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2026:AHC:17253

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Reserved :-

Jan. 16/19/21/22, 2026

Delivered :-

Jan. 27, 2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 19185 of 2025

Samita

.....Petitioner(s)

Versus

State of U.P. and 2 others

.....Respondent(s)

Counsel for Petitioner(s)	:	Manish Tiwari,	Saurabh
		Tripathi, Sr. Advocate	
Counsel for Respondent(s)	:	C.S.C.	

Along with :

- Writ - A No. 19255 of 2025:**
1. Veeresh Chandra Mishra and 2 others
Versus
State of U.P. and 5 others
- Writ - A No. 19267 of 2025:**
2. Chandrabhan and 6 others
Versus
State of U.P. and 9 others
- Writ - A No. 19682 of 2025:**
3. Shiv Kumar Sharma
Versus
State of U.P. and 4 others
- Writ – A No. 13849 of 2025:**
4. Ghanshyam Singh
Versus
State of U.P. and 3 others

5. **Rajeev Kumar** **Versus**
State of Uttar Pradesh and 4 others

6. Ashok Kumar Pandey
Versus
State of U.P. and 4 others

7. Prem Pal Singh Versus
State of U.P. and 3 others

8. Khwaja Tariq Ahmad Versus
State of U.P. and 5 others

9. Dr. Rajesh Kumar Chaturvedi
Versus
State of U.P. and 4 others

10. Govind Kumar Singh
Versus
State of U.P. and 3 others

11. Raj Kumar
State of U.P. and 3 others

Versus

HON'BLE SAURABH SHYAM SHAMSHERY, J.

(a) In a case where an ad-hoc vacancy of Principal or Head Master, as the case may be, of an institution is filled by promotion of senior most qualifying teacher in terms of provisions of Regulations described under Chapter-II of U.P. Intermediate Education Act,

1921 (for short "Act of 1921") read with Regulations under Sections 16-E, 16-F and 16-FF of Act of 1921, whether such ad-hoc Principal or Head Master would be entitled for salary of Principal or Head Master or it would still be governed by the provisions of Section 18 of U.P. Secondary Education Service Selection Board Act, 1982 (for short "Act of 1982") i.e. such ad-hoc Principal or Head Master would be entitled for salary of regular Principal or Head Master, only after preconditions prescribed therein are fulfilled.

(b) Whether issue of payment of salary of post of Principal or Head Master, as the case may be, while working on promotion on Ad-hoc basis is already settled by the judgments passed by Division Benches of this Court in **Dhaneshwar Singh Chauhan vs. DIOS, Budaun, 1980 UPLBEC 286; Narbadeshwar Misra vs. DIOS Deoria, 1982 UPLBEC 171 and Soloman Morar Jha vs. DIOS, Deoria, 1985 UPLBEC 113 (for short "judgments of 1980, 1982 and 1985")**.

(c) Whether aforesaid judgments of 1980, 1982 and 1985 were considered in a Full Bench judgment of **Dr. Jai Prakash Narayan Singh vs. State of U.P. and others, (2014) 4 UPLBEC 2642** and despite said Full Bench was in regard to U.P. State Universities Act, 1973 and U.P. Higher Education Service Commission Act, 1980 would still govern the facts and circumstances of present case arisen out of Act of 1921 and regulations made therein and Act of 1982.

2. Arguments of Sri Prabhakar Awasthi, learned Senior Advocate assisted by S/Sri Adarsh Shukla, Tanuj Shahi, Prashant Shukla, Anurag Shukla, Dharmendra Kumar Tripathi, learned advocates for petitioners in all writ petitions are that issue has already been settled in above referred three judgments of 1980, 1982 and 1985 and judgment of Full Bench of this Court in **Dr. Jai Prakash Narayan Singh (supra)** so much as that even preconditions prescribed in Section 18 of Act of 1982 are not complied with, still if the promotion is made on a temporary vacancy in the post of Principal or

Head Master, such appointee shall be entitled for salary as Principal or Head Master, as the case may be, from the date he joined at such post in pursuance of said order of promotion. There is no scope for reconsideration of the issue.

3. Per contra, it is the argument of Sri Kartikeya Saran, learned Additional Advocate General assisted by S\Sri J.N. Maurya, learned C.S.C., R.P. Dubey, learned Addl. C.S.C., Dharendra Pratap Singh and Saurabh, learned Standing Counsel that judgments of Division Benches were of the year 1980, 1982 and 1985 and Section 18 of Act of 1982 was substituted by enactment of U.P. Act No. 5/2001 (w.e.f. 03.12.2000) i.e. subsequent to said judgments, therefore, this Court can still look, consider and interpret the effect of said Section 18 of Act of 1982 which has certain preconditions for promotion of Ad-hoc Principal or Head Master, as the case may be and its effect on payment of salary of said post.

4. The next argument of learned Additional Advocate General is that Full Bench in **Dr. Jai Prakash Narayan Singh (supra)** was considering different statutes i.e. U.P. State Universities Act, 1973 and Act of 1980, therefore, it is not applicable in facts and circumstances of the present case as here ad-hoc promotion is governed by different set of Statutes viz. Act of 1921 and Act of 1982.

