

Principal Abhay Nandan Inter College ... vs State Of U.P. And 3 Others on 19 November, 2018

Author: Sudhir Agarwal

Bench: Sudhir Agarwal

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Court No. 34

1. Case :- WRIT - C No. - 45060 of 2015

Petitioner :- Principal, Abhay Nandan Inter College, Vishnu Mandir & Anr.

Respondent :- State of U.P. & 3 Others

Counsel for Petitioner :- Ashish Kumar Ojha, Radha Kant Ojha

Counsel for Respondent :- C.S.C.

2. Case :- WRIT - A No. - 62544 of 2013

Petitioner :- C/M Lala Babu Baijal Memorial Inter College and 3 Others

Respondent :- Special Secretary, Government of U.P. And 6 Others

Counsel for Petitioner :- N.L. Pandey, Suyash Pandey

Counsel for Respondent :- C.S.C.

3. Case :- WRIT - A No. - 17335 of 2014

Petitioner :- Principal Sanatan Dharm Inter College And Another

Respondent :- State of U.P. And 4 Others

Counsel for Petitioner :- S.P. Singh,B.B. Singh

Counsel for Respondent :- C.S.C.

4. Case :- WRIT - A No. - 650 of 2015

Petitioner :- C/M, Chaudhary Jawahar Singh Inter College

Respondent :- State of U.P. And 3 Ors

Counsel for Petitioner :- Yogish Kumar Saxena

Counsel for Respondent :- C.S.C.

5. Case :- WRIT - A No. - 32446 of 2016

Petitioner :- Ramashankar Gaud

Respondent :- State of U.P. And 4 Others

Counsel for Petitioner :- Ashutosh Mani Tripathi,Daya Shanker Mani Tripathi

Counsel for Respondent :- C.S.C.

6. Case :- WRIT - A No. - 35821 of 2016

Petitioner :- C/M Adarsh Vidya Niketan Inter College And Anr.

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Santosh Kumar Tiwari,Sri Radha Kant Ojha

Counsel for Respondent :- C.S.C.

7. Case :- WRIT - A No. - 35939 of 2016

Petitioner :- Hari Shankar And Anr.

Respondent :- District Inspector of Schools And 3 Ors.

Counsel for Petitioner :- Indra Raj Singh,Adarsh Singh

Counsel for Respondent :- C.S.C.

8. Case :- WRIT - A No. - 52968 of 2016

Petitioner :- Dilip Yadav

Respondent :- District Inspector of Schools And 3 Ors.

Counsel for Petitioner :- Indra Raj Singh, Adarsh Singh

Counsel for Respondent :- C.S.C.

9. Case :- WRIT - A No. - 52971 of 2016

Petitioner :- Chandu Kumar

Respondent :- District Inspector of Schools And 3 Ors.

Counsel for Petitioner :- Indra Raj Singh, Adarsh Singh

Counsel for Respondent :- C.S.C.

10. Case :- WRIT - A No. - 52973 of 2016

Petitioner :- Surendra Kumar Yadav

Respondent :- District Inspector of Schools And 3 Ors.

Counsel for Petitioner :- Indra Raj Singh, Adarsh Singh

Counsel for Respondent :- C.S.C.

11. Case :- WRIT - A No. - 53746 of 2016

Petitioner :- Rinkaj Singh And Anr.

Respondent :- District Inspector of Schools And 4 Ors.

Counsel for Petitioner :- Indra Raj Singh

Counsel for Respondent :- C.S.C.

12. Case :- WRIT - A No. - 54767 of 2016

Petitioner :- Indal Kumar Rai And Anr.

Respondent :- State of U.P. And 2 Ors.

Counsel for Petitioner :- R. K. Singh Kaosik

Counsel for Respondent :- C.S.C.

13. Case :- WRIT - A No. - 16568 of 2018

Petitioner :- Akbar Ali

Respondent :- State of U.P. And 2 Others

Counsel for Petitioner :- Prakash Padia

Counsel for Respondent :- C.S.C.

14. Case :- WRIT - A No. - 17647 of 2018

Petitioner :- Kamlesh Yadav

Respondent :- State of U.P. And 2 Others

Counsel for Petitioner :- Prakash Padia

Counsel for Respondent :- C.S.C.

15. Case :- WRIT - A No. - 21259 of 2018

Petitioner :- Vijay Kumar Bharti And 3 Others

Respondent :- State of U.P. And 2 Others

Counsel for Petitioner :- R. K. Singh Kaosik

Counsel for Respondent :- C.S.C.

16. Case :- WRIT - A No. - 21589 of 2018

Petitioner :- Manoj Kumar Singh

Respondent :- District Inspector of Schools And 3 Others

Counsel for Petitioner :- Indra Raj Singh, Adarsh Singh, Deo Prakash Singh

Counsel for Respondent :- C.S.C.

17. Case :- WRIT - A No. - 21590 of 2018

Petitioner :- Sujeet Kumar Kharwar

Respondent :- District Inspector of Schools And 3 Others

Counsel for Petitioner :- Indra Raj Singh, Adarsh Singh, Deo Prakash Singh

Counsel for Respondent :- C.S.C.

18. Case :- WRIT - C No. - 68534 of 2014

Petitioner :- M.M. Ali Memorial Inter College

Respondent :- State of U.P. And 5 Ors

Counsel for Petitioner :- Rohan Gupta

Counsel for Respondent :- C.S.C.

19. Case :- WRIT - A No. - 7929 of 2015

Petitioner :- Shakeel Ahmad

Respondent :- State of U.P. And 4 Ors.

Counsel for Petitioner :- R.K. Singh Kaosik

Counsel for Respondent :- C.S.C.

20. Case :- WRIT - C No. - 11032 of 2016

Petitioner :- The Principal, Shri Sant Vinobha Inter College And Another

Respondent :- State of U.P. And 4 Others

Counsel for Petitioner :- Rahul Mishra, Abhishek Mishra

Counsel for Respondent :- C.S.C.

21. Case :- WRIT - C No. - 11646 of 2016

Petitioner :- C/M Shri Gandhi Inter College And Another

Respondent :- State of U.P. And 3 Others

Counsel for Petitioner :- Rahul Mishra, Abhishek Mishra

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

22. Case :- WRIT - C No. - 40189 of 2016

Petitioner :- Amit Kumar Singh And 4 Others

Respondent :- State of U.P. And 4 Others

Counsel for Petitioner :- Arun Kumar Misra, Prabhakar Awasthi, Radha Kant Ojha

Counsel for Respondent :- C.S.C.

23. Case :- WRIT - C No. - 45967 of 2016

Petitioner :- Lakhan Singh And 3 Ors.

Respondent :- State of U.P. And 3 Ors.

Counsel for Petitioner :- Sandeep Kumar

Counsel for Respondent :- C.S.C.

24. Case :- WRIT - C No. - 53805 of 2016

Petitioner :- Rajesh Kumar Gupta

Respondent :- State of U.P. And 5 Others

Counsel for Petitioner :- Kedar Nath Mishra

Counsel for Respondent :- C.S.C.

25. Case :- WRIT - C No. - 54705 of 2016

Petitioner :- Ashok Prasad

Respondent :- State of U.P. And 5 Others

Counsel for Petitioner :- Kedar Nath Mishra

Counsel for Respondent :- C.S.C.

26. Case :- WRIT - C No. - 55139 of 2016

Petitioner :- Shailendra Kumar Singh And 2 Others

Respondent :- State of U.P. And 5 Others

Counsel for Petitioner :- Kedar Nath Mishra

Counsel for Respondent :- C.S.C.

27. Case :- WRIT - C No. - 59027 of 2016

Petitioner :- Shri Krishna Inter College And Another

Respondent :- State of U.P. And 3 Others

Counsel for Petitioner :- Prabhakar Awasthi

Counsel for Respondent :- C.S.C.

28. Case :- WRIT - C No. - 60875 of 2016

Petitioner :- C/M Lokman Das Ganpat Swaroop Inter College

Respondent :- State of U.P. And Another

Counsel for Petitioner :- Shesh Kumar Srivastava

Counsel for Respondent :- C.S.C.

29. Case :- WRIT - C No. - 4357 of 2017

Petitioner :- Pankaj Kumar Singh

Respondent :- State of U.P. And 3 Others

Counsel for Petitioner :- Narendra Kumar Chaturvedi

Counsel for Respondent :- C.S.C.

30. Case :- WRIT - C No. - 4359 of 2017

Petitioner :- Gaurav Pratap Singh And 3 Others

Respondent :- State of U.P. And 3 Others

Counsel for Petitioner :- Narendra Kumar Chaturvedi

Counsel for Respondent :- C.S.C.

31. Case :- WRIT - C No. - 6154 of 2017

Petitioner :- Dharmendra Kumar & 8 Others

Respondent :- State of U.P. & 3 Others

Counsel for Petitioner :- Amit Saxena

Counsel for Respondent :- C.S.C.

32. Case :- WRIT - C No. - 9600 of 2017

Petitioner :- Bhaskar Singh

Respondent :- State of U.P. And 3 Others

Counsel for Petitioner :- Ashok Kumar Singh

Counsel for Respondent :- C.S.C.

33. Case :- WRIT - C No. - 9714 of 2017

Petitioner :- Vineeta Prakash Srivastava & 2 Others

Respondent :- State of U.P. & 5 Others

Counsel for Petitioner :- Ashwani Kumar Srivastava, Ajay Kumar Srivastava

Counsel for Respondent :- C.S.C.

34. Case :- WRIT - C No. - 54042 of 2017

Petitioner :- Principal Sri Tara Chand Chaturvedi Inter College & Another

Respondent :- State of U.P. And 3 Others

Counsel for Petitioner :- Alok Dwivedi

Counsel for Respondent :- C.S.C.

