

Kiran Gupta & Ors. Etc. Etc vs State Of U.P. & Ors. Etc on 28 September, 2000

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Author: Syed Shah Mohammed Quadri

Bench: Syed Shah Mohammed Quadri, Shivaraj V. Patil

PETITIONER:

KIRAN GUPTA & ORS. ETC. ETC.

Vs.

RESPONDENT:

STATE OF U.P. & ORS. ETC.

DATE OF JUDGMENT: 28/09/2000

BENCH:

Syed Shah Mohammed Quadri & Shivaraj V. patil

JUDGMENT:

SYED SHAH MOHAMMED QUADRI, J.

L...I...T.....T.....T.....T.....T.....T.....T..J Leave to file appeal is granted in all the Petitions for Special Leave.

The common judgment and order of a Division Bench of the High Court of Judicature at Allahabad in a batch of writ petitions and special appeals delivered on October 6, 1998 is under challenge. The unsuccessful writ petitioners are the appellants in these appeals. The controversy in the writ petitions as also in these appeals relates to the selection and appointment of Principals/Headmasters of various recognised private aided intermediate colleges and secondary schools in Uttar Pradesh and other allied matters.

The conclusions reached by the Division Bench of the High Court, in the impugned judgment, may be summarised as follows :

(1) the constitutional validity of Sections 9,10 and 11 of the U.P. Secondary Education Services Commission and Selection Boards Act, 1982 (for short, 'U.P. Act No.5 of 1982') as amended by U.P. Act No.15 of 1995 and also Rule 12 of the U.P. Secondary Education Services Commission (Amendment) Rules, 1995 (for short, 'the 1995 Rules'), was upheld; (2) the selection of candidates by the U.P. Secondary Education Services Commission (for short, 'the Commission') and the notifications issued on August 3, 1996 and August 30, 1996 were found to be valid; (3) the panel of selected candidates prepared on April 15, 1997 was held not vitiated by the notification issued by the Government of U.P. on April 17, 1997 and it was directed that the same should be implemented by the educational authorities in accordance with law; and (4) it was left open to the Director of Education, and if so ordered by him, to the Deputy Director of Education to inquire into the requisite qualifications of the selected candidates; if it is found that the requisite qualifications for the post of Principal/Headmaster were not possessed by any of the selected candidates, the Director of Education/Deputy Director of Education shall, after giving him reasonable opportunity of being heard, determine the question and thereafter refer it to the Board which was directed to reconsider his selection after giving due opportunity to the candidate and for that limited purpose the matter should be deemed to be pending before the Board under the provisions of sub-section (6) of Section 3 of the U.P. Intermediate Education Act, 1921 (for short, 'the Act') as amended by the U.P. Act No.25 of 1998. The factual matrix in which the aforementioned conclusions are recorded by the High Court needs to be noticed here. For educational purposes, the State of U.P. was divided into 13 regions which had 1504 vacancies of teachers, Principals/Headmasters, as on December 13, 1995 when an advertisement was issued inviting applications from the eligible persons to appoint suitable candidates. It appears that about one lakh applicants responded. After short-listing them under the 1995 Rules, 7,500 candidates were called for interviews and selection for the posts of Principals/Headmasters of 13 regions, including the Meerut region, was completed. This batch, we are told, relates to selection of Principals/Headmasters in Meerut region. There were 258 posts in that region and out of them interviews were held for 253 posts. The selection of Principals/Headmasters in Meerut region, based on oral interview and the panel of selected candidates of April 15, 1997, were challenged by the unsuccessful candidates by filing writ petitions in the High Court. The validity of the provisions of Sections 9 and 10 of U.P. Act No.5 of 1982 and Rule 12 of the 1995 Rules was also questioned. The senior teachers working as ad hoc Principals/Headmasters, who were not selected, sought their regularisation under the provisions of U.P. Act No.5 of 1982. The contesting respondents supported the legality of the impugned provisions and defended both the procedure adopted and the panel of the selected candidates prepared by the Commission.

The claim for regularisation, it was pleaded, was unfounded. On these pleas, the High Court recorded the aforementioned findings and thus disposed of all the cases by the impugned order which gave rise to these appeals. Mr.P.K.Goswami, the learned senior counsel appearing for the appellants in Civil Appeal Nos. of 2000 [@ S.L.P. (C) Nos.19035-38/98], advanced the following contentions : (i) By Sections 9 & 10 of U.P.Act No.5 of 1982, the essential legislative functions of laying down guidelines have been assigned to the Commission and that inasmuch as Rule 12 of the 1995 Rules prescribes selection of suitable candidates by oral interview without laying down any criteria, the said provisions are illegal and unconstitutional and are liable to be struck down; and (ii) even assuming that the impugned provisions of U.P.Act No.5 of 1982 and Rule 12(3) are valid, the process of selection by interview alone confers arbitrary power on the Commission; he elaborated this submission by placing reliance on various decisions of this Court and asserted that in cases when 15 per cent of the total marks were prescribed for interview, it was held to be arbitrary so the selection solely on the basis of viva voce was a fortiori illegal. These and other contentions, which will be referred to presently, urged by Mr.Goswami were adopted by Mr.P.N.Misra, learned senior counsel, Mr.Pramod Dayal, Mr.B.M.Sharma, Mr.P.K.Jain, Mr.Shrish Kumar Mishra, learned counsel appearing for the appellants in the other appeals. Mr.Shanti Bhushan, learned senior counsel appearing for the respondents - selected candidates, has contended that there is no delegation of essential legislative functions by the Legislature under Sections 9 and 10 of U.P. Act No.5 of 1982; that preparation of guidelines in regard to method of recruitment by the Commission which consists of experts, the most competent body, is a matter of giving effect to the legislative policy. He argued that under Rule 12(3) of the 1995 Rules,