5. Learned Additional Advocate General has further submitted that in **Dr. Jai Prakash Narayan Singh (supra)**, a judgment passed in case of **Radha Raizada, 1994 (2) ESC 342 ALD (FB)** was referred and was considered only qua to effect of order of Removal of Difficulties and power of ad-hoc

appointment which is not an issue in present case. The judgments of 1980, 1982 and 1985 were only mentioned in the Full Bench judgment but were not considered at detail except to follow an analogy that issue of payment of salary to ad-hoc Principal under Act of 1921 was considered and accordingly directed for payment.

6. Learned Senior Advocate for petitioners have submitted that even if the preconditions prescribed in Section 18 of Act of 1982 are mandatory and Committee of Management has failed to notify the vacancy, it could not have an adverse effect so far as adhoc Principal or Head Master are concerned since Section 18(2) of Act of 1982 provides that DIOS concerned has a duty to take care of such defaults.

7. Before considering rival submissions, relevant provisions of Act of 1921 as well as its Regulations and Act of 1982 are mentioned hereinafter :-

**“Regulations of U.P. Intermediate Education Act,
1921**

2(1) The post of the Head of Institution shall except as provided in clause (2) be filled by direct recruitment after reference to the Selection Committee constituted under sub-section (1) of Section 16-F or, as the case may be, under sub-section (1) of Section 16-FF:

Provided that in the case of any institution not being an institution referred to in Section 16-FF a temporary vacancy caused by the grant of leave to an incumbent for a period not exceeding six months or by death, retirement or suspension of an incumbent occurring during an educational session in the post of the Head of Institution shall be filled by the promotion of the senior most qualified teacher, if any, in the highest grade in the institution.

(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.

(b) The Committee of Management of such institution shall submit the proposal for promotion of the Headmaster concerned to the Regional Deputy Director of Education for his concurrence.

(c) The proposal referred to in sub-clause (b) shall be accompanied by a copy of the resolution of the Committee of Management approving such Headmaster for promotion, his service Book and Character Roll and shall contain the following particulars in relation to him, namely—

(i) date of birth,

(ii) examinations passed by him stating the subjects, divisions and year of passing such examinations.

(d) The Regional Deputy Director of Education shall communicate his decision on such proposal within two weeks from the date of receipt thereof, failing which the Regional Deputy Director shall be deemed to have given his concurrence to such proposal.

(e) The decision of the Regional Deputy Director of Education under sub-clause (d) shall be communicated to the Committee of Management as well as the Headmaster concerned.

(f) Any person aggrieved from the decision of the Regional Deputy Director of Education, including the Committee of Management may within 10 days from the date of communication of the order under sub-clause (e) make a representation against it to the Director whose decision in the matter shall be final.

(g) A Headmaster 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 upgraded High School, shall be retained as an assistant teacher on the highest post for which he is qualified, provided that this 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.

(3) Where the temporary vacancy in the post of head of institution is, for a period not exceeding thirty days, the senior-most teacher in the highest grade may be allowed to work as acting head of institution, but he shall not be entitled to pay in a scale higher than the scale of pay in which he is drawing salary as such teacher.

(4) In all cases in which promotions are made under this regulation a copy of the resolution of the Committee of Management together with particulars in the pro forma prescribed in Appendix 'B' shall be immediately forwarded by the Manager to the Inspector as well as the Regional Deputy Director of Education."

"U.P. Secondary Education Service Selection Board Act, 1982

Section 18: Ad hoc Principals or Headmasters

(1) Where the Management has notified a vacancy to the Board, in accordance with sub-section (1) of Section 10 and the post of the Principal or the Headmaster actually remained vacant for more than two months, the management shall fill such vacancy on purely ad hoc basis by promoting the seniormost teacher.

(a) in the lecturer's grade in respect of a vacancy in the post of the Principal.

(b) in the trained graduate's grade in respect of a vacancy in the post of the Headmaster.

(2) Where the Management fails to promote the senior most teacher under sub-section (1) the

inspector shall himself issue the order of promotion of such teacher and the teacher concerned shall be entitled to get his salary as the Principal or the Headmaster, as the case may be, from the date he joins such post is pursuance of such order of promotion.

(3) Where the teacher to whom the order of promotion is issued under sub-section (2) is unable to join the post of the Principal or the Headmaster, as the case may be, due to any act or omission on the part of the management, such teacher may submit his joining report to the Inspector, and shall thereupon be entitled to get his salary as the Principal or the Headmaster, as the case may be, from the date he submits the said report.

(4) Every appointment of an ad hoc Principal or Headmaster under sub-section (1) or sub-section (2) shall cease to have effect from when the candidate recommended by the Board joins the post."

8. Learned Senior Advocate for petitioners has placed heavy reliance on judgments of 1980, 1982 and 1985. Said judgments being short judgments are mentioned below in entirety :-

"Dhaneshwar Singh Chauhan vs. DIOS, Budaun :- (1980)

The petitioner is a permanent lecturer in Sri Krishna Intermediate College, Budaun, an aided and recognized institution. On 30-7-72, the petitioner was promoted to officiate as Principal in the vacancy caused by the suspension of one Sri Hari Om Goel. The Committee of Management requested the District Inspector of Schools to approve the petitioners officiating promotion. The Manager of the institution as well as the petitioner made representation to the District Inspector of Schools that the petitioner be granted pay in the Principals grade as he was officiating on that post. The District Inspector of Schools by his order dated 14-4-77 upheld the petitioners claim and observed that the petitioner was entitled to Principals grade as he was officiating on that post. The

petitioners salary was fixed at the rate of Rs. 816 per mensem with effect from 1-11-76.