35. Case :- WRIT - C No. - 3876 of 2018

Petitioner :- Swatantra Singh And 4 Others

Respondent :- District Inspector of Schools, Chandauli And 3 Others

Counsel for Petitioner :- Indra Raj Singh, Adarsh Singh, Pankaj Lal

Counsel for Respondent :- C.S.C.

36. Case :- WRIT - C No. - 5467 of 2018

Petitioner :- C/M Of Navjeevan Inter College And 3 Others

Respondent :- State of U.P. And 3 Others

Counsel for Petitioner :- Naresh Chandra Tripathi

Counsel for Respondent :- C.S.C.

37. Case :- WRIT - C No. - 14695 of 2018

Petitioner :- Indrajeet Singh And Another

Respondent :- District Inspector of Schools And 3 Others

Counsel for Petitioner :- Indra Raj Singh, Adarsh Singh

Counsel for Respondent :- C.S.C.

38. Case :- WRIT - C No. - 15362 of 2018

Petitioner :- Tarun Kumar Singh And Another

Respondent :- State of U.P. And 3 Others

Counsel for Petitioner :- Indra Raj Singh

Counsel for Respondent :- C.S.C., Adarsh Singh

39. Case :- WRIT - C No. - 16544 of 2018

Petitioner :- Manoj Kumar Verma And Another

Respondent :- State of U.P. And 2 Others

Counsel for Petitioner :- Saurabh Singh,Amit Saxena

Counsel for Respondent :- C.S.C.

40. Case :- WRIT - C No. - 17183 of 2018

Petitioner :- Shri Lal Bahadur Shastri Inter College Sursi Kannauj Through Its Principal

Respondent :- State of U.P. And 3 Others.

Counsel for Petitioner :- Yogesh Kumar Saxena

Counsel for Respondent :- C.S.C.

41. Case :- WRIT - C No. - 18761 of 2018

Petitioner :- Rama Shanker Yadav

Respondent :- State of U.P. And 2 Others

Counsel for Petitioner :- Mrityunjay Khare

Counsel for Respondent :- C.S.C.

42. Case :- WRIT - C No. - 24105 of 2018

Petitioner :- Principal Adarsh Nagrik Inter College And Another

Respondent :- State of U.P. And 3 Others

Counsel for Petitioner :- Naresh Chandra Tripahti

Counsel for Respondent :- C.S.C.

Hon. Sudhir Agarwal, J.

Hon. Om Prakash-VII, J.

1. In all these writ petitions validity of Regulation 101 Chapter III of Regulations framed under U.P. Intermediate Education Act, 1921 (hereinafter referred to as "Regulations"), as amended by State Government vide Government Order dated 04.09.2013, issued in exercise of power under Section 9 of U.P. Intermediate Education Act, 1921 (hereinafter referred to as "Act, 1921"), to the extent it provides management of vacancies of Class IV employees through 'Outsourcing' only, is under challenge.

2. We are not going into individual facts of these writ petitions for the reason that decision on validity of Regulation 101, as amended, and to the extent it is under challenge, if goes in favour of petitioners and against State of Uttar Pradesh and its authorities, Educational Authorities will have to re-examine orders impugned in these writ petitions.

3. Section 16-G of Act, 1921 provides that every person employed in a recognized institution shall be governed by such conditions of service as may be prescribed by Regulations. It also declares that any agreement between management and such employee, who is governed by Regulations, if inconsistent with provisions of Act, 1921 and Regulations, to that extent, agreement shall be void. In Sub-section (2) of Section 16-G of Act, 1921, besides general powers, certain matters which may be governed by Regulations are detailed and identified. It will be useful to quote Section 16-G, as substituted by U.P. Act No.26 of 1975, which read as under :

"16-G. Conditions of service of Head of Institutions, teachers and other employees.-

(1) Every person employed in a recognized institution shall be governed by such conditions of service as may be prescribed by regulations and any agreement between the management and such employee insofar as it is inconsistent with the provisions of this Act or with the regulations shall be void.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), regulations may provide for--

(a) the period of probation, the conditions of confirmation and the procedure and conditions for promotion and punishment including suspension pending or in contemplation of inquiry or during the pendency of investigation, inquiry or trial in any criminal case for an offence involving moral turpitude and the emoluments for the period of suspension and termination of service with notice;

(b) the scales of pay and payment of salaries;

(c) transfer of service from one recognized institution to another;

(d) grant of leave and Provident Fund and other benefits; and

(e) maintenance of record of work and service.

(3) (a) No Principal, Headmaster or teacher may be discharged or removed or dismissed from service or reduced in rank or subject to any diminution in emoluments, or served with notice of termination of service except with the prior approval in writing of the Inspector. The decision of the Inspector shall be communicated within the period to be prescribed by regulations.

(b) The Inspector may approve or disapprove or reduce or enhance the punishment or approve or disapprove of the notice for termination of service proposed by the management:

Provided that in the cases of punishment, before passing orders, the Inspector shall give an opportunity to the Principal, the Headmaster or the teacher to show cause within a fortnight of the receipt of the notice why the proposed punishment should not be inflicted.

(c) Any party may prefer an appeal to the Regional Deputy Director, Education, against an order of the Inspector under clause (b), whether passed before or after the commencement of the Uttar Pradesh Intermediate Education (Sanshodhan) Adhiniyam, 1966, within one month from the date of communication of the order to that party, and the Regional Deputy Director may, after such further enquiry, if any, as he considers necessary, confirm, set aside or modify the order, and the order passed by the Regional Deputy Director shall be final. In case the order under appeal was passed by the very person holding the Office of Regional Deputy Director while acting as Inspector, the appeal shall be transferred by the order of the Director to some other Regional Deputy Director for decision, and the provisions of this clause shall apply in relation to decision by that other Regional Deputy Director as if the appeal had been preferred to himself.

(d) All appeals preferred under clause (c), as it stood before the date of commencement of the Intermediate Education (Sanshodhan) Adhiniyam, 1966, and pending decisions immediately before the said date shall be decided by the Regional Deputy Director, Education, in accordance with clause (c) as substituted by the said Adhiniyam.

(4) An order made or decision given by the competent authority under sub-section (3) shall not be questioned in any Court and the parties concerned shall be bound to execute the directions contained in the order or decision within the period that may be specified therein.

(5) No Head of Institution or teacher shall be suspended by the management, unless in the opinion of the management--

(a) the charges against him are serious enough to merit his dismissal, removal or reduction in rank; or

(b) his continuance in office is likely to hamper or prejudice the conduct of disciplinary proceedings against him; or

(c) any criminal case for an offence involving moral turpitude against him is under investigation, inquiry or trial.

(6) Where any Head of Institution or teacher is suspended by the Committee of Management, it shall be reported to the Inspector within thirty days from the date of the commencement of the Uttar Pradesh Secondary Education Laws (Amendment) Act, 1975, in case the order of suspension was passed before such commencement, and within seven days from the date of the order of suspension in any other case, and the report shall contain such particulars as may be prescribed and be accompanied by all relevant documents.

(7) No such order of suspension shall, unless approved in writing by the Inspector, remain in force for more than sixty days from the date of commencement of the Uttar Pradesh Secondary Education Laws (Amendment) Act, 1975, or as the case may be, from the date of such order, and the order of the Inspector shall be final and shall not be questioned in any Court.

(8) If, at any time, the Inspector is satisfied that disciplinary proceedings against the Head of Institution or teacher are being delayed, for no fault of the Head of Institution or the teacher, the Inspector may, after affording opportunity to the Management to make representation revoke an order of suspension passed under this section.

(9) All appeals pending before the Deputy Director of Education (Women) immediately before the commencement of this sub-section shall be transferred to the Joint Director of Education (Women) for disposal :

Provided that where the Deputy Director of Education (Women) has already commenced the hearing of any such appeal before the commencement of this sub-section, the appeal shall be disposed of by the Deputy Director of Education (Women) herself.

Explanation.--For the purposes of this section, the expression "Regional Deputy Director of Education" shall, in relation to a girl's institution mean the "Joint Director of Education (Women)" (emphasis added)

4. The term "Prescribed" and "Regulations" are defined in Section 2(c) and (e) of Act, 1921 and read as under :

"(c) "Prescribed" means prescribed by regulations."

"(e) "Regulations" means Regulations made by the Board under this Act."

5. 'Board' is also defined in Section 2(a) of Act, 1921, which means, "Board of High School and Intermediate Education". Therefore, power to make Regulations is conferred on Board. In respect of matters dealing with conditions of service of employees, teaching and non teaching, employed in a recognized institution, it is the Board who is competent to make Regulations.

6. The terms "Institution" and "Recognition" are also defined in Section 2(b) and (d) of Act, 1921, which read as under :

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

"(d) "Recognition" means recognition for the purpose of preparing candidates for admission to the Board's Examinations."

7. Section 9 of Act, 1921 confers power upon Government to address the Board with reference to any work conducted or done by it and consequential compliance action by the Board. The language of Section 9 of Act, 1921 shows that overriding power has been given to State Government to get its views/decision implemented, which are to be complied by the Board.

8. Similarly, for modification, rescission or making of Regulation, State Government, under Section 9(4) of Act, 1921, has power to direct Board to do the needful, as desired by State Government. Here also overriding power has been given to State Government to issue orders for modification, rescission or making of any Regulation in respect of any matter and such order simply is to be informed to the Board. Meaning thereby, once Government itself causes any modification, rescission or makes any Regulation, the said order of Government will result in requisite change in Regulation. The only guiding factor is that action of Government must be consistent with provisions of Act, 1921. It may be appropriate to reproduce Section 9 of Act, 1921, as it stands after its amendment made by U.P. Act No.26 of 1975, which reads as under :

"Power of State Government.- (1) The State Government shall have the right to address the Board with reference to any of the works conducted or done by the Board and to communicate to the Board its views on any matter with which the Board is concerned.