(i) the Government rightly prescribed selection by interview for appointment of the in- service teachers, at the fag end for their service career, to the posts of Principals/Headmasters, and (ii) the selection was entrusted to an expert body, well-informed on the subject and whose opinion in regard to selection of the candidates, in the absence allegation of mala fide, would be proper and legal and that a written test in such cases would be the most inappropriate method. The scheme for selection of the candidates, submitted the learned counsel, required awarding quality points for academic qualifications, training, administrative experience, etc. and it was on the basis of the marks secured by them, that they were short-listed and called for interview for judging their personality keeping in view the seven factors specified in the guidelines by the Commission, thus, there was nothing arbitrary or illegal in the selection process. Mr.Subodh Markandeya, learned senior counsel for the State of U.P., supported the judgment of the High Court in regard to validity of the impugned provisions. To appreciate these contentions, it will be necessary to refer to the relevant enactments from the maze of legislation dealing with matters relating to education and appointment of Teachers, Principals/Headmasters, in Uttar Pradesh. The first enactment to be noticed is the U.P.Intermediate Education Act, 1921 (for short 'the Act'). A Board is established under the Act to regulate and supervise the system of education, including appointment of teachers at the high school and intermediate level in U.P. The Act conferred power on the Board to frame Regulations for purposes of the Act. Regulation 10(dd) of the Regulations, framed by the Board, prescribed the procedure for filling up the vacancies of teachers and of the Heads of Institutions/schools by direct recruitment in any aided recognised institution/school. Sections 16-E and 16-F of the Act were substituted to bring about a change in the mode of appointment of teachers by the management of private educational aided institutions (for short, 'the management') and to provide for appointment

of teaching staff after selection by a Committee comprising of representatives of the management and experts nominated by authorities of the education department. Later, the power of the management to appoint teaching staff was restricted only for a period not exceeding 'six months'. Series of Orders called 'U.P.Secondary Education (Removal of Difficulties) Orders' were issued. We concern ourselves with the Second Order of 1976 by which the words 'not extending beyond June 30, 1976' were substituted for 'six months' and the Fifth Order of 1976 issued on November 27, 1976 which brought about two important changes : (i) it regularised all temporary appointments made by the management on or before June 30, 1975; and (ii) it extended the period, earlier fixed for ad hoc appointments under various orders, till December 31, 1976 or till regular appointments, whichever is earlier. Section 16-GG was inserted in the Act by U.P. Act 5 of 1977 with effect from April 21, 1977. The said provision deals with the regularisation of appointment of ad hoc teachers made between August 18, 1975 and September 30, 1976. By a subsequent Order, the period was again extended till May 20, 1977 or till regular selection, whichever is earlier. In 1982, U.P.Secondary Education Services Commission and Selection Boards Act, 1982 (U.P. Act No.5 of 1982) was enacted, which mandated the management to appoint teaching staff only on recommendation by the Commission. The State Government was given the power to make rules under Section 35 of U.P.Act No.5 of 1982. On May 8, 1995, the Government made the 1995 Rules. Rule 12 of the said Rules prescribes procedure for appointment of teaching staff by direct recruitment. Sections 9 and 10 of U.P.Act No.5 of 1982, which are impugned, read as under : "9. Powers and duties of Commission. - The Commission shall have the following powers and duties, namely -

(a) to prepare guidelines on matters relating to the method of recruitment and promotion of such categories of teachers as are specified in the Schedule;

(b) to (j) *** **

10. Procedure of selection of teachers specified in the Schedule -

(1) For the purposes of making appointment of a teacher specified in the Schedule, the management shall notify the vacancy to the Commission in such manner and through such officer or authority as may be prescribed.

(2) The procedure of selection of candidates for appointment to the posts of such teachers shall be such as may be prescribed :

Provided that the Commission shall, with a view to inviting talented persons, give wide publicity in the State to the vacancies notified under sub-section (1)."