The petitioner thereafter continued to draw his salary in the Principals grade till January, 1978. The Directorate of Education appeared to have advised the District Inspector of Schools not to allow an officiating Principal to draw his salary in Principals grade. In pursuance of that direction, the District Inspector of Schools by his letter dated 31-8-77 informed the petitioner that he was not entitled to draw his salary in Principals grade and he was directed to refund the amount which had already been paid to him. The petitioner made representation to the District Inspector of Schools but he met with no success. Aggrieved, the petitioner has approached this court under Article 226 of the Constitution challenging the order of the District Inspector of Schools as contained in his letter-dated 31-8-77 for the issue of a writ of mandamus directing the respondents to permit the petitioner to draw his salary in the Principals grade for the period he continues to officiate as Principal.

2. The petitioner is a teacher in aided and recognised institution and the liability for the prejoint his salary is on the State Government under the U.P. High School and Intermediate College (Payment of Salary of Teacher and other Employees) Act, 1971. The salary of a teacher in aided and recognised institution is regulated by the regulation framed under the U.P. Intermediate Education Act and the order issued by the State Government from time to time Regulation 46 in Chapter III lays down that employees of an aided and recognised institution shall be given the pay scale sanctioned by the State Government from time to time. The State Government has prescribed the scales of pay for teachers. The State Government issues an order on 18th January 1974 accepting the recommendations of the U.P. Pay Commission prescribing scales of pay for teachers. Paragraph 5(2) of the Government order lays down that a teacher while officiating on the post carrying higher grade is entitled to officiating salary in the higher grade and it further prescribed procedure for determining the salary of officiating teacher in the

higher grade. A copy of the Government order was before us by the petitioner. Respondents do not deny the petitioners averment that the State Government issued orders sanctioning officiating pay to a teacher in the higher grade. The petitioners claim for salary in Principals grade was sanctioned by the District Inspector of Schools in pursuance of the aforesaid Government order. Respondents have failed to show any subsequent Government order or rule superseding the direction contained in Government order dated 24-1-74. The respondents have further failed to place any material before the court showing that the petitioner was not entitled to the salary in the Principal's grade while officiating on the post of Principal. The order of the District Inspector of Schools dated 31-8-77 is therefore not sustainable in law.

3. In the result we allow the petition and quash the order of the District Inspector of Schools and direct the respondents to pay salary to the petitioner in the Principals grade for the period during which he has been officiating as Principal in accordance with the orders contained in the letter of the District Inspector of Schools dated 14-4-79. The petitioner is entitled to his cost."

(Note -: The above judgment has not considered any relevant provisions of applicable Act and passed judgments only on basis of a GO dated 24.01.1974)

Narbdeshwar Misra vs. DIOS, Deoria (1982)

"1. The petitioner was a confirmed lecturer in Mathematics in the Shivaji Inter College, Knukhondoo, Deoria.

2. Purporting to exercise powers under the proviso to clause 2 of Chapter II of the Regulations framed under the Intermediate Education Act, 1921 on the retirement of the permanent Principal namely Sri Banshidhar Dixit of the aforesaid College. the committee of management passed a resolution dated 9th of October, 1977 appointing the petitioner as the officiating Principal of the College. It is not disputed that the petitioner has since been working as the officiating Principal of the College. When however, the Manager of the College forwarded the bills of the petitioners salary as the Principal of the College to the

District Inspector of Schools, the latter refused to clear the bills of the petitioner on the ground that there was no provision for payment of salary in the principals grade to those who were appointed merely to net as affiliating Principal. The petitioner, thereafter, personally met the District Inspector of schools and placed before him his grievance that under the proviso to Regulation 2 of Chapter II of the aforesaid Regulations read with Regulations 46 of Chapter III of the Regulations the petitioner was entitled to be paid the salary of a Principal. Having failed to obtain any redress from the District Inspector of Schools, the petitioner has approached this court under Article 226 of the Constitution of India.

3. The petitioner contends that the proviso to Regulation 2 of Chapter II was clearly attracted to his case and that consequently he was entitled under Regulation 46 of Chapter III to be paid the salary of a Principal. Learned Standing counsel on the other hand submitted that under the various Removal of Difficulties Orders issued by the Government from time to time the petitioner could be appointed as officiating Principal for a period not exceeding six months. He was hence not entitled to be paid any salary beyond that period.

4. Having heard learned counsel for the parties, we are clearly of the opinion that the contention of the petitioner is well founded. Regulation 2 of Chapter II of the aforesaid Regulations reads as follows:

"2. (1) The posts of the Head of Institution shall, except as provided in clause (2) be filled by direct recruitment after reference to the Selection Committee under Sub-section (1) of section 16-F or, as the case may be, under Sub section (1) of Section 16-FF.