(2) The Board shall report to the State Government such action, if any, as it is proposed to take or has been taken upon its communication.

(3) If the Board does not, within a reasonable time, take action to the satisfaction of the State Government, the State Government may, after considering any explanation furnished or representation made by the Board, issue such directions consistent with

this Act as it may think fit, and the Board shall comply with such directions.

(4) Whenever, in the opinion of the State Government, it is necessary or expedient to take immediate action, it may, without making any reference to the Board under the foregoing provisions, pass such order or take such other action consistent with the provisions of this Act as it deems necessary, and in particular, may by such order modify or rescind or make any regulation in respect of any matter and shall forthwith inform the Board accordingly.

(5) No action taken by the State Government under sub-section (4), shall be called in question." (emphasis added)

9. It is also on record that Regulations have been framed under Act 1921 dealing with various subjects. Chapter II of Regulations deals with subject of "Appointment of Heads of Institutions and Teachers" and is referable to Sections 16-E, 16-F and 16-FF of Act, 1921. For our purposes it is Chapter III, which deals with the subject of "Conditions of service" and refers to Section 16-G, of Act 1921, which is relevant in the present set of writ petitions.

10. Regulations 24 to 30 deals with "Termination of Service"; Regulations 31 to 45 deals with subject of "Punishment, Enquiry and Suspension"; Regulations 46 to 54 deals with subject of "Scale of pay and payment of salaries"; Regulations 55 to 61 (Regulation 62 has been omitted by Notification dated 22.2.1992, published in U.P. Gazette Part 4, dated 14.03.1992) deals with subject of "Transfer from one Institution to another"; Regulations 63 to 67 deals with subject of "Part time tuition and benefits thereof"; Regulations 68 to 76 deals with subject of "Maintenance of Record of work and service"; Regulations 77 to 82 deals with subject "Provident Fund"; and, Regulations 86 to 98 deals with subject "Appeal"; (Regulations 83 to 85 have been omitted).

11. Thereafter, Regulation 99 deals with subject of "leave". Regulation 100 provides that for ministerial staff including Librarian, Committee of Management shall be the Appointing Authority but in respect of Class IV employees, Principal shall be the Appointing Authority. It further provides that initial appointment shall be made on probation, period whereof will be one year. It also provides that in respect of confirmation and other service conditions of ministerial and Class IV employees, Regulations 1, 4 to 8, 10, 11, 15, 24 to 26, 30, 32 to 34, 36 to 38, 40 to 43, 45 to 52, 54, 66, 67, 70 to 73 and 76 to 82 shall be applicable, subject to necessary changes, as required. It further says that in respect of Class IV employees, Regulation 77 to 82, which relates to "Provident Fund" shall be applicable only when necessary instructions would be given by State Government. Regulation 100 specifically declares that in respect of ministerial and Class IV employees, including Librarian, Regulations 9, 12, 13, 14, 16 to 20, 27, 28, 54, 55 to 65 and 97 shall not be applicable.

12. Then comes Regulation 101. This was inserted vide Parishad 9/592 dated 28.8.92 Govt-Notification No.400/15-7-2(1)-90 dated 30-7-1992 and reads as under :

^^fu;qfDr izkf/kdkjh] fujh{kd ds iwokZuqeksnu ds flok; fdllh ekU;rk izkIr] lgk;rk izkIr laLFkk ds f'k{k.Rrj LVkQ esa fdllh fjfDr dks ugha Hkjsxk A^^ "Appointing

Authority except with prior approval of Inspector shall not fill up any vacancy of non-teaching post of any recognised aided institution." (English Translation by Court)

13. Regulation 101 was substituted by Notification No.300/XV-7-2(1)/90, dated 2nd February, 1995 and substituted regulation reads as under :

"Appointing Authority except with prior approval of Inspector shall not fill up any vacancy of non-teaching post of any recognised aided institution :

Provided that filling of the vacancy on the post of Jamadar may be granted by the Inspector."

14. Again Regulation 101 was amended vide Notification No. 9/898 dated 31.12.2009 and reads as under :

^^fu;qfDr izkf/kdkjh] fujh{kd ds iwokZuqeksnu ds flok; fdlh ekU;rk izkIr] lgk;rk izkIr laLFkk ds f'k{k.ksRrj LVkQ esa fdlh fjdDr dks ugha Hkjsxk] izfrcU/k ;g gS fd ftyk fo|ky; fujh{kd leLr fjdDr;ksa dh la[k f'k{k{k funks'kd] ek/;fed dks miyC/k dj;sxk rFkk laLFkk esa Nk= la[k n'kkZrs gq;s inksa dks Hkjs tkus ds vkSfpR; dks Hkh Li"V djsaxsa f'k{k{k funks'kd] ek/;fed ls vkns'k izkIr gksus ij ftyk fo|ky; fujh{kd mDr fjdDr;ksa dks Hkjus gsrq fu;qfDr izkf/kdkjh dks vuqefr iznku djsxk vkSj vuqefr iznku djrs le; 'kklu }kjk fu/kkZfjr vkj{k.k fu;eksa ,oa inksa ds vkSfpR; ds fy;s fu/kkZfjr ekudksa dk ikyu dj;sxk mDr fofue; la'kks/ku rRdkfyd izHkko ls ykxw gksxkA**
"The appointing authority shall not fill any vacancy of the non-teaching staff of recognised aided institutions, except with the approval of Inspector, subject to a restriction that District Inspector of Schools shall make available total number of vacancies to Director of Education (Secondary Education), and showing the number of students put forth justification for the filling of the vacancies. On receipt of order from the Director of Education (Secondary Education), the District Inspector of Schools shall, for filling said vacancies, give permission to the appointing authority; and while giving such permission he shall ensure to follow the reservation rules specified by the government and the prescribed norms in justification for the posts.

The aforesaid amendment in the Regulation shall come into force immediate effect."
(English Translation by Court)

15. Now, this Regulation 101 has been amended by State Government by Government Order dated 04.09.2013 and amended Regulations issued by State Government reads as under :

^^fu;qfDr izkf/kdkjh] fujh{kd ds iwokZuqeksnu ds flok; fdlh ekU;rk izkIr] lgk;rk izkIr laLFkk ds f'k{k.ksRrj ¼fyfid laoxZ½ in dh fjdDr dks ugha HkjsxkA izfrcU/k ;g gS fd ftyk fo|ky; fujh{kd leLr fjdDr;ksa dh la[k f'k{k{k funks'kd] ek/;fed dks miyC/k dj;sxk rFkk laLFkk esa Nk= la[k n'kkZrs gq;s inksa dks Hkjs tkus ds vkSfpR; dks Hkh Li"V

djsaxsA f'k{kk funs'kd ek/;fed ls vkns'k izkIr gksus ij ftyk fo|ky; fujh{kD mDr fjfDr;ksa ¼prqFkZ Js.kh fjDr;ksa dks NksM+dj½ dks Hkjus gsrq fu;qfDr izkf/kdkjh dks vuqefr iznku djsxk vkSj vuqefr iznku djrs le; 'kklu }kjk fu/kkZfjr vkj{k.k fu;eksa ,oa inksa ds vkSfpR; ds fy;s fu/kkZfjr ekudksa dk ikyu dj;k;sxkA prqFkZ Js.kh dh fjfDr;ksa ds lEcU/k esa dsoy vkmVlksflZax ds ek/;e ls O;oLFkk dh tk;sxhA ijUrq mijksDr v'kkldh; lgk;rk izkIr laLFkkvksa ds lsokdky esa e`r f'k{kd vFkok f'k{k.k.sRrj deZpkfj;ksa ds vkfJrksa dh HkrhZ gsrq lqlaxr fu;ekoyh] 1981] le;□ij ;Fkk la'kksf/kr ds vUrxZr prqFkZ Js.kh ds fjDRk inksa ij dh tkus okyh fu;qfDr ds lEcU/k esa ykxw ugha gksxhA** (emphasis added) "The appointing authority, except for the prior approval of the inspector, shall not fill any vacant post of non-teaching staff (clerical cadre) in any recognised or aided institution; with the restriction that the District Inspector of Schools shall make available the total number of vacancies to the Director of Education (Secondary Education) and also put forth justification for filling of the posts, showing the strength of the students in the institution. On receipt of the order from Director of Education (Secondary Education), the District Inspector of Schools shall give permission to the appointing authority for filling the said vacancies (except the vacancies of Class-IV posts) and while giving the permission, he shall ensure compliance of the reservation rules specified by the government as also of the prescribed norms in justification for the posts.

With respect to the Class-IV vacancies, arrangements shall be made by way of outsourcing only; but the relevant rules, 1981, as amended from time to time, for recruitment of dependants of teaching or non-teaching staff of the non-government aided institutions dying in harness shall be applicable in relation to the appointments to be made on the vacant posts of Class-IV category."

(English Translation by Court)

16. Regulation 101, as it stands now amended, makes no changes in the Scheme of other Regulations applicable to Class IV employees. It only requires that before making appointment, Appointing Authority shall seek prior approval from District Inspector of Schools (hereinafter referred to as "DIOS concerned"). Power of DIOS is restricted by Regulation 101 that before granting approval, he shall inform number of vacancies, number of students in the Institution concerned and justification for filling in vacancy to Director of Education (Secondary) [hereinafter referred to as "D.E.(Sec.)] and after receiving order from D.E. (Sec.), approval shall be granted and DIOS shall ensure filling in vacancies by observing provisions relating to reservation and justification of posts as per prescribed standards. This part is fully procedural, therefore, whatever restriction was imposed by way of Regulations, no Educational Institution felt aggrieved therewith but for the first time, in respect of Class IV employees, a different condition has been imposed in Regulation 101 (vide notification dated 04.09.2013) and that has caused serious discontentment amongst Management of recognised institutions as also candidates aspiring for employment and that is how it has been challenged.