A perusal of Section 9 shows that it enumerates the powers and duties of the Commission which include preparation of guidelines on matters relating to the method of recruitment and promotion of teachers. It is the validity of clause (a) of Section 9 that is impugned on the ground of delegation of essential legislative functions. In our view, the contention is wholly misconceived. It is too late in the day to question the delegation of legislative functions to the Government or a subordinate

authority. However, what cannot be delegated is essential legislative functions. It will be useful to reproduce here the observations of Mukherjea, J. In re The Delhi Laws Act, 1912, the Ajmer-Merwara (Extension of Laws) Act, 1947 vs. The Part C States (Laws) Act, 1950 [1951 SCR 747 at 982] :

"If the legislature hands over its essential legislative powers to an outside authority, that would, in my opinion amount to a virtual abdication of its powers and such an act would be in excess of the limits of permissible delegation. The essential legislative function consists in the determination or choosing of the legislative policy and of formally enacting that policy into a binding rule of conduct. It is open to the legislature to formulate the policy as broadly and with as little or as much details as it thinks proper and it may delegate the rest of the legislative work to a subordinate authority who will work out the details within the framework of that policy." The essence of the essential legislative function lies in the legislature formulating a policy in respect of a matter within its field of legislation and translating it into words of an enactment to clothe it with binding authority. The legislative policy, as could be gathered from the aforementioned provisions, appears to us to constitute a Commission which is a statutory body consisting of experts and leave the question as to how it should proceed with the method of recruitment and promotion of Teachers to the posts of Principals/Headmasters to that Commission. A plain reading of that clause shows that the legislature has delegated the power of preparation of guidelines on matters relating to the method of recruitment to the Commission which is in the sphere of effectuation of the legislative policy rather than in realm of laying down a legislative policy. The composition of the Commission under Section 4 of U.P. Act No. 5 of 1982 is as follows : "4. Composition of the Commission. - (1) The Commission shall consist of a Chairman and not less than six and not more than eight other members to be appointed by the State Government.

(2) Of the members - (a) One shall be a person who occupies or has occupied, in the opinion of the State Government, a position of eminence in Judicial Services;

(b) Two shall be persons who occupy or have occupied, in the opinion of such Government, a position of eminence in the State Education Services; and

(c) Others shall have teaching experiences as -

(i) Professor of any University established by law in Uttar Pradesh; or

(ii) Principal of any college recognised by or affiliated to any such University for a period of not less than ten years; or

(iii) Principal of any institution recognised under the Intermediate Education Act, 1921 for a period of not less than fifteen years.

(3) Every appointment under this section shall take effect from the date on which it is notified by the State Government."

A bare reading of Section 4 makes it evident that the Commission was composed of members of whom one member was having a position of eminence in judicial services and the other members were experts in the field of education. Inasmuch as the Commission was an expert body and it was entrusted with the duty of selection of Teachers, Principals/Headmasters, it would be the most competent body to lay down guidelines on matters relating to method of recruitment and promotion of teachers to the posts of Principals/ Headmasters. Indeed laying down of guidelines by the Commission in such matters when it is so authorised by an Act of legislature or by statutory Rules is a well accepted principle and no exception can be taken to it. [See : Dr. Krushna Chandra Sahu and Ors. Vs. State of Orissa and Ors. [1995 (6) SCC 1]. A perusal of Section 10 shows that it deals with the procedure for selection of teachers specified in the Schedule to U.P. Act No.5 of 1982. The schedule specifies the following as teachers for purposes of Section 10 : (1) Principal of an Intermediate College; (2) Lecturer of an Intermediate College; (3) Headmaster of a High School; and (4) Trained Graduates, Grade Teachers of Higher Secondary School. Further, Section 2(k) of that Act defines 'teacher' to include a principal or a headmaster. Sub-section (1) of Section 10 enjoins the management to notify the vacancy for making appointment of a teacher specified in the Schedule to the Commission in such manner as may be prescribed. Sub-section (2) of Section 10 says that the procedure for selection of a candidate for appointment to the post of a teacher shall be as may be prescribed. The Commission is mandated to give wide publicity in the State to the vacancies notified under sub-section (1) to invite talented persons. The Government of U.P. has prescribed in Rule 12 of the 1995 Rules procedure for recruitment of teachers. Nothing has been pointed out and we also find nothing which would render the provisions of Section 10 as unconstitutional. Rule 12 (3) of the 1995 Rules, which is the subject matter of challenge, is extracted hereunder : "12. Procedure of direct recruitment - (3) The commission shall hold interview of the candidates and, for each category of post prepare panel of those found most suitable for appointment in order of merit as disclosed by the marks obtained by them in the interview. The panel, for the post of Principal or Headmaster shall be prepared institution wise after giving due regard to the preference given by a candidate, if any, for appointment in a particular institution whereas for the posts in the lecturers and trained graduates (L.T.) grade, it shall be prepared subjectwise and groupwise respectively. If two or more candidates obtain equal marks in interview, the name of the candidate who has higher quality points shall be placed higher in the panel and if the marks obtained in the interview as well as the quality points of two or more candidates are equal, the name of the candidate who is older in age shall be placed higher. In the panel for the post of Principal or Headmaster, the number of names shall be three times of the number of the vacancy and for the post of teachers in the lecturers and trained graduates (L.T.) grade, it shall be larger (but not larger than twenty five per cent) than the number of vacancies.

Explanation.- For the purposes of this sub- rule the word groupwise means in accordance with the groups specified in the Explanation to sub-rule (2) of Rule 11."

