

Smt. Ruchi vs State Of U.P. And 2 Others on 13 August, 2018

Equivalent citations: AIRONLINE 2018 ALL 3451

Author: Surya Prakash Kesarwani

Bench: Surya Prakash Kesarwani

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

(Judgment reserved on 03.08.2018)

(Judgment delivered on 13.08.2018)

Court No. - 7

1. Case :- WRIT - A No. - 14395 of 2018

Petitioner :- Smt. Ruchi

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

Counsel for Petitioner :- Mahima Maurya Kushwaha, Mukesh Kumar Kushwaha

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

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2. Case :- WRIT - A No. - 4963 of 2018

Petitioner :- Vimlesh

Respondent :- State Of Up And 3 Others

Counsel for Petitioner :- Alok Kumar Yadav,Jigyasa Singh

Counsel for Respondent :- C.S.C.,Ashok Kumar Yadav,Bhupendra Kumar Yadav

3. Case :- WRIT - A No. - 14096 of 2018

Petitioner :- Smt. Rashmee Sharma

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

Counsel for Petitioner :- Ankita Jain,Siddharth Singhal

Counsel for Respondent :- Pankaj Kumar Tyagi

4. Case :- WRIT - A No. - 14099 of 2018

Petitioner :- Roshani Singh And 4 Others

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

Counsel for Petitioner :- Indra Raj Singh,Adarsh Singh

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

5. Case :- WRIT - A No. - 14100 of 2018

Petitioner :- Smt. Sneh

Respondent :- U.P. Basic Education Board And 3 Others

Counsel for Petitioner :- Ankita Jain,Siddharth Singhal

Counsel for Respondent :- Virendra Chaubey

6. Case :- WRIT - A No. - 14102 of 2018

Petitioner :- Antima Tiwari And 13 Others

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Shivendu Ojha,Sri Radha Kant Ojha, Senior Advocate

Counsel for Respondent :- C.S.C.,Ashok Kumar Singh

7. Case :- WRIT - A No. - 14105 of 2018

Petitioner :- Bibha Singh Kushwaha And 24 Others

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

Counsel for Petitioner :- Indra Raj Singh,Adarsh Singh

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

8. Case :- WRIT - A No. - 14112 of 2018

Petitioner :- Smt. Bandana Sharma

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

Counsel for Petitioner :- Raj Narayan

Counsel for Respondent :- C.S.C.

9. Case :- WRIT - A No. - 14128 of 2018

Petitioner :- Smt. Shikha Singh And 101 Others

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

Counsel for Petitioner :- Shailendra,Deo Dayal

Counsel for Respondent :- C.S.C.

10. Case :- WRIT - A No. - 14147 of 2018

Petitioner :- Ruchi Tuteja

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

Counsel for Petitioner :- Ravindra Kumar Tripathi,Sarvanand Pandey

Counsel for Respondent :- C.S.C.,Bhanu Pratap Singh

11. Case :- WRIT - A No. - 14157 of 2018

Petitioner :- Priti Varshney And 10 Others

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

Counsel for Petitioner :- S B Singh

Counsel for Respondent :- C.S.C.,Akhilesh Chandra Srivastava,Ashok Kumar Yadav

12. Case :- WRIT - A No. - 14159 of 2018

Petitioner :- Vandana Rohela And 34 Others

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

Counsel for Petitioner :- Indra Raj Singh,Adarsh Singh

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

13. Case :- WRIT - A No. - 14160 of 2018

Petitioner :- Nidhi Kumari And 15 Others

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

Counsel for Petitioner :- Indra Raj Singh,Adarsh Singh

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

14. Case :- WRIT - A No. - 14162 of 2018

Petitioner :- Neelam Singh Gautam And 6 Others

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

Counsel for Petitioner :- Indra Raj Singh,Adarsh Singh

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

15. Case :- WRIT - A No. - 14168 of 2018

Petitioner :- Archana Dixit And 6 Others

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Raj Kumar Singh,Ravindra Kumar

Counsel for Respondent :- C.S.C.,Ashok Kumar Singh

16. Case :- WRIT - A No. - 14174 of 2018

Petitioner :- Manisha Sharma And 5 Others

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

Counsel for Petitioner :- Rishi Kant Rai,Ravi Prakash Rai,Tej Bahadur Rai

Counsel for Respondent :- C.S.C.,Sanjay Kumar,Shivam Yadav

17. Case :- WRIT - A No. - 14199 of 2018

Petitioner :- Sarita Yadav And 9 Others

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

Counsel for Petitioner :- Navin Kumar Sharma

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

18. Case :- WRIT - A No. - 14205 of 2018

Petitioner :- Farid Bano And 4 Others

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

Counsel for Petitioner :- Navin Kumar Sharma

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

19. Case :- WRIT - A No. - 14210 of 2018

Petitioner :- Priyanka Singh And 23 Others

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

Counsel for Petitioner :- Navin Kumar Sharma,Anil Kumar Singh Bishen

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

20. Case :- WRIT - A No. - 14212 of 2018

Petitioner :- Ranjana Singh And 65 Others

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Seemant Singh

Counsel for Respondent :- C.S.C.,Ashok Kumar Singh

21. Case :- WRIT - A No. - 14215 of 2018

Petitioner :- Ankit Singh And 4 Others

Respondent :- State Of U P And 2 Others

Counsel for Petitioner :- Indra Raj Singh,Adarsh Singh

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

22. Case :- WRIT - A No. - 14219 of 2018

Petitioner :- Shalini Yadav And 28 Others

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

Counsel for Petitioner :- Ashutosh Dwivedi,Ravi Kant Yadav

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

23. Case :- WRIT - A No. - 14244 of 2018

Petitioner :- Smt. Bhawna Verma

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

Counsel for Petitioner :- Raghwendra Prasad Mishra

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

24. Case :- WRIT - A No. - 14245 of 2018

Petitioner :- Smt. Pragati Mishra

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

Counsel for Petitioner :- Mahesh Kumar Dubey

Counsel for Respondent :- C.S.C., Mangla Prasad Rai

25. Case :- WRIT - A No. - 14274 of 2018

Petitioner :- Smt. Manorama And 17 Others

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

Counsel for Petitioner :- Abhishek Tripathi, Shri Ashok Khare, Senior Advocate

Counsel for Respondent :- C.S.C., Bhanu Pratap Singh, Pranesh Dutt Tripathi

26. Case :- WRIT - A No. - 14276 of 2018

Petitioner :- Anita Singh And 45 Others

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Deepak Kumar Pandey, Ashish Kumar

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

27. Case :- WRIT - A No. - 14278 of 2018

Petitioner :- Smt. Geeta Soni And 4 Others

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

Counsel for Petitioner :- Saurabh Tripathi, Santosh Kumar Pandey

Counsel for Respondent :- C.S.C.

28. Case :- WRIT - A No. - 14281 of 2018

Petitioner :- Smt. Usha Upadhyay

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

Counsel for Petitioner :- Saurabh Tripathi, Vinod Kumar Srivastava

Counsel for Respondent :- C.S.C.,Ashok Kumar Singh

29. Case :- WRIT - A No. - 14284 of 2018

Petitioner :- Smt. Sarika Srivastava And 5 Others

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

Counsel for Petitioner :- Awdhesh Narayan Srivastava

Counsel for Respondent :- C.S.C.,Mangla Prasad Rai

30. Case :- WRIT - A No. - 14367 of 2018

Petitioner :- Smt. Sonal Srivastava

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

Counsel for Petitioner :- Atul Dayal,Avanish Kumar Srivastava

Counsel for Respondent :- C.S.C.

31. Case :- WRIT - A No. - 14423 of 2018

Petitioner :- Smt. Vinita Pandey

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

Counsel for Petitioner :- Amit Kumar Rai,Niraj Kumar Singh,Subhash Chandra Rai

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

32. Case :- WRIT - A No. - 14548 of 2018

Petitioner :- Smt. Ranu Katiyar

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

Counsel for Petitioner :- Rishikesh Kumar Maurya,Amit Kumar Gaur

Counsel for Respondent :- C.S.C.,Pranesh Dutt Tripathi

33. Case :- WRIT - A No. - 14582 of 2018

Petitioner :- Sharda Sharma And 6 Others

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Adarsh Singh, Indra Raj Singh

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

34. Case :- WRIT - A No. - 14612 of 2018

Petitioner :- Vibha Singh And 3 Others

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

Counsel for Petitioner :- Indra Raj Singh, Adarsh Singh

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

35. Case :- WRIT - A No. - 14624 of 2018

Petitioner :- Ritoo Singh And 10 Others

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Raj Kishore Pandey

Counsel for Respondent :- C.S.C., Amit Shukla, Manu Sharma, Pranesh Dutt Tripathi, Ram Praka

36. Case :- WRIT - A No. - 14632 of 2018

Petitioner :- Ravi Kumar Sharma

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

Counsel for Petitioner :- Shashi Kant Sharma, Rajnikant Rai

Counsel for Respondent :- C.S.C., Bhupendra Kumar Yadav, Chandrakesh Rai

37. Case :- WRIT - A No. - 14639 of 2018

Petitioner :- Priyanka Shukla And 58 Others

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

Counsel for Petitioner :- Navin Kumar Sharma

Counsel for Respondent :- C.S.C.

38. Case :- WRIT - A No. - 14649 of 2018

Petitioner :- Smt. Renu Devi And 10 Others

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Piyush Shukla, Pratyush Shukla

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

39. Case :- WRIT - A No. - 14656 of 2018

Petitioner :- Smt. Alpana Singh And 2 Others

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

Counsel for Petitioner :- Gajendra Singh

Counsel for Respondent :- C.S.C., Ashok Kumar Singh, Rajesh Khare

40. Case :- WRIT - A No. - 14671 of 2018

Petitioner :- Richa Mishra And Another

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

Counsel for Petitioner :- Mahesh Kumar Dubey

Counsel for Respondent :- C.S.C., Mangla Prasad Rai

41. Case :- WRIT - A No. - 14683 of 2018

Petitioner :- Smt. Sonu Verma And 4 Others

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

Counsel for Petitioner :- S.M. Nazir Abbas Abedi

Counsel for Respondent :- C.S.C.,Raghvendra Pratap Singh

42. Case :- WRIT - A No. - 14741 of 2018

Petitioner :- Smt. Shashi Bala

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

Counsel for Petitioner :- R.K. Sinha,R. B. Tripathi

Counsel for Respondent :- C.S.C.,Yogendra Singh Bohra

43. Case :- WRIT - A No. - 14823 of 2018

Petitioner :- Shikha Nigam

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

Counsel for Petitioner :- Ashutosh Dwivedi,Ravi Kant Yadav

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

44. Case :- WRIT - A No. - 14873 of 2018

Petitioner :- Sapana Agrahari

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

Counsel for Petitioner :- Jitendra Kumar,Anurag Pandey

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

45. Case :- WRIT - A No. - 14939 of 2018

Petitioner :- Urmila Nagar And 6 Others

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

Counsel for Petitioner :- Arvind Kumar Singh

Counsel for Respondent :- C.S.C.,Mangla Prasad Rai

46. Case :- WRIT - A No. - 14967 of 2018

Petitioner :- Amita

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

Counsel for Petitioner :- Suresh Chandra Dwivedi

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

47. Case :- WRIT - A No. - 14973 of 2018

Petitioner :- Shivani Tyagi

Respondent :- U.P. Basic Education Board Allahabad And 3 Others

Counsel for Petitioner :- Vinod Sinha,Mahesh Sharma

Counsel for Respondent :- C.S.C.,Satish Chandra Yadav,Yatindra

48. Case :- WRIT - A No. - 14976 of 2018

Petitioner :- Divya Bhadauriya

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

Counsel for Petitioner :- Indra Raj Singh, Adarsh Singh

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

49. Case :- WRIT - A No. - 14988 of 2018

Petitioner :- Gauri Pandey

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

Counsel for Petitioner :- Santosh Kumar Pandey, Rajendra Kumar Dubey

Counsel for Respondent :- C.S.C., Akhilesh Chandra Srivastava, Rajesh Khare

50. Case :- WRIT - A No. - 14996 of 2018

Petitioner :- Smt. Savitri Trivedi

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

Counsel for Petitioner :- Satendra Tirpathi

Counsel for Respondent :- C.S.C., Akhilesh Chandra Srivastava, Shravan Kumar Panday

51. Case :- WRIT - A No. - 14998 of 2018

Petitioner :- Smt. Sarita

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

Counsel for Petitioner :- Bansh Raj Mishra

Counsel for Respondent :- C.S.C.

52. Case :- WRIT - A No. - 15004 of 2018

Petitioner :- Smt. Prachi Singh And 75 Others

Respondent :- State Of U.P. And Anothr

Counsel for Petitioner :- Anoop Trivedi,Vibhu Rai

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

53. Case :- WRIT - A No. - 15008 of 2018

Petitioner :- Smt. Kshama Chaudhary And 2 Others

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Sudhir Kumar (Chandraul)

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

54. Case :- WRIT - A No. - 15026 of 2018

Petitioner :- Arpita Barnwal

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

Counsel for Petitioner :- Ajeet Kumar Baranwal

Counsel for Respondent :- C.S.C.,Ashok Kumar Singh

55. Case :- WRIT - A No. - 15063 of 2018

Petitioner :- Meenesh Chaudhari

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Prabhakar Tripathi,Satyendra Kumar Pal

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

56. Case :- WRIT - A No. - 15070 of 2018

Petitioner :- Prakash Lavania

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

Counsel for Petitioner :- Venu Gopal,Sudhir Kumar Rai

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

57. Case :- WRIT - A No. - 15075 of 2018

Petitioner :- Smt. Poonam Verma

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

Counsel for Petitioner :- Chandra Bhan Dubey,Surya Bhan Dubey

Counsel for Respondent :- C.S.C.,Jai Krishna Tiwari

58. Case :- WRIT - A No. - 15089 of 2018

Petitioner :- Sugandh Bharti

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

Counsel for Petitioner :- Vinod Kumar Singh,Suresh Chandra Mishra

Counsel for Respondent :- C.S.C.