17. By impugned amended Regulation 101, it has been provided that Class IV vacancies shall be managed only by the system of 'Outsourcing', therefore, no recruitment by Competent Appointing

Authority is permissible against existing vacancies of Class IV employees, and, such vacancies are to be managed by system of 'Outsourcing'. One exception, however, has been provided that wherever appointment by way of compassionate appointment is to be made in non-Government recognized aided Educational Institution, restriction of outsourcing on Class IV employees shall not be applicable. Meaning thereby, against Class IV vacancies, existing provisions for making appointment on compassionate basis will continue to apply but in respect of all other unfilled vacancies of Class IV employees, no appointment in any manner shall be allowed since such vacancies have to be arranged/managed by the system of 'Outsourcing'.

18. Learned counsel for petitioners vehemently contended that teaching and non-teaching staff are appointed by Competent Authority, whether Management or Principal, as the case may be, following various provisions of Regulations read with Act, 1921. The recognized institutions, which are aided, therein payment of salary of teaching and non-teaching staff is governed by the provisions of Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 (hereinafter referred to as "U.P. Act, 1971"). The obligation to make payment of salary to the staff, governed by U.P. Act, 1971, is upon State Government. No Educational Institution governed by U.P. Act, 1971 is empowered to create any post whether in teaching or non-teaching cadre except as provided in Section 9 of U.P. Act, 1971, including Class IV employees.

19. There is no amendment in scheme of various statutes, which includes Principal Legislation as well as Regulations. In a strange manner, appointment of Class IV staff has been prohibited by directing that vacancies of Class IV employees shall be managed through 'Outsourcing', which is a vague term having not been defined anywhere and without specifying as to how scheme of appointment, other conditions of service and payment of salary etc. shall be operated. This restriction has been imposed in a very clandestine manner. It is wholly irrational and arbitrary, hence, ultra vires of various provisions of Act, 1921 and U.P. Act, 1971. It is further contended that bringing concept of 'Outsourcing' is arbitrary, has no rational or nexus with the object sought to be achieved. Even otherwise, classification of Class IV employees by creating a separate compartment and limiting it to 'Outsourcing' is violative of Articles 14 and 16(1) of Constitution.

20. Learned Standing Counsel, on the contrary, contended that for better management of Class IV employees, Government has adopted scheme of 'Outsourcing' and therefore, warrants no interference.

21. Sri Radha Kant Ojha, Senior Advocate, assisted by Sri Ashish Kumar Ojha, and Sri S.K.Tiwari, Sri Yogish Kumar Saxena, Sri Ashutosh Mani Tripathi, Sri S.P.Singh, Sri R.K.Singh Kaosik, Sri Kedar Nath Mishra, Sri Ajay Kumar Srivastava, Sri Alok Dwivedi, Sri Rakesh Kumar, Advocate, holding brief of Sri Prakash Padia and Sri Adarsh Singh, Advocate, holding brief of Sri Indra Raj Singh, Advocates have appeared on behalf of petitioners in these writ petitions and Sri Neeraj Tripathi, Additional Advocate General, has appeared for respondents.

22. Regulation 101 from its bare reading is applicable only to a recognized institution, which is aided by Government. It deals with non-teaching staff of such institution. Therefore, it cannot be doubted that Regulation 101 deals with non-teaching staff of such Educational Institution, which are within

the ambit of U.P. Act, 1971.

23. Section 2(f) of U.P. Act, 1971 defines "Employee" and Section 2(g) of U.P. Act, 1971 defines "Salary" and the same read as under :

"(f) "Employee" of an institution means non-teaching employees in respect of whose employment maintenance grant is paid by the State Government to the institution."

"(g) "Salary" of teacher or employee means the aggregate of the emoluments including dearness or any other allowance, for the time being payable to him at the rates approved for the purpose of payment of maintenance grant." (emphasis added)

24. Sub-section (1) of Section 3 of U.P. Act, 1971 provides that notwithstanding any contract to the contrary, salary of teacher and other employee of an institution in respect of any period after 31st March, 1971 shall be paid before expiry of 20th day, or such earlier day as State Government may, by general or special order in that behalf, appoint, of the month next following the month in respect of which or any part of which it is payable. Sub-section (2) of Section 3 of U.P. Act, 1971 prohibits any deduction from salary of teaching and non-teaching staff except those authorised by Regulations or any Rules made under U.P. Act, 1971 or by any other law for the time being in force. In case Institution fails to make payment, as contemplated in Section 3(1) of U.P. Act, 1971, DIOS is authorized and empowered to make payment of salary.

25. Then comes procedure for payment of salary of institutions within the ambit of U.P. Act, 1971. It reads as under :

5. Procedure for payment of salary in the case of certain institutions. - (1) The management of every institution shall, for the purpose of disbursement of salaries to its teachers and employees, open in a Scheduled Bank or a Cooperative Bank a separate account to be opened jointly by a representative of the management and by the Inspector or such other officer as may be authorised in that behalf :

Provided that after the account is opened, the Inspector may, if he is, subject to any rules made under this Act, satisfied that it is expedient in the public interest so to do, instruct the bank that the account shall be operated by the representative as the management alone, and may at any time revoke such instruction :

Provided further that in the case referred to in the provision to subsection (2), or where a difficulty arises in the disbursement of salaries due to any default of the management, the Inspector may instruct the Bank that the account shall be operated only by himself or by such other officer as may be authorised by him in that behalf and may at any time revoke such instruction.

(2) The management shall deposit in the said account by such date as may be specified by general or special orders by the Inspector, eighty per cent or where the

State Government or an officer authorised by the State Government having regard to the money required to be disbursed directs a higher percentage, then such higher percentage as it or he may direct of the amount received from students as fees which in accordance with the general or special orders of the State Government in that behalf and for so long as such orders are not made in accordance with the direction of the Inspector form part of the maintenance fund :

Provided that where the said percentage of fees is not deposited as aforesaid the Inspector may by order prohibit the management from making any realization of fees from the students, and thereupon the Inspector may recover the fees (either through the teachers of the institution or in such other manner as the thinks fit) directly from the students and shall deposit the fees so recovered in the said account.

(3) The entire amount of the maintenance grant and the amount of eighty per cent or such higher percentage as the State Government or an officer authorised by the State Government, may be general or special order in that behalf determine, of the grants for reimbursement of free ships and other similar concessions shall also be paid by the State Government into the said account.

(4) No money credited to the said account shall be applied for any purpose except the following, namely :

(a) payment of the said salaries falling due for any period after March 31, 1971;

(b) credit of the institution's contribution, if any, to the provident fund accounts of the teachers and employees;

(c) such other expenditure for the purposes of the institution as may be directed by the State Government or by an officer authorised by the State Government in that behalf;

and such portion of the balance in the accounts at the end of the month of July each year as exceeds the aggregate of one month's salary of the teachers and employees of the institution after meeting the liability for payment of their salaries for the period for which fees have been realised from the students shall be made over to the management for expenditure on the institution;

(5) The salary of a teacher or employee shall be paid by transfer of the amount from the said account, in any, in the same bank, or if he has no account in that bank, then by cheque.

(6) In respect of a place where there is no Scheduled Bank or a Cooperative Bank, the provisions of this section shall apply with such modifications as the State Government may, by notification in the Gazette specify, and the reference in this section to bank shall in that case be construed as reference to a post office savings bank." (emphasis added)

26. Section 5 of U.P. Act, 1971, therefore, makes it clear that a joint account shall be opened by Management and DIOS or any such officer authorized by him, in a Bank for the purpose of disbursement of salary to teaching and non teaching staff. Vide Section 5(2) of U.P. Act, 1971, Management is under an obligation to deposit eighty percent or where higher percentage is prescribed by State Government, such higher percentage, received by it from students as fees, in accordance with general and special orders of State Government and such amount shall form part of maintenance fund.

27. The term "Maintenance Grant" has been defined in Section 2(c) of U.P. Act, 1971, which read as under :

(c) "Maintenance Grant" means such grant-in-aid of an institution, as the State Government by general or special order in that behalf direct to be treated as maintenance grant appropriate to the level of the institution;

28. Deposit of amount of fee, as directed in Section 5(2) of U.P. Act, 1971 is mandatory. The amount of maintenance grant etc. shall also be paid by State Government in aforesaid salary account, as provided in Section 5(3). Section 5(4) restricts application of aforesaid fund except for the purpose as stated therein. Section 5(5) provides that salary of a teacher or employee shall be paid by transfer of the amount from the said account to his account, if any, in the same bank, or if he has no account in that bank, then by cheque.

29. In order to avoid unnecessary burden on State Exchequer in the form of increase of 'maintenance grant' due to arbitrary increase of posts in the College, restriction has been imposed on creation of posts in recognised institutions by Section 9 of U.P. Act, 1971 and it reads as under :

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

30. Thus, no new post of teacher or other employee can be created in an institution except with previous approval of D.E.(Sec.), or such officer as may be empowered in this behalf by D.E.(Sec.). A declaration has been made in Section 10 of U.P. Act, 1971 that liability of payment of salaries of teachers and employees is that of State Government and it reads as under :

"10. Liability in respect of salary. - (1) The State Government shall be liable for payment of salaries of teachers and employees of every institution due in respect of any period after March 31, 1971.

