaibind Singh Rathour

with

Case :- SERVICE SINGLE No. - 9737 of 2019

Petitioner :- Raj Narain Tripathi

Respondent :- State Of U.P. Thru. Secy. Basic Education & Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C., Prashant Arora

with

Case :- SERVICE SINGLE No. - 9739 of 2019

Petitioner :- Ram Prasad

Respondent :- State Of U.P. Thru. Secy. Basic Education & Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,Prashant Arora

with

Case :- SERVICE SINGLE No. - 9846 of 2019

Petitioner :- Ram Karan

Respondent :- State Of U.P. Thru. Secy., Basic Education & Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,Jaibind Singh Rathour

with

Case :- SERVICE SINGLE No. - 9936 of 2019

Petitioner :- Shri Pati Singh

Respondent :- State Of U.P.Throu.Secy.Basic Education
Lucknow And Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,J.B.S.Rathour

with

Case :- SERVICE SINGLE No. - 10119 of 2019

Petitioner :- Ashok Kumar Mishra

Respondent :- State Of U.P. Thru Secretary Basic Education &
Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,J.B.S. Rathour

with

Case :- SERVICE SINGLE No. - 10122 of 2019

Petitioner :- Gherrau Ram

Respondent :- State Of U.P. Thru Secretary Basic Education &
Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,J.B.S. Rathour

with

Case :- SERVICE SINGLE No. - 10390 of 2019

Petitioner :- Baban Chandra Singh

Respondent :- State Of U.P. Thru Secy. Basic Edu. Lucknow And Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,P.K. Singh Besen

with

Case :- SERVICE SINGLE No. - 10481 of 2019

Petitioner :- Shila Ram

Respondent :- State Of U.P.Thru Secy.Basic Education And Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,J.B.S.Rathore

with

Case :- SERVICE SINGLE No. - 10519 of 2019

Petitioner :- Nag Raj Yadav And Another

Respondent :- State Of U.P. Thru Prin.Secy. Basic Edu.Lko. & Ors.

Counsel for Petitioner :- Hari Prakash Yadav

Counsel for Respondent :- C.S.C.,Neeraj Chaurasiya

with

Case :- SERVICE SINGLE No. - 10776 of 2019

Petitioner :- Narsingh Bahadur Singh

Respondent :- State Of U.P. Thru Secy.Basic Edu. Lucknow And Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,P.K. Singh Bisen

with

Case :- SERVICE SINGLE No. - 10867 of 2019

Petitioner :- Samar Bahadur Singh

Respondent :- State Of U.P. Thru Secy.Basic Edu. Lucknow And Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,P.K. Singh Bisen

with

Case :- SERVICE SINGLE No. - 10930 of 2019

Petitioner :- Ram Adhar Yadav

Respondent :- State Of U.P. Thru Secy.Basic Edu. Lucknow And Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,P.K. Singh Bisen

with

Case :- SERVICE SINGLE No. - 11596 of 2019

Petitioner :- Shyam Bahadur Singh

Respondent :- State Of U.P.Thru Secy.Basic Edu. Lucknow And Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,J.B.S. Rathore

with

Case :- SERVICE SINGLE No. - 11598 of 2019

Petitioner :- Ashok Kumar Singh

Respondent :- State Of U.P.Thru Secy.Basic Edu. Lucknow And Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,J.B.S. Rathore

with

Case :- SERVICE SINGLE No. - 24124 of 2018

Petitioner :- Rishikesh Pandey & Ors.

Respondent :- State Of U.P. Thru. Secy. Basic Education,Lko. & Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,Ajay Kumar

with

Case :- SERVICE SINGLE No. - 34657 of 2018

Petitioner :- Indra Dev Pandey

Respondent :- State Of U.P Thru Secy Basic Education & Ors

Counsel for Petitioner :- Vinay Misra
Counsel for Respondent :- C.S.C,J.B.S Rathour

with

Case :- SERVICE SINGLE No. - 24851 of 2018

Petitioner :- Smt. Neeru Dhawan & Ors.
Respondent :- State Of U.P. Addnl. Chief Secy Basic Edu. Up &
Ors.
Counsel for Petitioner :- Girish Chandra Verma
Counsel for Respondent :- C.S.C.,Ajay Kumar

with

Case :- SERVICE SINGLE No. - 36275 of 2018

Petitioner :- Ram Shanker Tripathi
Respondent :- State Of U.P. Thru Secy.Basic Education And Ors.
Counsel for Petitioner :- Vinay Misra
Counsel for Respondent :- C.S.C.,Prashant Arora

with

Case :- SERVICE SINGLE No. - 37476 of 2018

Petitioner :- Bajrangi Prasad Tripathi
Respondent :- State Of U.P. Thru Secy.Basic Education & Ors.
Counsel for Petitioner :- Vinay Misra
Counsel for Respondent :- C.S.C.,Prashant Arora

with

Case :- SERVICE SINGLE No. - 35826 of 2018

Petitioner :- Jageshwar Prasad Vishvakarma
Respondent :- State Of U.P. Thru Secy. Basic Education And Ors.
Counsel for Petitioner :- Vinay Misra
Counsel for Respondent :- C.S.C.,P.K.Singh Bishen

with

Case :- SERVICE SINGLE No. - 35134 of 2018

Petitioner :- Mohd Shamim
Respondent :- State Of U.P Thru Secy Basic Education & Ors

Counsel for Petitioner :- Vinay Misra
Counsel for Respondent :- C.S.C,J.B.S Rathour

with

Case :- SERVICE SINGLE No. - 35168 of 2018

Petitioner :- Krishna Murti Tripathi
Respondent :- State Of U.P Thru Secy Basic Education & Ors
Counsel for Petitioner :- Vinay Misra
Counsel for Respondent :- C.S.C,J.B.S Rathour

with

Case :- SERVICE SINGLE No. - 35603 of 2018

Petitioner :- Raghuvir Singh
Respondent :- State Of U.P.Throu.Secy.Basic Education Lko.And
Ors.
Counsel for Petitioner :- Vinay Misra
Counsel for Respondent :- C.S.C.,J.B.S.Rathour

with

Case :- SERVICE SINGLE No. - 35801 of 2018

Petitioner :- Matafer Singh
Respondent :- State Of U.P.Thru.Secy.Basic Education,Lucknow
& Ors.
Counsel for Petitioner :- Vinay Misra
Counsel for Respondent :- C.S.C.,P.K.Singh Bisen

with

Case :- SERVICE SINGLE No. - 35780 of 2018

Petitioner :- Chet Narain Singh
Respondent :- State Of U.P., Secy. Basic Education & Ors.
Counsel for Petitioner :- Vinay Misra
Counsel for Respondent :- C.S.C.,J.B.S. Rathore

with

Case :- SERVICE SINGLE No. - 35979 of 2018

Petitioner :- Kandarp Narain Shukla

Respondent :- State Of U.P. Thru Secy Basic Education And Others

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,Prashant Arora

with

Case :- SERVICE SINGLE No. - 35984 of 2018

Petitioner :- Ram Babu Tripathi

Respondent :- State Of U.P. Thru Secy Basic Education And Others

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,Prashant Arora

with

Case :- SERVICE SINGLE No. - 24943 of 2017

Petitioner :- Shesh Chandra Gupta

Respondent :- State Of U.P. Thru Prin.Secy.Basic Edu.Civil Sectt.Lko.&Ors.

Counsel for Petitioner :- Girish Chandra Verma

Counsel for Respondent :- C.S.C.,Ajay Kumar

with

Case :- SERVICE SINGLE No. - 24766 of 2017

Petitioner :- Shailja Pal

Respondent :- State Of U.P. Thru Prin.Secy.Basic Edu.Civil Sectt.Lko.&Ors.

Counsel for Petitioner :- Mohd.Ateeq Khan

Counsel for Respondent :- C.S.C.,Ajay Kumar

with

Case :- SERVICE SINGLE No. - 26365 of 2018

Petitioner :- Janardan Rai & 40 Others

Respondent :- State Of U.P. Thru. Secretary, Basic Education & 16 Others

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,Ajay Kumar

with

Case :- SERVICE SINGLE No. - 13186 of 2019

Petitioner :- Ramanand Pandey

Respondent :- State Of U.P. Thru Secy. Basic Edu. Lucknow And Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,J.B.S. Rathore,Prashant Arora

with

Case :- SERVICE SINGLE No. - 13221 of 2019

Petitioner :- Rameshwar Mishra

Respondent :- State Of U.P. Thru Secy. Basic Edu. Lucknow And Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,J.B.S. Rathour,Prashant Arora

with

Case :- SERVICE SINGLE No. - 13378 of 2019

Petitioner :- Murlidhar Mishra

Respondent :- State Of U.P. Thru Secy. Basic Edu. Lucknow And Ors.

Counsel for Petitioner :- Vinay Misra,Shiv Kumar

Counsel for Respondent :- C.S.C.,J.B.S. Rathore,Prashant Arora

with

Case :- SERVICE SINGLE No. - 13393 of 2019

Petitioner :- Shiv Mahesh Dwivedi

Respondent :- State Of U.P. Thru Secy. Basic Edu. Lucknow And Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,J.B.S. Rathore,Prashant Arora

with

Case :- SERVICE SINGLE No. - 13396 of 2019

Petitioner :- Munesar

Respondent :- State Of U.P. Thru Secy. Basic Edu. Lucknow And Ors.

Counsel for Petitioner :- Vinay Misra,Shiv Kumar

Counsel for Respondent :- C.S.C.,J.B.S. Rathour,Prashant Arora

with

Case :- SERVICE SINGLE No. - 10746 of 2019

Petitioner :- Keshav Ram Tripathi

Respondent :- State Of U.P.Thru Secy.Basic Edu. Lucknow And Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,P.K. Singh Bisen

with

Case :- SERVICE SINGLE No. - 10812 of 2019

Petitioner :- Chandrika Prasad Nai

Respondent :- State Of U.P. Thru Secy.Basic Edu. Lucknow And Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,P.K. Singh Bisen

with

Case :- SERVICE SINGLE No. - 34968 of 2018

Petitioner :- Chhailbihari

Respondent :- State Of U.P Thru Secy Basic Education & Ors

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C,Shobhit Mohan Shukla

with

Case :- SERVICE SINGLE No. - 2462 of 2014

Petitioner :- Krishna Lal Pandey And 4 Ors.