59. Case :- WRIT - A No. - 15112 of 2018

Petitioner :- Alok Rai

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

Counsel for Petitioner :- Sanjeev Kumar Rai,Sumit Kumar Srivastava

Counsel for Respondent :- C.S.C.,Bhanu Pratap Singh

60. Case :- WRIT - A No. - 15116 of 2018

Petitioner :- Kapil Bhati

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

Counsel for Petitioner :- Manisha Chaturvedi

Counsel for Respondent :- C.S.C.,Bhanu Pratap Singh

61. Case :- WRIT - A No. - 15149 of 2018

Petitioner :- Rubi Singh

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

Counsel for Petitioner :- Satyendra Singh

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

62. Case :- WRIT - A No. - 15153 of 2018

Petitioner :- Rinki Tyagi

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

Counsel for Petitioner :- Ravi Prakash Rai,Rishi Kant Rai,Tej Bahadur Rai

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

63. Case :- WRIT - A No. - 15172 of 2018

Petitioner :- Chanchal Tyagi

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

Counsel for Petitioner :- Rishi Kant Rai,Ravi Prakash Rai,Tej Bahadur Rai

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

64. Case :- WRIT - A No. - 15185 of 2018

Petitioner :- Smt. Binita

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

Counsel for Petitioner :- Ram Kumar Tiwari

Counsel for Respondent :- C.S.C.,Mangla Prasad Rai

65. Case :- WRIT - A No. - 15186 of 2018

Petitioner :- Kuldeep Agarwal

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

Counsel for Petitioner :- Kuldeep Singh Chauhan

Counsel for Respondent :- C.S.C.

66. Case :- WRIT - A No. - 15204 of 2018

Petitioner :- Aradhana And 16 Others

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

Counsel for Petitioner :- Indra Raj Singh,Adarsh Singh

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

67. Case :- WRIT - A No. - 15295 of 2018

Petitioner :- Smt. Priyanka Yadav And Another

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

Counsel for Petitioner :- Vidya Kant Tripathi, Pushpendra Kumar Yadav

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

68. Case :- WRIT - A No. - 15312 of 2018

Petitioner :- Pooja

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

Counsel for Petitioner :- Dharendra Singh, Fuzail Ahmad Ansari

Counsel for Respondent :- C.S.C., Pranesh Dutt Tripathi

69. Case :- WRIT - A No. - 15349 of 2018

Petitioner :- Deepali Saxena And 11 Others

Respondent :- State Of U.P. And 6 Others

Counsel for Petitioner :- Deepak Kumar Pandey, Ashish Kumar

Counsel for Respondent :- C.S.C., Mohd Shere Ali, Ram Prakash Shukla, Ras Bihari Pradhan, Sa

70. Case :- WRIT - A No. - 15394 of 2018

Petitioner :- Archana Kool

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

Counsel for Petitioner :- Rahul Chaudhary

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

71. Case :- WRIT - A No. - 15403 of 2018

Petitioner :- Hemlata Pandey

Respondent :- State Of U.P. Through Its Principal Secretary Basic Education And 2 Others

Counsel for Petitioner :- Ravi Kant Yadav

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

72. Case :- WRIT - A No. - 15466 of 2018

Petitioner :- Kiran

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

Counsel for Petitioner :- Arvind Kumar Singh

Counsel for Respondent :- C.S.C.,Krishna Kumar Chand

73. Case :- WRIT - A No. - 15474 of 2018

Petitioner :- Saroj

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

Counsel for Petitioner :- Shridhar Tripathi

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

74. Case :- WRIT - A No. - 15475 of 2018

Petitioner :- Priyanka Saini

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

Counsel for Petitioner :- Ramanand Gupta

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

75. Case :- WRIT - A No. - 15485 of 2018

Petitioner :- Smt. Sushma Sagar

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

Counsel for Petitioner :- Jamwant Maurya

Counsel for Respondent :- C.S.C.

76. Case :- WRIT - A No. - 15486 of 2018

Petitioner :- Meena Chandra And Another

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

Counsel for Petitioner :- Navin Kumar Sharma

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

77. Case :- WRIT - A No. - 15488 of 2018

Petitioner :- Shilpi Singh And 9 Others

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

Counsel for Petitioner :- Navin Kumar Sharma

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

78. Case :- WRIT - A No. - 15495 of 2018

Petitioner :- Smt. Chhavi Sharma

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

Counsel for Petitioner :- Satish Chandra Dubey

Counsel for Respondent :- C.S.C.,Ashok Kumar Yadav,Shravan Kumar Panday

79. Case :- WRIT - A No. - 15500 of 2018

Petitioner :- Hemraj Singh

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

Counsel for Petitioner :- Mujib Ahmad Siddiqui

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

80. Case :- WRIT - A No. - 15503 of 2018

Petitioner :- Smt. Nishu Rani And Another

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

Counsel for Petitioner :- Bhuvnesh Kumar Singh

Counsel for Respondent :- C.S.C.,Ashok Kumar Singh

81. Case :- WRIT - A No. - 15506 of 2018

Petitioner :- Jyoti Singh

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

Counsel for Petitioner :- Ajay Kumar Singh Yadav,Vinay Kumar Singh

Counsel for Respondent :- C.S.C.,Mangla Prasad Rai

82. Case :- WRIT - A No. - 15630 of 2018

Petitioner :- Sheetal Chaudhary

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

Counsel for Petitioner :- Namit Kumar Sharma, Gunjan Sharma

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

83. Case :- WRIT - A No. - 15632 of 2018

Petitioner :- Priyanka Srivastava

Respondent :- U.P. Basic Education Board Allahabad And 3 Others

Counsel for Petitioner :- Rajesh Kumar Khare

Counsel for Respondent :- C.S.C., Ashok Kumar Singh, Ashok Kumar Yadav

84. Case :- WRIT - A No. - 15644 of 2018

Petitioner :- Chhaya Rani

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

Counsel for Petitioner :- Babboo Ram

Counsel for Respondent :- C.S.C., Pradeep Singh Sengar

85. Case :- WRIT - A No. - 15651 of 2018

Petitioner :- Vishakha Gupta

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Ramakant Tiwari, Mrigraj Singh

Counsel for Respondent :- C.S.C.

86. Case :- WRIT - A No. - 15663 of 2018

Petitioner :- Smt. Deepika Mishra

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

Counsel for Petitioner :- Pramil Kumar

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

87. Case :- WRIT - A No. - 15669 of 2018

Petitioner :- Rajni Srivastava And 3 Others

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Ajeet Kumar,Adarsh Singh,Indra Raj Singh

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

88. Case :- WRIT - A No. - 15689 of 2018

Petitioner :- Smt. Suman Lata

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

Counsel for Petitioner :- Rahul Mishra,Rajeev Upadhyay

Counsel for Respondent :- C.S.C.,Bhanu Pratap Singh

89. Case :- WRIT - A No. - 15690 of 2018

Petitioner :- Rajeshwar Krishna Singh

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

Counsel for Petitioner :- Om Singh Rathaur

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

90. Case :- WRIT - A No. - 15695 of 2018

Petitioner :- Shobha Yadav

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

Counsel for Petitioner :- Vimal Chandra Mishra

Counsel for Respondent :- C.S.C., Jay Ram Pandey

91. Case :- WRIT - A No. - 15697 of 2018

Petitioner :- Smt. Roopa Singh

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

Counsel for Petitioner :- Shiva Nand Pandey

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

92. Case :- WRIT - A No. - 15705 of 2018

Petitioner :- Smt. Shivani Gupta And 3 Others

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

Counsel for Petitioner :- Santosh Kumar Pandey, Saurabh Tripathi

Counsel for Respondent :- C.S.C., Ashok Kumar Singh

93. Case :- WRIT - A No. - 15710 of 2018

Petitioner :- Smt. Shahida Khatoun

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

Counsel for Petitioner :- Rakesh Kumar Verma, Kartikey Singh

Counsel for Respondent :- C.S.C., Ram Prakash Shukla, Vikram Bahadur Singh

94. Case :- WRIT - A No. - 15720 of 2018

Petitioner :- Smt. Neeta Nischal

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

Counsel for Petitioner :- Saroj Kumar Pandey

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

95. Case :- WRIT - A No. - 15733 of 2018

Petitioner :- Smt. Bineeta Singh

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

Counsel for Petitioner :- Saroj Kumar Pandey

Counsel for Respondent :- C.S.C.,Deo Dayal,Nisheeth Yadav

96. Case :- WRIT - A No. - 15742 of 2018

Petitioner :- Rakesh Kumar Pathak

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Santosh Kumar Mishra,Satyvrat Tripathi

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

97. Case :- WRIT - A No. - 15774 of 2018

Petitioner :- Shivani

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

Counsel for Petitioner :- Indra Raj Singh,Adarsh Singh

Counsel for Respondent :- C.S.C.,Bhola Nath Yadav

98. Case :- WRIT - A No. - 15835 of 2018

Petitioner :- Aruna Punia

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

Counsel for Petitioner :- Ajeet Kumar Shukla,Narendra Singh

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

99. Case :- WRIT - A No. - 15854 of 2018

Petitioner :- Gaurav Rajpoot

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

Counsel for Petitioner :- Yadvendra Singh

Counsel for Respondent :- C.S.C.,Sanjay Kumar Srivastava,Shravan Kumar Panday

100. Case :- WRIT - A No. - 15863 of 2018

Petitioner :- Smt. Aradhana

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

Counsel for Petitioner :- Diwakar Singh

Counsel for Respondent :- C.S.C.,Ram Prakash Shukla

101. Case :- WRIT - A No. - 15874 of 2018

Petitioner :- Prachi Verma And 12 Others

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

Counsel for Petitioner :- Dewarshi Kumar Rai,Vipin Chandra Pal

Counsel for Respondent :- C.S.C.,Bhanu Pratap Singh,Vikram Bahadur Singh

102. Case :- WRIT - A No. - 15937 of 2018

Petitioner :- Sunita Devi Rathore

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

Counsel for Petitioner :- Man Mohan Singh

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

103. Case :- WRIT - A No. - 15951 of 2018

Petitioner :- Shailendra Kumar And 22 Others

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

Counsel for Petitioner :- Anil Kumar Singh Bishen,Agnihotri Kumar Tripathi

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

104. Case :- WRIT - A No. - 15959 of 2018

Petitioner :- Abha Singh

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

Counsel for Petitioner :- Hausihla Prasad Mishra

Counsel for Respondent :- C.S.C.,Ashok Kumar Yadav,Hausihla Prasad Mishra

105. Case :- WRIT - A No. - 15972 of 2018

Petitioner :- Neha Khare

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

Counsel for Petitioner :- Chandra Narayan Mishra

Counsel for Respondent :- C.S.C.,Ashok Kumar Singh

106. Case :- WRIT - A No. - 15976 of 2018

Petitioner :- Neetu Agrawal

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

Counsel for Petitioner :- Chandra Narayan Mishra

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

107. Case :- WRIT - A No. - 16012 of 2018

Petitioner :- Shilpi Sharma

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

Counsel for Petitioner :- Keshari Nath Tripathi,Arvind Srivastava

Counsel for Respondent :- C.S.C.,Mangla Prasad Rai

108. Case :- WRIT - A No. - 16043 of 2018

Petitioner :- Smt. Nitu

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

Counsel for Petitioner :- Chandra Narayan Mishra

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

109. Case :- WRIT - A No. - 16061 of 2018

Petitioner :- Smt. Kanti Shukla And 14 Others

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

Counsel for Petitioner :- Seemant Singh

Counsel for Respondent :- C.S.C., Ram Prakash Shukla

110. Case :- WRIT - A No. - 16066 of 2018

Petitioner :- Smt. Sant Saurabh Rastogi And 2 Others

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

Counsel for Petitioner :- Seemant Singh

Counsel for Respondent :- C.S.C., Deo Dayal, Mangla Prasad Rai

111. Case :- WRIT - A No. - 16113 of 2018

Petitioner :- Smt. Srivati

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

Counsel for Petitioner :- Babita Upadhyay, Sanjeev Kumar Gaur

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

112. Case :- WRIT - A No. - 16119 of 2018

Petitioner :- Madhulika Gupta

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

Counsel for Petitioner :- Tej Bhan Singh

Counsel for Respondent :- C.S.C., Ashok Kumar, Pranesh Dutt Tripathi

113. Case :- WRIT - A No. - 16132 of 2018

Petitioner :- Neeru (Smt.)

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

Counsel for Petitioner :- Alok Kumar Yadav,Jigyasa Singh

Counsel for Respondent :- C.S.C.,Ashok Kumar Singh

114. Case :- WRIT - A No. - 16211 of 2018

Petitioner :- Smt. Nandini Singh

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

Counsel for Petitioner :- Pushkar Kushwaha

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

115. Case :- WRIT - A No. - 16265 of 2018

Petitioner :- Anju Yadav

Respondent :- State Of U.P. And Another

Counsel for Petitioner :- Ram Milan Mishra

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

116. Case :- WRIT - A No. - 16333 of 2018

Petitioner :- Komal Sharma And 2 Others

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

Counsel for Petitioner :- Jagdish Prasad Tripathi,Urmila Tripathi

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

117. Case :- WRIT - A No. - 16339 of 2018

Petitioner :- Smt. Usha Devi

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

Counsel for Petitioner :- Dharm Raj,Shobh Nath

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

118. Case :- WRIT - A No. - 16349 of 2018

Petitioner :- Pooja Bharti

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

Counsel for Petitioner :- Ajitabh Choubey,B.B.Rai

Counsel for Respondent :- C.S.C.,Mangla Prasad Rai

119. Case :- WRIT - A No. - 16374 of 2018

Petitioner :- Smt. Garima Tiwari

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

Counsel for Petitioner :- Ajay Srivastava

Counsel for Respondent :- C.S.C.,Akhilesh Chandra Srivastava,Chandrakesh Rai

120. Case :- WRIT - A No. - 16376 of 2018

Petitioner :- Taru Agrawal

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

Counsel for Petitioner :- Navin Kumar Sharma

Counsel for Respondent :- C.S.C.,Yogendra Singh Bohra

121. Case :- WRIT - A No. - 16438 of 2018

Petitioner :- Aruna Gautam

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

Counsel for Petitioner :- Hari Prasad Pandey,Gaurav Mishra

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

122. Case :- WRIT - A No. - 16477 of 2018

Petitioner :- Nidhi Katiyar

Respondent :- U.P. Basic Education Board And 3 Others

Counsel for Petitioner :- Krishna Murari Tripathi

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

123. Case :- WRIT - A No. - 16528 of 2018

Petitioner :- Smt. Gyanesh

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

Counsel for Petitioner :- Rakesh Chandra Pathak,Abhinav Ojha

Counsel for Respondent :- C.S.C.,Bhola Nath Yadav

124. Case :- WRIT - A No. - 16531 of 2018

Petitioner :- Ram Bharose And Another

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

Counsel for Petitioner :- Ashish Kumar,Prakash Sharma

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

125. Case :- WRIT - A No. - 16558 of 2018

Petitioner :- Smt. Aruna

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

Counsel for Petitioner :- Rakesh Chandra Pathak,Abhinav Ojha

Counsel for Respondent :- C.S.C.,Ashok Kumar Singh

126. Case :- WRIT - A No. - 16601 of 2018

Petitioner :- Babita Chaudhary

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

Counsel for Petitioner :- Rajendra Prasad Tripathi,Dharmendra Kumar Yadav

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

127. Case :- WRIT - A No. - 16650 of 2018

Petitioner :- Smt. Shalini Mishra

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

Counsel for Petitioner :- Seemant Singh

Counsel for Respondent :- C.S.C.,Shashi Kant Verma

Hon'ble Surya Prakash Kesarwani, J.

