

# Secretary, Up Basic Education Board And ... vs Tripurari Dubey And 3 Others on 30 April, 2025

**Author: Ashwani Kumar Mishra**

**Bench: Ashwani Kumar Mishra**

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:67382-DB

Court No. - 29

Case :- SPECIAL APPEAL No. - 652 of 2024

Appellant :- Secretary, Up Basic Education Board And 2 Others

Respondent :- Tripurari Dubey And 3 Others

Counsel for Appellant :- Ashish Kumar (Nagvanshi), Kushmondeya Shahi, Pankaj Kumar Ojha

Counsel for Respondent :- Alok Kumar Gupta, C.S.C., Satyendra Chandra Tripathi, Shiv Poojan

AND

Case :- SPECIAL APPEAL No. - 1096 of 2024

Appellant :- Secretary Uttar Pradesh Basic Education Parishad Prayagraj And 2 Others

Respondent :- Vijay Kumar And 38 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C., Pankaj Kumar Ojha

AND

Case :- SPECIAL APPEAL No. - 1097 of 2024

Appellant :- Secretary Uttar Pradesh Basic Education Parishad Prayagraj And 2 Others

Respondent :- Vijay Pal Singh Verma And 16 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- Alok Kumar Gupta,C.S.C.

AND

Case :- SPECIAL APPEAL No. - 1098 of 2024

Appellant :- Secretary Uttar Pradesh Basic Education Parishad Prayagraj And 2 Others

Respondent :- Naveen Kumar Singh And 16 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- Alok Kumar Gupta,C.S.C.

AND

Case :- SPECIAL APPEAL No. - 1099 of 2024

Appellant :- Secretary Up Basic Education Board Prayagraj And 2 Others

Respondent :- Pavita Sharma And Another

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Kamal Kumar Keshewani

AND

Case :- SPECIAL APPEAL No. - 1100 of 2024

Appellant :- Secretary Uttar Pradesh Basic Education Parishad Pryagraj And Another

Respondent :- Abdul Sattar And 42 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- Alok Kumar Gupta,C.S.C.

AND

Case :- SPECIAL APPEAL No. - 1101 of 2024

Appellant :- Secretary Uttar Pradesh Basic Education Parishad Prayagraj And 2 Others

Respondent :- Isam Singh And 17 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- Alok Kumar Gupta,C.S.C.

AND

Case :- SPECIAL APPEAL No. - 1102 of 2024

Appellant :- Secretary Uttar Pradesh Basic Education Parishad Prayagraj And 2 Others

Respondent :- Ram Kela Care Of Jay Pal Singh And 52 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Tej Prakash Yadav

AND

Case :- SPECIAL APPEAL No. - 1103 of 2024

Appellant :- Secretary Uttar Pradesh Basic Education Parishad Prayagraj And Another

Respondent :- Sanjay Kumar And 10 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- Alok Kumar Gupta,C.S.C.

AND

Case :- SPECIAL APPEAL No. - 1104 of 2024

Appellant :- Secretary Uttar Pradesh Basic Education Board Prayagraj And Another

Respondent :- Pradeep Kumar And 127 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- Alok Kumar Gupta,C.S.C.

AND

Case :- SPECIAL APPEAL No. - 1105 of 2024

Appellant :- Secretary Uttar Pradesh Basic Education Board District Prayagraj And 2 Others

Respondent :- Rajesh Tiwari And 60 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Vivek Kumar Tiwari

AND

Case :- SPECIAL APPEAL No. - 126 of 2025

Appellant :- District Basic Education Officer And Another

Respondent :- Smt Anjana Verma And Another

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- Akhilesh Chandra Dwivedi,C.S.C.