Respondent :- State Of U.P.Thr Secy.Basic Edu.Civil Sectt. Lucknow & Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,P.K. Singh Bisan

with

Case :- SERVICE SINGLE No. - 4415 of 2009

Petitioner :- C/M Sri Gauri Shankar Laghu Madhyamik Vidyalaya & Another

Respondent :- State Of U.P.Through Secretary Basic Education And Others

Counsel for Petitioner :- Girish Chandra Verma
Counsel for Respondent :- C.S.C.,A.M. Tripathi

with

Case :- SERVICE SINGLE No. - 4776 of 2009

Petitioner :- Smt.Neelam Tripathi And Another
Respondent :- State Of U.P.Through Secretary Basic Education
And Others

Counsel for Petitioner :- Bagesh Shukla
Counsel for Respondent :- C.S.C.,A.M. Tripathi

with

Case :- SERVICE SINGLE No. - 8035 of 2009

Petitioner :- Committee Of Management Sitram Laghu
Madhyamik Vidyalaya,
Respondent :- State Of U.P. Thu. Secretary Basic Education,Civil
Counsel for Petitioner :- Vinay Misra
Counsel for Respondent :- C.S.C.,A.M.Tripatahi

with

Case :- SERVICE SINGLE No. - 3386 of 2014

Petitioner :- Ravindra Singh Kushwaha & 8 Ors.
Respondent :- State Of U.P. Through Secy. Deptt. Of Basic Edu.
Lko. & Ors.

Counsel for Petitioner :- Girish Chandra Verma
Counsel for Respondent :- C.S.C.

with

Case :- SERVICE SINGLE No. - 6307 of 2018

Petitioner :- Mangla Prasad Mishra
Respondent :- State Of U.P Thru Secy Basic Edu Lko & Ors
Counsel for Petitioner :- Vinay Misra
Counsel for Respondent :- C.S.C,J.B.S Rathour

with

Case :- SERVICE SINGLE No. - 4874 of 2009

Petitioner :- C/M Ramesh Junior High School Through Manager

V.K.Pandey

Respondent :- State Of U.P.Thru Secy.Basic Education And Ors.
[Obj.Filed]

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,A.M.Tripathi

with

Case :- SERVICE SINGLE No. - 3615 of 2009

Petitioner :- Pawan Kumar Singh, Head Master Buddha Gyan
Bharti J.H.School

Respondent :- State Of U.P. Thru Secy. Basic Education & Others

Counsel for Petitioner :- Bagesh Shukla

Counsel for Respondent :- C.S.C.,A.M. Tripathi

with

Case :- SERVICE SINGLE No. - 1679 of 2015

Petitioner :- Madhuri Singh

Respondent :- State Of U.P. Thru Secy.Basic Edu.Civil
Sectt.Lukcnw & Ors.

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C.,P.K. Singh Visan

with

Case :- SERVICE SINGLE No. - 34971 of 2018

Petitioner :- Kailash Chandra

Respondent :- State Of U.P Thru Secy Basic Education & Ors

Counsel for Petitioner :- Vinay Misra

Counsel for Respondent :- C.S.C,Shobhit Mohan Shukla

with

Case :- SERVICE SINGLE No. - 2110 of 2020

Petitioner :- Virendra Singh And 5 Ors.

Respondent :- State Of U.P. Thru Secy. Basic Edu. Lucknow And
Ors.

Counsel for Petitioner :- Pt. S. Chandra

Counsel for Respondent :- C.S.C.,Ajay Kumar,Man Mohan

with

Case :- SERVICE SINGLE No. - 5470 of 2013

Petitioner :- Smt. Tarawati

Respondent :- State Of U.P. Thru Its Secy.(Basic Edu.)Govt.Of U.P.& Ors.

Counsel for Petitioner :- K.M. Shukla

Counsel for Respondent :- C.S.C.,Neeraj Chaurasiya

with

Case :- SERVICE SINGLE No. - 16074 of 2020

Petitioner :- Smt. Leela Devi

Respondent :- State Of U.P. Thru.Secy. Basic Education Lko. & Ors.

Counsel for Petitioner :- Krishna Madhav Shukla

Counsel for Respondent :- C.S.C.,Neeraj Chaurasiya

with

Case :- SERVICE SINGLE No. - 24860 of 2018

Petitioner :- Ram Saran & Ors.

Respondent :- State Of U.P. Addl.Chief Secy. Basic Edu. U.P. & Ors.

Counsel for Petitioner :- Girish Chandra Verma

Counsel for Respondent :- C.S.C.,Janendra Kumar Verma,Shobhit Mohan Shukla

with

Case :- SERVICE SINGLE No. - 320 of 2014

Petitioner :- Ram Kumar Pathak & 8 Ors.

Respondent :- State Of U.P. Through Prin. Secy. Deptt. Of Basic Edu. Lko.

Counsel for Petitioner :- Girish Chandra Verma

Counsel for Respondent :- C.S.C.,Vindhyawashini Kumar

with

Case :- SERVICE SINGLE No. - 4777 of 2021

Petitioner :- Smt. Ishrat Jahan

Respondent :- State Of U.P.Thru.Prin.Secy.Basic Education & Ors.

Counsel for Petitioner :- Umesh Kumar Srivastava
Counsel for Respondent :- C.S.C.,Ghaus Beg

with

Case :- SERVICE SINGLE No. - 4806 of 2021

Petitioner :- Babu Ali
Respondent :- State Of U.P.Thru.Prin.Secy. Basic Education &
Ors.
Counsel for Petitioner :- Pradeep Kumar Mishra
Counsel for Respondent :- C.S.C.,Shobhit Mohan Shukla

with

Case :- SERVICE SINGLE No. - 7570 of 2003

Petitioner :- Ram Kumar Verma And 3 Ors.
Respondent :- State Of U.P. Through Its Secy. Basic Education
Civil Sectt.
Counsel for Petitioner :- Salil K.Srivastav,Alok Singh,Dharm Raj
Mishra,G.C. Verma,Pradeep Kumar Mishra
Counsel for Respondent :- C.S.C.,Ghaus
Beg,M.M.Asthana,Shobhit Mohan Shukla,Vijay Kr. Bajpai

with

Case :- SERVICE SINGLE No. - 1194 of 2015

Petitioner :- Deo Narain Tripathi
Respondent :- State Of U.P.Throu.Secy.Deptt.Of Basic
Edu.Lkko.And Ors.
Counsel for Petitioner :- G.C.Verma
Counsel for Respondent :- C.S.C.,P.K.Singh Bisen

with

Case :- SERVICE SINGLE No. - 9624 of 2019

Petitioner :- Deshraj Singh & Anr.
Respondent :- State Of U.P. Thru. Addl. Chief Secy., Basic
Education & Ors
Counsel for Petitioner :- Girish Chandra Verma
Counsel for Respondent :- C.S.C.,Shobhit Mohan Shukla,Vinay
Kumar Verma

Hon'ble Irshad Ali,J.

(1) Heard Sri L.P. Misra, learned counsel assisted by Sri G.C. Verma, Sri Vinay Mishra, Sri Pt. S. Chandra, Sri Hari Prakash Yadav and Sri K.M. Shukla, learned counsel for the petitioner and Sri Alok Sharma, learned Additional Chief Standing Counsel for the respondent State, Sri Ajay Kumar, Sri Neeraj Chaurasiya, Sri Vindhya wasini Kumar, Sri Prashant Arora, Sri J.B.S. Rathour and Sri P.K. Bishen, learned counsel for the respondents.

(2) This is a bunch of 66 writ petitions. Facts of all the connected writ petitions are same and is in regard to claim of Old Pension Scheme (OPS), therefore, this bunch of writ petitions is being decided by means of a common order treating Writ Petition No.3458 (S/S) of 2009 to be leading writ petition.

(3) Brief fact of the case is that several senior basic level institutions were established during year 1989-1998 in which teaching and non teaching staff were appointed. The Government has discontinued the monthly pension scheme vide order dated 28.03.2005 and w.e.f. 01.04.2005 placed a new contributory pension scheme to new recruits. The government order issued by the State Government on 28.03.2005 has laid down New Pension Scheme enforced w.e.f. 01.04.2005 and vide impugned order, the State Government refused to cover the claim of the teaching and non teaching staff from the zone of old pension scheme on the ground that the institutions where they have been appointed have been brought after the enforcement of NPS.

4) Vide order dated 02.12.2006, the Government of U.P. admitted those 100 institutions, who were established between 1989-1998 in grant in aid list. However, teachers of those institutions are not being paid benefit of pension as per OPS,

however they were appointed prior to 01.04.2005, therefore, the present bunch of writ petitions has been filed.

5) Bunch of writ petitions were filed before this Court claiming the relief sought in the present bunch of writ petitions claiming pensionary benefit under the Scheme of 1964 challenging certain orders, whereby members of the Association were ordered to be governed by New Pension Scheme (NPS) introduced vide notification dated 28.03.2005 ignoring the fact that the institution under which the members of the Association were working started receiving grant in aid after 01.04.2005.

6) The claim setup by the petitioners of the above referred writ petitions was not accepted by learned Single Judge and the writ petitions were dismissed.

7) Being aggrieved by the judgment passed by learned Single Judge, a special appeal was preferred by the petitioners, which was also dismissed vide judgment and order dated 04.12.2015. A review application was filed mainly on the ground that the Division Bench in dismissing the appeal has relied on the judgment passed by this court in the case of **Budhiram Vs. State of U.P. and others; Civil Misc. Writ Petition No.45217 of 2012** decided vide judgment and order dated **26.09.2012**.

8) The judgment and order passed in the case of **Budhiram (Supra)** was subsequently set aside by the Division Bench with remission of the case to learned Single Judge for a fresh decision of the issue along with pending petitions.

9) In view of the judgment in the case of **Budhiram (Supra)**, this bunch of writ petitions is being decided after hearing learned counsel for the parties.

10) In certain writ petitions connected to the bunch matter, by means of interim orders passed by this Court, G.P.F. from the salary of the teaching and non teaching staff have been deducted and after passing the impugned orders challenged in the writ petitions, the claim of applicability of Old Pension Scheme (OPS) was rejected and the deduction of GPF amount was stopped.

11) In the writ petitions filed by U.P. Senior Basic Shikshak Sangh by enclosing copy of list of members, a direction was issued for deposit of court fee by the members. The members have paid the court fee, which has been filed before this court through supplementary affidavit.