Rule 12 deals with the procedure for direct recruitment of Teachers, Principals/Headmasters and Lecturers. The procedure for selection of the Principals and Headmasters is as follows : Sub-rule (1)

requires the Commission to advertise the vacancies, inter alia, for the post of Principal of an Intermediate College or the Headmaster of a High School duly specifying the name and place of the institution/school and inviting application from the candidates who are required to give their choice in respect of three institutions/schools in the order of preference for which they desire to be considered. Sub-rule (2), insofar as it relates to selection of Principals/Headmasters, directs that the Commission should scrutinise the applications and prepare the list having due regard to the representation of the candidates belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes. The Commission is required to call for interview five candidates for each vacancy on the basis of the quality points secured by them. Sub-rule (3), quoted above, directs that the Commission shall hold interviews of the candidates for each category of posts and prepare a panel of those found suitable for appointment in order of merit as disclosed by the marks obtained by them in the interview. The panel for the posts of Principals/Headmasters has to be prepared institutionwise keeping in view the preference given by the candidates, if any, or in respect of a particular institution/school. The panel should contain the names of the candidates three times of the number of vacancies. The vice in sub-rule (3), it is argued, is, it mandates selection of candidates only by interview. What is complained of is that there is no provision for comparison of educational qualification, administrative experience, service record and character roll without which selection solely on the basis of interview will be arbitrary. It may be noted that the scheme for selection of the candidates, under consideration, is in two stages. The first stage is evaluation at the time of screening, as envisaged in Appendix D of the 1995 Rules, which provides for awarding of quality points under six items. For academic qualification marks are awarded, under items 1 to 4, based on the percentage of marks secured in (1) High School; (2) Intermediate; (3) Graduate degree; and (4) Post-graduate degree in accordance with formulae noted therein. Item No.5 deals with awarding of marks for training depending upon whether the candidate secured the first or the second or the third division in theory and practical. And at item No.6 provision is made for awarding marks for administrative experience; 2 marks are given for each year of experience, subject to a maximum of 15 marks. Thus, it is noticed that at the stage of awarding quality points academic qualification, training and administrative experience of candidates are taken into consideration. The candidates are called for interview on the basis of the 'quality points' secured by them. Regarding non-consideration of service record and character roll by the Commission, no allegation was made in the writ petitions. However, Mr.T.N.Singh, the learned counsel for the Commission, on instructions, submitted that service records of senior teachers were before the Commission at the time of interview. Now we shall advert to the cases cited at the Bar. In *Shri Janki Prasad Parimoo and Ors. Vs. State of Jammu and Kashmir and Ors* [1973 (1) SCC 420], the challenge was against selection for the posts of Headmasters made by the Selection Committee on the basis of interview. A Constitution Bench of this Court while approving the method of selection by interview, held that when appointment to higher posts were made it might be perfectly legitimate to test the candidate at a properly conducted interview. It was observed that the efficiency of a teacher and his qualification to be appointed as a Headmaster depended upon several considerations - his character, his teaching experience, ability to manage his class, his popularity with the students and the high percentage of successful students he was able to produce; and that all those matters must be necessarily taken into consideration before making a selection. It is difficult to accept the omnibus contention that selection on the basis of viva voce only is arbitrary and illegal and that since allocation of 15% marks for interview was held to be arbitrary by this Court, selections solely based on interview is a fortiori

illegal. It will be useful to bear in mind that there is no rule of thumb with regard to allotment of percentage of marks for interview. It depends on several factors and the question of permissible percentage of marks for an interview test has to be decided on the facts of each case. However, the decisions of this Court with regard to reasonableness of percentage of marks allotted for interview in cases of admission to educational institutions/schools will not afford a proper guidance in determining the permissible percentage of marks for interview in cases of selection/appointment to the posts in various services. Even in this class, there may be two categories: (i) when the selection is by both a written test and viva voce; and

(ii) by viva voce alone. The courts have frowned upon prescribing higher percentage of marks for interview when selection is on the basis of both oral interview and a written test. But, where oral interview alone has been the criteria for selection/appointment/promotion to any posts in senior positions the question of higher percentage of marks for interview does not arise. Therefore, we think it an exercise in futility to discuss these cases -- *Minor A. Peeriakaruppan etc. Vs. State of Tamil Nadu and Ors.* [1971 (1) SCC 38] and *Ajay Hasia and Ors. Vs. Khalid Mujib Sehravardi and Ors.* [1981 (1) SCC 722] -- relied upon by Mr. Goswami, which deal with admission to educational institutions/schools and also cases where prescribed method of recruitment was written test followed by interview - *Ashok Kumar Yadav & Ors. vs. State of Haryana & Ors.* [1985 (4) SCC 417]; *D.V. Bakshi & Ors. vs. Union of India & Ors.* [1993 (3) SCC 663]; *Krishan Yadav & Anr. Vs. State of Haryana & Ors.* [1994 (4) SCC 165]. However, it will be apt to refer to the decision of a three-Judge Bench of this Court in *Lila Dhar Vs. State of Rajasthan and Ors.* [1981 (4) SCC 159]. There, the impugned selection for the posts of District Munsifs under Rajasthan Judicial Service Rules was made by the Rajasthan Public Service Commission. The ratio of marks allocated for written test and interview was 75:25. Speaking for the Court, Justice O. Chinnappa Reddy pointed out: "In the case of admission to a college, for instance, where the candidate's personality is yet to develop and it is too early to identify the personal qualities for which greater importance may have to be attached in later life, greater weight has per force to be given to performance in the written examination. The importance to be attached to the interview-test must be minimal. Therefore, the ratio of the decisions in *Minor A. Peeriakaruppan etc. Vs. State of Tamil Nadu and Ors.* [1971 (1) SCC 38] and *Ajay Hasia and Ors. Vs. Khalid Mujib Sehravardi and Ors.* [1981 (1) SCC 722], in this regard, cannot be applied in case of services to which recruitment has necessarily to be made from persons of mature personality, interview test may be the only way, subject to basic and essential academic and professional requirements being satisfied."