AND

Case :- SPECIAL APPEAL No. - 127 of 2025

Appellant :- Uttar Pradesh Basic Education Board, Prayagraj And 2 Others

Respondent :- Purnima Singh Chauhan And Another

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Sudheer Rana

AND

Case :- SPECIAL APPEAL No. - 128 of 2025

Appellant :- Uttar Pradesh Basic Education Board Prayagraj And 2 Others

Respondent :- Nilima Singh And Another

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Sudheer Rana

AND

Case :- SPECIAL APPEAL No. - 129 of 2025

Appellant :- Uttar Pradesh Basic Education Board Prayagraj And 2 Others

Respondent :- Phool Singh And Another

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Sudheer Rana

AND

Case :- SPECIAL APPEAL No. - 131 of 2025

Appellant :- Uttar Pradesh Basic Education Board Prayagraj And 2 Others

Respondent :- Rashmi Srivastava And Another

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Sudheer Rana

AND

Case :- SPECIAL APPEAL No. - 137 of 2025

Appellant :- Uttar Pradesh Basic Education Board And 2 Others

Respondent :- Krishan Kumar Lor And 28 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Kamal Kumar Kesherwani

AND

Case :- SPECIAL APPEAL No. - 138 of 2025

Appellant :- Secretary U.P. Basic Education Board And 2 Others

Respondent :- Radhey Shyam Chaurasiya And 2 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Ram Sagar Yadav

AND

Case :- SPECIAL APPEAL No. - 139 of 2025

Appellant :- Uttar Pradesh Basic Education Board Prayagraj And 2 Others

Respondent :- Chandra Shekhar Gangwar And 93 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Kamal Kumar Kesherwani

AND

Case :- SPECIAL APPEAL No. - 14 of 2025

Appellant :- State Of U.P. And Another

Respondent :- Tripurari Dubey And 4 Others

Counsel for Appellant :- C.S.C.,S.C.

Counsel for Respondent :- Alok Kumar Gupta,Kushmondeya Shahi

AND

Case :- SPECIAL APPEAL No. - 143 of 2025

Appellant :- Secretary Up Basic Education Board Prayagraj And 2 Others

Respondent :- Mahesh Kumar Saroj And 55 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Vivek Kumar Tiwari

AND

Case :- SPECIAL APPEAL No. - 147 of 2025

Appellant :- Uttar Pradesh Basic Education Board And 3 Others

Respondent :- Kamlesh Prasad And 2 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Kamal Kumar Keshewani

AND

Case :- SPECIAL APPEAL No. - 148 of 2025

Appellant :- Uttar Pradesh Basic Education Board Prayagraj And 2 Others

Respondent :- Prakash Chandra Dwivedi And Another

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Sudheer Rana

AND

Case :- SPECIAL APPEAL No. - 149 of 2025

Appellant :- Secretary, U.P. Basic Education Board. Prayagraj And 2 Others

Respondent :- Pramod Kumar Mishra And 15 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Vivek Kumar Tiwari

AND

Case :- SPECIAL APPEAL No. - 150 of 2025

Appellant :- Uttar Pradesh Basic Education Board Prayagraj And 2 Others

Respondent :- Amar Nath Singh And 40 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Kamal Kumar Keshewani

AND

Case :- SPECIAL APPEAL No. - 151 of 2025

Appellant :- Uttar Pradesh Basic Education Board, Prayagraj And 2 Others



Respondent :- Bharti Trivedi And Another

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Sudheer Rana

AND

Case :- SPECIAL APPEAL No. - 152 of 2025

Appellant :- Uttar Pradesh Basic Education Board And 2 Others

Respondent :- Ajay Kumar Singh And 16 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Sudheer Rana

AND

Case :- SPECIAL APPEAL No. - 153 of 2025

Appellant :- Board Of Basic Education U.P. At Prayagraj And Another

Respondent :- Jitendra Singh Sengar And 17 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Man Bahadur Singh

AND

Case :- SPECIAL APPEAL No. - 154 of 2025

Appellant :- Uttar Pradesh Basic Education Board Prayagraj And 2 Others

Respondent :- Pratibha Singh And Another

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Sudheer Rana

AND

Case :- SPECIAL APPEAL No. - 159 of 2025

Appellant :- Secretary Uttar Pradesh Basic Education Board And 2 Others

Respondent :- Agraj Pratap Singh And 18 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- Alok Kumar Gupta,C.S.C.