12) Certain conditions of the teachers are governed by the rules known as U.P. Recognized Basic (Junior High School) (Recruitment and Condition of Service of Teachers) Rules, 1978 (for short "Rules of 1978") and certain condition of the non teaching staff are governed under the U.P. Recognised Basic Schools (Junior High Schools) (Recruitment And Conditions Of Service Of Ministerial Staff And Group 'D' Employees) Rules, 1984 (for short, "Rules of 1984").

13) Rule 19 of Rules of 1978 provides for payment of provident fund to the teachers and Head Masters employed in recognized schools in accordance with scheme applicable to the aided institutions.

14) Rule 19 of 1978 Rules has been amended through notification dated 04.12.2019 and proviso has been added to the effect that Rule 19 shall not be effective for teaching and non teaching staff appointed after 01.04.2005.

15) A Tri Benefit Scheme was introduced to the teaching and non teaching staff who were getting G.P.F. but were not getting benefit of insurance and pension. Accordingly, a government order was issued on 10.08.1978, as per said scheme. Further government order has been issued on 23.05.1998 followed by government order dated 10.03.1978 by which it was directed that the Tri Benefit Scheme of 1965 would be available to the teachers of the aided schools.

16) At earlier point of time, to meet out the pensionary benefits to teachers appointed during course of non aided institution recognized under the relevant provisions, it was permitted to deposit amount of fund with interest upto 30.09.1998 for the service rendered of teaching and non teaching staff before providing grant in aid which will be counted for payment of pension.

17) The cut off date fixed was extended by the further government order issued on 17.02.1999. The State Government through a policy decision taken on 15.07.1999 directed the Director, All Regional Directors and All District Basic Education Officers (DBEO) for fixation of salary of teaching and non teaching staff to whom grant in aid was extended by counting their service from the date of approval granted by the DBEO for appointment. The government order for deposition of fund issued another government order dated 08.03.2020 fixing a cut of date.

18) Writ Petition No.75746 of 2005 was filed challenging the cut off date in the government order dated 26.07.2001 from 30.06.1999 to 31.03.2002. The writ petition was allowed vide judgment and order dated 08.09.2006 with a direction for extension of cut of date.

19) Another writ petition - Writ-A No.23525 / 2012 was filed before this Court, which was allowed vide judgment and order dated 04.05.2012 against which Special Appeal No. 503 / 2014 was filed by the State, which was dismissed by the Division Bench of this Court considering that the payment was made prior to 01.04.2005 and approval was granted before the said date.

20) Vide notification issued on 28.03.2005, NPS was implemented w.e.f. 01.04.2005 to whom who were appointed on or after 01.04.2005. Applications were invited for taking the institution on grant in aid list on fulfilling requirement of scheme notified by the State Government. In regard to 1000 recognized junior high schools, 800 boys schools recognized upto 30.04.1988 and 200 girls schools recognized upto 24.03.1999 and accordingly, the institutions were brought within purview of Payment of Salaries Act, 1978.

21) The Director of Basic Education issued an order for deposition of salary to teaching and non teaching staff, to whom grant in aid was extended through government order dated 02.12.2006 as per provisions mentioned in government order dated 15.07.1999, wherein it has been provided that salary of teaching and non teaching staff shall be fixed from the date of approval granted by the DBEO.

22) Vide notification issued on 14.08.2008 by the State Government, it has been clarified that NPS implemented w.e.f. 01.04.2005 shall be applicable to employees, who were appointed on or after 01.04.2005.

23) Applications were filed by the petitioners before the State Government requesting therein for extension of date for

depositing management's fund and payment of pension to the teachers and non teaching staff who have been appointed prior to 01.04.2005. The petitioners of Writ Petition No.8340 of 2009 and 1031 of 2009 submitted applications for extension of time but no decision was communicated even after recommendation made by respondent No.2 dated 26.10.2007.

24) Direction was issued by this Court to the State Government for giving information in regard to recommendation made by respondent No.2 for extension of date. Thereafter, the impugned order dated 08.04.2009 has been passed.

25) Assailing the impugned order, submission of learned Senior Counsel for the petitioners is that the impugned order is neither policy decision nor government order, therefore, the rider imposed in regard to applicability of NPS upon the petitioners is arbitrary and contrary to applicable rules.

26) Their next submission is that vide impugned order the Special Secretary of State Government has tried to modify the NPS implemented upon the employees who entered in service on or after 01.04.2005. In case of petitioners, in bunch of matters, none of the petitioner has entered in service on or after 01.04.2005. Thus, his submission is that the impugned order is contrary to NPS and cannot be modified by an executive order passed by the respondents.

27) Their further submission is that the impugned order overlooked Rule 19 of Rules of 1978. Rule 19 does not carve out the distinction between aided and unaided institutions. The Special Secretary has also failed to appreciate the fact that the service rendered by the teachers and non teaching staff while the

institution was not on grant in aid list has been made basis for taking the institution on the list of grant in aid.

28) The State Government issued government orders according to government order issued in year 1978 as per scheme of 1965 and decisions were taken for depositing the managerial fund in regard to adding the service of teachers and non teaching staff rendered by them before providing grant in aid for payment of pensionary benefits.

29) His further submission is that the Special Secretary was having no authority to add his own view by passing the impugned order in the notification dated 28.03.2005, whereby NPS was enforced.

30) In support of his submissions, he relied upon certain judgments, which are as under:

i) U.P. Senior Basic Shikshak Sangh Sindhi Vidyalaya Vs. State of U.P. and others; Special Appeal No.123 of 2013.

ii) Shailendra Daina and others Vs. S.P. Dubey and others; 2007 (5) SCC 535.

iii) N. Suresh Nathan and another Vs. Union of India and others; 1992 Supp. (1) Scc 584.

iv) Rajinder Singh (Dr.) Vs. State of Punjab and others; 2001 (2) UPLBEC 1502.

v) Shyam Sadan Singh (Dr.) Vs. Chancellor, Deen Dayal Upadyyay University of Gorakhpur and others; 2002 (1) UPLBEC 152.

vi) Girdhari Lal Shankwar Vs. State of U.P. and others; 2014 (1) UPLBEC 657.

vii) Narinder S. Chadha and others Vs. Municipal Corporation of Greater Mumbai and others; 2015 (33) LCD 1743.

31) Per contra, learned counsel for the respondents submitted that the Special Secretary by passing the impugned order has committed no error and the order impugned has been passed in consonance with provisions of NPS.

32) He next submitted that the impugned order challenged in bunch of writ petitions does not suffer from any illegality and is just and valid.

33) His further submission is that the provisions relied upon by learned Senior Counsel for the petitioners is not applicable, therefore, the submission advanced by learned Senior Counsel for the petitioners is misplaced and submitted that the writ petitions filed claiming applicability of OPS are liable to be dismissed.

34) I have considered the submissions advanced by learned counsels for the parties and perused the material on record.

35) To resolve the controversy involved in the present matter, the judgments relied upon by learned counsel for the petitioners are being quoted below:-

i) U.P. Senior Basic Shikshak Sangh Sindhi Vidyalaya Vs. State of U.P. and others; Special Appeal No.123 of 2013.

ii) Shailendra Daina and others (Supra):

"26. In *N. Suresh Nathan v. Union of India* a three Judge Bench was called upon to decide a similar question as involved in the present case, namely, whether the three years' service prior to obtaining the degree or three years' service after obtaining the degree. The relevant Rule 11 provided for recruitment by promotion from the grade of Junior Engineers. Two categories were provided therein viz. one of degree-holder Junior Engineers with three years' service in the grade and the other of diploma-holder Junior Engineers with six years' service in the grade, the provision being for 50% from each category. While interpreting the rule, this Court said that the entire scheme did indicate that the period of three years can commence only from the date of obtaining the degree and not earlier. The service in the grade as a diploma holder and, therefore, that period of three years' service can commence only from the date of obtaining the degree and not earlier. The service in the grade as a diploma-holder prior to obtaining the degree cannot be counted as service in the grade with a degree for the purpose of three years' service as a degree-holder. The Court observed as follows: (SCC p.586 para 4)

"4. In our opinion, this appeal has to be allowed. There is sufficient material including the admission of respondent diploma-holders that the practice followed in the department for a long time was that in the case of diploma-holder Junior Engineers who obtained the degree during service, the period of three years' service in the grade for eligibility for promotion as degree-holders commenced from the date of obtaining the degree and the earlier period of service as diploma-holders was not counted for this purpose. This earlier practice was clearly admitted by the respondent diploma-holders in para 5 of their application made to the Tribunal at p115 of the paper book. This also appears to be the view of the Union Public Service Commission contained in their letter dated December 6, 1968 extracted at pp. 99-100 of the paper book in the counter affidavit of Respondents 1 to 3. The real question, therefore, is whether the construction made of this provision in the rules on which the past practice extending over a long period is based is untenable to require upsetting it. If the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not be appropriate. It is in this perspective that the question raised has to be determined.

From a reading of the aforesaid judgment, it is apparent that after construing the relevant rule the Court has found that the past practice followed in the Department is consistent with the interpretation provided to the relevant Rule by the Court.

27. *The same question once again came before another two Judge Bench of this Court in M.B. Joshi v. Satish Kumar Pandey. This time an interpretation was required with reference to a quota of 10% for the graduate Sub-Engineers completing eight years of service. The relevant Rule provided for Sub-Engineers to qualify for promotion to the post of Assistant Engineers and qualifying service provided was twelve years for diploma holders and eight years for such Sub Engineers who had obtained degree of graduation in the course of service. By an executive order, 50% quota by promotion was sub-divided prescribing 35% for diploma holders completing twelve years of service, 5% for Draftsmen and Head Draftsmen completing twelve years of service and 10% for graduate Engineers completing eight years of service. The Court was called upon to consider whether the period of eight years can only be counted from the date when the diploma holder sub Engineers acquired the degree of Engineering and not prior to the said date. The controversy arose between the parties is summarised in para 5 of the judgment as under: (SCC pp 422-23)*

"5. The short controversy arising in these cases relates to the determination of seniority amongst the diploma holder Sub Engineers who acquired the degree of graduation in Engineering during the period of service qualifying them for promotion in 8 years to the post of Assistant Engineer.