(2) The State Government may recover any amount in respect of which any liability is incurred by its under sub-section (1) by attachment of the income from the property belonging to or vested in the institution as if that amount were an arrear of land revenue due from the institution.

(3) Nothing in this Section shall be deemed to derogate from the liability of the institution for any such dues to the teacher or employee. (emphasis added)

31. When we questioned learned Standing Counsel as to how scheme of payment of salary, as contemplated under U.P. Act, 1971, shall be observed and complied in case a Class IV employees shall be arranged by 'Outsourcing', and, whether scheme of payment of salary provided in U.P. Act, 1971, applicable to recognized aided Secondary Educational Institutions can be made inoperative by way of making an amendment in Regulation 101 and providing that vacancy of Class IV employees shall be managed by 'outsourcing', no reply could be given by him. It also could not be shown that Class IV employees, if managed by 'Outsourcing' their expenses shall be borne by State Government in any other manner without touching "maintenance grant", which obviously has to be governed strictly by U.P. Act, 1971, in the absence of any otherwise amendment in the said statute. Even liability of deposit of 80% of amount collected as student fee by College continues as such.

32. The next aspect is that for appointment of teaching and non-teaching staff, as we have already discussed in detail, a complete set of Regulations have been made. The existing sanctioned posts of Class IV employees when become vacant, process of recruitment, as provided in Regulations framed under Act, 1921, will have to be followed. A Class IV employee, in the light of Regulation 100, initially has to be appointed on probation. In the light of Regulation 100 we find, when a Class IV employee is to be appointed, he shall be entitled to payment of salary, as prescribed by State Government under Regulation 47 and thereafter shall be entitled to increment etc., as provided under other Regulations. Some of the Regulations, which deal with appointment including Class IV employees are :

(i) Regulation 1 read with Regulation 100 provides that existing substantive vacancy shall be filled in by next coming 31st July, which was existing on the date of opening of Education Institution.

(ii) Regulation 2 sub-regulation (2) provides that 50 per cent of Class III vacancies shall be filled in by promotion of Class IV employees and for promotion, one must have 5 years continuous substantive service and good character roll.

(iii) Regulation 7 provides that substantively selected and appointed person shall be appointed on probation which shall commence from the date he joins.

(iv) Regulation 10 provides that on completion of probation, subject to satisfaction of conditions of Regulation 9, wherever applicable the incumbent shall be confirmed. Then there are provisions of leave etc. and departmental inquiry which are applicable to Class IV employees also by virtue of Regulation 100.

33. How such Regulations can be applied to a Class IV employees arranged by 'Outsourcing', nothing has been clarified and when we questioned learned Standing Counsel, he was also not in a position to give any satisfactory reply.

34. We then also inquired from him as to what is the concept of 'Outsourcing' which is contemplated in impugned amended Regulation 101 and whether this 'Outsourcing' has been dealt with in any Regulation, but, on this aspect also, he could give no reply at all.

What is 'Outsourcing'

35. This situation has left to the Court to examine concept of 'Outsourcing' in common parlance.

36. 'Outsourcing', as known in common parlance, is neither a technical term nor a term of art. Its origin we relate back to 1700 A.D., when countries where labour was cheaper, they were engaged for production by way of 'Outsourcing'. Britishers used to bring raw material to India and exploiting labour, which was in abundance and cheaper, got the manufacturing done and thereafter export the product.

37. In independent India, we find that system of 'Outsourcing' gained momentum in recent past and, broadly, it takes us to 1980s when some global airlines started 'Outsourcing' their back office work to India and subsequently followed by Information Technology Companies which got accelerated in 1990s. Earlier, one common 'Outsourcing' practice was to employ a vehicle with driver instead of keeping own vehicle and driver, which made it free from burden of maintenance of vehicles and employment of skilled persons i.e. drivers for running those vehicles. Now, companies have started focusing on core competence on 'Outsourcing' and on non-core functions also. Still concept of 'Outsourcing' in Industrial sectors is not with respect to entire functions but certain job requirements, practice and other functions which are identified for 'Outsourcing'.

38. Thus, State Government when introduced concept of 'Outsourcing', it has to be shown as to what functions have been identified, which can be managed by 'Outsourcing' and it has also to explain that such 'Outsourcing' is not contrary to law, arbitrary, discriminatory, violative of any statutory provisions and also does not amount to 'unfair labour practice' or victimizing the poor persons since 'Outsourcing' has been employed by State Government only in respect of Class IV and not to higher Cadres.

39. When this Court enquired from Sri Neeraj Tripathi, learned Additional Advocate General as to what Government means by asking Educational Institutions to go for "Outsourcing" instead of making recruitment on Class-IV posts, he simply replied that Educational Institutions shall not have to recruit any Class-IV employee on their own but may have their work done, meant to be performed by Class-IV employees, by employing persons from Labour Suppliers i.e. Contractor or the Organizations engaged in the work of "Outsourcing". He was immediately confronted, whether it amounts to a contract labour supply to which he said that exactly that is not the purpose but to some extent there may be some similarity.

40. When this Court proceeds to consider the meaning and ambit of the term "Outsourcing"; immediate questions arise (a) what is 'Outsourcing'; (b) what can be outsourced; (c) where one can find outsourcing resources; and, (d) is it a uni-kind of system or multiple kind.

41. The term "outsourcing" is not a very commonly recognized term in various Dictionaries but some recent and revised editions contain this term and define it.

42. The "Concise Oxford English Dictionary Indian Edition" (11th Edition Revised) (2008) published by Oxford University Press, New Delhi at page 1017 defines the term "outsourcing" as under:

"Outsourcing-obtain by contract from an outside supplier."

43. "Wikipedia" describes the term "outsourcing" as "the process of contracting a business function to someone else". In the commercial world particularly among the managerial class, the term "Outsourcing" is known in various ways. According to some "Outsourcing" is any task, operation, job or process that can be performed by employees of company, but is instead, contracted to a third party for a significant period of time. Hiring a temporary employee when a regular employee in an institution is on leave is not "Outsourcing". According to some others "Outsourcing" is contracting with other company or persons to do a particular function. Normally outsourcing is resorted to such functions which are considered "non-core to the business". Another definition or meaning of "Outsourcing" is that it is simply farming out of services to a third party. The central idea, therefore, discerned from above is, that, "Outsourcing" is the process of contracting a function to someone else. Its opposite is "Insourcing".

44. "Insourcing" has been identified as a mean to ensure, control, compliance and to gain competitive differentiation through vertical integration or the development of shared services. "Insourcing" is also called as vertical integration.

45. "Outsourcing" is considered to be something more than purchasing and more than consulting. It is a long term results oriented relationship for a whole activity normally commercial over which the Provider has a large amount of control and managerial discretion. "Outsourcing" is the use of outside business relationship to perform necessary business activities and processes in lieu of internal capabilities. The most common forms of outsourcing presently known are "Information Technology Outsourcing" (ITO), "Business Process Outsourcing" (BPO) and Knowledge Process Outsourcing" (KPO). Business Process Outsourcing encompasses, Call Center Outsourcing, Human Resources Outsourcing, Finance and Accounting Outsourcing and Claims Processing Outsourcing.

46. The organizations seeking "Outsourcing" normally take into account the issues like, cost savings, focus on core business, cost restructuring, improvement of quality, access and availability of better knowledge and experience, operational expertise, access to talent, capacity management, catalyst for change, enhancement for capacity of innovation, reduction of time in production of a product for supply to the market, Commodification, Risk Management, Tax Benefit, Venture Capital, Scalability, Creating Leisure Time, Reducing Liability, Revenue etc.

47. "Outsourcing", therefore, is the use of outside business relationship to perform necessary business activities and processes in lieu of internal capabilities. Those who provide "Outsourcing" facilities are called Outsourcing Partners, Outsourcing Suppliers and Providers. Those who go to

purchase outsourcing services are called "Buyers" and "Users" in common parlance. The key to the definition of "Outsourcing" is the aspect of transfer of control. In Outsourcing, the Buyer normally does not instruct Supplier how to perform its task but, instead, focuses on communicating what results it want to buy. It leaves the process of accomplishing those results to supplier.

48. There are different kinds of outsourcing, namely, Tactical Outsourcing, Strategic Outsourcing, Transformational Outsourcing etc.

49. Though the term "outsourcing" as such has not been considered in detail by Courts but its purport and object can be discerned in the context the same has been referred to in certain decisions.

50. In Common Cause (A Regd. Society) Vs. Union of India and others, JT 2008 (4) SC 317 the Court considered a situation where a committee is appointed by the Court but with a further authority to issue orders to authorities or to public. Deprecating this practice in para 36 of the judgement the Court said:

"36. We would also like to advert to orders by some Courts appointing committees giving these committees power to issue orders to the authorities or to the public. This is wholly unconstitutional. The power to issue a mandamus or injunction is only with the Court. The Court cannot abdicate its function by handing over its powers under the Constitution or the C.P.C. or Cr.P.C. to a person or committee appointed by it. Such 'outsourcing' of judicial functions is not only illegal and unconstitutional, it is also giving rise to adverse public comment due to the alleged despotic behaviour of these committees and some other allegations. A committee can be appointed by the Court to gather some information and/or give some suggestions to the Court on a matter pending before it, but the Court cannot arm such a committee to issue orders which only a Court can do."