AND

Case :- SPECIAL APPEAL No. - 160 of 2025

Appellant :- Uttar Pradesh Basic Education Board And 2 Others

Respondent :- Khushnuma And Another

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Sudheer Rana

AND

Case :- SPECIAL APPEAL No. - 161 of 2025

Appellant :- Secretary, U.P. Basic Education Board And 2 Others

Respondent :- Smt. Lilawati Yadav And 2 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Jitendra Kumar Yadav

AND

Case :- SPECIAL APPEAL No. - 162 of 2025

Appellant :- Uttar Pradesh Basic Education Board And 2 Others

Respondent :- Vimla And 5 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Sudheer Rana

AND

Case :- SPECIAL APPEAL No. - 163 of 2025

Appellant :- Uttar Pradesh Basic Education Board Prayagraj And 2 Others

Respondent :- Dipti Mishra And Another

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Sudheer Rana

AND

Case :- SPECIAL APPEAL No. - 825 of 2024

Appellant :- Uttar Pradesh Basic Education Board And 2 Others

Respondent :- Mohd. Yaseen And 29 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Kamal Kumar Keshewani

AND

Case :- SPECIAL APPEAL No. - 835 of 2024

Appellant :- Secretary U.P. Basic Education Parishad And 2 Others

Respondent :- Vijai Kumar Sharma And 58 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- Alok Kumar Gupta,C.S.C.

AND

Case :- SPECIAL APPEAL No. - 865 of 2024

Appellant :- Secretary Up Basic Education Board And 2 Others

Respondent :- Saroj Kumar Thakur And 34 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C.,Santosh Kumar Shukla

AND

Case :- SPECIAL APPEAL DEFECTIVE No. - 203 of 2025

Appellant :- Basic Shiksha Adhikari District Muzaffarnagar And Another

Respondent :- Smt. Fatima Khatoon And 2 Others

Counsel for Appellant :- Kushmondeya Shahi

Counsel for Respondent :- Anurag Shukla,C.S.C.

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Praveen Kumar Giri,J.

1. Heard Sri Kushmondeya Shahi, learned counsel for the appellants, Sri V.K. Singh, Senior Advocate, assisted by Sri Alok Kumar Gupta, Sri Sudheer Rana, Sri Kamal Kumar Kesharwani, Sri Man Bahadur Singh, Sri Agnihotri Kumar Tripathi, Sri Jitendra Kumar Yadav, Sri Anurag Shukla

and Sri Pankaj Kumar Ojha, learned counsel for the respondent-writ petitioner.

2. This bunch of special appeal is preferred by the U.P. Basic Education Board through its Secretary challenging an order passed by learned Single Judge granting salary of the post of headmaster to the writ petitioners who are working as such since long. In the leading case, the writ petitioner has been working as headmaster since 2014, yet, the salary for the post of headmaster has not been paid to him. Under the orders of learned Single Judge, such person has been held entitled to the salary for the higher post on which he is allowed to function. In other cases, the situation is more or less similar and those petitions have been disposed of in terms of order passed by this Court in the leading case of Tripurari Dubey and another Versus State of U.P. and others passed in Writ-A No. 18228 of 2022. Learned Single Judge has returned a finding that the writ petitioner has been discharging the duties of headmaster since 31.05.2014 and is otherwise qualified for appointment to the post of headmaster. Reliance is placed upon a Full Bench decision of this Court in Dr. Jai Prakash Narayan Singh Vs. State of U.P., in Civil Misc. Writ Petition No. 23627 of 2014, decided on 26th September 2014, 2014(8) ADJ 617 as well as the judgment of Hon'ble Supreme Court in Arindam Chattopadhyay and others Versus State of West Bengal and others, (2013) 4 SCC 152 and the judgment of this Court passed in Writ-A No. 3863 of 2018 (Smt. Raj Kishori Kushwaha Versus State of U.P. and others, decided on 07.05.2014.