1. Heard Sri R.K. Ojha, learned senior advocate, Sri Shailendra, Sri Indra Raj Singh, Sri Alok Kumar Yadav and other learned counsels for the petitioners, and, Sri Ajit Kumar Singh, learned Additional Advocate General assisted by Sri Mohanji Srivastava, learned counsel for the State-respondents and S/Sri A.K.Yadav, Suresh Kumar, B.P. Singh, Sanjay Kumar, Pravesh Dutt Tripathi, Virendra Chaubey, Sanjay Chaturvedi, Ashok Kr. Singh, Pankaj Kr. Tyagi, Vikram Bahadur Singh, R.P. Shukla, Satish Chandra Yadav, Akhilesh Chandra Srivastava, Manu Sharma, Amit Shukla, learned counsels representing the concerned Basic Education Officers and the U.P. Basic Education Board, Allahabad.

FACTS OF THE CASE:-

2. Briefly stated facts of the cases are that the petitioners in this batch of writ petitions, are mainly female Assistant Teachers. Pursuant to the Provisions of Rule 21 of The Uttar Pradesh Basic Education (Teachers) Service Rules, 1981 (hereinafter referred to as "the Rules 1981"), Rule 8(2)(d) of The Uttar Pradesh Basic Education (Teachers) (Posting) Rules, 2008 (hereinafter referred to as "the Rules 2008"), the State Government issued Government Order No.1078/79-5-2016-15 (149)/2010 dated 13.06.2017, Government Order No.1810/79-5-2017-15 (149)/2010 dated 20.09.2017, Government Order No.130/79-5-2018 dated 05.02.2018, declaring the Transfer Policy for inter-district Transfer of Assistant Teachers of Basic Schools run by the U.P. Basic Education Board (hereinafter referred to as "the Board") which was followed by decision/ circular of the Board being No. cs of ko io /4252-54/2018-19, dated 10.06.2018 in terms of the Rules 21 of the Rules 1981, were issued. An uniform policy was adopted that no teachers shall be transferred from those districts where the vacancy of teachers is more than 15% and no teacher shall be transferred from eight aspirational districts identified by the Niti Ayog on the basis of backwardness of these districts in the areas of education, health, nutrition, agriculture etc. and the programme 'Transformation of Aspirational Districts' was launched by the Hon'ble Prime Minister. Out of 115 such extremely backward districts in the country, 08 Aspirational Districts, namely Siddharth Nagar, Shravasti, Behraich, Sonbhadra, Chandauli, Fetehpur, Chitrakoot and Balrampur; were identified in the State of Uttar Pradesh.

3. For the purposes of inter-district Transfer of Assistant Teachers, a software based process has been adopted which does not involve human intervention. The applications for transfer were invited online. Merit list for transfer was prepared awarding marks to applicants, as under:

Particulars Marks

- (a) Differently Abled before joining service or while in service
- (b) Serious Illness (self/ spouse/ children)
- (c) Female
- (d) For every completed year of service (upto 35 marks Maximum)

4. In the present batch of writ petitions, large number of petitioners are those Assistant Teachers of Basic Schools of the Board situate in Aspirational Districts, who were not transferred in terms of the decision of the Board. The other petitioners are those who are Assistant Teachers in Basic Schools situate in districts other than Aspirational Districts but were not transferred. Therefore, they filed remaining writ petitions of the present batch of writ petitions.

SUBMISSIONS ON BEHALF OF PETITIONERS:

5. Sri Indra Raj Singh in Writ - A No.14105 of 2018 and Writ - A No.14099 of 2018, submits as under:

(i) The cadre of the Assistant Teachers in Basic Schools being run by the Board is a District level cadre. Therefore, their transfer was earlier governed by the provisions of Rule 21 of the Uttar Pradesh Basic Education (Teachers) Service Rules 1981. Subsequently, the Uttar Pradesh Basic Education (Teachers) (Posting) Rules 2008 was enacted. Rule 8(2)(d) of the Rules 2008 provides for inter-districts transfer. Petitioners are working as Assistant Teachers in District - Kushinagar. They want their transfer to District Ballia, where there are 973 vacant posts but they have not been transferred despite inter-parties order passed by this Court, dated 19.7.2017 in Writ - A No.30805 of 2017 (Bibha Singh Kushwaha Vs. U.P. Basic Education Board Allahabad and three others) and the judgment dated 6.2.2018 in Writ - A No.2868 of 2018 (Bibha Singh Kushwaha and 21 others Vs. State of U.P.) which have become final.

(ii) The impugned order dated 13.6.2018, 12/14.6.2018 and 15.6.2018 (Annexures 8, 9 and 11) in Writ - A No.14128 of 2018 providing for no transfer from 8 aspirational districts and no transfer from Districts where the number of vacancies is more than 15% of the sanctioned post, is wholly arbitrary and illegal and also violative of the Government Order dated 29.3.2018, and the judgments of this Court particularly the judgment in the case of Bibha Singh (supra).

(iii) In district Ballia, 973 vacant posts were notified but the petitioner Vibha Singh was deliberately not transferred.

(iv) The rider on transfer placed by the Government Order No.3/18/1/3/96- dko -4-2018 dated 29.03.2018 is violative of Rule 8(2)(d) of the Rules, 2008, therefore,

the said G.O. and the circular of the Board dated 10.06.2018, both cannot be enforced.

6. Sri Shailendra, learned counsel for the petitioners in WRIT - A No. - 14128 of 2018, submits as under:

(i) The impugned press note dated 13.6.2018, does not disclose who issued it and under what authority it has been issued. Therefore, this press note can not be given effect.

(ii) The benefit available to the petitioners under Rule 8(2)(d) can not be denied under the garb of the impugned press note dated 13.6.2018 which even does not have backing of any statutory provisions or the Government Order.

(iii) Petitioners have a right for inter-district Transfer under Rule 8(2)(d) of the Rules, 2008 which cannot be denied.

(iv) The bar of five years service as a condition for transfer mentioned in Rule 8(2)(d) of the Rules, 2008, has been relaxed by the G.O. dated 05.02.2018, therefore, it cannot be violated by a press note.

(v) A policy decision of the Central Government with respect to Aspirational districts in the year 2018, cannot be applied to inter-district transfers of the petitioners for the Session 2017-2018 (July to June).

7. Sri R.K. Ojha, learned Senior Advocate has argued in WRIT - A No. - 14102 of 2018 which has been filed challenging the aforesaid press note dated 12/6.6.2018, submits as under:

(i) Clause 6 of the Transfer Policy/Government Order dated 13.6.2017 (Annexure 1) provides that the districts where vacancy against sanctioned post is more than 15%, no inter-districts transfer of Assistant Teacher shall be done. By letter of the Secretary, U.P. Basic Education Board, dated 6.2.2018, (Annexure 3) a list of vacancies of Assistant Teachers in different districts have been notified being 40766 Assistant Teachers in Primary Schools and 6719 Headmasters of primary school/Assistant Teachers of Higher Basic School. In terms of Clause 3 of the Transfer policy/Government order dated 13.6.2017, inter-districts transfer is to be made to the extent of 25% of the available vacancies. Therefore, out of the aforesaid vacancies available, the transfers to the extent of 25% were to be made which has not been done. Under the circumstances, the action of the respondents in not transferring the petitioners from the districts of their place of posting to the desired Districts, is wholly arbitrary and illegal.

(ii) The policy of the "Niti Aayog" as relied in the press note dated 12/13.6.2018, came into affect from 5.6.2018. Therefore, the said policy decision shall not effect the

statutory rights of the petitioners for transfer which they accrued prior to 5.6.2018.

(iii) The petitioners are lady Assistant Teachers. Their rights for transfer is a statutory right under Rule 8(2)(d) of the Rules 2008. Their right for transfer is also protected by Article 15 of the Constitution of India, which provides that the State may make special provisions for women. Therefore, the action of the respondents in not transferring the petitioners, is also violative of Article 15 of the Constitution of India.

(iv) There is no order or direction of the State Government or the Central Government for not transferring Assistant Teachers (Females) from Aspirational Districts.

(v) The petitioners have a right of inter-district transfer under Rule 21 of the Rules, 1981 and Rule 8(2)(d) of the Rules, 2008, therefore, the restrictions mentioned on inter-district transfers in the G.O. dated 13.06.2017 being contrary to the Rule, cannot be enforced.

(vi) Petitioners were considered for inter-district transfer but transfer has been denied to them on the ground that they are posted in Aspirational Districts whereas there is no such prohibition against the transfer in the Rules or the G.O. dated 13.06.2017. Therefore, the denial to transfer the petitioners from Aspirational Districts is wholly illegal.

(vii) The inter-district transfer shall not materially affect pupils and teachers ratio under Section 25 of The Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as "the Act, 2009").

8. Sri Alok Kumar Yadav, learned counsel for the petitioner in Writ-A No. 49636 of 2018 submits as under:

(i) Rule 8(2)(d) of the Rules, 2008 gives teachers a right to be considered for inter-district transfer, therefore, the consideration has to be non-discriminatory. Therefore, the denial of transfer by clause (3) of the G.O. dated 13.06.2017, is illegal.

(ii) The transfer of the petitioners of Writ-A No.49636 of 2018, has been denied on the ground that she has earlier taken benefit of transfer. Such denial is illegal inasmuch as there is no such restriction in Rule 8(2)(d) of the Rules.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

9. Sri Ajit Kumar Singh, learned Additional Advocate General, submits, as under:

(i) Placing the instructions of the State Government dated 6.7.2018, which reiterates the Government Transfer Policy/Government Order dated 13.6.2017, and the policy

decision of the Niti Aayog so as to deny uniformly transfer of Assistant teachers from 8 aspirational districts and such districts where the number of vacancies as against the sanctioned post is more than 15%. The eight aspirational districts are Siddharth Nagar, Shravasti, Bahraich, Sonbhadra, Chandauli, Fatehpur, Chitrakoot and Balrampur which have been earmarked as most backward districts. There are five districts, namely, Bhadohi, Pratapgarh, Kanpur Nagar, Etawah and Sultanpur where vacancies of Assistant Teachers in primary schools is more than 15%. There are 20 districts where vacancies of Assistant Teachers in Senior Basic School, namely, Districts - Chandauli, Muzaffarnagar, Sambhal, Raebareli, Maharajganj, Siddharth Nagar, Auraiya, Sitapur, Pilibhit, Hardoi, Kushinagar, Budaun, Shravasti, Kasganj, Gonda, Bahraich, Balrampur, Sonbhadra, Shahjahanpur and Lakhimpur - Kheri, where the vacancies against the sanctioned posts are more than 15%. Therefore, as a uniform policy transfer of Assistant Teachers from aspirational districts and the districts where the number of vacancies as against the sanctioned post are more than 15%, have not been done in terms of the transfer policy dated 13.6.2017 and the policy of the Niti Aayog.

(ii) The Rules 1981 and the Rules 2008, both have been framed by the State Government in exercise of powers conferred under Section 19 of the U.P. Basic Education Act, 1972 (hereinafter referred to as "the Act 1972"). The provisions of the Rules, 2008 mainly deal with posting while Rule 21 of the Rules, 1981 specifically deals with transfer, therefore, both the Rules need to be read together.

(iii) Transfer List has already been finalized and the teachers have been posted accordingly. The new Academic Session has commenced. Therefore, any interference at this juncture, would ultimately affect the interest of students who have a fundamental right of education under Article 21A of the Constitution of India.

(iv) Placing reliance on averments made in various paragraphs of the Personal Affidavit of the Additional Chief Secretary dated 17.07.2018, it is submitted that the action of the Board and the authorities are wholly in terms of the relevant Rules, Government Orders and Circulars and figures given in the affidavit regarding vacancies, are correct.

(v) There are total 5462 sanctioned posts in District Ballia, which have been filled up mainly by new appointments, hence there is no vacancy in district Ballia.

DISCUSSIONS AND FINDINGS:

10. I have carefully considered the submissions of learned counsels for the parties.

11. With the consent of the learned counsels for the parties, the following questions were framed on 27.07.2018 for determination in this batch of writ petitions.

Questions for Determination:-

(a) Whether restriction on inter-district transfer has been validly imposed by the Government Order dated 13.06.2017 on teachers who have earlier taken benefit of inter-district transfer?

(b) Whether under Rule 21 of the Rules, 1981 and Rule 8(2)(d) of the Rules, 2008, the assistant teachers have a right for consideration of their transfer application or they have a right of transfer?

(c) Whether in the absence of any stipulation either in Rule 21 of the Rules, 1981 or in Rule 8(2)(d) of the Rules, 2008, inter-district transfer to the petitioners working in aspirational districts, can be denied?