29. *In para 11 of the judgment, the Court discussed the ratio and held: (M.B. Joshi Case, SCC p. 426)*

"11. A perusal of the above observations made by this Court clearly show that the respondent diploma-holders in that case has admitted the practice followed in that department for a long time and the case was mainly decided on the basis of past practice followed in that department for a long time. It was clearly laid down in the above case that if the past practice is based on one of the possible constructions which can be made of the rules then upsetting the same now would not ber appropriate. It was clearly said 'it is in this perspective that the question raised has to be determined'. It was also observed as already quoted above that the Tribunal was not justified in taking the contrary view and unsettling the settled practice in the department. That apart the scheme of the rules in N. Suresh Nathan case was entirely different from the scheme of the rules before us. The rule in that case prescribed for appointment by promotion of Section Officers/Junior Engineers provided that 50 per cent quota shall be from Section Officers possessing a recognised degree in Civil Engineering was made

equivalent with three years' service in the grade. Thus, in the scheme of such rules the period of three years' service was rightly counted from the date of obtaining such degree. In the cases in hand before us, the scheme of the rules is entirely different".

31. Similar issue once again came before a two-Judge Bench of this Court in *D. Stephen Joseph v. Union of India*. The exact question was as follows: (SCC p. 754, para 1)

"[W]hether for promotion to the post of Assistant Engineer in the 50% promotion quota reserved for the person possessing degree in Electrical Engineering from a recognized university or an equivalent with three years' regular service in the grade of Junior Engineers in the Electricity Department, Government of Pondicherry, three years' experience as Junior Engineer in the grade is to be counted from the date of acquisition of the degree in Electrical Engineering or the length of service in the grade of Junior Engineers is to be reckoned if the incumbent at the time of promotion to the 50% quota also possesses degree in Electrical Engineering.

32. The ambit of *N. Suresh Nathan* case is explained in *D. Stephen Joseph* wherein it is said in para 5 that the State Government is labouring under a wrong impression as to the applicability of the past practice as indicated in *N. Suresh Nathan* case. This Court, in the said decision, has only indicated that the past practice should not be upset if such practice conforms to the Rule for promotion and consistently followed for some time past. The Rule has been interpreted in a particular manner and *N. Suresh Nathan* case only indicates that past practice must be referable to the applicability of the Rule as interpreted by the Court's order in a particular manner consistently for some time and would lend support to the interpretation of the Rule. The Court emphasises that any past practice dehors the Rule cannot be taken into consideration as past practice consistently followed for long by interpreting the Rule and *N. Suresh Nathan* case was distinguished in the facts of that case and the language of the Rule which came up for consideration. *D. Stephen Joseph* provides for promotion to 50% quota from Junior Engineers possessing degree in Electrical Engineering from a recognised university with three years' regular service in the grade of Junior Engineers. On the plain language of the rule, this Court has held that the requirement of the Rule is three years' experience as Junior Engineer in the grade and not the acquisition of degree in Electrical Engineering. Thus, it cannot be said that in *M.B. Joshi* and *D. Stephen Joseph* the Court has taken a different view than what was taken by a three

Judge Bench in N. Suresh Nathan Case. In N. Suresh Nathan case the Court has interpreted the Rule which provides for a particular length of service in the feeder post as qualifying service completed with educational qualification to enable the candidates to be considered for promotion and, thus the experience so obtained in the service would necessarily mean the experience obtained after the requisite qualification was acquired. Thus, the decision turns on the language of the Rule and has distinguished N. Suresh Nathan case on that basis.

33. *In Anil Kumar Gupta v. Municipal Corporation of Delhi the relevant rules which came up for consideration provided for essential qualification for appointment viz (A) degree in civil engineering (b) two years professional experience. The age was not exceed 30 years (relaxable for government servant and MCD employees). The applications were received for appointment to the post of Assistant Engineer (Civil) in the engineering department of MCD. The applications were received from the departmental candidates as well as other. The selection board of MCD has prescribed the norms for awarding marks. So far as the experience part was concerned, break up was; upto two years'experience-'no marks" 3 to 12 years, and above experience @ 1/2 mark i.e. for ten years - 5 marks, and viva vice - 15 marks. The question for consideration was whether the pre degree experience of the candidate can be taken into consideration for awarding the marks or whether the candidate's experience being after obtaining the degree is to be taken into consideration for awarding the marks. In para 20 of the judgment, the Court has said that the provisions regarding experience speaks only of professional experience of two years and does not, in any manner, connect it with the degree qualification. Further, the Court has considered N. Suresh Nathan case and said in para 22 that N. Suresh Nathan case was based initially on the practice followed in the department over a long number of years and when the rules were understood as full service of three years after obtaining the degree and on that basis it was held that the service was not include the service while holding a diploma. In para 23, the court cautioned that any practice which is de hors the rules can be no justification for the department to rely upon. Such past practice must relate to the interpretation of the rule in a particular manner and while interpreting the language of the notification, the court held that two years, professional experience need not entirely be the experience obtained after obtaining the degree. Requirement is only degree and two years, professional experience and not the experience as degree holder. We are afraid that the observation of the Court that N. Suresh Nathan case was decided mainly on the past*

practice followed in the department, would not be a correct reading of N. Suresh Nathan Case. This case was essentially decided on the interpretation of the rule and the Court found support to that interpretation from the past practice followed in the department. Thus, it appears from this judgment that essentially N. Suresh Nathan case was not followed on the interpretation of the Rule, which came in question for consideration before the Court and it was held that the professional experience required cannot be read to have any connection with the degree in civil engineering and, therefore, the professional experience in service irrespective of a degree in civil engineering would be considered for allotting marks by the selection board.

43. *Taking into consideration the entire scheme of the relevant rules, it is obvious that diploma-holders will not be eligible for promotion to the post of Assistant Engineer in their quota unless they have eight years service, whereas the graduate engineers would be required to have three years service experience apart from their degree. If the effect and the intent of the rules were such to treat the diploma as equivalent to a degree for the purpose of promotion to the higher post, then induction to the cadre of Junior Engineers from two different channels would be required to be considered similar, without subjecting the diploma-holders to any further requirement of having a further qualification of two years service. At the time of induction in to the service to the post of Junior Engineers, degree in engineering is a sufficient qualification without there being any prior experience, whereas diploma-holders should have two years' experience apart from their diploma for induction in the service. As per the service rules, on the post of Assistant Engineer, 50% of total vacancies would be filled up by direct recruitment, whereas for the promotion specific quota is prescribed for a graduate Junior Engineer and a diploma-holder Junior Engineer. When the quota is prescribed under the rules, the promotion of graduate junior engineers to the higher post is restricted to 25% quota fixed. So far as the diploma holders are concerned, their promotion to higher post is confined to 25%. As an eligibility criterion, a degree is further qualified by three years service for the junior engineers, whereas eight years service is required for the diploma holders. Degree with three years service experience and diploma with eight years service experience itself indicates qualitative difference in the service rendered as degree-holder Junior Engineer and diploma-holder Junior Engineer. Three years' service experience as a graduate Junior Engineer and eight years' service experience as a diploma-holder Junior Engineer, which is the eligibility cri*

terion for promotion, is an indication of different quality of service rendered. In the given case, can it be said that a diploma-holder who acquired a degree during the tenure of his service, has gained experience as an Engineer just because he has acquired a degree in Engineering. That would amount to say that the experience gained by him in his service as a diploma-holder is qualitatively the same as that of the experience of a graduate Engineer. The Rule specifically made difference of service rendered as a graduate Junior Engineer and a diploma-holder Junior Engineer. Degree-holder Engineer's experience cannot be substituted with diploma-holder's experience. The distinction between the experience of degree-holders and diploma-holders is maintained under the Rules in further promotion to the post of Executive Engineer also, wherein there is no separate quota assigned to degree-holders or to diploma-holders and the promotion is to be made from the cadre of Assistant Engineers. The Rules provide for different service experience for degree-holders and diploma holders. Degree-holder Assistant Engineers having eight years of service experience would be eligible for promotion to the post of Executive Engineer, whereas diploma-holder Assistant Engineers would be required to have ten years' service experience on the post of Assistant Engineer to become eligible for promotion to the higher post. This indicates that the Rule itself makes differentia in the qualifying service of eight years for degree holders and ten years' service experience for diploma-holders. The Rule itself makes qualitative difference in the service rendered on the same post. It is a clear indication of qualitative difference of the service on the same post by a graduate Engineer and a diploma-holder Engineer. It appears to us that different period of service attached to qualification as an essential criterion for promotion is based on administrative interest in the service. Different period of service experience for degree-holder Junior Engineers and diploma holder Junior Engineers for promotion to the higher post is conducive to the post manned by the Engineers. There can be no manner of doubt that higher technical knowledge would give better thrust to administrative efficiency and quality output. To carry out technical specialised job more efficiently, higher technical knowledge would be the requirement. Higher educational qualifications develop broader perspective and therefore service rendered on the same post by more qualifying person would be qualitatively different. Engineers

to the higher post is restricted to 25% quota fixed. So far as the diploma-holders are concerned, their promotion to the higher post is confined to 25%. As an eligibility criterion, a degree is further qualified by three years' service for the Junior Engineers, whereas eight years' service is required for the diploma-holders. Degree with three years' service experience and diploma with eight years' service experience itself indicates qualitative difference in the service rendered as degree-holder Junior Engineer and diploma-holder Junior Engineer. Three years' service experience as a graduate Junior Engineer and eight years' service experience as a diploma-holder Junior Engineer, which is the eligibility criterion for promotion, is an indication of different quality of service rendered. In the given case, can it be said that a diploma-holder who acquired a degree during the tenure of his service, has gained experience as an Engineer just because he has acquired a degree in Engineering. That would amount to say that the experience gained by him in his service as a diploma-holder is qualitatively the same as that of the experience of a graduate Engineer. The Rule specifically made difference of service rendered as a graduate Junior Engineer and a diploma-holder Junior Engineer. Degree-holder Engineer's experience cannot be substituted with diploma-holder's experience. The distinction between the experience of degree-holders and diploma-holders is maintained under the Rules in further promotion to the post of Executive Engineer also, wherein there is no separate quota assigned to degree-holders or to diploma-holders and the promotion is to be made from the cadre of Assistant Engineers. The Rules provide for different service experience for degree-holders and diploma holders. Degree-holder Assistant Engineers having eight years of service experience would be eligible for promotion to the post of Executive Engineer, whereas diploma-holder Assistant Engineers would be required to have ten years' service experience on the post of Assistant Engineer to become eligible for promotion to the higher post. This indicates that the Rule itself makes differentia in the qualifying service of eight years for degree holders and ten years' service experience for diploma-holders. The Rule itself makes qualitative difference in the service rendered on the same post. It is a clear indication of qualitative difference of the service on the same post by a graduate Engineer and a diploma-holder Engineer. It appears to us that different period of

service attached to qualification as an essential criterion for promotion is based on administrative interest in the service. Different period of service experience for degree-holder Junior Engineers and diploma -holder Junior Engineers for promotion to the higher post is conducive to the post manned by the Engineers. There can be no manner of doubt that higher technical knowledge would give better thrust to administrative efficiency and quality output. To carry out technical specialised job more efficiently, higher technical knowledge would be the requirement. Higher educational qualifications develop broader perspective and therefore service rendered on the same post by more qualifying person would be qualitatively different.

iii) N. Suresh Nathan and another (Supra) :-

"4. In our opinion, this appeal has to be allowed. There is sufficient material including the admission of respondents diploma holders that the practice followed in the department for a long time was that in the case of diploma-holder Junior Engineer who obtained the degree during service, the period of three years service in the grade for eligibility for promotion as degree holder commenced from the date of obtaining the degree and the earlier period of service as diploma holders was not counted for this purpose. This earlier practice was clearly admitted by the respondents diploma-holders in para 5 of their application made to the tribunal at page 115 of the paper book. This also appears to be the view of the UPSC in their letter dated December 6, 1968 extracted as pages 99-100 of the paper book in the counter affidavit of respondent 1 to 3. The real question, therefore, is whether the construction made of this provision in the rules on which the past practice extending over a long period is based is untenable to require of upsetting it. If the past practice is based on one of the possible construction which can be made of the rule then upsetting the same now would not be appropriate. It is in this perspective that the question raised has to be determined.