3. Before learned Single Judge the claim of petitioner was resisted by the appellants relying upon the judgment of the Hon'ble Supreme Court in State of Madhya Pradesh Vs. R.D. Sharma and another, (2022) 2 Scale 398. Having examined the respective claim of the parties, learned Single Judge has allowed the writ petition and a mandamus has been issued to pay the salary for the post of head master alongwith arrears to the writ petitioner from 31.05.2014.

4. The judgement of learned Single Judge is challenged on following grounds: (i) that the determination of post of headmaster in the primary school in question is regulated by the provisions of Right to Education Act, 2009 (hereinafter referred to as 'RTE Act 2009') and by virtue of section 25 read with the schedule, the strength of teachers required in the institution is prescribed. It is the case of the appellants that in most of the primary schools the strength of the students is below 150 and in junior high schools the strength of students is below 100 and, therefore, there exists no post of headmaster and, therefore, the question of payment of salary for the post of headmaster does not arise. A chart in respect of two blocks of District Gorakhpur has been placed on record in order to submit that in most of the institutions there is no requirement of a post of headmaster. It is, therefore, submitted that the direction to pay the salary for the post of headmaster is impermissible; (ii) that the qualification of teachers in primary and junior schools is prescribed by the notification issued by NCTE. An amendment was introduced in 2011 incorporating Section 12A in the NCTE Act, 1993, as per which for maintaining standards of education in schools, the NCTE may, by regulations, determine the qualifications of persons who have been recruited as teachers in any pre-primary, upper primary, secondary, senior secondary or intermediate school or college. The proviso, however, stipulates that nothing in this section shall adversely affect the continuance of any person recruited in such institution immediately before the commencement of NCTE (Amendment) Act. A notification of 12 November 2014 is also relied upon, as per which, even for the promotion of teachers the relevant minimum qualification as specified in First and Second schedule are

applicable. It is, therefore, urged that the post of headmaster mandatorily requires passing of TET qualification which is not possessed by the writ petitioners and, therefore, the salary of promoted post cannot be paid to him; (iii) it is also urged that the principle laid down by the Full Bench of this Court in Dr. Jai Prakash Narayan Singh (supra) will not be attracted in the facts of this case since the judgment of Dr. Jai Prakash Narayan Singh (supra) related to a university, whereas, the statutory scheme is different in the present case.

5. Sri V.K. Singh, learned Senior Counsel, on the other hand, has placed reliance upon the judgment of Supreme Court in Arindam Chattopadhyay and others Versus State of West Bengal and others, (2013) 4 SCC 152; the judgment of this Court passed in Writ-A No. 3863 of 2018 (Smt. Raj Kishori Kushwaha Versus State of U.P. and others, decided on 07.05.2014, and Dr. Jai Prakash Narayan Singh (supra) to submit that the principle in law is well settled that where the management promotes a person to higher post such that the responsibility of higher post is discharged by the employee concerned, he would be entitled to payment of salary for such promoted post, unless there is any bar in the statute to such effect. It is also submitted that the rationale and legality of such a provision denying salary (if at all it existed) would also be under serious cloud. Sri Singh further submits that all the writ petitioners were appointed by the Board on the basis of open competition and they possess the qualification prescribed for the post of assistant teacher. The writ petitioners also possess qualification for appointment to the post of headmaster. So far as the provision of the NCTE Amendment Act and the notification of 2014 is concerned, it is stated that the writ petitioners are already in employment and on the date of their appointment there was no requirement of obtaining TET qualification. It is submitted that if the State so intended it could have required the petitioners to undergo TET qualification, which has not been done by the State. Argument is that on their own the writ petitioners could not have secured the TET qualification nor it was required when they were appointed. It is, therefore, urged that the Board/State having failed to take any steps to equip the writ petitioners with the TET qualification, it (Board) cannot take this as a ground to deny the salary for the higher post of which responsibility is being discharged by the writ petitioners. It is further urged that in the primary and junior high schools run by the basic education Board the post of headmaster has existed since long. The post is also not being disputed. The only argument now advanced by learned counsel for the appellant-State is that by virtue of provisions contained under the RTE Act, lesser post would be required in the institution. It is submitted that the specification of post in the schedule read with section 25 of the RTE Act provides for minimum number of post that are required in an educational institution and does not forbid continuance of posts in excess if it existed from before. It is further argued that the educational authorities have not taken any exercise to re-determine the post in accordance with RTE Act nor any order has been passed reducing the number of posts and, therefore, merely on the strength of lesser requirement of post under the RTE Act, it cannot be said that the existing posts of teachers including Headmaster in these institutions are reduced or that the post of headmaster stands abolished.