Provided that in the case of any instruction not being an institution referred to in Section 16-FF a temporary vacancy caused by the grant of leave to an incumbent for a period not exceeding six months or by death retirement or suspension of any incumbent occurring during an educational session in the post of the Head of Instruction shall be filled by the promotion of the senior most

qualified teacher, if any, in the highest grade in Institution.

5. The next relevant provision is clause (3) of Regulation No. 2 of Chapter II which reads thus:-

"Where the temporary vacancy in the post of the head of institution is for a period not exceeding thirty days, the senior most teacher in the highest grade may be allowed to work as acting head of institution, but he shall not be entitled to pay in a scale higher than the scale of pay in which he is drawing salary as such teacher."

6. A perusal of the proviso to Regulation No. 2 (1) shows that the petitioner's case was squarely covered by it. The petitioner was appointed in the vacancy caused by the retirement of Banshidhar Dixit, to officiate as the Principal of the College. The petitioner was the senior most teacher. He was, therefore, lawfully appointed as the officiating Principal contemplated by the proviso.

7. In Dhaneshwar Singh Chauhan v. District Inspector of Schools, Badaun 1980 UPLBEC 286, a Division Bench of this court rules that a teacher officiating on the post of Principal is entitled to receive salary in the Principals grade as provided by the Government Order dated/18-1-1974. This decision does support the petitioners contention.

8. The same conclusion also flows from clause (3) of Regulation No. 2 quoted above. The provision that where the temporary vacancy in the post of the Head of the institution is for a period exceeding thirty days, the senior most teacher may be allowed to work as acting head of the Institution but that he would not be entitled to pay in a scale higher than that in which he was drawing his salary as a teacher clearly suggests that where the vacancy in the post of Principal lasts more than 180 days, the teacher appointed to officiate as the Principal under the aforesaid proviso would be entitled to the salary admissible to a Principal.

9. The aforesaid statutory provisions, therefore, clearly point to the conclusion that the petitioner was, as the officiating

principal of the College, entitled to be paid the salary of a principal. The respondent no. 1 was consequently not justified in refusing the salary of a Principal to the petitioner on the ground that the petitioner was merely officiating as the Principal.

10. As regards the contention of the learned Standing Counsel that under the various Removal of Difficulties Orders the officiating appointment could last only for a period of six months, it is sufficient to say that, that was not the ground on which the payment of salary in the Principals grade was refused by the District Inspector of Schools. On the other hand from annexure 4 to the writ petition which is a copy of the letter of the Deputy Director of Education dated 3rd of July 1981 addressed to the District Inspector of Schools (with a copy forwarded to the petitioner) it is clear that the petitioner was still being treated as the officiating Principal of the College, The Deputy Director of Education pointed out the relevant statutory provisions applicable to the payment of salary to officiating Principals and observed that the District Inspector of Schools should comply with those provisions. We, therefore, find no substance in this submission raised by the learned Standing counsel.

11. In the result, the petition succeeds and is allowed. The District Inspector of Schools, Deoria is directed to pay salary to the petitioner admissible to the Principals as long as the petitioner continues to be the officiating Principal of the aforesaid College. We, however, make no orders as to costs."

(Note :- In above judgment, relevant provision i.e. Proviso to Regulation 2(1) and 2(3) of Chapter-II of Regulations were considered, however, the words "in the highest grade in institution" was not specifically considered and further G.O. dated 24.01.1973 was also followed.)

Soloman Morar Jha vs. DIOS, Deoria (1985)

"By means of this petition under Article 226 of the Constitution, the petitioner claimed relief for issue of a writ of certiorari quashing the order of the District Inspector

of Schools, Deoria (hereinafter referred to as the D.I.O.S.), dated April 30, 1983 and for the issue of a writ of mandamus commanding the D.I.O.S. to pay the petitioner's salary in Principal's grade, and also to pay him the entire arrears of salary.

The petitioner is a seniormost lecturer in B.G.M. College, Bhagalpur, district Deoria, an aided and recognised institution. On the retirement of the permanent Principal of the College, the Committee of Management appointed the petitioner as the acting Principal, by resolution dated 26-6-1981. The petitioner took charge of the office of the principal, on July 1, 1981 and since then he has been working as the acting Principal of the institution, with the approval of the D.I.O.S. The Committee of Management made a reference to the D.I.O.S. for the payment of the salary in the Principal's grade, but the Inspector, by his letter dated April 30, 1983, refused to pay the salary to the petitioner, in the principal's grade, on the ground that there is no provision in the U. P. Intermediate Education Act or the Regulations framed thereunder, for paying the salary to a person officiating on the post of Principal. Aggrieved, the petitioner has filed this petition.