5. The recruitment rules for the post of Assistant Engineers in the PWD (annexure C) are at pages 57 to 59 of the paper book. Rule 7 lays down the qualification for direct recruitment from the two sources, namely, degree holders and diploma-holders with three years professional experience. In other words, a degree is equitted to diploma with three years professional experience. Rule 11 provides for recruitment by promotion from the grade of section officer now called

junior engineers. There are two categories provided therein - one is of degree-holder junior engineers with three years service in the grade and the other is of diploma-holder junior engineers with six years service in the grade, the provision being for 50% from each category. This matches with rule 7 wherein a degree is equitted with diploma with three years ' professional experience. In the first category meant for degree-holders, it is also provided that if degree holders with three years service in the grade are not available in sufficient number, then diploma-holders with six years 'service in the grade may be considered in the category of degree holders also for the 50% vacancies meant for them. The entire scheme, therefore, does indicate that the period of three years service in the grade required for degree holders according to rule 11 as a qualification for promotion in that category must mean three years 'service in the grade as a degree holder and, therefore, that period of three years can commence only from the date of obtaining the degree and not earlier. The service in the grade as a diploma holder prior to obtaining the degree cannot be counted as service in the grade with a degree for the purpose of three years 'service as a degree holders. The only question before us is of the construction of the provision and not of the validity thereof and, therefore, we are only required to construe the meaning of the provision. In our opinion, the contention of the appellants degree-holder that the rules must be construed to mean that the three years service in the grade of a degree holder for the purpose of Rule 11 is three years from the date of obtaining the degree is quite tenable and commends to us being in confirmity with the past practice followed consistently. It has also been so understood by all concerned till the raising of the present controversy recently that the respondents. The tribunal was, therefore, not justified in taking the contrary view and unsettling the settled practice in the department."

iv) Rajinder Singh (Dr.) (Supra) :

"7. The settled position of law is that no government order, notification or circular can be a substitute of the statutory rules framed with the authority of law. Following any other course would be a disastrous in as much as it would deprive the security of tenure and light of equality conferred upon the civil servants under the constitutional scheme. It would be negating the so far expected service jurisprudence. We are of the firm view that the High Court was not justified in observing that even without the amendment of the rules, the class II of the service can be treated as class I only by way of

notification. Following such a course in effect amounts to amending the rules by a government order and ignoring the mandate of article 309 of the Constitution.

8. As respondent No.3 was not eligible for consideration to the post of Deputy Director, Health Services, the departmental promotion committee committed a mistake in recommending him. Consequent promotion of respondent No.3 on the basis of recommendation of the departmental promotion committee being contrary to law is liable to be set aside."

v) Shyam Sadan Singh (Dr.) (Supra) :

"6. It would be pertinent to mention here that according to statute 18.10 of the first statutes of the Gorakhpur University made under the provisions of the U.P. State University Act, 1973 service in the capacity of Principal or Teachers, as the case may be, is to be counted from the date of taking charge pursuant to substantive appointment. Appointment to old statute service is to be counted from the date of substantive appointment in the capacity of Principal or Teachers, as the case may be. It makes no distinction between the teachers of degree department and those of post graduate department belonging to the same cadre and same grade. Disqualification created by the government order dated 09.07.1968, in our mind is contrary to law for it has the effect amending the statutes and the State Government has no authority to do so under Section 39 of the Gorakhpur University Act, 1956. In as much as classification of teachers of degree department and post graduate department for the purpose of seniority could have been done only by amending the statutes and not by government orders. Executive power of the State under Article 162 cannot be invoked in derogation of statutory provisions."

vi) Girdhari Lal Shankwar Vs. State of U.P. and others; 2014 (1) UPLBEC 657.

vii) Narinder S. Chadha and others (Supra):

"3. Mr. C.U. Singh, learned Senior Advocate appearing on behalf of the appellants in the civil appeal arising out of SLP (C) No.30832 of 2011 made wide ranging arguments on the genesis of cigarettes act and the fact that it was legislation made under entry 52 list I read with entry 33 list III of the

7th Schedule to the Constitution of India. He cited Godawat Pan Masala Products I. P. Ltd. and another v. Union of India and others (2004) 7 SCC 68, particularly the concluding paragraph 77 (6) stating that the cigarettes act is a special act dealing only with tobacco and tobacco products, while the prevention of Food Adultration Act, 1954 is general and must therefore yield to the Cigarettes Act. He also cited Bajinath Kedia v. State of Bihar and others (1969) 3 SCC 838 for the preposition that once the requisite declaration under Section 2 of the Cigarettes Act is made, the State Government is denuded of any power to legislate in the field occupied by the Cigarette Act. He also cited Paluru Ramakrishnaiah and others v. Union of India and another (1989) 2 SCC 541 for the proposition that executive instructions and conditions cannot be contrary to statute or statutory rules. Ultimately, however, he contended that there were three features of the impugned circular which required to be shut down being ultra vires the Cigarettes Act and the rules made therein.

26. We are at a loss to understand the aforesaid reasoning. If Section 144 is to be invoked, the order dated 14th July, 2011 would have expired two months thereafter. The High Court went on to state that while administering the law it is to be tempered with equity and if an equitable situation demands, the High Court would fail in its duty if it does not mould relief accordingly. It must never be forgotten that one of the maxims of equity is that 'equity follows the law'. If the law is clear, no notions of equity can substitute the same. We are clearly of the view that the Gujarat High Court judgment dated 2nd December, 2011 deserves to be set aside not only for the following the Bombay High Court judgment impugned in the appeals before us but for the reason stated herein above."

36) I have gone through the judgments relied upon by learned counsel for the petitioners, which are fully applicable to the facts and circumstances of the case and the submissions advanced taking shelter of the judgments are acceptable.

37) On going through the aforesaid judgments and the government order issued on 10.07.1978, wherein procedure has been prescribed in regard to fixation of salary to teachers of an institution which has been brought within purview of Payment of

Salaries Act, 1978 whereby the benefit of Tri Benefit Scheme of 1965 was provided to institutions referred therein in Clause III of the government order.

38) On perusal of government orders issued from time to time in regard to fixation of salary of teachers in non aided schools to the effect that as soon as the institution is brought within purview of Payment of Salaries Act, 1972 past service rendered in the institution from the date of approval shall be counted in fixation of salary.

39) In case the theory framed under the impugned order is taken into consideration, there shall be great distinction in regard to teachers and non teaching staff, who have been appointed in the institution in accordance with service rules applicable in the year 1970 and the teachers who have been appointed in the year 1990. In case they are placed in regard to fixation of salary from the date the institution has been brought within the purview of Payment of Salaries Act, 1978 that will create great discrimination amongst the teachers who have been appointed in the institution.

40) The next point for consideration is very important to make applicable the pensionary rules in regard to teachers appointed in the institution recognized under the provisions of U.P. Basic Education Act, 1972.

41) This Court in examination of impugned order gone through the provisions of U.P. Recognized Basic Schools (Recruitment and Condition of Service of Teachers and other Conditions) Rules, 1975 and The U.P. Recognised Basic Schools (Junior High

Schools) (Recruitment And Conditions Of Service Of Teachers) Rules, 1978.

42) On perusal of provisions of Rules of 1975, it is reflected that the rules have been framed in exercise of power under sub-section (1) of Section 19 of U.P. Basic Education Act, 1972. Rule 2 (b) of the rules clarifies that junior basic schools means an institution other than high school or intermediate colleges imparting education upto 5th class.

43) Meaning thereby, in case the institution is a primary school upto level of class 1st to class 5th, the Rules of 1975 is applicable, wherein under Rule 9 & 10, provisions of appointment of teachers has been provided as under :

"9. Appointment of teachers:- No person shall be appointed as teacher or other employee in any recognised school unless he possesses such qualifications as are specified in this behalf by the Board and for whose appointment the previous approval of the Basic Shiksha Adhikari has been obtained in writing. In case of vacancy the applications for appointment shall be invited by the concerned management through advertisement in at least two newspapers (one of them will be daily newspaper), giving at least thirty days' time for submitting application. The date of interview may be given in the advertisement or the candidates be informed of the date fixed for interview by registered post, giving them at least 15 days time from the date of issue of the letter. The management shall not select any untrained teacher and if the selected candidate is a trained one, he will be approved by the Basic Shiksha Adhikari.

10. Salary of teachers :- A recognised school shall undertake to pay with effect from July 1, 1975 to every teacher and employee the same scale of pay, dearness allowance and additional dearness allowance as are paid to the teachers and employees of the Board possessing similar qualification. Pay will be disbursed through cheque."

44) On its perusal, it is evident that it does not carve out any distinction in regard to procedure of recruitment and appointment

of a teacher in primary school, therefore, the distinction drawn under the impugned order that the teachers after taking the institution on the grant in aid list shall be treated to be appointed in the institution on the date when the institution is brought within the purview of grant in aid list / Payment of Salaries Act, 1972 is wholly erroneous and contrary to rules referred herein above.