6. We have heard learned counsel for the parties and have perused the materials on record.

7. It is undisputed that all the writ petitioners have been appointed as assistant teachers pursuant to open recruitment undertaken by the Board in accordance with the provision of U.P. Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as 'Rules of 1981'). The service conditions of

the writ petitioners are governed by the Rules of 1981. The strength of service has been specified in Rule 4. The qualification for appointment of teachers is prescribed in Rule 8. It is, however, settled that by virtue of notifications issued under the NCTE Act the prescription of qualification of teachers stands substituted in terms of notification issued by NCTE. The Regulations of NCTE protect those teachers who have already been appointed prior to the notification issued requiring possessing of TET qualification.

8. Learned counsel for the Board argues that the notification of 12th November 2014 requires that the qualification for promotion must be such as is specified in the the NCTE Regulation. The post of headmaster is a promotional post under the Rules of 1981. Rule 8(3) specifies the eligibility for promotion to the post of headmaster. The requirement under the Rule is at least 5 years of teaching as a permanent assistant master of junior basic school. The additional requirement of possessing TET has come into being on account of the NCTE Regulation, 2010.

9. The first submission of Sri Kushmondeya Shahi, learned counsel for the appellants, is that most of the teachers are not possessing requisite qualification for appointment to the post of headmaster inasmuch as they do not possess TET qualification.

10. Under the Rules of 1981, the only qualification required for assistant teacher for promotion to the post of headmaster is five years teaching experience. This is an essential condition and unless the teacher possess such eligibility he would be lacking the eligibility for promotion to the post of headmaster. Such assistant teacher who lacks such experience would clearly not be entitled to salary for the post of headmaster. The authorities shall be at liberty to examine the individual cases of assistant teachers in this bunch and exclude their claim for payment of salary of Headmaster.

11. The only other requirement is possessing of TET qualification. We have already noticed that possessing TET was not a qualification for appointment to the post of assistant teacher at the time when the writ petitioners were appointed. Continuance of assistant teachers even without TET qualification is permissible under the NCTE Regulations. The petitioners, who are the assistant teachers, are already in employment of the State. Once the requirement of TET for promotion is made essential under the Regulations of 2014 then it would be for the State to ensure that the existing teachers in Basic schools are permitted to undergo TET qualification. The object of NCTE Regulation is to ensure quality education for students in the age group of 6 to 14 years. It would thus be desirable for the State to frame appropriate scheme so that assistant teachers are allowed to undergo TET qualification. Since all assistant teachers appointed in basic schools prior to 2010 do not possess TET. These teachers would become ineligible even for regular promotion to the post of headmaster. Arrangement will thus be required to be made for such assistant teachers to acquire TET or else only teachers appointed with TET alone will qualify for promotion. Denial of promotion to such assistant teachers, for no fault of theirs, would wholly be arbitrary. Therefore, so long as the State does not provide for mechanism to acquire TET, it would be difficult to resist the claim of the writ petitioners for payment of salary of post of Headmaster only because the State has not extended opportunity to them for undergoing TET qualification. It is admitted that on their own the existing teachers cannot obtain TET qualification. A qualification which is dependent upon the action of the State if is not allowed to be possessed by any existing teacher, it would be improper to deny

entitlement of salary for the post of headmaster even though such assistant teachers are working in such capacity. In case, if we accept the stand of the Board it would only amount to putting premium on the default of the State. In such circumstances, we are of the view that the assistant teachers who possess experience of five years or above and are working as headmaster would be entitled to the salary for such post.