12. Before I proceed to examine the rival submissions made by the learned counsels for the parties so as to determine the questions framed above, it would be appropriate to reproduce relevant provisions of the Act 1972, the Act 2009, the Rule 1981, the Rules 2008, the G.O. dated 13.06.2017, 20.09.2017, 05.02.2018, 29.03.2018 and the circular of the Board dated 10.06.2018, as under:

"(i) The Uttar Pradesh Basic Education Act, 1972

13. Control by the State Government. - (1) The Board shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act.

(2) If in, or in connection with, the exercise of any of its powers and discharge of any of the functions by the Board under this Act, any dispute arises between the Board and the State Government, or between the Board and any local body, the decision of the State Government on such dispute shall be final and binding on the Board or the local body, as the case may be.

(3) The Board or any local body shall furnish to the State Government such reports, returns and other information, as the State Government may from time to time require for the purposes of this Act.

19. Power to make Rules. - (1) The State Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely -

(a) the recruitment, and the conditions of service of persons appointed to the posts of officers, teachers and other employees under Section 6;

(b) the tenure of service, remuneration and other terms and conditions of service of officers, teachers and other employees transferred to the Board under Section 9;

(c) the recruitment, and the conditions of service of the persons appointed, to the posts of teachers and other employees of basic schools recognised by the Board;

(d) any other matter for which insufficient provision exists in the Act and provision in the rules is considered by the State Government to be necessary;

(e) any other matter which is to be or may be prescribed.

(ii) The Right of Children to Free and Compulsory Education Act, 2009

25. Pupil-Teacher Ratio.- (1) Within three years from the date of commencement of this Act, the appropriate Government and the local authority shall ensure that Pupil-Teacher Ratio, as specified in the Schedule, is maintained in each school.

(2) For the purpose of maintaining the Pupil-Teacher Ratio under sub-section (1), no teacher posted in a school shall be made to serve in any other school or office or deployed for any non-educational purpose, other than those specified in section 27.

26. Filling up vacancies of teachers.- The appointing authority, in relation to a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or by a local authority, shall ensure that vacancy of teacher in a school under its control shall not exceed ten per cent/of the total sanctioned strength.

35. Power to issue directions.- (1) The Central Government may issue such guidelines to the appropriate Government or, as the case may be, the local authority, as it deems fit for the purposes of implementation of the provisions of this Act.

(2) The appropriate Government may issue guidelines and give such directions, as it deems fit, to the local authority or the School Management Committee regarding implementation of the provisions of this Act.

(3) The local authority may issue guidelines and give such directions, as it deems fit, to the School Management Committee regarding implementation of the provisions of this Act.

(iii) The Uttar Pradesh Basic Education (Teachers) Service Rules, 1981

4. Strength of the Service. - (1) There shall be separate cadres of service under these rules for each local area.

(2) The strength of the cadre of the teaching staff pertaining to a local area and the number of the posts in the cadre shall be such as may be determined by the Board from time to time with the previous approval of the State Government :

Provided that the appointing authority may leave unfilled or the Board may hold in abeyance any post or class of posts without thereby entitling any person to compensation :

Provided further that the Board may, with the previous approval of the State Government, create from time to time such number of temporary posts as it may deem fit.

21. Procedure for transfer - There shall be no transfer of any teacher from the rural local area to an urban local area or vice versa or from one urban local area to another of the same district or from local area of one district to that of another district except on the request of or with the consent of the teacher himself and in either case approval of the Board shall be necessary.

(iv) The Uttar Pradesh Basic Education (Teachers) (Posting) Rules, 2008

8. Posting. - (1)(a) Three options for schools shall be asked from the handicapped candidates in order of their merit and after receiving such options the handicapped candidates shall be posted on the basis of options given by them and the vacancies.

(b) Based on the order of their merit, female teachers would be required to submit under their signature option of three schools each from the general and backward block and accordingly, posting would be given in one of these schools.

(c) The posting of male teachers shall be made in accordance with the order of candidates, in the roster prepared under Rule 7.

(2)(a) The newly appointed male teachers shall initially be posted compulsorily in backward areas for a period of at least five years.

(b) Newly appointed female teachers shall also be compulsorily posted in backward area for a period of at least two years.

(c) Mutual transfers within the district from general block of backward block and vice-versa would be permitted with the condition that the teacher on mutual transfer to a backward block shall have to serve in that block compulsorily for five years. Mutual transfers would be permitted only in case of those teachers who have more than remaining five year's service.

(d) In normal circumstances the applications for inter-district transfers in respect of male and female teachers will not be entertained within five years of their posting. But under special circumstances, applications for inter-district transfers in respect of female teachers would be entertained to the place of residence of their husband or in law's district.

(e) If by virtue of posting of newly appointed or promoted teachers the primary and upper primary schools of backward blocks get saturated i.e., no post of teacher is vacant in these schools, then handicapped and female teachers on their choice can be adjusted against the vacant posts of general blocks from these saturated blocks.

(f) Mutual transfers of male/female teachers from one backward block to another can be considered.

(3) Teachers transferred from one district to another will be given posting as per the provisions of these rules."

(v) Government Order No.1078/79-5-2016-15 (149)/2010, dated 13.06.2017 izs"kd] jkt izrki flag vij eq[; lfpo] moizo 'kkluA lsok esa] 1& v/;{k csfld f'k{kk ifj"kn 2& lfpo] csfld f'k{kk ifj"kn] ,oa f'k{kk funs'kd ¼csfld½ moizo] bykgkcknA moizo] y[kuÅA f'k{kk vuqHkx&5 y[kuÅ% fnukad% 13 twu] 2017 fo"k;% moizo csfld f'k{kk ifj"kn }kjk lapkfyr fo|ky;ksa ds v/;kidksa dk o"kZ 2017&18 gsrq vUrtZuinh; LFkkukUrj.k uhfrA egksn;] mi;qZDr fo"k;d d`i;k vius i=kad&5842@2017&18] fnukad 19&5&2017 dk d`i;k lUnHkZ xzg.k djsa] fltds }kjk moizo csfld f'k{kk ifj"kn }kjk lapkfyr fo|ky;ksa ds v/;kidksa dk 'kSf{kd l= 2017&18 ds fy, vUrtZuinh; ¼tuin ds ckgj½ LFkkukUrj.k ds laca/k esa izLrko miyC/k dj;k;k x;k gSA 2& bl laca/k esa eq>s ;g dgus dk funs'k gqv k gS fd moizo csfld f'k{kk ifj"kn }kjk lapkfyr fo|ky;ksa eas dk;Zjr v/;kidksa ds 'kSf{kd l= 2017&18 ds fy, vUrtZuinh; LFkkukUrj.k gsrq fuEuor~ uhfr fu/kkZfjr dh tkrh gS %& 3& ,sls fu;fer f'k{kd tks vius rSukrh@dk;Zjr tuin esa vkosnu ds o"kZ esa 31 ekpZ rd U;wure 5 o"kZ dh larks"ktud lsok iw.kZ dj pqds gks rFkk bls iwoZ muds }kjk vUrtZuinh; LFkkukUrj.k dk ykHk u fy;k x;k gks ,oa muds fo:) iwoZ esa lafLFkr fdLh foHkxh; dk;Zokgh esa mUgsa nf.Mr u fd;k x;k gksA 4&¼41½&vUrtZuinh; LFkkukUrj.k izfdz;k tuin Lrjh; lek;kstu ,oa vUr% tuinh; ¼intra district transfer½ ds i'pkr izkjEHk dh tk;sxhA vUrtZuinh; LFkkukUrj.k izfdz;k izkjEHk djus gsrq loZizFke izns'k ds lHkh tuinksa ls csfld f'k{kk vf/kdkfj;ksa }kjk fnukad 25&7&2017 rd fjfDr;ksa dk fooj.k ifj"kn eq[;ky; dks miyC/k dj;k;k tk;sxkA mDr fjfDr;ksa esa rno"kZ ds 31 ekpZ rd ds inksUufr] lsokfuo`fRr] u;s in l`tu vFkok vkdfLed e`R;q@R;kxi= vkfn ds QyLo:i gksus okys fjfDr;ksa dks lfEefyr fd;k tk;sxkA ¼42½ tuin dh fjfDr;ksa dk fooj.k ml tuin ds ,uovkbZolho dh osclkbV rFkk leLr tuinksa ds fjfDr;ksa dk fooj.k ifj"kn dh osclkbV ij fnukad 31 tqykbZ] 2017 rd iznf'kZr fd;k tk;sxkA ¼43½ mijksDr fjfDr;ksa esa ls 25 izfr'kr dh lhek rd gh vUrtZuinh; LFkkukUrj.k dh dk;Zokgh dh tk;sxhA ¼44½ bl gsrq ifj"kn }kjk izns'k ds cgqizlkfjr nks lepkj i=ksa esa vUrtZuinh; LFkkukUrj.k gsrq foLr`r le; lkfj.kh fu/kkZfjr osclkbV dk mYys[k djrs gq, izdk'ku dj;k;k tk;sxkA vUrtZuinh; LFkkukUrj.k gsrq leLr vkosnu fnukad 07 vxLr ls 20 vxLr] 2017 ds e/; izkIr fd;s tk;sxsA rFkk izfdz;k fnukad 31 vxLr] 2017 rd iw.kZ dj yh tk;sxhA ¼45½ vUrtZuinh; LFkkukUrj.k gsrq bPNqd ,oa vgZ v/;kidksa }kjk fu/kkZfjr osclkbV ij vkWuykbu vkosnu fd;k tk;sxk] flesa v/;kidksa }kjk vf/keku dze esa rhu tuinksa dk fodYi izLrqr djuk gksxsA LFkkukUrj.k pkgus okys efgyk@iq:"k v/;kidksa dk LFkkukUrj.k vkosfnr@fodYi fn;s x;s ftys esa muds vf/keku dze esa izFke fodYi ,oa fjfDr;ksa dh miyC/krk ds vk/kkj ij fd;k tk;sxk] rRi'pkr fjfDr;ksa dh miyC/krk ds vk/kkj ij mudk LFkkukUrj.k muds }kjk fn;s x;s f}rh;@r`rh; fodYi ds vk/kkj ij fd;k tk;sxkA ¼46½ ,sls tuin tgkW f'k{kdksa dh fjfDr Lohd`r inksa ds lkis{k 15 izfr'kr ls vf/kd gS] ogkW ls vUrtZuinh; LFkkukUrj.k ds ek/;e ls fdLh v/;kid dk LFkkukUrj.k vU; tuin esa ugha fd;k tk;sxkA ¼47½ vkWuykbu vkosnu i= esa vafdr fooj.k@rF;ksa ls lacaf/kr izekf.kr vfHkys[k vkosnu i= ds lkFk viyksM fd;s tk;sxksA mnkgj.k ds fy, fodykaxrk@vlk/; jksx ds vk/kkj ij fd;s x;s vkosnu i= ds lkFk eq[; fpfdRlk vf/kdkjh dk bl vk'k; dk izek.k&i= viyksM fd;k tkuk vko'd gksxsA mRrj izns'k esa vlk/; jksx ds