45) Under the definition of Rule 2(E), junior high school means an institution other than high school or intermediate college imparting education to boys or girls from Class 6th to Class 8th (inclusive) and these rules have been framed under the provisions of U.P. Basic Education Act, 1972.

46) To resolve the controversy, relevant provisions of U.P. Recognized Basic (Junior High School) (Recruitment and Condition of Service of Teachers) Rules, 1978 are being quoted below:

3. Appointment - (1) *It shall be the responsibility of the Management to fill a vacancy in the post of Headmaster or Assistant teacher, as the case may be, of a recognised school by 31st July every year.*

(2) *If any vacancy occurs during an academic session, it shall be filled within two months from the date of occurrence of such vacancy.*

4. Minimum qualification. - (1) *The minimum qualifications for the post of Assistant Teacher of a recognised school shall be a Graduation Degree from a University recognised by U.G.C., and a teachers training course recognised by the State Government or U.G.C. or the Board as follows :-*

1. *Basic Teaching Certificate.*

2. *A regular B.Ed. degree from a duly recognized institution.*

3. *Certificate of Teaching.*

4. *Junior Teaching Certificate.*

5. *Hindustani Teaching Certificate.*

And

Teacher eligibility test passed conducted by the Government of Uttar Pradesh or by the Government of India.

(2) The minimum qualifications for the appointment to the post of head master of a recognized school shall be as follows -

(a) A degree from a recognized University or an equivalent examination recognized as such.

(b) A teacher's training course recognized by the State Government or U.G.C. or Board as follows :-

1. Basic Teaching Certificate.

2. A regular B.Ed. degree from a duly recognized Institution.

3. Certificate of Teaching;

4. Junior Teaching Certificate.

5. Hindustani Teaching Certificate.

(c) Five years teaching experience in a recognized school].

5. Eligibility for appointment. - *No person shall be appointed as Headmaster or Assistant Teacher in substantive capacity in any recognised school, unless -*

(a) he possesses the minimum qualifications prescribed for such post;

(b) he is recommended for such appointment by the Selection Committee.

6. Disqualification. - *(1) No person who is related to any member of the Management shall be appointed as Headmaster or Assistant Teacher of a recognised school.*

(2) For the purposes of this rule, a person shall be deemed to be related if he is related to such member in any one of the following ways, namely -

(i) Father or mother;

(ii) Grandfather, grandmother;

(iii) Father-in-law, mother-in-law;

(iv) Uncle, aunt, maternal uncle, maternal aunt;

(v) Son, daughter, son-in-law, daughter-in-law;

(vi) Brother, sister;

(vii) Grandson, grand-daughter;

(viii) Husband, wife;

(ix) Nephew, niece;

(x) Cousin;

(xi) Wife's brother, or wife's sister, wife's brother's wife, sister's husband;

(xii) Husband's brother, husband's brother's wife;

(xiii) Brother's or cousin's wife.

7. Advertisement of vacancy. - (1) No vacancy shall be filled, except after its advertisement in at least two newspapers one of whom must have adequate circulation all over the State and the other in a locality the school is situated.

(2) In every advertisement and intimation under clause (1), the Management shall give particulars as to the name of the post, the minimum qualifications and age-limit, if any, prescribed for such post and the last date for receipt of applications in pursuance of such advertisement.

(3) Management of the school after explaining the sanctioned posts of the institution shall send information of vacant post during the calendar year compulsorily to the District Basic Education Officer by the 30th April for permission of Advertisement to fill them.

(4) After scrutinizing the proposal within 15 days the District Basic Education Officer shall accord permission to advertise the post according to law. The District Basic Education Officer shall be duty bound to accord permission for advertisement or to reject the permission with reasoned speaking order during the stipulated time.

(6) An appeal may be preferred before the Regional Assistant Director of Education (Basic) against the decision of the District Basic Education Officer. The decision of the Regional Assistant Director of Education (Basic) shall be final.

8. Age limit. - The minimum age shall on the first day of July of the academic year following next after the year in which the advertisement of the vacancy is made under Rule 7 be :

(1) In relation to the post of an Assistant Teacher, 18 years.

(2) In relation to the post of Head Master, 25 years.

9. Selection Committee. - For appointment of Headmaster and Assistant Teacher in institutions other than minority institutions and in the minority institutions, the Management shall constitute a Selection Committee as follows :

A - Institutions other than Minority Institutions :

(i) For the post of headmaster :

(1) Manager;

(2) a nominee of the District Basic Education Officer;

(3) a nominee of the Management;

(ii) For the post of Assistant Teacher;

(1) Manager;

(2) Headmaster of the recognised school in which appointment is to be made;

(3) a nominee of the District Basic Education Officer;

B - Minority Institutions :

(i) For the post of Headmaster;

(1) Manager;

(2) two nominees of Management;

(ii) For the post of Assistant Teacher;

(1) Manager;

(2) Headmaster of the recognised school in which the appointment is to be made;

[(3) A specialist in the subject nominee by the District Basic Education Officer.]

10. Procedure for selection. - (1) The Selection Committee shall, after interviewing such candidates as appear before it on a date to be fixed by it in this behalf, of which due intimation shall be given to all the candidates, prepare a list containing as far as possible the names, in order of preference, of three candidates found to be suitable for appointment.

(2) The list prepared under clause (1) shall also contain particulars regarding the date of birth, academic qualifications and teaching experience of the candidates and shall be signed by all the members of the Selection Committee.

(3) The Selection Committee shall, as soon as possible, forward such list, together with the minutes of the proceedings of the Committee to the management.

(4) The Manager shall within one week from the date of receipt of the papers under clause (3) send a copy of the list to the District Basic Education Officer.

(5) (i) If the District Basic Education Officer is satisfied that -

(a) the candidates recommended by the Selection Committee possess the minimum qualifications prescribed for the post;

(b) the procedure laid down in these rules for the selection of Headmaster or Assistant Teacher, as the case may be, has been followed he shall accord approval to the recommendations made by the Selection Committee and shall communicate his decision to the Management within two weeks from the date of receipt of the papers under clause (4).

(ii) If the District Basic Education Officer is not satisfied as aforesaid, he shall return the papers to the Management with the direction that the matter shall be reconsidered by the Selection Committee.

(iii) If the District Basic Education Officer does not communicate his decision within one month from the date of receipt of the papers under clause (4), he shall be deemed to have accorded approval to the recommendations made by the Selection Committee.

11. Appointment - Appointment by the Management. -

(1) On receipt of communication of approval or as the case may be, on the expiry of the period of one month under clause (iii) of sub-rule (5) of Rule 10, the Management shall, first offer appointment to the candidate given the first preference by the Selection Committee and on his failure to join the post, to the candidate next to him in the list prepared by the Selection Committee and on the failure of such candidate also, to the last candidate specified in such list.

(2) (a) The appointment letter shall be sent under the signature of the Manager by registered post to the selected candidate.

(b) The appointment letter shall clearly specify the name of post, the pay scale and the nature of appointment, whether permanent or temporary, and shall also specify that if the candidate does not join within 15 days from the date of receipt of the appointment letter his appointment shall be cancelled.

(c) a copy of the appointment letter shall also be sent to the District Basic Education Officer.

19. Provident Fund: *Provident Fund shall be payable by the management of a recognised school to every Headmaster or teacher employed in such school in accordance with the scheme applicable to aided institutions as laid down in Appendix 8 of the Education Code (1958 Edition).*

47) On bare perusal of Rule 19, it is evident that provident fund shall be payable by the management of a recognized school to head master or teachers employed in such a school in accordance with scheme applicable to aided institutions as laid down in Appendix-XIII of the Education Code.

48) It clearly demonstrates that the scheme in regard to provident fund shall be applicable to the institutions recognized under the provisions of Act of 1972 and no distinction has been carved out in regard to aided and non aided institutions.

49) On bare perusal of Rule 19 of 1978 Rules amended through notification dated 04.12.2019, it is apparent that by adding proviso, it shall not be effective for the teaching and non teaching staff appointed after 01.04.2005. Meaning thereby, all the teachers and non teaching staff of recognized junior high schools are entitled for provident fund.

50) The petitioners before this court were granted appointment in accordance with aforesaid rules and their appointments were duly approved by the competent authorities. At the time of taking the institutions on grant in aid list in the manager's return names of teaching and non teaching staff were also submitted and financial concurrence was also granted to them. At the time of enforcement of NPS, the rules referred herein above were same as was existing at the time of appointment of the petitioners. When the institutions were brought within purview of Payment of Salaries Act, the aforesaid rules were intact and no amendment was incorporated in the rules that after taking the institutions on grant in aid list their appointment shall be treated to be made after enforcement of NPS. Therefore, once this is the back ground, the petitioners before this court cannot be denied for grant of benefit

of OPS being appointed in the institutions prior to enforcement of NPS.

51) The provisions in regard to appointment of teachers in primary school came into existence in the year 1975 and in regard to appointment and recruitment on the post of teachers in junior high schools came into existence in the year 1978.

52) The teachers of the bunch of writ petitions have been appointed in the institution in accordance with the rules of 1975 and 1978 respectively and approval was granted by the DBEO of the concerned districts.

53) Relevant point of consideration is that when the institution was brought within the purview of Payment of Salaries Act, 1978. There were same provisions in regard to recruitment and appointment of teachers in the institution. For consideration of this aspect of the matter, it is relevant to narrate the necessary facts.

54) In pursuance to notification issued, several senior basic level institutions established during year 1989-1998 in which teaching and non teaching staffs were appointed and the Government has discontinued the monthly pension scheme vide order dated 28.03.2005 and w.e.f. 01.04.2005 placed a new contributory pension scheme to new recruits and vide order dated 02.12.2006, the Government of U.P. admitted those 100 institutions in grant in aid list. The management filed relevant documents along with details of teachers and non teaching staff of the institution and after due consideration the institutions were brought within the purview of Payment of Salaries Act, 1972 vide order dated 02.12.2006.

55) I have examined the relevant provisions of recruitment and appointment of teachers as referred above and there is no hesitation to hold that at the time of taking of institution on grant in aid list in the year 2006, same provision of recruitment and condition of service were applicable to the teachers who are liable to be paid salary from the State Exchequer after taking the institution on the grant in aid list.