(emphasis added)

51. The above discussion clearly suggests and demonstrates that 'Outsourcing' does contemplate performance of job or function or work by a body outside the buyer or purchaser and the service provider himself performs the job through its own agencies and it cannot be equated with the supply of labour or employees by a third party. The two connote different situations, functions and idea. They are not same and identical. In the system of labour supplier, there is an introduction of middleman who makes the workers available as a commodity without creating any employer and employee relationship with Principal Employer and the contract labour but outsourcing as such is not the involvement of a middleman for arranging the labour force but it is the system where a particular kind of job or performance itself is performed by third party, i.e., the service is provided through his own man and it is the own result which is made available to purchaser or buyer.

52. Sixth Pay Commission, in order to reduce financial burden on Government on employment of persons for discharge of its various functions, recommended introduction of contractual

employment for selected posts, particularly those requiring high professional skills. Under this recommendation, suitable persons from outside could be inducted in the Government on negotiated salary/emolument.

53. Seventh Pay Commission, however, peeped into the system of 'Outsourcing' of service in more detail. It states that General Financial Rules of Government of India provide for 'Outsourcing' of services in the interest of economy and efficiency. However, from discussion made in para 3.72 of Chapter 3 of Seventh Pay Commission Report, we find that these General Financial Rules were in relation to 'Work Contract' and provided guidelines of identification of Contractors and tendering process. From the Report of Seventh Pay Commission, we find that it sought views of different departments on contractual manpower, which it termed as "Outsourcing". Commission also inquired from different departments of Government of India whether there existed a clear identification of jobs that can be Outsourced.

54. Different Ministries submitted their response which Commission said that it is mixed one. It is the Department of Personnel and Training, which suggested removal of category of Group 'D' employees, and, those who are already in service, to be moved up to Group 'C' cadre through a process of training. It opined that unskilled functions in Government sectors should be contracted from 'Outsources'. Ministry of Defence shared its experience that 'Outsourcing' in conservancy service and transport is quite good. Central Board of Direct Taxes though supported 'Outsourcing' but cautioned for need of effecting some streamlining. Ministry of AYUSH also supported 'Outsourcing' of routine administrative works. Most departments, however, supported 'Outsourcing' but with qualifications. Department of Posts stated that 'Outsourcing' in core operation would not be suitable since outsourced manpower keep on changing frequently and it is difficult to train them. However, it was not against outsourcing for housekeeping, maintenance related activities, driving staff and secretarial assistance. Department of Economic Affairs, however, was strongly against 'Outsourcing' and said that it should be used in the rarest of rare cases for duties of a peripheral nature. Ministry of Power said that 'Outsourcing' could only temporarily supplement the requirements of Government. They also expressed their concern with regard to confidentiality and accountability of outsourced personnel. National Informatics Centre was also against 'Outsourcing'.

55. In para 3.80 of Report, Commission said that responses and data received by Commission suggest that there is a general consensus that routine administrative jobs in the Government can continue to be outsourced. However, Commission was of the view that a clear guidance from the Government on jobs, that can and should be, contracted out, would be appropriate. While doing so, Government must also take care of concern of confidentiality and accountability. Further, to bring about continuity and to address the concern regarding exploitation of contractual manpower, uniform guidelines/model contract agreements need be devised by the Government.

56. In para 3.83, the conclusion and recommendations of Seventh Pay Commission are given and the same are reproduced as under :

"3.83 The following are the conclusions and recommendations:

- i. The Commission notes that based on the medium term goals and priorities of the government, a determination of skills and competencies required to meet them, needs to be made across Central Government ministries/departments. This will have implications both for recruitment policy as well as the size and composition of the government.
- ii. To ensure integrity and availability of consistent data on personnel in the government, the Commission is of the view that the database on personnel needs to be standardised on an IT platform, across all civil ministries/departments. This will facilitate ease in compilation, aggregation and make reliable data readily available to concerned stakeholders.
- iii. The Commission notes that in addition to details on composition of personnel in terms of the Group 'A', 'B' and 'C' it would be useful both for purposes of management information and decision making if reliable data on personnel in terms of job families is collected.
- iv. Retiring personnel in a number of ministries/departments are substantial and this presents two sets of implications. At one level losing experienced high level personnel entails unquantifiable costs as new recruits will require training and on the job skills. At the same time it presents ministries/departments the opportunity to align their personnel requirement in line with their current and future challenges.
- v. The Commission recommends that the Department of Posts budget and account for remuneration of Gramin Dak Sevaks under a head distinct from Salaries, as they are not reckoned as Central Government employees.
- vi. For the purposes of transparency and availability of information in the public domain, it is recommended that a separate Object head may be created to capture expenditure on Allowances in Civil, Defence, Railways and Posts.
- vii. The Commission is of the view that a clear guidance from the government on jobs that can and should be contracted out would be appropriate. While doing so the concerns of confidentiality and accountability may be kept in view. Further, to bring about continuity and to address the concerns regarding exploitation of contractual manpower, uniform guidelines/ model contract agreements may be devised by the government.
- viii. The Commission is also of the view that a database should be available with the government which can enable it to draw upon high level retiring personnel, who have subject matter knowledge, experience and skills to be utilised through contractual appointments." (emphasis added)

57. Regarding the merits and demerits of 'Outsourcing' there are different views but this Court is not required to go into it since discussion about "Outsourcing" made above is only in furtherance to understand what Regulation 101 intended to do, whether in view of relevant provisions of statute, it is permissible to do so.

Relevant Statutes

58. The relevant statutes which have been referred to by both sides are Act, 1921 and U.P. Act, 1971.

59. Act, 1921 is pre-constitutional enactment. Prior thereto secondary education was governed and managed by Allahabad University. Act 1921 was enacted to establish a Board to take place of Allahabad University for regulating and supervising High School and Intermediate Education system in U.P. and to prescribe courses therefor. It constituted Board of High Schools and Intermediate, U.P. (hereinafter referred to as the "Board").

60. Here a question incidentally may also arise as to the status of "Board". This came up for consideration before a Division Bench of this Court in Ghulam Haqqani Khan Vs. State Of Uttar Pradesh And Ors, AIR 1962 Alld. 413. Two separate but concurrent judgments were rendered by Hon'ble B. Mukerji and S.C. Manchanda, JJ. The two questions formulated by Bench are stated in para 33a of the judgment, which reads as under:

"(1) Whether the Board is a statutory authority, and if so, whether it is possible to create a statutory body as a department of Government?

(2) If the Legislature under Act II of 1921; has fixed the ambit and scope of the powers to be exercised by such statutory body can any one else interfere therewith or enlarge their scope?"

61. Hon'ble Manchanda, J. observed that the Legislature intended the Board to be independent only in certain respects subject to overriding fiscal and general administrative control of Government. It referred to and relied on a G.O. dated 13.04.1951 stating that the office of Board of High School is separate from that of Director of Education and appointments to higher clerical posts in any one of those offices are to be confined to clerks of that office only. This means that for certain purposes Board is treated separate from Education Department and normally higher clerical posts are not interchangeable. It further observed that there is no inherent impossibility in a statutory authority being at the same time a department of Government unless the Act itself, which creates the authority, gives it a separate legal status, i.e., provides it with the right of perpetual succession, a common seal, right to sue and to be sued in its own name. Such a body as the Board, cannot have a separate legal existence for all purposes. It must, necessarily, in the matter of administration and fiscal control, be under the authority of someone else. His Lordship also observed that:

"It is true that the Act itself nowhere says that it shall be a department of Government but when the historical background is taken into consideration the appointments of the staff from the very inception of the Board were made by the Government, salaries

to the ministerial staff were paid by the Government; the appointments, transfers, suspension and removal were always by the Government--the budget provisions for the Board were made by the State Government--shows that the Board was always treated as a department of Government for all purposes other than those powers which the Act itself had specifically conferred and made the Board autonomous to that extent."

62. In the concurring judgment, Hon'ble B. Mukerji, J. in para 10 said:

"10. It was not shown to us that the Board was ever treated as a Corporation or a body incorporated or it exercised any privileges peculiar to such bodies. I could think of no law, and none was shown to us, on which it could be contended that simply because a certain body was created by statute that body could not function as a Department of Government so as to be outside the scope of the executive power of the Governor under Article 154 of the Constitution. Clause (2) (b) of this Article conferred powers on Parliament and the State Legislature under which either could confer by law functions on any authority subordinate to the Governor but because of the provisions of Clause (2) (a) the Governor could not exercise 'Executive power' where such functions had been, conferred on any other authority by any existing law."

63. Again a Hon'ble Single Judge of this Court in Sangam Lal Dube Vs. Director of Education and another, AIR 1957 All 70 considered "Board's" status. Therein an order was passed by Director of Education transferring Sri Sangam Lal Dube who was working as Clerk in Board to the office of Government Normal School, Aligarh. The power of Director was challenged on the ground that Board is not part of Education Department and, therefore, Director has no such power. The contention was upheld in para 30 of the judgment, which reads as under:

"30. Various provisions of the Code and Financial Hand Book were placed before me to show that the powers of the Director and that of the Board are mutually exclusive. District powers are given to the Secretary of the Board and to the Deputy Director of Education. It is not necessary for me to refer to all of them, but in my opinion the Board cannot be regarded as a part of the Education Department of the State so as to be under the control of the Director of Education.

Apart from it as I have already indicated the power to punish the staff of the Board has been given to the Secretary and I find that in the present case the transfer was in fact punishment awarded to the petitioner. The Director had in my opinion no power to transfer him. There is another aspect of the matter to be considered. If the Board of Education is a body created under the Act the staff of the Board is not a part Of the Education Department. The transfer to some other office in fact amounts to termination of the services of the petitioner in the office and re-employment in another office and in that view of the matter also the opportunity should have been given to the petitioner."