fu%'kqYd mipkj gsrq fu;ekoyh&2013 esa of.kZr vlk/; jksx ;Fkk&dSalj] ân; jksx] yhoj] fdMuh ekus tk;saxsA ¼48½ vUrtZuin; LFkkukUrj.k gsrq vgZ ik;s x;s vkWuykbu vkosnu i=ksa eas ls ojh;rk ds vk/kkj ij LFkkukUrj.k fd;s tk;saxsA ojh;rk fu/kkZj.k gsrq xq.koRrk vadksa dk fu/kkZj.k fuEuor gksxk& d& fodyakxrk ¼4lsok esa vkus ls iwoZ vFkok i'pkr½ & o5 vad [k& vlk/;@xEHkhj chekj ¼4ek= Lo;a] ifr@iRuh vFkok cPps ek=½ & o5 vad x& efgyk & o5 vad ?k& lsok ds izR;sd iw.kZ o"kZ ds fy, o1 vad ¼4vf/kdre 35 vad½ mi;qZDr ds lUnHkZ esa ;fn fdUgh nks O;fDr;ksa ds dqy xq.koRrk vad leku gksus ij rFkk dsoy ,d gh O;fDr dk LFkkukUrj.k gks ldrk gS rks ,slh fLFkfr esa muesa ls vf/kd vk;q okys v/;kid dks ojh;rk nh tk;sxhA ¼49½ vUrZtuin; LFkkukUrj.k 'kSf[kd o"kZ esa ,d ckj gh fd;s tk,xsaA ¼410½ ;fn ifr&iRuh nksuksa esa ls dksbZ ,d moizo ljdkj lsok esa gksa rks mUgsa ;Fkk laHko ,d gh tuin esa rSukrh dk fodYi gksxkA 5&¼41½ vUrtZuin; LFkkukUrj.k ds QyLo:i LFkkukUrfjr gksus okys v/;kidksa dks izR;sd n'kk esa vkns'k fuxZr gksus ds 10 fnuksa ds vUnj rSukrh ds tuin ls vns;rk izek.k&i= izkIr dj uohu tuin esa dk;ZHkkj xzg.k djuk vfuok;Z gksxkA vU;Fkk dh n'kk esa mudk LFkkukUrj.k Lo;eso fujLr gks tk;sxkA ¼42½ vUrtZuin; LFkkukUrj.k ds QyLo:i uohu tuin esa LFkkukUrfjr gksus okys v/;kidksa dh ofj"Brk dk fu/kkZj.k moizo csfld v/;kid lsok fu;ekoyh&1981 ds fu;e 22¼42½ ds vuq;i fd;k tk;sxkA 6& fdlh Hkh fo|ky; es cUn@,dy gksus dh n'kk esa LFkkukUrfjr v/;kid dks rc rd dk;ZeqDr ugha fd;k tk;sxk te rd ml fo|ky; esa v/;kid dh O;oLFkk u gks tk;sa 7& LFkkukUrj.k gsrq vkosnu dsoy vkuykbu Lohdkj fd;s tk;saxsA eSuqvy ;k vU; fdlh fof/k ¼4;Fkk&jftLVMZ] LihMiksLV] dksfj;] nLrh vkfn½ ls fd;k x;k vkosnu&i= Lohdkj ugha fd;s tk;sxsA vkosnu&i= fu/kkZfjr izfdz;kuqlkj =qfVjfr Hkjus dh ftEesnkjh lacaf/kr v/;kid dh gksxhA =qfViw.kZ@viw.kZ vkosnu i= ij fopkj ugha fd;k tk;sxkA vkosnu dh vfUre frfFk ds mijUr dksbZ Hkh la'kks/ku xzkg~; ugha gksxkA vku&ykbu vkosnuksaijUr Hkjs gq, vkosnu i= dk fizaV vkmV lEcU/kr v/;kid }kjk ftyk csfld f'k{kk vf/kdkjh dk;kZy; dks nks izfr;ksa esa miyC/k dj;k tk;sxk] ftdh izkflr jlhn ftyk csfld f'k{kk vf/kdkjh dk;kZy; }kjk v/;kid dks nh tk;sxhA 8& lEcU/kr ftyk csfld f'k{kk vf/kdkjh bl izdkj izkIr vku&ykbu vkosnu i=ksa esa vafdr fooj.k@rF;ksa dk dk;kZy;h; vfHkys[kksa ls lR;kiu dh dk;Zokgh lqfuf'pr djsaxsA lEcU/kr ftyk csfld f'k{kk vf/kdkjh }kjk lR;kfir vkosnu i=ksa dh fizaVsM dkih vko';d layXudksa@lk{;ksa lfr vkosnu i= Hkjus dh vfUre frfFk ls ,d lRkg dh vof/k ds vUnj lfpo] csfld f'k{kk ifj"kn dk;kZy;] bykgkekn dks vfuok;Z :i ls miyC/k djuk gksxk] lkFk gh mUgsa bl vk'k; dk izek.k&i= Hkh ifj"kn eq|ky; dks nsuk vfuok;Z gksxk fd ^^tuin----- esa vUrtZuin; LFkkukUrj.k gsrq dqy----- fizaVsM vku&ykbu vkosnu&i= izLqr fd;s x;s] ftlesa lR;kfir vkosnu i=ksa dh la[k;----- rFkk fujLr vkosnu i=ksa dh la[k;----- gSA** 9& lEcU/kr ftyk csfld f'k{kk vf/kdkjh }kjk vku&ykbu izkIr vkosnu i=ksa ds lR;kiu esa fujLr fd;s x;s vkosnu i=ksa ds lEcU/k eas lqLi"V dkj.k dk mYys[k djrs gq, fujLr fd;s x;s vkosnu i=ksa dh lwph lfpo] csfld f'k{kk ifj"kn] moizo bykgkekn dks miyC/k dj;k tk;sxk rFkk mDr lwph dh ,d izfr dk;kZy; ds lwpuk iV ij Hkh pLik dh tk;sxhA 10& ftyk csfld f'k{kk vf/kdkjh }kjk lacaf/kr v/;kid ls bl vk'k; dk Hkh vUMj Vsfdax@'kiFk&i= fy;k tk;sxk fd lacaf/kr v/;kid }kjk LFkkukUrfjr tuin esa viuh T;s"Brk dk nkok izLqr ugha fd;k tk;sxkA bl gsrq vUMj Vsfdax@'kiFk&i= dk izk:i lfpo] csfld f'k{kk ifj"kn] bykgkekn }kjk fodflr dj ftyk csfld f'k{kk vf/kdkj;ksa dks miyC/k dj;k tk;sxkA 11& lfpo] csfld f'k{kk ifj"kn }kjk v/;kidksa ds vartZuin; ¼4tuin ds ckgj½ LFkkukUrj.k dh leLr dk;Zokgh ikjnf'kZrk ds lkFk fnukad 31 vxLr] 2017 rd iw.kZ dj yh tk;sxhA v/;kid dk LFkkukUrj.k xzkeh.k {ks= ls uxj {ks= ,oa uxj {ks= ls xzkeh.k {ks= eas ugha fd;k tk;sxkA 12& ftyk csfld f'k{kk vf/kdkjh }kjk LFkkukUrj.k ds QyLo:i tuin esa vk;s gq, v/;kidksa dh rSukrh 'kklukns'k la[k;k&1088@79&5&17&15¼4149½210Vh-lh-] fnukad 13-06-2017 ds izLrj&3 esa ftyk/kdkjh dh v/;{krk esa xBr lfefr ds vuqeksnuksijUr dh tk;sxhA 13& LFkkukUrj.k gsrq fu/kkZfjr vfUre frfFk 31 vxLr] 2017 ds i'pkr dksbZ Hkh vUrtZuin; LFkkukUrj.k lfpo] csfld f'k{kk ifj"kn] moizo bykgkekn }kjk ugha fd;k tk;sxkA vr,o vartZuin;

LFkkukUrj.k dh dk;Zokgh mDr fu/kkZfjr izfdz;kuqlkj ikjnf'kZrkiw.kZ Hkonh;

go viBuh;

¼ajkt izrki flag½ vij eq[; lfpoA

(vi) Government Order No.1810/79-5-2017-15 (149)/2010 dated 20.09.2017, izs"kd] eerK JhokLro la;qDr lfpo] moizo 'kkluA lsok esa] 1& v/;{k csfld f'k{kk ifj"kn 2& lfpo] csfld f'k{kk ifj"kn] ,oa f'k{kk funs'kd ¼csfld½ moizo] bykgkcknA moizo] y[kuÅA f'k{kk vuqHkx&5 y[kuÅ% fnukad 20 flrEcj] 2017 fo"k;% moizo csfld f'k{kk ifj"kn }kjk lapkfyR fo|ky;ksa ds v/;kidksa dk o"kZ 2017&18 gsrq vUrtZuinh; LFkkukUrj.k uhfr esa la'kks/kuA egksn;] mi;qZDr fo"k;d lfpo] csfld f'k{kk ifj"kn ds i=kad&csf'koio@10755&56@2017&18] fnukad 18-08-2017 d`i;k lUnHkZ xzg.k djsa] ftlds }kjk moizo csfld f'k{kk ifj"kn }kjk lapkfyR fo|ky;ksa ds v/;kidksa dk 'kSf{kd l= 2017&18 ds fy, 'kklukns'k la[k&1078@79&5&2016&15¼4149½@2010] fnukad 13-06-2017 }kjk fuxZr vUrtZuinh; ¼tuin ds ckgj½ LFkkukUrj.k uhfr esa la'kks/ku dk izLrko miyC/k dj;k x;k gSA 2& bl laca/k esa eq>s ;g dgus dk funs'k gqvK gS fd 'kklu Lrj ij lE;d fopkjsijUr iwoZ eas fuxZr LFkkukUrj.k uhfr fnukad 13-06-2017 esa fuEuor~ la'kks/ku dh vuqefr iznku dh tkrh gS %& ¼41½ 'kklukns'k fnukad 13-06-2017 esa mfYyf[kr U;wure larks"ktud lsok dh le; lhek o5 o"kZ fnO;kax vH;fFkZ;ksa ij ykxw ugha gksxhA fodykaxrk ds laca/k esa eq[; fpfdRlkf/kdkjh dk fpfdRlh; izek.k&i= layXu djuk vfuok;Z gksxk] rHkh mldk ykHk mUgSa ns; gksxA ¼42½ 'kklukns'k fnukad 13-06-2017 esa dsUnzh; m)Z lSfud cy ¼4lhoiho,eo,Qo½ ;Fkk cho,lo,Qo] lhovkjoiho,Qo] vkbZoVhochoiho] lhovkbZo,lo,Qo] ,lo,locho ,oa ,uoMhovkjo,Qo rFkk Fky] ok;q ,oa ty lsuk ds dkfeZdksa dh vkfJr ifRu;ksa ij U;wure o5 o"kZ dh larks"ktud lsok dh le; lhek ykxw ugha gksxh] c'krsZ muds fu;a=d izkf/kdkjh }kjk ;g izek.k&i= nsuk gksxk fd og dsUnzh; v)Z lSfud cy@Hkkjrh; lsuk esa dk;Zjr gSA mDr nksukas izdj.kksa es lacaf/kr tuin esa fjdR;ksa dh miyC/krk gksus ij gh ykHk vuqeU; gksxA 3& 'kklukns'k la[k&1078@79&5&2016&15¼4149½@2010] fnukad 13-06-2017 }kjk fuxZr vUrtZuinh; LFkkukUrj.k uhfr 2017&18 dh 'ks"k 'krsZ ;Fkkor~ ykxw jgsxA d`i;k rn~uqlkj vko';d dk;Zokgh djus dk d"V djsaA Hkonh;k] go viBuh;

20-09-17 ¼eerK JhokLro½ la;qDr lfpoA

(vii) Government Order No.130/79-5-2018, dated 05.02.2018 egRoiw.kZ@le;c] la[k& 130@79&5&2018 izs"kd] ,lo jktfyaxe fo'ks"k lfpo moizo 'kkluA lsok esa] funs'kd] csfld f'k{kk] lfpo] csfld f'k{kk ifj"kn] moizo y[kuÅA moizo bykgkcknA f'k{kk vuqHkx&5 y[kuÅ% fnukad% o5 Qojh 2018 fo"k;& eko mPp U;k;ky; esa ;ksftr voekuuk ;kfpdk lao 5660@2017 Jherh lk{kh feJk cuke lfpo] csfld f'k{kk ifj"kn ,oa vU; rFkk fJV ;kfpdk lao 44442@2017 rFkk eko mPp U;k;ky; esa ;ksftr fofHkUu fJV ;kfpdkvksa rFkk efgyk v/;kfIdkvksa ds vUrtZuinh; LFkkukUrj.k ds lEcU/k esaA egksn;] mi;qZDr fo"k;d lfpo] csfld f'k{kk ifj"kn ds i= fnukad 23-01-18 dk lanHkZ xzg.k djsa] tks fd efgyk v/;kfIdkvksa ds vUrtZuinh; LFkkukUrj.k gsrq iwoZ fuxZr 'kklukns'k lao 1078@79&5&17&15 ¼4149½@10 Vholho fnukad 13-06-17] 20-09-17 rFkk 18-01-18 esa fu/kkZfjr lsok vof/k o5 o"kZ ds laca/k esa moizo csfld f'k{kk ¼4v/;kid½ ¼4rSukrh½ izfke la'kks/ku fu;ekoyh 2010 ds fcUnq lao 8¼42½¼4?k½ esa miyC/k izkfo/kku ds vUrtZr fo'ks"k ifjLFkfr esa efgyk v/;kfIdkvksa ds vUrtZuinh; LFkkukUrj.k esa o5 o"kZ dh le; lhek ls NwV fn;s tkus ds laca/k esa gSA 2- mYys[kuh; gS fd mRrj izns'k csfld f'k{kk ¼4v/;kid½¼4rSukrh½ fu;ekoyh 2008] v|ru la'kksf/kr 2010 ds fu;e&8¼42½¼4?k½ esa fuEu

O;oLFkk fo|eku gS & lkekU; ifjLFkfr;ksa esa efgyk vFkok iq:"k v/;kidksa ds vUrZtuinh; LFkkukUrj.k ds vkosnu i=ksa ij 5 o"kZ rd fopkj ugha fd;k tk;sxk] ijUrq fo'ks"k ifjLFkfr esa efgyk v/;kfidkvksa ds vkosnukas ij muds ifr ds fuokl LFkku@llqjky ds tuin esa vUrZtuinh; LFkkukUrj.k gsrq fopkj fd;k tk ldsxkA 3- mDr ds laca/k esa eq>s ;g dgus dk funs'k gqv k gS fd mDr fu;ekoyh ds fu;e 8¼42¼2¼4?k¼2 esa fo|eku O;oLFkk ds vUrZxr fo'ks"k ifjLFkfr esa efgyk v/;kfidkvksa ds vUrZtuinh; LFkkukUrj.k gsrq vku ykbu i= dks Lohdkj fd;s tkus rFkk of.kZr fo'ks"k ifjLFkfr dk ijh{k.k dj tuin esa fjdR dh miyC/krk dh n'kk esa vko';d dk;Zokgh djus dk d"V djsaA bl laca/k esa iwoZ fuxZr 'kklukns'k lao 1078@79&5&17&15 ¼4149¼2@10Vholho fnukad 13-06-17] 'kklukns'k lao 1810@79&5&17&15¼4149¼2@10Vholho fnukad 20-09-17] 'kklukns'k lao 67@79&5&18 fnuakd 18-01-18 bl lhek rd la'kksf/kr fd;k tkrk gSA 'ks"k 'krsZ ;Fkkor ykxw gksaxhA Hkonh;

go viBuh;

¼4,lo jktfyaxe¼2 fo'ks"k lfpoA

(viii) Relevant portion of Government Order No.3/18/1/3/96-dk-4-2018, dated 29.03.2018 relating to General Transfer Policy of the State Government for officers and employees:

11- vU; ekxZn'kZd fl)kar%& ¼4i¼2 lafnX/k lR;fu"Bk okys dkfeZdksa dh rSukrh laosnu'khy inksa ij dnkfi u dh tk;A ¼4ii¼2 eafnr cPpksa ds ekrk&firk dh rSukrh] vf/kd`r ljdkh fpfdRld ds izek.k i= ds vk/kkj ij] fodYi izkIr djsd ,sLs LFkku ij dh tk;] tgak fpfdRld dh leqfpr O;oLFkk miyC/k gksA ¼4iii¼2 lewg ^d* ds vf/kdkfj;ksa dks muds x`g e.My esa rSukr ugha fd;k tk;sxkA ¼4iv¼2 lewg ^[k* ds vf/kdkfj;ksa dks muds x`g tuin esa rSukr ugha fd;k tk;sxk] ijUrq izfrcA/k ;g gS fd mDr izkfo/kku dsoy tuin Lrjh; foHkkxksa@dk;Zy;ksa esa ykxw gksaxsA ¼4v¼2 fnO;kax dkfeZdksa vFkok ,sLs dkfeZd] ftuds vkfJr ifjokjhtu fnO;kaxrk ls izHkkfor gksa] dks lkekU; LFkkukUrj.k ls eqDr j[kk tk;A ,sLs fnO;kax dkfeZdksa ds LFkkukUrj.k xEHkhj f'kd;k;rk vFkok vifjgk;Z dkj.kksa ls gh fd;s tk;saaA fnO;kax dkfeZd ds n~okjk vuqjks/k fd;s tkus ij] in dh miyC/krk ds vk/kkj ij mls mlds x`g tuin esa rSukr djus ij fopkj fd;k tk ldrk gSA ¼4vi¼2 lewg ^x* ds dkfeZdksa dk izR;sd o3 o"kZ ds mijkUr iVy ifjorZu dj fn;k tk;A ¼4vii¼2 Hkkjr ljdkj n~okjk ?kksf"kr izns'k dh egRodka{kh ftyk ;kstuk ¼4Aspirational Districts Scheme¼2 ls lacaf/kr o8 ftys&fp=dwV] pankSyh] lksuHknz] Qrsgiqj] cyjkeiqj] fl)kFkZ uxj] JkoLrh o cgikbp esa izR;sd foHkkx n~okjk izR;sd n'kk esa leLr inksa ij rSukrh djsd lar`Ir dj fn;k tk;sxk ,oa o2 o"kZ ckn ogka rSukr dkfeZdksa ls fodYi izkIr dj mUgsa LFkkukUrj.k fd;k tk;A ¼4viii¼2 fu/kkZfjR vof/k ds mijkUr lkekU;r% LFkkukUrj.k ds izLrko izLqr u fd;s tk;saA ¼4ix¼2 LFkkukUrj.k fd;s tkus gsrq vof/k ds fu/kkZj.k ds fy, dV&vkQ&MsV 31 ekpZ dks ekuk tk;sxkA ¼4x¼2 o2 o"kZ esa lsokfuO`Rr gksus okys lewg ^x* ds dkfeZdksa dks muds x`g tuin ,oa lewg ^d* ,oa ^[k* ds dkfeZdksa dks muds x`g tuin dks NksM+rs gq,] bfPNr tuin esa rSukr djus ij ;FkklEHko fopkj fd;k tk;A ¼4xi¼2 lewg ^x* ,oa ^?k* ds LFkkukUrj.k] LFkkukUrj.k uhfr ds izLrj&1 ds izkfo/kkuksa ls vkPNkfnr gksus ij] izns'k Lrjh; laoxZ gksus ij fdllh vU; e.My@tuin esa rFkk e.My Lrjh; laoxZ gksus ij e.My ds vUnj fdllh vU; tuin esa fd;s tk;saA

(ix) decision/ circular of the Board being No. cs of koio /4252-54/2018-19, dated 10.06.2018 in terms of the Rules 21 of the Rules 1981 the Rules 2008:-

izs"kd] lfpo] moizo csfld f'k{kk ifj"kn] bykgkcknA lsok esa] mi egkfun'skd] jk"V^{ah}; lwpuk dsUnz] ;kstuk Hkou] y[kuÅA i=kad% cs of koio@4252&54@2018&19 fnukad & 10&6&2018 fo"K;%& vUrtZuinH; LFkkukUrj.k izfdz;k esa izkIr vkWuykbu vkosnu i=ksa ds lUnHkZ esa LFkkukUrj.k lwph tsujsV fd;s tkus ds lEcU/k esaA egksn;] d`i;k mi;qZDr fo"K;d lanHkZ yssus dk d"V djsa ftlls lEcU/kr 'kklu esa ,d cSBd dy fnukad 09-06-2018 dks vij eq[; lfpo egksn; dh v/;{krk esa gqbZ Fkha cSBd esa fy;s x;s fu.kZ;ksa] izkIr funsZ'kksa rFkk] vki }kjk LFkkukUrj.k lEcU/kh dk;Z gsrq okafNr v k o ' ; d l w p u k v k s a v k S j b l l a n H k Z e a s i w o Z i s z f " k r i = k a d cs of koio@3686&87@2018&19 fnukad 01-06-2018 ds dze esa fuEuor lWp; gS& 1& iwoZ esa miyC/k dj;k;s x;s izkls l 'yks pkVZ ds lanHkZ esa lEizfr dsoy ,d jkmUM dh gh izfdz;k lEikfnr gksxhA 2& tuinokj] inokj fjdR;ksa ¼xfreku ,oa izLrkfor HkrhZ izfdz;kvksa dks vkWx.ku esa ysrs gq,½ dh lKWQ~VdkWih layXu gSA 3& 'kklukns'k fnukad 13-06-2017 ds vuqlkj& ,sls tuin tgkW f'k{kdkksa dh fjdR Lohd`r inksa sds lkis{k 15 izfr'kr ls vf/kd gS] ogkW ls vUrtZuinH; LFkkukUrj.k ds ek/;e ls fdlh v/;kid dk LFkkukUrj.k vU; tuin esa ugha fd;k tk;sxk rFkk Hkkjr ljdkj }kjk fpfg~ur izns'k ds vkB ,Lisjs'kuy tuinksa& fl)kFkZuxj] JkoLrh] cgjkbp] lksuHknz] pUnkSyh] Qrsgiqj] fp=dwV] cyjkeiqj ls Hkh fdlh v/;kid dks vU; tuin esa LFkkukUrj.k ugha fd;k tk;sxk ijUrq bu tuinksa esa tkus okys bPNqd v/;kidksa dk LFkkukUrj.k fd;k tk;sxkA mDr 15 izfr'kr dk vkWx.ku mi;qZDr fcUnq&02 esa vafdr fjdR;ksa ds lkisf{kdk fd;k tkuk gksxk rFkk vkWx.ku esa n'keyo dh fLFkfr esa jkmfUMax vkWQ dj yh tk;sxh vFkkZr ;fn og n'keyo 05 ls de gS rks fjdR dh la[;k ogh jgsxh rFkk ;fn og n'keyo 05 vFkok mlls vf/kd gS rks og vxyh la[;k gks tk;sxhA 'kklukns'k fnukad 13-06-2017 esa LFkkukUrj.k gsrq fu/kkZfjr fdlh tuin dh fjdR dk 25 izfr'kr vf/kdre lhek dk laKku vc ugha fy;k tk;sxk D;ksafd xfreku rFkk vkxkeh HkfrZ;ksa esa fdlh tuin dks vkoafVr inksa dks fjdR;ksa ds vkWx.ku esa lfEefyr fd;k tk pqdk gSA 4& LFkkukUrj.k vkns'k lfpo ds ykWfxu ,oa fMftVy gLrk{kj }kjk lEikfnr dh tk;sxh rFkk LFkkukUrj.k vkns'k Hkh mUgha ds gLrk{kj ls fuxZr gksaxsA mDr LFkkukUrj.k vkns'k QR dksM lfgr gksxk ftldk izk:i layXu gSA 5& LFkkukUrj.k vkns'k dk voyksdu vkosnudsZ v/;kid ds Query }kjk iSu la[;k rFkk cSad [kkrrk la[;k dk iz;ksx djrs gq, Lo;a gh ns[kk tk ldsxk rFkk LFkkukUrj.k v/;kid }kjk viuk LFkkukUrj.k vkns'k dh izfr MkmuyksM dh tk ldsxhA ftu v/;kidksa dk LFkkukUrj.k ugha gqvk gksxk muds }kjk iSu rFkk cSad [kkrrk la[;k QhM fd;s tkus ij ^^Transfer could not be done because vacancy is not available** lans'k iznf'kZr gksxkA 5& ftyk csfld f'k{kk vf/kdkjh }kjk lR;kfir fd;s gq, MkVk dks fMftVy gLrk{kj ls ykWd djus dh dk;Zokgh xfreku gS ijUrq osclbV ds lapkyu esa vk jgh rduhdh dfBukbZ;ksa ds n`f"Vxr mlesa cgqr vf/kd le; yxus dh laHkkouk gS ftlls tufgr dk ;g LFkkukUrj.k dk;Z foyfEcr gks jgk gSA vr% bls n`f"Vxr ftyk csfld f'k{kk vf/kdkfj;ksa }kjk miyC/k dj;k;s x;s lR;kfir MkVk ij gh mDr izkslsflax dh tkuh gksxhA d`i;k vuqjks/k gS fd mijksDrkuqlkj dk;Zokgh djus dk d"V djsaA Hkonh;

go viBuh;

lfpo] moizo csfld fk{kk ifj"kn] bykgkcknA"

13. Rule 21 of the Rules 1981 when it was originally enacted; stood, as under:-

"There shall be no transfer of any teacher from the rural local area to an urban local area or vice versa or from one urban local area to another of the same district or from local area of one district to that of another district except on the request of or with the consent of the teacher himself and in either case approval of the Board."

14. By 7th Amendment Rules, 1997, Rule 21 was slightly amended whereby the words "with the approval of the Board" were replaced by the words "approval of the Board shall be necessary". By 13th Amendment Rules, Rule 21 was exhaustively amended in the year 2011 but by 15th Amendment dated 31.08.2012, Rule 21 was again amended, restoring Rule 21 almost in the same form as it was originally enacted.

15. In the personal affidavit dated 17.07.2018, filed by the Additional Chief Secretary, Basic Education, Government of U.P. Lucknow on behalf of the State Government, it has been stated, as under:

"4. That at the outset it is to be submitted that the process of Inter District Transfers was Software based and did not involve human intervention. The Applications for transfer were invited online. For the sake of transparency the weightage points earned by the applicants and their resultant standing in merit for transfer were put on the website so that any aggrieved applicant may represent his grievance. The Grievances were addressed and disposed of at the District level by a committee of Zonal A D (Basic) and DIET Principal and the required corrections were done by the BSAs. After this the transfer orders were generated by the NIC through the software developed for the purpose.

5. That regarding the submission of Advocate Sri Indra Raj Singh in Writ-A No.14105/2018 and Writ-A No.14099/2018. The deponent submits here under:

A- The transfer could be done only against the existing vacancies in any particular district because the post of a Parishadiya Teacher is of district Cadre. So far as the contention of the petitioner regarding their transfer to district Ballia is concerned, It is no disputed that earlier 973 vacant posts were notified, but having taken into consideration ongoing recruitment of teachers in all the district of U.P., there remained no vacancy in district Ballia for the post of Assistant Teacher primary post.

8. That thus in compliance of the Hon'ble Court's order all married female teachers were extended the benefit of applying for inter district transfer and subsequently the applications were considered and processed impartially as per existing vacancies and merit points.

9. That regarding contention about out ward transfer from Aspirational district, it is submitted that such districts have been chosen on the basis of their backwardness regarding education, health and nutrition, agricultural etc. and the programme 'Transformation of Aspirational Districts' was launched by the Hon'ble Prime Minister of India as per the information on the Niti Aayog website. A list of 115 Aspirational districts including 8 such districts of U.P. have been identified and sectorwise parameters which required improvement were also identified. One of the parameters is 'Percentage of elementary schools complying with RTE specified pupil teacher ratio (PTR)'. The same was communicated to all District Magistrates and concerned departments including Basic Education Department by letter dated 18-1-2018 from State Planning Commission. A copy of the information and documents on Niti Aayog website up dated on 28.03.2018 along with list, the letter dated 06th March 2018 from the State Planning Commission regarding the meeting by Chief Secretary, the letter dated 03 April 2018 regarding the review meeting by the Hon'ble Chief Minister and the Hon'ble Home Minister of India, the email dated 14th May 2018 regarding video conference with the state nodal officers by Niti Aayog, are being enclosed and here with marked as Annexure No.C.A.-3 to this affidavit.

10. That subsequent thereto communication dated 10.06.2018 was received from the office of the Secretary U.P. Basic Education Board, Allahabad giving reference to the order dated 13.06.2017 to the effect that such districts where the vacancies is more than 15% of the sanctioned posts, from those districts the transfer of any teacher to any other districts would not be done. Further, that from the 8 Aspirational districts of U.P., no teacher would be transferred out of these districts, however any teacher willing go to these 8 Aspirational districts, would be transferred accordingly. A copy of the communication dated 10.06.2018 and Government order dated 13.06.2017 as amended on 20.09.2017 is being enclosed and marked as Annexure No.C.A.-4 to this affidavit.

11. That from the aforesaid details, it is evident that the districts where strength of teacher is already deficient, the quality of education in the schools would be affected. Hence the outward transfer from Aspirational districts was barred. It is also submitted that the decision of not transferring of any teacher from such districts is not on a pick and choose basis but a decision that affects all in these districts. It is further submitted that transfer is not a right of the teacher but has to be done in the light of the vacancies and public interest and providing better education in primary schools of the State.

14. That from the aforesaid it is clear that in normal circumstances a teacher ought to have a minimum of 5 years of service to be eligible for Inter District Transfer but in special circumstances applications of female teachers could be considered. The inter district transfer in question has been provided for considering applications of such teachers on basis of weightage marks arrived at not only for them being women but also additional marks for illness of their own or spouse or children and also for being

handicapped. Thus the teachers falling in such special circumstances were considered for transfers and the transfers were done where-ever vacancies existed against the sanctioned post. Thus it is further submitted that the contention of the petitioner to the effect that press note has been made a basis of denying the benefit, of Rule 8(2)(d), is misconceived. Merit list was prepared after awarding marks to different categories of teachers as given below:

a. Differently Abled (before joining service or while in service) - 05 marks
b. Serious Illness (self/ spouse/ children) - 05 marks
c. Female - 05 marks
d. Per completed year of service - 01 marks (upto 35 marks Maximum)

15. That with regard to the argument of Senior Adv. Sri R.K. Ojha in writ petition no.14102/2018, it is submitted that the transfer policy of the Basic Teachers is Governed by the 1981 Rules namely "U.P. Basic education (Teachers) Service Rules 1981" subsequently the posting Rule of Basic Teachers were framed in 2008 namely: in furtherance thereto the Government order dated 13.06.2017 was issued whereby inter districts transfer policy for the session 2017-18 in the schools run by U.P. Basic Education Baord, U.P. were framed. However the Government order was also issued on 05.02.2018 under pursuance of the Hon'ble High Court order. The said policy is not under challenge.

18. That the deponent with all respect to the Constitution of India submits that the applications for inter districts trasnfer have to be considered in view of the clause no.8 of the Government order dated 13.06.2017 and therefore the eligibility of the applicants for inter district transfer has to be considered on the basis of the quality points and also on the basis of the preference as mentioned therein. This provision makes it clear that the applicants cannot claim transfer posting at their choice place as a matter of right. The interests of the children studying in Parishadiya Primary Schools in these backward districts identified as aspirational districts were considered foremost while taking the decision."