56) In regard to non teaching staff of the institutions, the provisions of Rules of 1984 are applicable. Relevant provisions are being quoted below:

3. नियुक्ति – (1) किसी मान्यता प्राप्त स्कूल के प्रबन्धाधिकरण या यह उत्तरदायित्व होगा कि वह, यथास्थिति, लिपिक या समूह 'घ' के कर्मचारी के पद की रिक्ति को प्रत्येक वर्ष 31 जुलाई तक भरें,

(2) यदि कोई रिक्ति शिक्षा-सत्र के दौरान हो तो उसे ऐसी रिक्ति के दिनांक से दो मास के भीतर भरा जायेगा।

4. न्यूनतम अर्हता – (1) लिपिक के पद के लिए न्यूनतम अर्हता माध्यमिक शिक्षा परिषद, उत्तर प्रदेश की इण्टरमीडिएट परीक्षा या समकक्ष परीक्षा (हिन्दी के साथ) और हिन्दी टंकण में 30 शब्द प्रति मिनट की न्यूनतम गति होगी।

(2) समूह 'घ' के कर्मचारी के पद के लिए न्यूनतम अर्हता उत्तर प्रदेश सरकार द्वारा मान्यता प्राप्त किसी संस्था से पाँचवी कक्षा या हिन्दी के साथ समकक्ष परीक्षा उत्तीर्ण करना होगा।

5. नियुक्ति के लिए पात्रता— कोई व्यक्ति किसी मान्यता प्राप्त स्कूलों में मौलिक रूप में लिपिक या समूह 'घ' में कर्मचारी के रूप में तब तक नियुक्त नहीं किया जायेगा जब तक कि—

(क) उसकी ऐसे पद के लिए विहित न्यूनतम अर्हतायें न हों।

(ख) चयन-समिति द्वारा ऐसी नियुक्ति के लिए उसके सम्बन्ध में संस्तुति न की जाये।

6. आयु— इस नियमावली में निर्दिष्ट लिपिक पद पर भर्ती के लिए अभ्यर्थी की आयु उस वर्ष की, जिसमें रिक्ति अधिसूचित की जाये, अनुवर्ती पहली जुलाई को 18 वर्ष की हो जानी चाहिए और 40 वर्ष से अधिक नहीं होनी चाहिए।

परन्तु अनुसूचित जातियों, अनुसूचित जन-जातियों के एवं अन्य पिछड़ा वर्ग के अभ्यर्थियों की स्थिति में, उच्चतर आयु-सीमा 5 वर्ष अधिक होगी या उतनी होगी जितनी राज्य सरकार द्वारा समय-समय पर उपबन्धित की जाये।

7. राष्ट्रीयता नियम 5 में उल्लिखित किसी पद पर भर्ती के लिए यह आवश्यक है कि अभ्यर्थी—

(क) भारत का नागरिक हो, या

(ख) तिब्बती शरणार्थी हो, जो भारत में स्थायी निवास के अभिप्राय से पहली जनवरी, 1962 के पूर्व भारत आया हो, या

(ग) भारतीय उद्भव का ऐसा व्यक्ति हो जिसने भारत में स्थायी निवास के अभिप्राय से पाकिस्तान, बर्मा, श्रीलंका या किसी पूर्वी अफ्रीकी देश केन्या, उगान्डा और यूनाइटेड रिपब्लिक ऑफ तन्जानिया (पूर्ववर्ती तांगानिका और जंजीवार) से प्रवजन किया हो,

परन्तु उपर्युक्त श्रेणी (ख) या (ग) के अभ्यर्थी को ऐसा व्यक्ति होना चाहिए जिसके पक्ष में राज्य सरकार द्वारा पात्रता का प्रमाण-पत्र जारी किया गया हो,

परन्तु यह और कि श्रेणी (ख) के अभ्यर्थी से यह भी अपेक्षा की जायेगी कि वह पुलिस उप-महानिरीक्षक, गुप्तचर शाखा, उत्तर प्रदेश से पात्रता का प्रमाण-पत्र प्राप्त कर ले।

परन्तु यह भी कि यदि कोई अभ्यर्थी उपर्युक्त श्रेणी (ग) का हो तो पात्रता का प्रमाण-पत्र एक वर्ष से अधिक अवधि के लिए जारी नहीं किया जायेगा और ऐसे अभ्यर्थी को एक वर्ष की अवधि की सेवा में तभी रहने दिया जायेगा जब कि वह भारत की नागरिकता प्राप्त कर ले।

टिप्पणी – ऐसे अभ्यर्थी को जिसके मामले में पात्रता का प्रमाण-पत्र आवश्यक हो किन्तु न तो वह जारी किया गया हो और न देने से इन्कार किया गया हो, किसी साक्षात्कार में सम्मिलित किया जा सकता है और उसे इस शर्त पर अन्तिम रूप से नियुक्त भी किया जा सकता है कि आवश्यक प्रमाण-पत्र उसके द्वारा प्राप्त कर लिया जाये या उसके पक्ष में जारी कर दिया जाये।

8. आरक्षण- अनुसूचित जातियों, अनुसूचित जन-जातियों और अन्य श्रेणियों के अभ्यर्थियों के लिए आरक्षण भर्ती के समय प्रवृत्त राज्य सरकार के आदेशों के अनुसार किया जायेगा।

9. चरित्र- सीधी भर्ती के लिए अभ्यर्थी का चरित्र ऐसा होना चाहिए कि वह सेवा में नियोजन के लिए सभी प्रकार से उपयुक्त हो सके और नियुक्ति-प्राधिकारी का यह कर्तव्य होगा कि वह इस सम्बन्ध में अपना समाधान कर ले।

स्पष्टीकरण- केन्द्र सरकार या किसी राज्य सरकार द्वारा या केन्द्र सरकार या किसी राज्य सरकार के स्वामित्व में या नियन्त्रणाधीन किसी निगम द्वारा पदच्युत व्यक्ति को इस नियम के प्रयोजनार्थ के लिए अनुपयुक्त समझा जायेगा।

10. वैवाहिक प्रास्थिति- सेवा में नियुक्ति के लिए ऐसे पुरुष अभ्यर्थी पात्र न होगा जिसकी एक से अधिक पत्नियाँ जीवित हों और ऐसी महिला अभ्यर्थी पात्र न होगी जिसने ऐसे पुरुष से विवाह किया हो जिसकी पहले से कोई पत्नी जीवित रही हो।

परन्तु चयन-समिति किसी व्यक्ति को इस नियम के प्रवर्तन से छूट दे सकती है, यदि उसका समाधान हो जाये कि ऐसा करने के लिए विशेष कारण विद्यमान है।

11. शारीरिक स्वस्थता- (1) किसी अभ्यर्थी को तभी नियुक्त किया जायेगा जब मानसिक और शारीरिक दृष्टि से उसका स्वास्थ्य अच्छा हो और वह ऐसे सभी शारीरिक दोष से मुक्त हो जिनसे उसे अपने कर्तव्यों का दक्षतापूर्वक पालन करने में बाधा पड़ने की सम्भावना हो।

(2) किसी अभ्यर्थी को सीधी भर्ती द्वारा नियुक्ति के लिए अन्तिम रूप से अनुमोदित किये जाने के पूर्व उससे यह अपेक्षा की जाएगी कि वह प्रान्तीय चिकित्सा और स्वास्थ्य सेवा के किसी चिकित्सा-अधिकारी से स्वस्थता प्रमाण-पत्र प्रस्तुत करे।

12. अनर्हता- (1) ऐसा कोई व्यक्ति जो प्रबन्धाधिकरण के किसी सदस्य का सम्बन्धी हो, किसी मान्यताप्राप्त स्कूल के लिपिक या समूह 'घ' के कर्मचारी के रूप में नियुक्त नहीं किया जायेगा।

(2) इस नियम के प्रयोजनार्थ किसी व्यक्ति को सम्बन्धी समझा जायेगा यदि वह निम्नलिखित किसी भी एक प्रकार से ऐसे सदस्य सम्बन्धित हो, अर्थात्-

- (एक) पिता या माता,
- (दो) पितामह, पितामही
- (तीन) ससुर, सास,
- (चार) चाचा, चाची, मामा, मामी
- (पाँच) पुत्र, पुत्री, दामाद, वधू
- (छ:) भाई, बहिन
- (सात) पौत्र, पौत्री
- (आठ) पति, पत्नी
- (नौ) भतीजा, भतीजी
- (दस) सम्भ्राता (कजन)

(ग्यारह) पत्नी का भाई या पत्नी की बहिन, पत्नी का भाई की पत्नी, बहन का पति

(बारह) पति का भाई, पति के भाई की पत्नी

(तेरह) भाई या सम्भ्राता की पत्नी।

13. रिक्ति का विज्ञापन— (1) किसी रिक्ति को तब तक नहीं भरा जायेगा जब तक उसका विज्ञापन कम से कम एक ऐसे समाचारपत्र में जिसका उस क्षेत्र में पर्याप्त परिचलन न हो न किया जाये, और ऐसी रिक्ति की सूचना जिला बेसिक शिक्षा अधिकारी को न दी जाये।

(2) प्रबन्धाधिकरण खण्ड (1) के अधीन प्रत्येक विज्ञापन और सूचना में पद का नाम, ऐसे पद के लिए विहित न्यूनतम अर्हता और आयु-सीमा, यदि कोई हो, और ऐसे विज्ञापन के अनुसरण में आवेदन-पत्रों की प्राप्ति के अन्तिम दिनांक का विवरण देगा।

14. चयन समिति— प्रबन्धाधिकरण एक चयन-समिति का गठन करेगा जिसमें निम्नलिखित होंगे—

(1) प्रबन्धक

(2) मान्यताप्राप्त स्कूल का जिसमें नियुक्ति की जानी हो प्रधान अध्यापक।

(3) जिला बेसिक शिक्षा अधिकारी द्वारा नामनिर्दिष्ट एक विशेषज्ञ जो अल्पसंख्यक द्वारा स्थापित और प्रशासित स्कूल के सम्बन्ध में अनुसूचित जातियों में होगा।

15. चयन की प्रक्रिया— (1) चयन-समिति ऐसे अभ्यर्थियों का, जो समिति द्वारा इस निमित्त निर्धारित दिनांक को, जिसकी सम्यक सूचना समस्त अभ्यर्थियों को दी जायेगी, उसके समक्ष उपस्थित हों साक्षात्कार करने के पश्चात् एक सूची तैयार करेगी जिसमें यथासंभव नियुक्ति के लिए उपयुक्त पाये गये तीन अभ्यर्थियों के नाम अधिमान क्रम में होंगे।

(2) खण्ड (4) के अधीन तैयार की गयी सूची में अभ्यर्थियों के जन्म दिनांक शैक्षिक अर्हता के सम्बन्ध में विवरण होंगे और उस पर चयन-समिति के समस्त सदस्यों द्वारा हस्ताक्षर किये जायेंगे।