(emphasis added)

64. We, however, do not find any contradictory opinion expressed in the later two judgments for the reason that the Hon'ble Single Judge has simply held that Board is not a part of Education Department and cannot be treated to be a Department of Government for any purpose whatsoever which was the decision taken by Division Bench in Ghulam Haqqani Khan (supra).

65. Section 2 sub-section (a) of Act, 1921 defines "Board" as the Board of High School and Intermediate Education and its constitution is provided in Section 3. The members of Board can be removed by State Government as provided in Section 3-A and the term of the office of members is provided in Section 4. Section 5 contemplates that the Board shall be reconstituted before expiry of term of office of members under Section 4. The constitution of Board in Section 3 and its functions as provided in Section 7 makes it clear that Board is a statutory body, independent of Government, having several members connected with Government or its various institutions but also several members belonging to other bodies like, Kendriya Vidyalaya Sangathan, State Legislative Assembly, State Legislative Council and private recognised institutions not maintained by the State Government etc. The State Government, however, has been conferred with power to address the Board with reference to any of the work conducted or done by Board and also to communicate its Government views on any matter with which the Board is concerned. Under sub-section (3) and (4) of Section 7 of Act, 1921 the State Government can issue directions "consistent with the Act" which the Board shall be obliged to comply. The State Government also has power to make amendment in the regulations without making any reference to Board.

66. Thus, initially when Act, 1921 was enacted, power and authority enjoyed by private managements of educational institutions left intact, i.e., remained untouched. However, subsequently, it was found that protection is needed to avoid mismanagement of institutions and, therefore, a major amendment was made in 1958 by extending and enlarging statutory power of supervision by educational authorities upon private management. This included provisions relating to framing of scheme of administration which would include provisions relating to management and conduct all the affairs of institution concerned, Power of approval of scheme of administration, and certain matters relating to staff of the College. In fact Section 16-A to 16-G were inserted by U.P. Act No. 36 of 1958.

67. Various relevant statutory provisions of Act, 1921 and Regulations framed thereunder we have already referred and quoted. These Regulations talk of probation, confirmation etc., i.e., the provisions relating to conditions of service and confirmation. The existing provisions, therefore, under Act, 1921 read with Regulations framed thereunder nowhere control, check or obstruct the power of management of a Secondary institution regarding recruitment and appointment of Class-III and Class-IV staff in any manner except to the extent of providing conditions relating to eligibility etc. and that too in the context of the fact that in recognised and aided educational institutions, payment of salary to staff is the responsibility of State Government and, therefore, number of posts of Class-III and Class-IV staff is regulated by State Government, otherwise in all matters, management of an educational institution (Secondary), is free and enjoys power of recruitment and appointment of Class-III and Class-IV staff to the extent it requires, for smooth

working and functioning of institution.

68. The Regulation of payment of salary is provided by U.P. Act, 1971 which is applicable to the institutions which are recognised and receiving maintenance grant from State Government. Section 10 of U.P. Act, 1971 makes State Government liable for payment of salary of teachers and employees of every institution in respect of any period after 31.03.1971. It is in this context, vide Section 9, a restriction has been imposed upon an institution not to create a new post of teacher or other employee except with the previous approval of Director or such other Officer as may be empowered in that behalf by Director. Here also power of creation of post has been left with institution but in order to attract the provisions of U.P. Act, 1971, for a valid creation of post, an approval by Director or other officer as empowered by Director is necessary. There is no power of abolition of any post conferred upon Director or any officer. Power of approval cannot be identified with power of creation but it is only regulatory.

69. A comprehensive reading of various provisions of Act, 1921 and in particular Section 16-G, leads to the inference that power to frame Regulations has been conferred in respect of matters relating to "conditions of service" and nothing else. The term "conditions of service" is not wide enough to include every stage commencing from recruitment or appointment but comes after appointment. There is a distinction between the term "recruitment" and "conditions of service". It is worthwhile to mention that in Article 309 of Constitution both these terms have been used in respect of Legislative power and in that context, have been considered by Courts time and again.

70. In service jurisprudence three terms are of wide application, have a definite concept and well known to those who deal in the subject. This is called "common parlance". These three terms are "recruitment", "appointment" and "conditions of service".

71. The meaning of term "recruitment" and its distinction vis a vis "appointment" came to be considered in Prafulla Kumar Swain Vs. Prakash Chandra Misra, 1993 Supp. (3) SCC 181. Court said that the term "recruitment" connotes and signifies enlistment, acceptance, selection or approval for appointment. Certainly, this is not actual appointment or posting in service. In contradiction thereto the word "appointment" means the actual act of posting a person to a particular office. Similarly, in K. Narayanan Vs. State of Karnataka, 1994 Supp. (I) SCC 44, Court said that "recruitment" according to dictionary meaning is "enlistment". It is a comprehensive term and includes any method provided for inducting a person in public service. However, in the context of the case, Court proceeded to observe that appointment, selection, promotion, deputation are well known methods of recruitment and even appointment can be made by transfer.

72. The term "conditions of service" is also no more res integra having been considered and defined by Courts time and again.

73. One of the earliest known case considering the term "conditions of service" is North West Frontier Province Vs. Suraj Narain Anand, Vol. LXXV Indian Appeals 343. Therein Privy Council considered the term "conditions of service" as mentioned in Section 243 of Government of India Act, 1935. It says that the term "conditions of service" must mean all the conditions on which a man

serves and they must include inter alia the tenure of his service, the method by which he may be dismissed or reduced in rank etc.

74. In *State of Madhya Pradesh Vs. Shardul Singh*, 1970(1) SCC 108, Court explain the expression "conditions of service" as under:

"The expression "conditions of service" is an expression of wide import. It means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in matters like pension etc." (emphasis added)

75. In *I.N. Subba Reddi Vs. Andhra University*, 1977(1) SCC 554, Court explain the term as under:

"The expression 'conditions of service' means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it, in matters like pension etc."

76. Same view was taken in para 6 of the judgment in *Mysore State Road Transport Corporation Vs. Mirja Khasim Ali Beg and another*, 1977(2) SCC 457.

77. In *Lily Kurian Vs. Sr. Lewina and others*, 1979(2) SCC 124 in para 13 of the judgment, Court referred to above decisions and observed that the expression "conditions of service" includes everything from the stage of appointment to the stage of termination of service and even beyond, including the matter pertaining to disciplinary action.

78. Again it came up for consideration in *Syed Khalid Rizvi and others Vs. Union of India and others*, 1993(3) SCC 575. Court formulated a question, "whether seniority is a condition of service or part of rules of recruitment". It observed that "conditions of service" may be classified as salary, confirmation, promotion, seniority, tenure or termination of service etc. Court considered whether a right to promotion and right to be considered for promotion constitute a condition of service. Referring to a Constitution Bench decision in *Mohd. Shujat Ali and others Vs. Union of India and others*, 1975(3) SCC 76, Court observed that a rule which confers a right to actual promotion or a right to be considered for promotion is a rule prescribing a condition of service. It also refers to another Constitution Bench decision in *Mohd. Bhakar Vs. Krishna Reddy*, 1970 SLR 768 observing that any rule which affects the promotion of a person relates to his condition of service. Then it also refers to a further earlier judgment in *State of Mysore Vs. G.B. Purohit*, C.A. No. 2281 of 1965, decided on 25.01.1967 to hold that a rule which merely effects chances of promotion cannot be regarded as varying a condition of service. Chances of promotion are not conditions of service. Same view was reiterated in a later Constitution Bench decision in *Ramchandra Shankar Deodhar and others Vs. The State of Maharashtra*, 1974(1) SCC 317. All these decisions were harmonized by Court in *Syed Khalid Rizvi (supra)* observing that if an employee was initially recruited into service according to Rules and promotion was regulated in the same Rules to higher echelons of service, in that arena, promotion may be considered to be condition of service.

79. In a Division Bench decision of this Court the above decisions have been referred to and this Court in *Dr. Rajeev Ranjan Mishra and others Vs. State of U.P. and others*, 2008(1) ESC 595 has said:

"The distinction between rule of "recruitment" and "condition of service" is no more res integra having already been settled by the Apex Court in a catena of cases. In *State of U.P. Vs. Shardul Singh* 1970(1) SCC 108 the Apex Court held that the term "conditions of service" means all those conditions which regulate the holding of a post by a person right from the time of his appointment till retirement and even pension etc. It was reiterated in *I.N. Subbareddy Vs. State of A.P.* 1997(1) SCC 554. In *Syed Khalid Rizvi Vs. Union of India* 1993 Supp (3) SCC 575 the Apex Court held where a rule permits relaxation of provisions pertaining to "conditions of service", the same would be applicable to the condition after appointment to the service in accordance with rules. It also held that that "conditions of recruitment" and "conditions of service" are distinct and the latter is preceded by an appointment according to rules, the former cannot be relaxed."

"Part 3, 4 and 5 contain rules of recruitment which includes rules pertaining to reservation, eligibility and other qualifications with respect to nationality, educational qualifications, age, character, marital status, physical fitness etc. and procedure for recruitment. The rules pertaining to 'recruitment' cannot be relaxed by exercising power under Rule 26 since such rules are not relaxable."

80. The above decision has been followed in *Devendra Nayak and another Vs. State of U.P. and others*, Writ Petition No. 55988 of 2009, decided on 24.02.2011.