That case has been consistently followed in various judgments of this Court. We refer to a few of them here.

In *Dr. Keshav Ram Pal vs. U.P. Higher Education Services Commission, Allahabad & Ors.* [1986 (1) SCC 671], referring to the view taken by this Court in *Periakaruppan vs. State of T.N.* (supra) and *Ajay Hasia vs. Khalid Mujib Sehravardi* (supra) that the importance to be attached to the interview test must be minimal, this Court commented that in the case of services to which recruitment had necessarily to be made from persons of mature personality, interview test might be the only way, subject to basic and essential academic and professional requirements being satisfied and that subjecting such persons to a written examination might yield unfruitful and negative results, apart

from it being an act of cruelty to those persons. In Anzar Ahmad etc. Vs. State of Bihar and Ors. etc. [1994 (1) SCC 150], for appointment to the posts of Unani Medical Officer the Government prescribed that the Public Service Commission shall select the candidates on the basis of interview. The Commission allocated 50% marks for academic qualification and 50% for interview. This Court, after referring to the aforementioned cases and relying upon Lila Dhar's case, upheld the method of selection by interview alone. That decision was followed in A.P. State Financial Corporation Vs. C.M. Ashok Raju and Ors. [1994 (5) SCC 359]. In that case also selection of candidates by interview without a written test was upheld by this Court. The posts of Managers in the A.P. Financial Corporation were to be filled by interview without a written test. The Corporation approved the promotion criteria by viva voce without a written test and allocated marks under various heads; among them for interview 25% and for length of service 15% marks were prescribed. A Division Bench of the High Court while upholding the allocation of marks under various heads, reduced the percentage of marks for interview from 25% to 15% and increased percentage of marks for length of service from 15% to 25%. On appeal, this Court held that the High Court fell into patent error in reaching the conclusion that 25% marks for interview were, in the facts of that case, excessive. It was observed that there was no dispute that no written test was prescribed for promotion to the post of Manager and above and the selection/promotion was only by viva voce test, so no limit could be imposed for prescribing the marks for interview. In Siya Ram Vs. Union of India and Ors. [1998 (2) SCC 566] one of the grounds of attack was that the Rules regarding selection for the post of Chief Personnel Inspector in Railways, permitted only oral test in the form of viva voce and no written examination was held. It was contended that the result of a selection merely on the basis of viva voce could not be reasonably fair and was liable to lead to arbitrariness. There, out of 100 marks, 50 were allotted for professional ability without prescribing any norms. While rejecting the contention, this Court, following the Lila Dhar's case, held that at times for certain posts only interview was considered to be the best method of selection. For all these reasons, we find no illegality in Rule 12(3) of the 1995 Rules providing for selection of suitable candidates based on their performance in the interviews for appointment to the posts of Principals/Headmasters. The next prong of attack on the interview test is that in the guidelines framed by the Commission no separate marks are allocated for each of the seven items and the members of the Commission did not award separate marks under each item therefore the selection was arbitrary and liable to be set aside. Mr. Shanti Bhushan, on the other hand, supported the selection and argued that having regard to the items specified in the guidelines awarding of separate marks under each item would lead to most undesirable consequences and even disastrous results. He has submitted that in such cases overall evaluation alone is the best method and that was adopted by the Commission. In the guidelines framed by the Commission the following aspects are to be kept in mind while evaluating a candidate : "Madhyamik Shiksha Ayog- The candidates called for interview have to be adjudged by members of the Board for 75 Marks, keeping in view the following factors.

1. Personality.
2. Knowledge of the subject.
3. Knowledge of current ideas and problems of the educational work diagnostic attitude towards them.

4. General Knowledge.
5. Administrative ability regarding school management.
6. Self expressive and impressive views.
7. Achievement in curricular activities of the regional and State levels."