(3) चयन समिति ऐसी सूची को समिति की कार्यवाहियों के कार्यवृत्त के साथ प्रबन्धाधिकरण को यथाशीघ्र अग्रसारित करेगी।

(4) प्रबन्धक खण्ड (3) के अधीन पत्रादि की प्राप्ति के दिनांक से एक सप्ताह के भीतर सूची की एक प्रति जिला बेसिक शिक्षा अधिकारी को भेजेगा।

(5) (एक) यदि जिला बेसिक शिक्षा अधिकारी का यह समाधान हो जाये कि—

(क) चयन समिति द्वारा संस्तुत किये गये अभ्यर्थी पद के लिए विहित न्यूनतम अर्हतायें रखते हैं

(ख) यथास्थिति लिपिक वर्ग कर्मचारियों और समूह 'ब' के कर्मचारियों के चयन के लिए इस नियमावली में निर्धारित प्रक्रिया का अनुसरण किया गया है।

तो वह चयन-समिति द्वारा की गयी संस्तुतियों को अनुमोदित करेगा और खण्ड (4) के अधीन पत्रादि की प्राप्ति के दिनांक से दो सप्ताह के भीतर प्रबन्धाधिकरण को अपना विनिश्चय संसूचित करेगा।

(दो) यदि जिला बेसिक शिक्षा अधिकारी का यथापूर्वोक्त के सम्बन्ध में समाधान न हो तो पत्रादि प्रबन्धाधिकरण को इस आदेश के साथ वापस कर देगा कि मामले पर चयन-समिति द्वारा पुनर्विचार किया जाये।

(तीन) यदि जिला बेसिक शिक्षा अधिकारी खण्ड (4) के अधीन पत्रादि की प्राप्ति के दिनांक से एक मास के भीतर अपने विनिश्चय की संसूचना न दे तो यह समझा जायेगा कि उसने चयन-समिति द्वारा की गयी संस्तुतियों को अनुमोदित कर दिया है।

16. नियुक्ति: प्रबन्धाधिकरण द्वारा नियुक्त— (1) यथास्थिति अनुमोदन की संसूचना प्राप्त होने पर या नियम 15 के उपनियम (5) के खण्ड (तीन) के अधीन एक मास की अवधि के समाप्त होने पर प्रबन्धाधिकरण सर्वप्रथम चयन-समिति द्वारा प्रथम अधिमान दिये गये अभ्यर्थी को नियुक्ति का प्रस्ताव करेगा, और उसके द्वारा पद का कार्यभार ग्रहण न करने पर वह चयन-समिति द्वारा तैयार की गयी सूची में उससे अगले अभ्यर्थी को

नियुक्ति का प्रस्ताव करेगा और ऐसे अभ्यर्थी के भी विफल होने पर ऐसी सूची में उल्लिखित अन्तिम अभ्यर्थी को नियुक्ति का प्रस्ताव करेगा।

(2) (क) नियुक्तिपत्र प्रबन्धक के हस्ताक्षर से चयन किये गये अभ्यर्थी को रजिस्ट्रीकृत डाक द्वारा भेजा जायेगा।

(ख) नियुक्तिपत्र में पद का नाम, वेतनमान, और नियुक्ति का प्रकार, स्थायी है या अस्थायी, स्पष्ट रूप से विनिर्दिष्ट किया जायेगा, और यह भी विनिर्दिष्ट होगा कि यदि अभ्यर्थी नियुक्ति पत्र की प्राप्ति के दिनांक से 15 दिन के भीतर कार्यभार ग्रहण नहीं करता है तो उसकी नियुक्ति रद्द कर दी जायेगी।

(ग) नियुक्ति पत्र की एक प्रति जिला बेसिक शिक्षा अधिकारी को भी भेजी जायेगी।

57) On examination, it is found that from the date of recognition of the institution under the provisions of U.P. Basic Education Act, 1972 the service condition of non teaching staff of the institutions are governed under the provisions of 1984 Rules, wherein procedure for recruitment is provided.

58) It is case of the petitioners who are non teaching staff of the institutions that they were appointed in the institution in accordance with the provisions contained under the 1984 Rules and at the time of taking the institution on grant in aid list, same service condition shall be applicable in regard to recruitment of non teaching staff of the institutions. Therefore, the applicability of NPS treating the non teaching staff to be appointed on the date the institution was brought within the purview of payment of salaries act on 02.12.2006 is erroneous in nature. The service condition and recruitment process of non teaching staff of the institution were same as was existing at the time of appointment in the institution. Therefore, the analogy drawn by the respondents that they are not entitled to get covered under OPS as the same came into existence prior to taking of institution on grant in aid list on 01.04.2005 is not sustainable. Therefore, the order treating the petitioners to be covered under NPS cannot be sustained.

59) Once, this is the background of the case of the petitioners, the analogy drawn under the impugned order making applicable the NPS being the institutions brought within the purview of Payment of Salaries Act, 1978 after 01.04.2005 is wholly erroneous and contrary to the act and rules applicable to the petitioners.

60) It is admitted case of the parties that teachers and non teaching staff have been appointed much prior to enforcement of NPS the date of enforcement w.e.f. 01.04.2005, therefore, only on the ground that the institution was brought within purview of payment of salaries act vide notification issued on 02.12.2006 after cut off date of enforcement of applicability of NPS cannot be a ground for depriving the teachers and non teaching staff, who were appointed in accordance with applicable rules and on the date of taking the institution on grant in aid list the recruitment condition of appointment was same.

61) Once the service rendered by teachers and non teaching staff appointed in non aided institutions is counted from the date of approval for the purpose of fixation of salary, the analogy drawn by the respondents in passing the impugned order treating the petitioners to be appointed after 01.04.2005 due to taking of institutions on grant in aid list vide government order dated 02.12.2006 appears to be not justifiable in law.

62) It is not disputed by the respondents that the petitioners were granted appointment on the post of Assistant Teachers and non teaching staff in the institutions recognized by following the procedure prescribed under law and approval has been granted to them by the competent authority and in pursuance thereof, they have discharged their duties in the institutions. Therefore, no

justification appears in not treating them to be teachers and non teaching staff for grant of benefit of OPS in case of taking of institutions on grant in aid list after 01.04.2005.

63) It is also reflected that there is a scheme of the State Government in regard to teachers and non teaching staff appointed in recognized schools under U.P. Basic Education Act, 1972 to whom recruitment and condition Rules 1978 are applicable that the management shall deposit the manager's fund for the period they have discharged service in non aided institutions.

64) This Court is of the opinion that in case the management is directed to deposit the manager's contribution with interest for counting of service rendered in the institution prior to taking of institution on grant in aid list, the petitioners shall come under the ambit of OPS and there shall be no difficulty or burden on the State Government in endorsing the petitioners under OPS which was prevailing prior to enforcement of NPS.

65) I have also gone through the judgment relied upon in regard to fixing cut off date for deposit of manager's fund wherein this Court recorded that the State failed to justify the cut off date fixed and quashed the government order of July, 2001 fixing cut off date as 31.03.2002.

66) In the bunch of writ petitions, CPF and GPF have been deducted from salary of the teachers and non teaching staff and after passing of the impugned order, it has been stopped.

67) It is admitted case of the parties that the scheme of NPS has been introduced vide notification issued on 28.03.2005 fixing 01.04.2005 as cut off date.

68) All the petitioners appeared before this Court have been granted appointment much prior to cut off date and their appointment has been duly approved by the DBEO of concerned districts, therefore, there shall be no justification on the part of the respondents in ignoring their date of appointment duly approved by the competent authority for applicability of OPS, thus, the impugned order holding otherwise ignoring certain provisions of rules and act applicable cannot be held to be justified.

69) Rule 19 of Rules of 1978 does not carve out distinction in regard to applicability between institutions aided and non aided. It specifically prescribes that Rule 19 of Rules of 1978 is applicable for the payment of provident fund to teachers and head masters employed in recognized schools in accordance with scheme applicable to aided institutions, therefore, the otherwise finding recorded while passing the impugned order cannot be sustained.

70) In view of the above, I am of the considered opinion that the Special Secretary has committed manifest error of law and has passed absurd order without taking into consideration the relevant provisions referred hereinabove in regard to recruitment and condition of service applicable to teaching and non teaching staff. The analogy drawn by the Special Secretary in passing the impugned order that NPS has been enforced vide order dated 28.03.2005 enforced w.e.f. 01.04.2005 is relevant date for applicability of claim of those teaching and non teaching staff whose institutions have been brought within purview of Payment of Salaries Act after the cut off date fixed for applicability of NPS is wholly erroneous to NPS, therefore, the order is liable to be set

aside. Therefore, the impugned order dated 08.04.2009 being illegal and contrary to NPS cannot be sustained and is hereby set aside.

71) On over all consideration of facts and circumstances of the case, this Court is of the view that the Special Secretary has nowhere considered while passing the impugned order that recruitment and condition of service of teaching and non teaching staff were same on the date of taking the institutions on grant in aid list vide order dated 02.12.2006. Therefore, the petitioners before this court who have been granted appointment much prior to enforcement of NPS vide notification issued on 28.03.2005 w.e.f 01.04.2005 shall not affect the right of the petitioners to be covered under OPS. The management has been empowered at earlier point of time by issuing government order to deposit the manager's contribution by calculating the service for grant of pension to teaching and non teaching staff, therefore, there shall be no burden upon the State Government in paying the pension treating the teaching and non teaching staff to be covered under OPS.

72) In view of the above, the bunch of writ petitions is liable to be allowed and is hereby **allowed**.

73) The respondents are directed to treat the petitioners of the connected writ petitions and members of association of leading writ petition to be covered under Old Pension Scheme and to pay pension to the retired teaching and non teaching staff accordingly. It is further directed to permit the managements to deposit manager's contribution with simple interest excluding the deducted amount from each of the petitioner within a period of two months from the date of production of a certified copy of this

order and to reckon the service rendered by the petitioners in the institutions from the date of their approval to the appointment made on their respective posts and to pay pension under OPS within a further period of two months from the date of production of a certified copy of this order. In case the service required for reckoning the qualifying service for the payment of pension is insufficient, the service rendered prior to taking into consideration on grant in aid list shall be counted for the purpose after deposit of managers contribution and accordingly the pension shall be released in their favour.

Dated:- 16.06.2021

Adarsh K Singh