81. There is a Full Bench judgment of Gujarat High Court also dealing with this issue in *A.J. Patel and others Vs. The State of Gujarat and others*, AIR 1965 Guj 234a. The judgment was rendered by Hon'ble K.T. Desai, C.J. and in para 27, with reference to the terms "recruitment" and "conditions of service" mentioned in Article 309 of the Constitution, His Lordship said:

"From this Article it is evident that rules relating to the recruitment of persons to public services and posts are distinct from rules relating to the conditions of service. The conditions of service are conditions applicable to persons who have been appointed to public services and posts. The terms and condition relating to recruitment and relating to appointment to public services and posts must, therefore, be regarded as distinct and different from the conditions of service governing persons on their appointment to public services and posts." (emphasis added)

82. In the context of above exposition of law, if this Court looks into Section 16-G, it is evident that it talks of only "conditions of service" of such person who is employed in a recognised institution. Therefore, to attract Section 16-G authorising competent authority to frame Regulations thereunder, the condition precedent is that the person must be employed in a recognised institution. The Regulations relating to "condition of service" presupposes an existing employed person. That being

so, in our view, Section 16-G authorises competent Regulation framing authority to make Regulations dealing with "conditions of service", a stage which comes after employment of a person in a recognised institution and not earlier thereto. This is how sub-section (1) of Section 16-G confers general powers of Regulation framing. The above view is further fortified from the fact that various categories in respect where to conditions of service can be laid down by Regulations, all come after appointment of a person and not till the stage of appointment. Besides, Section 16-G, no other provision has been shown to this Court authorising Board or Government to frame Regulations dealing with recruitment and appointment of staffs, teaching and non-teaching, of a recognised institution. The only other provision whereby State Government possesses certain power either to modify, rescind or make any Regulations or to issue instructions to the Board in a particular manner, is Section 9 but it is also restricted, i.e., only in the matters which are consistent with this Act, i.e., Act, 1921 and not beyond thereto. Therefore, Section 9 would also cover only those subjects which are consistent with the Act and not otherwise.

83. The impugned amended Regulation in the opening paragraph deals with the subject of procedure for filling in Class III and IV vacancies, which is admittedly a condition of service and, therefore, there cannot be any apparent objection with regard to Legislative power or competence of State Government in making aforesaid amended Regulation. But Para 2 thereof deals with a subject which has nothing to do with pay scale as such. It hampers the power of Management or Employer regarding recruitment and appointment of Class-IV employees in a recognised institution. Apparently this power is not shown to be supported by any provision of Act, 1921. To our mind, it would not be included within the ambit of Section 16-G also. Once it is evident that power is not referable to Act, 1921, or any other statute, this would be *ex facie ultra vires*. For this reason alone this Court would have no hesitation in holding Regulation 101 as amended by G.O. Dated 04.09.2013, *ultra vires* and illegal insofar as it restrain Management of recognised Secondary Educational Institutions from recruiting and appointing non-teaching staffs, i.e., Class-IV posts and direct to manage Class IV post by 'Outsourcing'.

84. Even otherwise, amended Regulation to our mind would be contrary to certain Regulations which provide procedure and manner in which appointment shall be made by Secondary Educational Institutions on Class-III and Class-IV posts. There is no prohibition in making appointment on Class-IV posts against sanctioned posts available in recognised educational institutions. The impugned amended Regulation do not claim overriding effect over other Regulation.

85. Moreover, in the context of what the amendment has permitted to be done by educational institutions, there also we are of the view that this amendment is palpably arbitrary, discriminatory, exploitative in nature and, therefore, suffers with the vice of contravening Constitutional provisions under Article 14 and 16. It is not a case where requirement of Class-IV staff in educational institutions has been done away. The existing sanctioned posts of Class-IV have not been abolished. It is nobody's case that henceforth educational institutions shall not require any Class-IV staff in its functioning. What it suggests and tries to endeavour is that educational institutions shall not employ Class-IV staff directly on their own so as to function and discharge duties of Class-IV staff under administrative and otherwise control of institution, but, work supposed to be performed by Class-IV

staff, would be required to be done through the staff made available by an outside agency and by that agency's staff. In true sense though it is termed "Outsourcing", but it does not satisfy the requirement of term "Outsourcing", as discussed above.

86. The normal functions of Class-IV staff in a secondary educational institution is ringing of bell, opening of class rooms, cleaning, providing stationary etc. from office to class teachers, taking files and other documents like examination copies, question paper, etc. from one place to other and similar other menial job. All this work of Class-IV has to be performed by a person present in educational institution itself. It cannot be performed sitting outside the educational institution. To some extent, job requirement of Class IV staff in Educational Institution is trained and specialized and also required confidentiality and accountability. In a matter of 'Outsourcing', there is a complete go by to all these aspects and nothing has been provided as to how these aspects will be taken care.

87. Moreover, 'Outsourcing' of Class IV employees is nothing but an introduction of a contract labour and this is against Constitutional spirit, social and economic justice to those who are performing duties at the lowest level i.e. Class IV. Even under Labour Regulations, there is an attempt to prohibit employment of contract labour but wherever necessary, regress checks and Regulations have been provided. The impugned amended Regulation suggests that for performing menial job of Class-IV, workers shall be made available by a third party, by whatever name it may be called, may be a labour supplier, may be a Service Provider or else but in effect it amounts to introduction of a "middleman" for arranging Class-IV employees to perform the job of Class-IV in educational institutions for which the institutions shall pay the service charges which would include wages/salary of such person (Class-IV) and also the service charges of third party. This is nothing but a kind of contract labour arrangement.

88. Introduction of a middlemen where the requirement is perennial, continuous and permanent has been deprecated time and again and many statutes enacted with an objective to exclude middleman have been held to be in public interest. This is really strange that herein State Government intends to introduce a system of middleman when it is not already there. Learned Additional Advocate General also could not explain that besides wages/salary of person for performing job of Class-IV employee, service charges to third party would also be paid and in these circumstances how it can be an arrangement for saving the cost. To this query he could not reply at all.

89. In our view, therefore, the concept of making available the staff to perform Class-IV job by outside agency termed "Outsourcing", is nothing but a system of supply of work force through a Contractor or a person who satisfies the term "Contractor" for all purposes though termed as "Outsourcing". Hence the system as contemplated in impugned amended Regulation is evidently exploitative, arbitrary, unreasonable, irrational and illogical, hence violative of Article 14 and 16 of the Constitution.

90. This Court has also considered Para 2 of G.O. dated 06.01.2011 in Luv Kush Pandey (supra) and has referred to various statutory provisions in Act, 1921 and Regulations framed thereunder. However, while reading down the G.O. so as not to cover the vacancies occurred before issuance of

said order, the Court has observed as under:

"Learned counsel for the State has not been able to satisfy the object behind banning the regular process of appointment against a clear vacancy on class IV post and getting it filled up by outsourcing.

The outsourcing, not being a matter of recruitment under the Act and the Regulations, could not have been introduced by means of a Government Order. It is also to be taken note of that in the instant case the vacancy had occurred on 28.2.2010, i.e. much before the issuance of Government Order dated 6.1.2011. Prior permission was granted by the Director of Education on 21.12.2010, i.e. before issuance of the aforesaid Government Order. The appointment, however, was made after issuance of the Government Order dated 6.1.2011. The vacancy having occurred prior to the Government Order dated 6.1.2011, cannot be taken to be a future vacancy so as to restrain the Principal from filling up the post for both the reasons aforesaid, viz. (1) the restraint order could not have been issued for banning the appointment on a clear vacancy of class IV post through regular process of appointment and substituting it by a new method of appointment which is not envisaged under the Act and the Regulations framed thereunder and also for the reason that the aforesaid ban, if at all is to be upheld then it has to be read down for appointments on future vacancies i.e. which had occurred after the issuance of the Government Order dated 6.1.2011 and not for the vacancies which had occurred earlier."

91. In the aforesaid decision this Court though has doubted the correctness of Para 2 of G.O. but has not ultimately adjudicated thereon and left the issue open since the facts in that case show that vacancies had occurred prior to G.O. dated 06.01.2011 and, therefore, the Court by merely reading down the G.O. upheld selection made by educational institution on Class-IV posts. The observations therein, however, show that Court doubted the justification of Government's decision for banning regular appointment on Class-IV posts and getting it filled up by outsourcing but did not make a final adjudication on this aspect. This is evident from the question posed by Court, as is evident from following:

"The question, however, arises whether the State Government could have issued a blanket restraint order on making appointment on a class IV post on which (1) vacancy has occurred prior to the issuance of the banning order dated 6.1.2011, (2) the vacancy has occurred after the aforesaid Government Order dated 6.1.2011, and (3) whether such a ban can be imposed for making appointment as per the statutory provision and allowing appointment by adopting the process of outsourcing."

92. Since the wider issue of validity has not been decided therein, it cannot be said that except to the extent the amended Regulation has been read down by this Court, rest Regulation stands affirmed by aforesaid judgment. A judgment is a binding precedent to the extent an issue is raised, argued and decided therein. It is not to be read as a statute. It cannot be read to cover something to which it has made no adjudication. We, therefore, find no obstruction in proceeding to consider validity of

amended Regulation vide G.O. dated 04.09.2013 in these sets of writ petitions where this issue has been specifically raised, argued and Court has been called upon to adjudicate thereon.

93. In the result, writ petitions are allowed. Regulation 101 of Regulations, framed under Act, 1921, as amended vide Government Order dated 04.09.2013, insofar as it provides that vacancies of Class IV shall be managed only by 'Outsourcing', is arbitrary, illegal and ultra vires, hence struck down and impugned Government Order dated 04.09.2013 to this extent is declared ultra vires.

94. The orders impugned in all these writ petitions, which have been passed by concerned Educational Authorities in the light of Regulation 101, as amended by Government order dated 04.09.2013 whereby Class IV vacancies were only to be managed by Outsourcing, are hereby set aside. The said authorities are now directed to reconsider the matter and pass appropriate orders in accordance with law without any further delay and in any case, within two months from the date of production of a certified copy of this order.

Order date : 19.11.2018 safi/KA