It is true that maximum marks for each item were not allocated. A perusal of the original lists of participants in the interviews for the posts of Principals/Headmasters with reference to each institution/school, shows that the members of the Commission who interviewed the candidates awarded marks in lump but separately after evaluating the candidate on the basis of aforementioned factors. On a careful consideration of the factors contained in the abovequoted guidelines, we find considerable force in the submission of Mr.Shanti Bhushan that overall evaluation rather than awarding of marks for each item will lead to proper and correct results. Assuming that each of the factors in the guidelines is allocated equal marks; in a given case, if the personality of the candidate and his administrative ability regarding school management are miserably poor but his knowledge of current ideas and problems of educational work, general knowledge and achievement in curricular activities etc., are good and he secures higher marks than a candidate who is having good personality, possess imaginative administrative ability regarding the school management and satisfies the other factors certainly the former candidate will not be better than the latter as a Principal/Headmaster for an institution/school. Such examples can be multiplied by permutation and combination. In our view, items mentioned in the guidelines are various aspects which have to be kept in mind in evaluating a candidate for his suitability and fitness for being appointed as the Principal/Headmaster of a institution/school. We, therefore, do not find any illegality in the procedure of overall evaluation of the candidate without fixing marks for each of the items noted above, adopted by the Commission, and on this ground we are not inclined to hold that the selection is arbitrary. Here, we may with advantage mention a decision of this Court in *Dr.Keshav Ram Pal vs. U.P.Higher Education Services Commission, Allahabad & Ors. (supra)*. In that case also selection for the post of Principal was under consideration. The appellant who claimed to possess higher academic qualifications and the longest experience, was not selected. He challenged the selection on the ground that although the basis of selection was the candidate's academic attainments, teaching experience, administrative experience and suitability for the post of Principal, marks were not separately allocated under each of those heads, therefore, the procedure was arbitrary and resulted in arbitrary selection. This Court held that the interview board was not obliged to subdivide the marks and selection could not be said to be arbitrary in the absence of such subdivision. It may be noticed here that initially there was no provision for considering two senior-most teachers of each institution/school in which the vacancy of Principal/Headmaster existed. On a decision taken by the Government that two senior-most teachers of each of the institutions/schools, where vacancy of Principal/Headmaster existed, should also be interviewed, the Commission in its Extra-Ordinary Meeting held on April 24, 1996, took the following decision : "On the report of Hon'ble Member Shri S.L.Adarsh the commission considered that the Regulation 1983 are not in force at present. Therefore, the procedure which has been laid down for interview in the present Regulations shall be complied with. Two senior most teachers shall participate in the selection process, they would be

considered only for their respective institutions where they have been serving. No special preference has been provided in the present Regulations as such their interviews would be held in the same manner as prescribed for the direct candidates from open market and they would be awarded marks as per the same procedure. In case, if any of the two senior teachers of each institution secures higher marks then he/she would be taken as selected and the other senior teacher would be left out at that very point of time and the other general candidates would be considered for other institutions in the Region on the basis of marks obtained in the interview."

The appellants are unsuccessful senior most teachers of various institutions/schools who have challenged the method of selection for the in-service teachers to find a way to the post of Principal/Headmaster. It is a common case that in the interview, the in-service candidates were not given any special preference and in their selection the same procedure, as was adopted in the case of general candidates, was applied. Between the two senior most teachers of each institution/school whoever secured higher marks was selected for that institution/school and no candidate from the general pool was selected ignoring the claim of the senior teachers for their institution/school which is reasonable and fair from the point of view of senior teachers of the institution/school concerned. The penultimate challenge is against the panel of selected candidates prepared on April 15, 1997. It was submitted that in view of wide spread allegations of favouritism and arbitrariness in the selection and preparation of panel of selected candidates, the State Government issued a notification under Section 2 of the Uttar Pradesh State (Control Over) Public Corporation Act, 1975 (Act 41/75) on April 17, 1997, directing the Commission not to take any steps to make selection by direct recruitment of the candidates for being appointed as teachers including Principals/Headmasters and not to prepare any panel of candidates but in violation thereof the Commission selected the candidates after the date of the notification and ante dated the panel as if it was prepared on April 15, 1997. That panel was received by the Regional Deputy Director of Education on April 20, 1997 and that, according to Mr.Goswami, would show that the panel was not prepared before the date of the notification. It was urged that in the interests of justice, this Court might peruse the original records of interview and preparation of panel and determine its validity. Mr.Shanti Bhushan met that argument by challenging the notification itself on the ground of lack of power in the Government to issue such a notification to interdict the functioning of a statutory body and submitted such an illegal notification did not bind the Commission. It was further submitted that merely because the panel of April 15, 1997 was not sent through the Inspector but was sent directly and was received by the Regional Deputy Director on April 20, 1997 it could not be concluded that the panel was ante-dated. Mr.Singh, learned counsel appearing for the Commission, submitted that after the date of the notification, no panel was prepared and that the preparation of panel was completed and it was despatched from Allahabad on April 15, 1997 before the date of the said notification and that no adverse inference could be drawn on the ground that it was received at Meerut by the Regional Deputy Director on April 20, 1997. He placed before us the register of despatch to show that the panel was despatched on April 15, 1997 itself. The secretary of the Commission produced the original panel and the original records of interviews conducted by the Commission. The questions that arise are : (i) whether the selection and preparation of the panel was completed before April 15, 1997; if not, (ii) whether the notification of April 17, 1997 issued under Section 2 of the Act 41/75 is valid in law; and (iii) what is the effect of the said notification on the impugned panel? At the outset, we may observe that the allegation that to get over the