There is no dispute that a permanent vacancy arose in the post of principal in the institution. There is, further, no dispute that the petitioner, being a seniormost teacher, was appointed to officiate on the post of Principal. Admittedly, the petitioner has been functioning as the acting Principal since 1-7-1981 and in that capacity, he has been discharging the functions of the Principal. Since the petitioner has been performing the duties and functions of the Principal, he is entitled to salary in the Principal's grade, for the period during which he continues to work as the Principal. In *Dhaneshwar Singh Chauhan v. D.I.O.S. Budaun* 1980 UPLBEC 286 as well as in *Narvadeshwar Misra v. D.I.O.S. Deoria*, 1982 UPLBEC 171, two Division Benches of this Court held that a lecturer officiating in the post of Principal is entitled to salary in the Principal's grade. The D.I.O.S. is under a legal obligation to pay the salary to a person for the period during which he acts as a

Principal. The law is very well settled in this respect. The D.I.O.S. has refused to pay the salary to the petitioner in an unjustified manner.

On behalf of the respondents, it was urged that Regulation 2 (1) of Chapter II of Regulations framed under the U. P. Intermediate Education Act is not applicable to the minority institution. No doubt, the institution in which the petitioner is acting as Principal is a minority institution but that does not affect the legal position. Proviso to Regulation 2 (1) of Chapter II of the Regulations does not prohibit the payment of salary to a lecturer in the Principal's grade, for the period during which he officiates on that post. The view taken by the DIOS is unjustified.

In the result, we allow the petition and quash the order of the DIOS, Deoria, dated April 30, 1983 and direct the Inspector to pay the arrears of salary to the petitioner in the Principal's grade, for the period during which he had been working as acting Principal in the institution and also to pay to the petitioner the salary for the period during which he continues to act as officiating Principal."

(Note :- Above judgment was in regard to Minority Institution and that judgment of 1980 and 1982 were held to applicable to said institution also and not above decision is applicable to said institution also.)

9. Relevant paragraphs of Full Bench judgment of **Dr. Jai Prakash Narayan Singh (supra)** are quoted below :-

"Issues

1. Whether there is a conflict between the ratio of the decisions in the cases, of Daljeet Singh v. State of U.P. (2007 (7) AWC 7687) and Om Saran Tripathi v. State of U.P. (2010 (1) AWC 374) and if so, which of the views lays down the law correctly; and whether an officiating Principal appointed under Statute 10.20 of Purvanchal University, is entitled to claim payment of salary in the regular grade of the Principal or not.

Essentially, the issue is whether a teacher who is appointed to officiate as principal on

the permanent post of a principal falling vacant in a college affiliated to a State University, is entitled to the pay scale and grade of a regular principal.

2. In the following decisions, Division Benches of this Court directed the payment of salary drawn by a principal to an officiating principal of a degree college:

(1) Durga Prasad Dwivedi v. Director of Higher Education (CMWP No. 8738, 1988, decided on 11 July, 1994). This judgment was referred to and followed in:

(i) Raghu Nath Mishra v. State of U.P. (CMWP No. 39699 of 1993, decided on 13 November, 1997);

(ii) Anand Prakash Tyagi v. State of U.P. (CMWP No. 46257 of 1999, decided on 2 November, 1999); and

(iii) Madan Gopal Mittal v. State of U.P. (CMWP No. 42012 of 2004, decided on 7-October, 2004);

(2) Paras Nath Pandey v. District Inspector of Schools ((1995) AWC 603": 1995 All LJ 1136);

(3) Dr. Govind Nam Niranjana v. District Inspector of Schools, Jalaun at Orai, 1996 AWC 1757 : (1997 All LJ 172); and

(4) Om Saran Tripathi v. State of U.P., 2009 (4) ESC 3023.

3. However, in Daljeet Singh (supra), a Division Bench of this Court held that under the Statutes of the University, the senior most teacher is not appointed as officiating principal but is only permitted to discharge the duties of a principal. In coming to this conclusion, the Division Bench placed reliance on the following decisions of Division Benches of the Court:

(1) Sheo Shanker Tripathi v. Director of Education (Sanskrit), UP Allahabad, 2007 (4) AWC 3636 : (2007 (4) All LJ (NOC) 687); and

(2) Vijay Rani v. Regional Inspectress of Girls Schools, Region I, Meerut, 2007 (2) ESC 987 : (2007 (2) All LJ 694).

4. For the completeness of the record, we note that Division Benches of this Court in the following decisions directed the payment of salary drawn by a principal to an officiating principal of a secondary school:

(1) Dhaneshwar Singh Chauhan v. District Inspector of Schools, Budaun (1980 UPLBEC 286),

(2) Narbadeshwar Misra v. District Inspector of Schools, Deoria (1982 UPLBEC 171); and

(3) Soloman Morar Jha v. District Inspector of Schools, Deoria (1985 UPLBEC 113).

A conflict of decisions has arisen. That, the Full Bench is called upon to resolve.

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29. A somewhat similar situation had arisen under the provisions of the UP Secondary Education Service Selection Board Act, 1982. That Act was enacted to establish a Secondary Education Service Commission for the selection of teachers in institutions recognized under the Intermediate Education Act 1921. The expression 'teacher' was defined to include a principal. Section 16 provided that subject to the provisions of Sections 18 and 33 and certain other sections, every appointment of a teacher upon the commencement of the Act would be made by the management only on the recommendation of the Commission and an appointment made in contravention of the provisions would be void. Section 18 dealt with ad hoc appointments of teachers. Since the provisions of Section 16 were made subject to Section 18, ad hoc appointments could be validly made under; Section 18. However, after the enactment of UP Act 1 of 1993, Section 16 was substituted and Section 18 of the Principal Act was sought to be deleted. Section 33 empowered the State Government to issue and notify Orders for removing any difficulty, during such period as may be specified in the Order, whereupon the provisions of the Act would have effect subject to adaptations whether by way of modification, addition or omission. Two notified Orders were issued under Section 33(1). Neither of the two Orders provided for any time limit during which the orders would remain effective.