16. When the Rules 2008 were enacted, no provision for transfer was made in Rule 8 of the Rules. By First Amendment Rules, 2010, the Rules 2008 were amended which is existing today. Subsequent to it, the Rule 21 was amended by 13th Amendment Rules as aforesaid and it was again amended by the 15th Amendment Rules, 2012 whereby Rule 21 was restored in its original form.

Question No.(a):- Whether restriction on inter-district transfer has been validly imposed by the Government Order dated 13.06.2017 on teachers who have earlier taken benefit of inter-district transfer?

17. The arguments of learned counsels for the petitioners on this question are wholly misconceived inasmuch as Government Order dated 13.06.2017 as amended by Government Order dated 20.09.2017, was further amended by the afore-quoted Government Order dated 05.02.2018, whereby the position as is existing under Rule 8(2)(d) has been reiterated and the restrictions

imposed under the Government Order dated 13.06.2017, have been withdrawn.

18. Since the Government Order itself has been amended by the State Government and applications of all eligible candidates in terms of the Rules have been considered, therefore, this question does not survive.

Question No.(b):- Whether under Rule 21 of the Rules 1981 and Rule 8(2)(d) of the Rules 2008, the assistant teachers have a right for consideration of their transfer application or they have a right of transfer?

19. It is settled law that transfer is not a right. As per Rule 4 of the Rules 1981, the service cadre of the petitioners is the local area of the respective district. Their appointing authority is the concerned District Basic Education Officer. In view of Rule 21 of the Rules 1981, the Assistant Teachers of basic schools run by the Board cannot be transferred from rural local area to an urban local area or vice versa or from one urban local area to another of the same district or from local area of one district to that of another district except on the request of or with the consent of the teacher himself and in either case, approval of the Board shall be necessary. Rule 8(2)(d) of the Rules 2008 also does not confer any right for inter-district transfer. On the contrary it provides that in normal circumstances, the applications of inter-district transfers in respect of male and female teachers will not be entertained within five years of their posting. However, an exception has been provided in respect of female teachers that in special circumstances their applications for inter-district transfer would be entertained to the place of residence of their husband or in-laws' district. Rule 21 read with Rule 8(2)(d) of the Rules 1981 clearly indicates that teachers have no right for inter-district transfer.

20. Similar controversy with respect to Rule 21 of the Rules 1981 as amended by 13th and 15th Amendment Rules, was considered by a bench of this Court in the case of Reena Singh and others vs. State of U.P. and others [2013(101) ALR 527] (Paras-5, 6, 7, 8, 10, 11) and it was held as under:-

"5. After respective arguments have been advanced the factual situation as is emerging in the present case is that State of U.P. proceeded to amend the Rule 21 by means of U.P. Basic Education Teachers Service (13th Amendment) Rules, 1981, wherein provision for inter-district transfer has been provided for in magnified form by substituting Rule 21 of U.P. Basic Education (Teachers Services) Rules 1981. Rule 21 as amended by Thirteenth Amendment is being extracted below:

"Rule 21 - Procedure for Transfer :- Any teacher who is working as Assistant Teacher/Headmaster in Schools governed by the Board on October, 31, 2011 may submit his/her option/application once in his/her service period for transfer from one district to another district on the proforma laid down by the Board in the manner prescribed by it, which shall be effective till his/her transfer is executed.

(i) On and from the commencement of the Uttar Pradesh Basic Education (Teachers Service) (Thirteenth Amendment) Rules 2011, headmasters/ teachers who are willing to seek inter-district transfer shall have to submit their options/applications till

December, 31, 2011. The options/applications for transfer received by the Board shall be listed in accordance with opted district wise by the Board in order of their date of substantive appointment.

(ii) The inter-district transfer of teachers shall be considered in the following order of preference:-

(a) Female teacher who applies for transfer on marriage basis.

(b) Female teacher who applies for transfer in a district other than her home district.

(c) Female teacher who applies for transfer in her home district.

(d) Male teacher who applies for transfer in a district other than his home district.

(e) Male teacher who applies for transfer in his home district.

(iii) For transfer of teacher working in schools governed by the Board three options of the districts in order of preference shall be obtained on one application Form laid down Board.

(iv) Teacher willing for transfer, if working as head master in primary schools and assistant teacher in upper primary schools after promotion their transfer shall be considered in the applied/opted district, only when the teachers appointed in the same year have got promotion. The transfer of head teacher of upper primary schools shall not be permitted.

(v) The female teacher willing for transfer according to the order of preference prescribed in clause (ii) above shall be transferred, on the basis of first option given by them, in applied/opted district in order of their seniority. After that they shall be transferred on the basis of their second option, and remaining female teachers shall be transferred on the basis of their third option. Thereafter transfer of male teachers shall be considered on the basis of their seniority, in the district on the vacant posts available against sanctioned posts in respective district.

(vi) No option shall be accepted after 31.12.2011 the date prescribed for submission of application/option by the teacher for inter-district transfer. It shall be the last opportunity for the teachers to submit their application/options for inter-district transfer. The teachers who have not submitted their option till the stipulated date, the right to give option thereof shall stand expired.

(vii) In accordance with the above procedure, the teachers by whom the option for their transfer have been submitted, this rule shall stand infructuous for them after the execution of their transfer on the aforesaid basis.

(viii) The facility of this rule shall not be admissible to the teachers appointed after dated 31.10.2011."

6. Thereafter, further amendment has been introduced on 31st August, 2012 by means of 15th Amendment and therein once again amendment has been introduced in Rule 21 in following terms;

"Rule 21 - Procedure for Transfer :- There shall be no transfer of any teacher from the rural local area to an urban local area or vice versa or from one urban local area to another of the same district or from local area of one district to that of another district except on the request or or with the consent of the teacher himself and in either case approval of the Board shall be necessary."

A bare perusal of the rules quoted above would go to show that there is an authority of transfer conferred in the authorities concerned on the request of teacher concerned or on his/her consent after there is due concurrence taken by the Board. By means of 15th Amendment, so introduced, original rule which was replaced by 13th Amendment has been restored.

7. Thereafter for making inter-district transfer, the Board, proceeded to frame guidelines in its meeting dated 22.04.2013 fixing therein criteria that was to be adhered in the matter of inter-district transfer and Secretary, Basic Shiksha Parishad on 27.05.2013, circulated the same to each and every District Basic Education Officer. Relevant extract of the same is being extracted below;

"izs"kd] lfpo] mRrj izns'k csfld f'k{kk ifj"kn] bykgkcknA lsok esa] ftyk csfld f'k{kk vf/kdkjh mRrj izns'kA i=kad csf'koio @ 9825&45 @2013&14 fnukad 27-5-13 fo"k; %& moizo csfld f'k{kk ifj"kn ds v/khu lapkfy fo|ky;ksa esa dk;Zjr f'k{kdkksa ds vUrtZuinh; LFkkukUrj.k ds lEcU/k esaA egksn;] ifj"knh; fo|ky;ksa esa dk;Zjr lgk;d v;/kid@lgk;d v;/kfidsksa ds vUrtZuinh; LFkkukUrj.k ds lEcU/k esa voxr djuk gS fd vUrtZuinh; LFkkukUrj.k moizo csfld f'k{kk v;/kid lsok fu;ekoyh&1981 esa iUnzgosa la'kks/ku ds QyLo:i fu;e &21 esa mfYyf[kr fuEu O;oLFkk ds vuq:i fd;k tkuk gS& ^ ^fdlh v;/kid dk LFkkukUrj.k xzkeh.k LFkkuk; {ks= ls uxj LFkkuk; {ks= esa ;k bls foijhr ;k fdlh ,d LFkkuk; uxj {ks= ls mlh ftys ds fdlh vU; LFkkuk; {ks= esa ;k ,d ftys ds LFkkuk; {ks= ls fdlh vU; ftys ds LFkkuk; {ks= dks flok; v;/kid ds vuqjks/k ij ;k mldh Lo;a dh lgeftr ds ugh gksxk] vkSj fdlh Hkh ekeys esa ifj"kn dk vuqeksnu vko';d gksxkA ^ ^ mDr ds dze esa 'ksf{kd l= 2013&14 esa moizo csfld f'k{kk ifj"kn }kjk bPNqd vgZ v;/kidksa dk vUrtZuinh; LFkkukUrj.k djus dk fu.kZ; fy;k x;k gSA ifj"knh; v;/kidksa ds vUrtZuinh; LFkkukUrj.k dks ikjn'khZ ,oa 'kqfprkiw.kZ cukus gsrq vkuykbu vkosnu dh O;oLFkk dh xbZ gSA mRrj izns'k csfld f'k{kk ifj"kn dh fnukad 22 vizSy 2013 dh cSBd esa ifj"knh; fo|ky;ksa esa dk;Zjr v;/kidksa dk vUrtZuinh; LFkkukUrj.k fuEufyf[kr izkfo/kkuksa ds vuq:i fd;s tkus dk fu.kZ; fy;k x;k gS& 1& vUrtZuinh; LFkkukUrj.k gsrq dsoy ogh v;/kid vgZ gksxs ftUgksus dk;Zjr tuin esa izFke fu;qfDr frfFk ls foKfIr izdk'ku dh frfFk rd U;wure o3 o"kZ ¼efgyk@fodykax v;/kidksa gsrq U;wure o1 o"kZ ½ dh lsok iw.kZ dj yh gksA 2& ;fn fdlh v;/kid@v;/kfids }kjk foxr o5 o"kZ esa vUrtZuinh; LFkkukUrj.k fy;k x;k gS rks og l=

2013&14 esa vUrtZuinH; LFkkukUrj.k gsrq vgZ ugh gksxkA LFkkukUrj.kr tuin esa dk;Zjr vof/k dk vkdyu tuin esa dk;ZHkkj xzg.k djus dh frfFk ls foKfIr izdk'ku dh frfFk rd fd;k tk;sxkA 3& vUrtZuinH; LFkkukUrj.k gsrq bPNqd lHkh efgyk@iq:"k v/;kidksa dks fu/kkZfjr izk:i ij vkuykbu vkosnu djuk gksxk] ftlesa v/;kidksa }kjk vf/keku dze esa rhu tuinksa dk fodYi izLrqr djuk gksxkA LFkkukUrj.k pkgus okys efgyk@iq:"k v/;kidksa dk LFkkukUrj.k vkosfnr@fodYi fn;s x;s ftys esa muds vf/keku dze esa izFke fodYi ds vk/kkj ij fd;k tk;sxk] rRi'pkr mudk LFkkukUrj.k muds f}rh; fodYi ,oa ckdh cps v/;kidksa dk muds r`rh; fodYi ds vk/kkj ij fd;k tk;sxkA 4& moizo csfld f'k{kk v/;kid lsok fu;ekoyh ds vuqlkj ifj"knH; v/;kidksa dk in ftyk laoxZ dk gksrk gSA ,slh fLFkfr esa vUrtZuinH; LFkkukUrj.k vf/kdkj ugh gSA v/;kidksa dk vUrtZuinH; LFkkukUrj.k mudks lqfo/kk iznku djus gsrq f'k{kdk@f'k{kdk dh vko';drk@ifjLFkfr dks n`f"Vxr j[krs gq, ,oa okafNr tuinksa esa miyC/k fjdR;ksa ds vk/kkj ij fd;s tkus dh O;oLFkk gSA vr ,o fdlh Hkh v/;kid }kjk vUrtZuinH; LFkkukUrj.k ikus dk nkok vf/kdkj Lo:i ugh fd;k tk ldrk gSA 6& vUrtZuinH; LFkkukUrj.k esa ,sls tuin tgkW ls vkosnu pkgk x;k gS rFkk mu tuinksa esa tgkW ds fy, vkosnu fd;k x;k gS] dh fjdR;ksa dks /;ku esa j[krs gq, vfUre fu.kZ; moizo csfld f'k{kk ifj"kn }kjk fuEufyf[kr fcUnqvksa ds vkyksd esa fd;k tk;sxk& d& ,sls fodykax v/;kid ftudh fodykaxrk U;wure 40 izfr'kr gksA [k& xEHkhj jksx ls ihfM+r v/;kidA x& l'kL= lSU; cy esa dk;Zjr lSfudksa dh ifRu;ksa dk okafNr tuin esa ojH;rkuqlkj LFkkukUrj.k lEcU/kh vuqjks/kA ?k& efgyk v/;kidksa ds lEcU/k esa x`g tuin@ifr ds dk;Zjr tuin gsrq vkosnuA M-& iq:"k v/;kidksa }kjk x`g tuin gsrq vkosnuA 6& LFkkukUrj.k pkgus okys v/;kidksa dk muds }kjk okafNr tuin esa dsoy mlh fLFkfr esa LFkkukUrj.k fd;k tk;sxk tefd ml tuin esa lEcU/k v/;kid ds cSp ds v/;kid Hkh leku in ij dk;Zjr gksA 7& vUrtZuinH; LFkkukUrj.k gsrq dsoy vkuykbu vkosnu Lohdkj fd;s tk,xs] ,oa LFkkukUrj.k ij dsoy mlh n'kk esa fopkj fd;k tkuk lEHko gksxkA tefd lEcU/k v/;kid }kjk fu/kkZfjr izfdz;kuqlkj lgh 8& vUrtZuinH; LFkkukUrj.k esa bl ckr dk Hkh /;ku j[kk tk;sxk fd nwjLFk @finM+s tuinksa ls flQZ mrus gh LFkkukUrj.k fd;s tk, ftlls fd lkekU; f'k{kk O;oLFkk esa dksbZ dfBukbZ mRiUu u gksA 9& lHkh LFkkukUrj.k pkgus okys vH;fFk;ksa }kjk foKfIr esa mfYyf[kr izfdz;kuqlkj vkuykbu vkosnu fd;k tk;sxkA vkosnuksijUr Hkjs gq, vkosnu i= dk fizUV vkmV nks izfr;ksa esa ftyk csfld f'k{kk vf/kdkjh dk;Zy; dks miyC/k djuk vfuok;Z gksxkA 10& lHkh ftyk csfld f'k{kk vf/kdkjh bl izdkj izkIr vkuykbu vkosnu i=ks dk vkuykbu vkosnu esa vafdr fooj.k@rF;ksa ls dkmfUlfyax esa v/;kid }kjk miyC/k dj;s x;s lk{;ksa ,oa dk;kZy;h vfHkys[kksa ls lR;kiu dh dk;Zokgh lqfuf'pr djsxsA 11& vUrtZuinH; LFkkukUrj.k gsrq vkosnu djus okys v/;kidks dks fnukad 18-06-2013 dks bl gsrq vk;ksftr dkmfUlfyax esa izR;sd n'kk esa iSu dkMZ@osru vkj.k cSad ikleqd@fu;qfDr ,oa inksUufr vkns'k@vU; lk{;ksa lfgr mifLFkr gksuk gksxkA ;fn mDr frfFk dks dksbZ v/;kid mifLFkr ugh gksrk gS rks ml ds LFkkukUrj.k ij fopkj fd;k tkuk lEHko ugh gksxkA 12& lHkh ftyk csfld f'k{kk vf/kdkjh vkuykbu lR;kiu esa fujLr fd;s x;s vkosnu i=ksa ds lEcU/k esa lqLi"V dkj.k dk mYys[k djsxsA lkFk gh fujLr fd;s x;s vkosnu i=ksa dks lwph lfgr i`Fkd ls miyC/k dj;sxsA 13& leLr ftyk csfld vf/kdkfj;ksa dks lR;kfir vkosnu i=ksa dh gkMZdkih vko';d layXudksa@lk{;ksa lfgr ifj"kn dk;kZy; dks vkosnu lekIr gksus dh frfFk ls ,d lIRkg ds Hkhrj vfuok;Z :i ls miyC/k djuk gksxk] lkFk gh mUgs bl vk'k; dk ,d izek.k i= Hkh ifj"kn eq[;ky; dk nsuk vfuok;Z gksxk fd ^tuin ----- esa vUrtZuinH; la;k ----- rFkk vlR;kfir