notification of April 17, 1997 the panel was ante dated to April 15, 1997 is fraught with very serious inferences, namely, the member of the Commission joined together to conspire to get over the said notification and having selected the candidates and prepared the panel after April 17, 1997 showed on record as if it was done on April 15, 1997 which are patently illegal acts. The allegation is too wild and preposterous to be entertained in the absence of any incontrovertible and irrefragable material to support it and to rebut the presumption of regularity of the official record and we outrightly reject the same. A perusal of the original panel of April 15, 1997 discloses that it contains the names of the selected candidates for the posts of Principals/Headmasters of various schools in different cities of Meerut region. On examination of the original lists from the records of interview, it appears that the selection of the candidates took place between November 1996 and February 1997 long before the date of the preparation of the panel and it appears to us that the panel was prepared before April 15, 1997 but it was communicated by the Commission at Allahabad to various educational authorities including the Regional Deputy Director, Meerut on April 15, 1997. In the court we perused the calendar of 1997 and noted that between April 16, 1997 and April 20, 1997 fell public holidays for Ram Navami, Idu'l Zuha and Sunday. The laxity with which an office generally functions should neither be a matter of any surprise for panel of selected candidates of April 15, 1997 to reach the Regional Deputy Director of Education, Meerut from Allahabad on April 20 nor could it furnish any basis to make a rabid allegation of ante dating. In view of this finding, it is unnecessary to go into the other questions as to the validity of the notification and its effect on the panel of candidates dated April 15, 1997. Now, one important aspect regarding the validity of panel of April 15, 1997 remains to be considered. In view of the allegations with regard to the selection and empanelling of the candidates, this Court by Order dated September 29, 1999 directed the Vigilance Department to submit a copy of the vigilance inquiry report. At the time of hearing when we asked the learned counsel for the State about the report we were informed that the Vigilance Department did not prepare the report. The explanation given to us was that the records were with this Court but this is incorrect because at the time of hearing, having found that the records were not available, we issued notice to the Secretary to attend the Court alongwith the records and that is how the records were made available to this Court on April 5, 2000. To ascertain whether the impugned panel of April 15, 1997 represents correctly the candidates who were selected by the Commission, we perused the original records keeping in mind the provisions of rule 12(3) of the 1995 Rules and the guidelines framed by the Commission with regard to selection of the senior teachers, extracted above, and verified the lists of candidates who participated in the interview in respect of each institutions/schools. In the lists marks awarded to the candidates are also noted. We may indicate here that for purposes of conducting interviews for the posts of Principals/ Headmasters in different institutions/schools in the Meerut region, each of the institutions/schools was assigned a code number. There are in all 258 code numbers. Thus, each list of candidates who were called for interview for the post of Principal/Headmaster of an institution/High School contains a code number. In each list under the caption `senior teachers of the institution/school' the names of two senior teachers of the institution/school are noted and under the caption `candidates' the names of general candidates are mentioned. Against their names marks awarded by each member of the Commission and the average marks secured by the candidates are also written. The word `chayanit' is noted in Hindi against the name of the senior teacher who secured higher marks than the other candidates in the list and was selected. Where only one senior teacher from that institution/school participated in the interview and he secured higher marks, he was accordingly selected. But where a

general candidate secured higher marks than the senior teachers of the institution/school he was not selected and a tick mark was put against the name of the general candidate, which does not indicate that he was necessarily selected for the same institution/school. Inasmuch as we are not concerned with the selection of the general candidates, we did not further probe into the matter. Though at the time of the argument it was submitted that all the appellants except two, appeared for interviews in Meerut region, the particulars of the appellants as to when and from which institutions/schools they appeared for interview, were not furnished so we were unable to verify as to how many marks they secured and whether their non-inclusion in the impugned panel is correct or not. From the record, supplied to us, we could find about 200 such lists. The names of the appellants, [except that of Kiran Gupta - appellant in Civil Appeal Nos. of 2000 (@ S.L.P.(C)Nos.19035-38/98)], do not figure therein. The name of Kiran Gupta who is a senior teacher, is found in the list bearing code No.239, category 02. She secured 42 marks whereas a general candidate secured 45 marks therefore her name was not included in the impugned panel and she cannot have any grievance for not being selected. On the scrutiny of the records, to the extent we have done, we are satisfied that the allegations of malpractice and illegality in respect of selection and empanelling are baseless and untenable. We are left with the last contention of the appellants that their claim for regularisation in the posts in which they have been working as ad hoc Principals/Headmasters, may be ordered. Indeed, their contention is that they stood regularised under Section 33-A(1-A) of Act No.5 of 1982 Act as amended in 1991 read with Section 33-C(1)(a)(ii) and (c). The High Court took the view that their claims must have been settled under sub-section (1-A) of Section 33-A of Act No.5 of 1982 long before the cut- off date (April 6,1991). It was observed that if any dispute with regard to any individual claim under the said provision is pending before the authority, such claim might be considered. With regard to the claim based on Section 33-C(1)(a)(ii), on the basis that some of them were appointed prior to August 7, 1993 and therefore they are entitled to be regularised, the High Court opined that the provisions of Section 33-C came into force on April 20, 1998, long after the vacancies were notified to the Commission and in respect of which the selection had already been completed by that date, therefore, in view of sub- section (6) of Section 33-C their claim did not survive. It will be apt to quote the said provisions here : "33-A. Regularisation of certain appointments.-