30. These provisions came up for consideration before a Full Bench of this Court in Radha Raizada v. Committee of Management, Vidyawati Darbari Girls Inter College, (1994) 3 UPLBEC 1551 : (1994 All LJ 1077) Dealing with the situation, the Full Bench held as follows:

“...After enforcement of U.P. Act No. 1 of 1993 except Section 13 thereof the situation that emerges is that by new Section 11 of Amendment Act which has substituted Section 16 of the Principal Act, has come into force whereas the omission of Section 18 from the principal Act by Section 13 of this amending Act has not been enforced which means Section 18 still continues in the Principal Act. In view of this legislative development a peculiar situation has arisen that new Section 16 which has come into force is no longer subject to Section 18 of the Act which means that no appointment on ad hoc basis can be made under Section 18 of the Act. New Section 16 begins with a non-obstante clause which means in spite of other provision, no appointment shall be made except on the recommendation of the Board. Where a section begins with a non-obstante clause, it indicates that the provision should prevail despite anything to the contrary in the provisions in the Act. Thus after omission of Section 18 from Section 16 no ad hoc appointment is permissible under Section 18 and if made, would be void under sub-section (2) of Section 16 of the Act. It has not been brought to my notice that First Removal of Difficulties Order 1981 issued by the State Government has either been revoked or rescinded. On the contrary, it was asserted that the said Removal of Difficulties Order is continuing. Now the question for consideration is that if no ad hoc appointment of teacher or Principal can be made under Section 18 of the Act, whether it is permissible to appoint a teacher or Principal on ad hoc basis under the First Removal of Difficulties Order? A perusal of Section 16 would show that Section 16 is still subject to Section 33 of the Act which empowers the State Government to issue Removal of Difficulties Order. Since Removal of Difficulties Orders have been issued under. Section 33 of the Act, an ad

hoc appointment either by direct recruitment or by promotion under the Removal of Difficulties Order would be a valid appointment."

31. Hence, the Full Bench took the view that even after the omission of a reference to the provisions of Section 18 in Section 16 following UP Act 1 of 1993, since Section 16 was still subject to Section 33, ad hoc appointments could be made both under the First and Second Removal of Difficulties Orders that had been issued under Section 33.

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33. Hence, as the Supreme Court noted, the State Government could have provided the period during which the Removal of Difficulties Orders could operate but such a provision was not made in these Orders limiting the period of operation. The Removal of Difficulties Orders were, therefore, construed to be permanent and not transient and reliance was placed on the decisions of the Full Bench of this Court in Radha Raizada (1994 All LJ 1077) (supra).

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45. We may again note that several decisions have taken the view that a person who has officiated on the post of a principal of a secondary school would be entitled to the salary of a principal. These decisions were in:

(i) Dhaneshwar Singh Chauhan v. District Inspector of Schools (supra);

(ii) Narbadeshwar Misra v. District Inspector of Schools (supra); and

(iii) Soloman Morar Jha v. District Inspector of Schools (supra).

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57. We, accordingly, dispose of the reference in the following terms:

(i) The decision in Daljeet Singh (supra) does not lay down the correct position in law; and
(ii) An officiating principal appointed under the Statutes of the University, which are pari materia to the provisions of Statute. 10-B of the First Statutes would be entitled to claim the payment of salary in the regular grade of principal for the period during which he or she has worked until a regularly selected candidate has been appointed and has assumed charge of the office."

10. Court also takes note of a judgment passed by Division Bench of this Court in Secretary, U.P. Basic Education Board and others vs. Tripurari Dubey, 2025 (5) ADJ 561 (DB) and relevant paragraphs thereof are quoted below :-

"16. Those of the assistant teachers who are allowed to discharge the work of headmaster discharge various administrative and supervisory duties in addition to the post of assistant teacher. Such teachers when are allowed to discharge additional work would be entitled to payment of salary. Though in somewhat different factual scenario, a Full Bench of this Court in Dr. Jai Prakash Narayan Singh (supra) has observed as under:

"If no power is to be construed to exist in a management to make an officiating appointment, when a vacancy arises in the office of a principal until a regular appointment is made in accordance with the provisions of the Commission Act, serious prejudice would have been caused in the functioning of educational institutions including affiliated colleges. There is a vital element of public interest in the proper functioning of educational institutions and if the cause of education is not to suffer, some arrangement would have to be made during the period when there is a vacancy in the office of a principal. The power to make an officiating appointment is traceable to the provisions of the Statutes of the State Universities, analogous to Statute 10-B of the First Statutes. Once the nature of that power is construed as a

power to make an appointment albeit on an officiating basis till a regularly selected candidate becomes available, there would be no justification to deny a claim for the payment of salary to such a person who has been appointed on an officiating basis. The power to make an officiating appointment under the Statutes of the University after the deletion of Section 16 from the Commission Act with effect from 22 November 1991 is preserved. Such a provision in the Statutes would not be inconsistent with or contrary to the Commission Act so as to attract the overriding provisions contained in Section 30. Where a person has been appointed as an officiating principal until a regularly selected candidate takes charge, this involves an assumption of duties and responsibilities of a greater importance than those attaching to the post of a teacher. The Universities Act in several provisions, which have been noted earlier, adverts to the duties and responsibilities which are required to be performed by a principal. Hence, a person who is appointed as an officiating principal under the Statutes of the University until a regularly selected candidate is made available, would be entitled to the payment of salary attached to the post of principal."