12. Coming to the aspect to post of headmaster we find that the petitioners contention that in all institutions the post of headmaster existed from before is not seriously disputed. What is stated is that on account of RTE Act the requirement of headmaster has reduced in large number of schools because of low availability of students. In this regard, we would like to observe that section 25 as well as the schedule specify the pupil-teacher ratio in each school as per the schedule. The mandate of section 25 as well as the schedule to the Act of 2009 reads as under:

"Section 25 seeks to provide for maintenance of pupil teacher ratio, by the appropriate government and local authority. An apparent contradiction between this provision, which requires that the pupil teacher ratio shall be maintained within a period of six months, vis-à-vis the provision under section 19 mandating that the norms and standards prescribed in the Schedule should be met within three years, is proposed to be corrected through the Amendment Bill introduced in the Parliament.

The proviso to this section also provides that teachers shall not be deployed for nonacademic work, barring those specified in section 27, viz., (i) decennial population census, (ii) disaster relief and (iii) elections to Parliament, State Legislatures and Local Bodies."

13. Combined reading of section 25 read with schedule would indicate that the norms and standards for a school are prescribed such that minimum number of teachers in an institution exist. The very purpose and object of introducing RTE Act is to ensure that quality education is provided to the students. Such quality education cannot be provided unless minimum number of teachers required in an institution are available. Section 25 read with the schedule, however, cannot be construed to mean that higher number of posts already existing in such institution would automatically stand reduced. That would neither be the purpose nor the object of the Act of 2009.

14. The only permissible course for the employer in such circumstances would be to undertake an exercise to re-determine the post of teachers required in an institution based upon the availability of strength of students for a minimum period of three years. This, however, has not been done so far.

15. Sri K. Shahi, learned counsel for the appellants, has placed reliance upon a chart annexed alongwith counter affidavit to show that as per the student strength in a particular year the availability of post of headmaster in a particular Block would only be 22 out of total number of 160 institutions. This aspect of the matter requires a little deeper examination. It is a matter of common experience that the strength of students in an institution may vary from year to year. If the argument of learned counsel for the appellant is accepted then there would be no post of headmaster in the junior school if the student strength is 97 but such a post would become admissible if the



strength is 101. Varying the strength of teachers depending upon the strength of students each year would create a unworkable situation. Merely by taking student strength in a particular year to hold that the post of headmaster is not available would lead to irrational consequences. Even otherwise, we have not been apprised as to what is the system proposed to be followed by the State for managing its basic and primary institutions even in the absence of Headmaster. Ordinarily, somebody would be the supervising authority for an educational institution. Generally, it is the headmaster or the principal who is authority entrusted with various task including task of supervision and taking decision etc. in respect of the affairs of the institution. In the event it is to be treated that no post of headmaster exist it would be difficult to imagine as to how such institution would function. Even if the students strength is low in a particular institution some authority would have to be given to a person to supervise the affairs of educational institution at the level of institution itself. Unless the State comes up with some credible alternative mechanism in which the institution could function even without the headmaster, we would be inclined to hold that such a post of headmaster would continue in the institution. It is otherwise admitted that in all the institutions the headmaster has been continuing for long and it is only on account of section 25 and the schedule to section 25 that an argument is raised by learned counsel for the appellant that post of headmaster ceases to exist. Having examined the matter in the light of the discussion aforesaid we are not inclined to accept the argument of Sri Shahi that the post of headmaster continuing in the basic institutions from before would suddenly come to an end, on account of section 25 of RTE Act readwith the schedule. In para 14 some doubts are raised with regard to continuance of the writ petitioners as headmaster. We make it clear that this aspect of the matter is not being adjudicated by us and we grant liberty to the concerned educational authority to determine the factual issue as to whether the petitioners have actually been continuing as headmaster of the institution or not. Payment of salary for the post of headmaster will be dependent upon such examination, of individual claim, by the Basic Shiksha Adhikari of the District concerned.

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 Versus 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 *Bichitrnanda Behera Versus State of Orissa and others*, 2023 SCC OnLine SC 1307. A Lucknow Bench of this Court in *Urmila Devi Pal Versus 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.

Order Date :- 30.4.2025 K.K. Maurya