(1) *** ***(1-A). Every teacher appointed by promotion, on ad hoc basis against a substantive vacancy in accordance with paragraph 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981, as amended from time to time, who possesses the qualifications prescribed under, or is exempted from such qualifications in accordance with the provisions of, the Intermediate Education Act, 1921 shall, with effect from the date of commencement of the Uttar Pradesh Secondary Education Services Commission and Selection Boards (Amendment) Act, 1991, be deemed to have been appointed in a substantive capacity provided such teacher has been continuously serving the institution from the date of such ad hoc appointment to the date of such commencement.

33-C(1) Any teacher who,-

(a)(i) *** ***(a)(i)

(ii) was appointed by promotion on or after July 31, 1988 but not later than August 6, 1993 on ad hoc basis against a substantive vacancy in the post of a Principal or Head Master in accordance with Section 18;

(b) *** **

(c) has been continuously serving the institution from the date of such appointment up to the date of the commencement of the Uttar Pradesh Secondary Education Services Commission (Amendment) Act, 1998;

(d) *** ** shall be given substantive appointment by the management.

(2), (3), (4), (5) *** ** (6) Nothing in this section shall be construed to entitle any teacher to substantive appointment, if on the date of commencement of the Ordinance referred to in clause

(c) of sub-section (1) such vacancy had already been filled or selection for such vacancy has already been made in accordance with this Act."

Insofar as the claim based on Section 33-A(1-A) is concerned, a perusal of sub-section (1-A) of Section 33-A discloses that to attract the provisions of this sub-section the teacher which includes Principal/Headmaster should fulfil the following conditions : (i) he must have been appointed on ad hoc basis against a substantive vacancy;

(ii) his appointment should have been made in accordance with para 2 of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order 1981, as amended from time to time; (iii) he must possess the qualification prescribed under the provisions of the Act or he should be exempted under the provisions of the said Act; and (iv) he should have been continuously serving in the institution/school from the date of his ad hoc appointment till the date of commencement of the Uttar Pradesh Secondary Education Services Commission and Selection Boards (Amendment) Act, 1991. In this batch of cases as individual particulars of the appellants on these aspects are not available, the High Court, in our view, rightly observed that if any such cases are pending the same may be examined and appropriate order be passed in accordance with the terms of the said provisions. We can only add that if any of the appellants makes a claim under these provisions within three months of this judgment to the Director of Education, the same shall be considered within three months from the date of receipt of such representation and the result be communicated in writing to the candidate. Insofar as claim based on Section 33-C(1)(a)(ii) is concerned, the candidates has to show that the following conditions are satisfied :

(i) a teacher was appointed by promotion on ad hoc basis in the post of Principal/Headmaster; (ii) the appointment by promotion was made on or after July 31, 1988 but not after August 6, 1993; (iii) though the appointment was an ad hoc appointment, it was against a substantive vacancy; (iv) the appointment was in accordance with Section 18 of U.P. Act No. 5 of 1982; and (v) the appointee has been continuously serving in the institution/school from the date of such appointment

upto the date of commencement of Uttar Pradesh Secondary Education Services Commission (Amendment) Act, 1998 (i.e. April 20, 1998). Even if an incumbent satisfies all these conditions, his right will be defeated by sub-section (6) of Section 33-C if on April 20, 1998 such vacancy has already been filled or selection for such vacancy has been made in accordance with the U.P. Service and Selection Board Act, 1982. Here again, the particulars of the appellants who claim to fulfill these requirements are not available, therefore, we consider it appropriate to leave it to the Director of Education who shall look into the claims made under this provision. As constitutional validity of Section 33- C(6) has not been challenged in the High Court, we do not propose to go into it here. However, we deem it proper to observe that the regularisation of the candidates under Section 33-C(1)(a)(ii) is made to depend on a mere chance of a substantive vacancy either being filled in or the selection for that vacancy being completed. There may still be cases where the posts of Principals/Headmasters may be lying vacant either because the selected candidates did not join or because the incumbents having obtained posting of their choice vacated the posts or for any other reason the posts might have fallen vacant. In all such cases the benefit of Section 33-C(1)(a)(ii) has to be given to the ad hoc appointees. We issue a similar direction as issued above in cases of claims based under Section 33A(1-A) of the said Act. Subject to the above observations, these appeals are dismissed. The parties are directed to bear their own costs.