17. We are thus of the view that headmaster's salary ought not be denied to the assistant teachers when they are regularly performing work on the higher post of headmaster for the last several years.

18. Lastly, learned counsel for the appellants submits that the direction of learned Single Judge to pay the salary for the post of headmaster since 2014 is otherwise impermissible in as much as no grievance was earlier raised by the writ petitioners with regard to denial of salary for the higher post and the writ petitions have been filed only in the year 2022 to 2024. Reliance is placed upon the judgment of Supreme Court in Union of India and others v. Tarsem Singh, (2008) 8 SCC 648, to contend that at best a direction for arrears up to a period of three years could have been issued in favour of the writ petitioners. The judgment in Tarsen Singh (supra) has been followed in subsequent judgment of Supreme Court in Bichitrananda Behera v. State of Orissa and others, 2023 SCC OnLine SC 1307. A Lucknow Bench of this Court in Urmila Devi Pal v. State of U.P. and others,

2023(6) ADJ (DB) (LB), also followed the similar judgment.

19. We find substance in the contention of Sri K. Shahi that the direction to pay arrears could not have been issued in a mechanical manner particularly when no grievance was raised by such persons earlier. Though it is stated that previous representations were made by the writ petitioners but such grievance apparently was not pressed till filing of the writ we are thus of the view that even if the petitioners have continued for long as headmaster the direction to pay the arrears could only extend up to three years prior to filing of the writ petition.

20. In view of the discussions and deliberations held above this bunch of special appeal stands disposed of with following observation: (i) we grant liberty to the concerned District Basic Education Officer to examine and determine the factual issue as to whether the petitioner has experience of five years and has actually been continuing as headmaster of the institution; (ii) if the petitioners have continued for long as headmaster the direction to pay the arrears would only extend up to three years prior to filing of the writ petition; (iii) we also make it open for the District Basic Education Officer to ensure at the district level that only senior assistant teachers are allowed to officiate in the educational institution, as far as, it is possible. This would eliminate possibility of heart burning on account of junior assistant teachers functioning as officiating headmaster; (iv) requisite exercise in this regard shall be undertaken within a period of two months and the amount in term of above determination shall be calculated and released without any further loss of time."

11. As referred above, judgments of year '1980', '1982' and '1985' were decided mainly on basis of a Government Order dated 18.01.1974, which provides that a teacher officiating the post of Principal is entitled to receive salary of Principal grade as well as further judgment of '1982' also took note of proviso to Clause – 2(1) and 2(3) of Regulations under Chapter II of Act of 1921 that in case there is a temporary

vacancy on the post of Head of Institution remain vacant for more than 180 days, a senior most qualified teacher can be promoted as Ad-hoc Principal would be entitled to get salary of Principal though words used “in the highest grade in the institution” therein were not interpreted specifically.

12. Court takes note that all these judgments are passed by Division Benches of this Court, therefore, present Bench being a Single Bench has to follow except if some provisions of law were not specifically considered. Court also takes note that at a particular time, present roster was within the Division Bench of this Court and now said roster is cognizable by a Single Bench.

13. In **Narbdeshwar Misra (supra) (1982)**, the Division Bench has not interpreted that what would be the interpretation of Proviso to Clause 2(1). So far as Clause (3) of Chapter II is concerned, it is specifically provided that if a temporary vacancy is for a period not exceeding thirty days, senior most teacher in the highest grade may be allowed to work as Acting Head Master of institution but he shall not be entitled to pay higher grade of pay, therefore, in such cases, Acting Principal or Head Master, as the case may be, is not entitled for salary of higher side.

14. So far as Proviso to Clause (2) is concerned, it provides a procedure that a temporary vacancy of the post of Head of Institution exists but not more than 180 days, the said post shall be filled up by promotion of senior most qualified teacher ‘in the highest grade in the Institution’. The words “highest grade in the Institution” does not mean that it

would be grade of Principal or Head Master, as the case may be. Being used in continuing in Statute, it would be highest grade in the Institution on post of a teacher.

15. At this stage, Court also takes note of Rule 11(2)(b) of U.P. Secondary Education Service Selection Board Rules, 1998 and its Explanation that ‘senior most teachers’ means the senior most teachers in the post of ‘highest grade in the institution’, therefore, same words used in Proviso to Clause 2(1) of Regulations has to be read in same manner and not that ‘highest grade’ would mean grade of the post of Principal. For reference, said Rule is mentioned hereinafter :-

“11. Determination and notification of vacancies :-

(1) xxxxx

(2) xxxx

(a) xxxxx

(b) With regard to the post of Principal or Headmaster, the Management shall also forward the names of two seniormost teachers, along with copies of their service records (including character rolls) and such other records or particulars as the Board may require from time to time.

Explanation For the purpose of this sub-rule 'seniormost teachers' mean the seniormost teachers in the post of the highest grade in the institution, irrespective of total service put in the institution.”

16. Clause (3) of Regulations is contemplating a situation when senior most teacher may not be in highest grade of the institution and that it is for a stop gap arrangement, therefore, word ‘qualified’ is also missing. Therefore, there is no provision of payment of salary of Principal in the case of

promotion on a temporary vacancy. The Court is of the view that in none of above referred cases, Section 18 of Act of 1982 as inserted in the year 2000 was interpreted or considered since enacted subsequently.

17. The Full Bench in **Dr. Jai Prakash Narayan Singh (supra)** has only made a reference of judgments of 1980, 1982 and 1985 and **Radha Raizada (supra)** but has not taken note of effect of Section 18 of Act of 1982 as it was not an issue for consideration before the Full Bench.

18. The Full Bench was considering only the provisions of State Universities Act whereas present bunch of similar matters are arising of The U.P. Intermediate Education Act, 1921. Similarly, the other Division Bench of this Court in **Tripurari Dubey (supra)** is considering cases arising out of University.

19. In aforesaid circumstances, now outcome of all these writ petitions would fall on interpretation of Section 18 of Act of 1982 which is already quoted in preceding paragraphs.

20. Above referred Section has following parts :-

a. The Section provides a mandatory prior condition, as to when Management can fill vacancy of Principal or Head Master on temporary/ad-hoc basis by promotion of a qualified senior most teacher that the Management has to notify the Vacancy to Board in accordance with subsection-1 of Section 10 of Act of 1982.

b. Post of Principal or Head Master actually remains vacant for more than 2 months.

c. After such preconditions are followed and such promotion is made on temporary/ad-hoc basis, then only such promotee shall be entitled to get salary of Principal or Head Master from the date he joined such post, therefore, if said preconditions are not fulfilled and exercise is undertaken to fill up vacancy of a Head of institution by way of ad-hoc promotion, such promotee shall not be entitled for salary of the post of Principal or Head Master.

d. A reference of Section 18 (2) of Act of 1982 given by learned Senior Advocate for petitioners would not be applicable in present case since it is only in regard to when Management fails to promote the senior most teacher in said institution even after preconditions are complied. It does not cast any duty on D.I.O.S. concerned to force the Management to notify vacancy to the Board. There is an object behind these preconditions that Committee of Management of College may not allow to continue with ad-hoc Principal to avoid a Principal appointed by the Board being a person outside the College.

21. In aforesaid circumstances, Court is of the view that above questions were not answered in **Narbdeshwar Misra (supra)** and being prior to said amendment, therefore, this Court has a jurisdiction to interpret the issue in terms of Section 18(2) of Act of 1982 and consequence of above directions as follows.

22. The judgment passed by Full Bench has also not considered the effect of Act of 1982 and was considering the provisions which are admitting not applicable in present facts and circumstances.

23. In aforesaid circumstances, Court is of the view that preconditions mentioned in Section 18 of the Act of 1982 has to be complied with being mandatory and only thereafter, such ad-hoc promotee on the post of Principal or Head Master would be entitled for salary of said post.

24. Accordingly, all writ petitions are **disposed of** with a direction that D.I.O.S. concerned will examine the facts of each case that in case preconditions of Section 18 that Management had notified the vacancy and it remained vacant for two months and ad-hoc promotion was made, then only such ad-hoc promotee will be entitled for salary of the post of Principal.

25. In case vacancy was not notified, such ad-hoc Principal will not be entitled for payment of salary on the post of Principal or Head Master and it is directed that in such case college will notify the vacancy within four weeks from the date of present judgment. In an event, even though the conditions referred above was not complied with and such ad-hoc Principal were paid salary of the post of Principal or Head Master is paid, it shall be stopped from the date of present judgment,

26. Now U.P. Secondary Education Service Selection Board 2023 and Rules therein namely Uttar Pradesh Education

Service Selection Rules, 2023 are being enacted and are enforced and Act of 1982 is now repealed. There is no provision in Act, 2023 of Ad-hoc Principals or Head Masters. As held above there is no provision to grant salary of post of Principal to Ad-hoc Principal under the provisions of Act of 1921 and its Regulations, therefore, its legal consequence would follow. An argument that after ad-hoc vacancy is filled by promotion and such promotee have discharged duties with higher responsibility, therefore also, they are entitled for salary of promoted post especially when it is for more than a year is also unacceptable since it would be against the provisions, as discussed above.

27. The Court takes note that in other cases, salary if already paid to earlier appointed ad-hoc Principal or Head Master, it is directed that it shall not be recovered but shall not be paid from the date of pronouncement of this judgment.

28. All writ petitions are, accordingly, **disposed of**.

(SAURABH SHYAM SHAMSHERY, J.)

January 27, 2026

<N. Sinha>