vkosnu i=ksa dh la[;k ----- gSA^^ 14& vkuykbu vkosnu ds QyLo:i
LFkkukUrfjr v/;kidksa dks vius uohu rSukrh tuin esa fu/kkZfjr frfFk rd mifLFkr
gksuk gksxk] vU;Fkk dh n'kk esa l= 2013&14 esa mlds vUrtZuinh; LFkkukUrfjr.k ij
fopkj ugh fd;k tk;sxA 15& lHkh tuinksa ds ftyk csfld f'k{kk vf/kdkjh LFkkukUrfjr
v/;kidksa dks dk;ZeqDr djus ds iwoZ mlds fo|ky; esa v/;kidksa dh O;oLFkk dj ys ftlls
cPpksa ds f'k{k.k dk;Z esa dksbZ ck/kk mRiUu u gksA fdUrq ;g dk;Z fu/kkZfjr frfFk
ds Hkhrj gh dj fy;k tk, ftlls lEcU/kr v/;kid vius uohu rSukrh tuin esa lle; mifLFkr gks
ldsA 16& vUrtZuinh; LFkkukUrfjr.k gsrq izLrkfor dk;Zdze@le;lkfj.kh vUrtZuinh;
LFkkukUrfjr.k gsrq foKfIr dk izdk'k 25-05-2013 vUrtZuinh; LFkkukUrfjr.k gsrq vkuykbu
vkosnu izkjEHk gksus dh frfFk 28-05-2013 vUrtZuinh; LFkkukUrfjr.k gsrq vkuykbu
vkosnu dh vfUre frfFk 09-06-2013 vUrtZuinh; LFkkukUrfjr.k gsrq dkmfUlfyax dk
vk;kstu 18-06-2013 ftyk csfld f'k{kk vf/kdkjh }kjk vkosnu dks lR;kfir djus dh vfUre
frfFk 20-06-2013 ftyk csfld f'k{kk vf/kdkjh vkosnu i= dh gkMZ dkih layXudksa lfgr
miyC/k djkus dh vfUre frfFk 25-06-2013 vUrtZuinh; LFkkukUrfjr.k lwph dk izdk'ku
tqykbZ ds izFke lRkg esa Hkonh;

go viBuh;

¼lat; flUgk½ lfpo] mRrj izns'k csfld f'k{kk ifj"kn bykgkcknA i`olao@csf'koio@
2013&14 rn~fnukad izfrfyfi fuEufyf[kr dks lwpukFkZ ,oa vko';d dk;Zokgh gsrq izsf"kr
1- f'k{kk funs'kd ¼csfld½ moizo y[kum dks lwpukFkZ izsfirA 2- leLr e.Myh; lgk;d
f'k{kk funs'kd ¼csfld½ moizoA ¼lat; flUgk½ lfpo] mRrj izns'k csfld f'k{kk ifj"kn
bykgkcknA"

8. Bare perusal of the guidelines would go to show that same is self explanatory covering each and every contingency and clearly specifying that transfer is not a right, as teachers working form part of the cadre which is of district level and further it has been clarified that transfer order would be effected wherein their batch-mates are working on equivalent post and no teacher can claim inter-district transfer as a matter of right.

9. Each one of the petitioners had applied for consideration of their claim for according inter-district transfer and the said claim in question has been accepted and at the point of time when the said claim in question has been considered it was not at all absolute acceptance and to the contrary in respect of the inter-district transfer Secretary, Basic Shiksha Parishad U.P. at Allahabad had already circulated a circular clearly mentioning therein at item no. 6 that all those incumbents, who are seeking transfer in the district concerned, they would be accorded transfer only in the contingency if their batch-mates in the concerned district are also working, accordingly. The final list, which has been so published, did contain the name of petitioners but at the foot of the same a categorical note had been appended at page 135 of the paper book that each and every District Basic Education Officer before proceeding to ensure joining of incumbent concerned, should see and ensure that the batch-mates of the aforementioned incumbents have already been accorded promotion in the district concerned.

10. The authority to effectuate the inter-district transfer is there but the said transfer order has to be given effect to after there is due concurrence from the Board. The Board has proceeded to issue a circular dated 27.05.2013 covering the field of inter-district transfer and therein a categorical mention has been made that request of teachers to be transferred in a particular district of his/her choice would be accepted only when in the corresponding district his/her respective batch-mates are working against the same post, as held by the incumbents. Here in the present case, accepted position is that in the district Allahabad promotional exercise has not been undertaken and the batch-mates of petitioners are still working on a lower post and, in view of this, as per condition no. 6 of the circular issued by the Board petitioners cannot be transferred and as per Note Gha appended in the list dated 31st July, 2013 joining of petitioners cannot be ensured. Transfer is an incidence of service, but under U.P. Basic Education Teachers (Service) Rules, 1981, it is a privilege conferred upon a teacher but it is not an absolute privilege rather it is hedged with certain conditions and once it has been made clear that one can be transferred only in the said district where his/her batch-mates are similarly situated, then transfer cannot be claimed as a matter of right. Here in the present case batch-mates of petitioners at Allahabad till date have not been accorded promotion, as such, petitioners cannot claim as a matter of right to be accorded transfer.

Much emphasis has been laid by the petitioners that once the Legislature in its wisdom has deliberately amended the Rule 21 of U.P. Basic Education (Teachers) Service Rules, 1981 and thereafter has restored back Rule 21 in its original form, then such a condition could not have been imposed by means of circular dated 27.05.2013, as deliberately said conditions have been deleted and, in view of this, issuance of circular dated 27.05.2013 is nothing but transgression and oversleeping of jurisdiction.

11. The transfer order in question as per Rule 21 of 1981 Rules has to be made with the concurrence/approval of the Board and the Board has taken a policy decision on 27.05.2013 not to effectuate any transfer to the corresponding district wherein batch-mates of the transferred incumbents have not at all been accorded same status and once the Board, who inheres the authority to accord transfer, has chosen to take a resolve on the said score, then it cannot be said that said circular in any way violate the rules in question. Where a power is conferred or duty is imposed by statute or otherwise, and there is nothing expressly inhibiting the exercise of authority or performance of duty by any limitations or restrictions, such power cannot be arbitrarily or indiscriminately exercised, as power is always coupled with duty. Once authority has been reposed in the Board to effectuate inter-district transfer, and in the said direction, keeping all relevant factors in mind, germane for effectuating inter-district transfer, policy decision has been taken on 27.05.2013 which is inclusive of the policy to save the seniority of their batch-mates in corresponding district, wherein they intend to be transferred, same is not effected, and in such a situation such exercise of transfer cannot be effectuated, wherein their batch-mates are not similarly situated. It is a well intended policy to save the seniority of their batch-mates in the corresponding district, wherein transfer has been intended for. There is no lack of authority in framing such a policy, as an authority who is empowered to do something has absolute authority to exercise incidental and ancillary authority too, so that the intentment of conferring such authority is fulfilled, in free, fair and transparent manner. The Board in transfer, has the authority to frame the guidelines qua the way and manner it has to conduct itself in the matter of effectuating transfer. On

account of reintroduction of Rule 21, the authority of the Board to frame guidelines for effectuating inter-district transfer is not at all diluted or restricted, as has been sought to be suggested. Guidelines have been framed to maintain transparency and rule out arbitrariness, so that one knows the contingency when an incumbent can be transferred and the parameters of exercise of authority. One of the function of Board is to control the imparting of basic education, to exercise supervision and control over the basic schools, and to take all such steps necessary for discharge of any power. Once under the rules, authority to accord approval, rests with the Board, then it has all authority to frame guidelines to conduct itself. Guidelines in question, in noway violate the Rules."

(Emphasis supplied by me)

21. In the case of Kailash Chandra Sharma vs. State of Rajasthan and others [(2002) 6 SCC 62 (para-32)], Hon'ble Supreme Court while considering the validity of awarding of bonus marks to applicants to the district and the rural areas of the district concerned, also considered the arguments of inter-district transfer and observed as under:

"32. Coming then to the next plea that the residents of towns, if appointed will not be willing to serve the rural areas and they will be more interested in getting themselves transferred to "relatively urban area and forward districts", does not in our view, stand a moment's scrutiny. The apprehension that 'teacher absenteeism' will be rampant if non-rural candidates are appointed, to say the least, is based on irrelevant and unwarranted assumptions. First of all, as rightly pointed out by Dr. A.M. Singhvi, postings and transfers are managerial functions. The concerned authorities in-charge cannot be heard to say that there will be undue pressures from the candidates from extraneous sources and they will have to succumb to such pressures. Secondly, the question of non rural candidates trying to avoid working in villages and seeking transfer to town or urban areas does not arise for the simple reason that the appointees would have no option but to work in villages coming within the jurisdiction of the Panchayat Samiti concerned. The only other possibility is that they may like to have postings in the villages close to the town. If the non-rural candidates would like to have postings at places close to the town, the rural area candidates may equally have the desire to get postings close to their native villages and many of them may even prefer working at places near the town. Thus desire and aspiration in regard to choosing the place of work need not be on a set pattern. Ultimately, it is a matter of regulation of postings of rural as well as non-rural candidates. As regards the candidates coming from other districts, the question of seeking inter-district transfer does not arise, as they are required to work within the particular district in which they are selected and appointed. The factors which may exist in the context of appointments to State-wide cadre does not exist here. The difficulties sought to be projected by the State appear to be more imaginary rather than real. We have, therefore, no hesitation in rejecting this argument."

(Emphasis supplied by me)

22. In the case of Bank of India vs. Jagjit Singh Mehta, [(1992) 1 SCC 306 (para-5)], Hon'ble Supreme Court considered the question of transfer and posting of couples at the same Station and held, as under:

"5. There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of All-India Services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an All-India Service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of All-India Service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places. In addition, in the present case, the respondent voluntarily gave an undertaking that he was prepared to be posted at any place in India and on that basis got promotion from the clerical cadre to the officers' grade and thereafter he seeks to be relieved of that necessary incident of All-India Service on the ground that his wife has to remain at Chandigarh. No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees."

(Emphasis supplied by me)

23. Rule 4 of the Rules, 1981 leaves no manner of doubt that the petitioners' cadre of service is the local area of the district. In view of Rule 21 of the Rules 1981, the Assistant Teachers of basic schools run by the Board cannot be transferred from rural local area to an urban local area or vice versa or from one urban local area to another of the same district or from local area of one district to that of another district except on the request of or with the consent of the teacher himself and in either case, approval of the Board shall be necessary. Clause (a) of sub-Rule (2) of Rule 8 of the Rules 2008, specifically provides that the newly appointed male teachers shall initially be posted

compulsorily in backward areas for the period of at least five years. Clause (b) provides that newly appointed female teachers shall also be compulsorily posted in backward areas for a period of at least two years. Clause (c) permits consideration for mutual transfer within the district from general block to backward block and vice versa subject to the condition that the teacher of mutual transfer to a backward block to serve in that block compulsorily for five years and mutual transfers would be permitted only in case of those teachers who have more than remaining five years of service. Clause (d) specifically provides that in normal circumstances, the applications for inter-district transfer in respect of male and female teachers will not be entertained within five years of their posting. A complete prohibition on inter-district transfers for five years, is not in conflict with the Scheme of the Rules 2008 or the Scheme of the Rules 1981. However, an exception has been provided in Clause (d) that under special circumstances, application for inter-district transfers in respect of female teachers can be entertained to the place of residence of their husbands or in-laws' district. This exception has to be read along with the clause (a), (b), (c) and (d) of sub-Rule (2) of Rule 8 of the Rules 2008 and Rule 21 of the Rules 1981. Thus, as an exception, the applications for inter-district transfers in respect of female teachers may be entertained to the place of residence of their husband or in-laws' district in special circumstances subject to approval of the Board. If the Board has framed certain guidelines for approving such inter-district transfers of female teachers then applications for inter-district transfers of female teachers, may be entertained only if such applications fulfil the guidelines of the Board otherwise they cannot be even entertained. The petitioners do not fulfil the guidelines of the Board. Some petitioners in the present batch of writ petitions are those who want their transfer from an aspirational district to a non-aspirational district or from a district where the vacancy is more than 15%, which is not permissible either under the provisions of the Rules or the guidelines dated 10.06.2018 and the Government Orders/ instructions earlier issued, therefore, refusal to accord inter-district transfer to such applicants, is well in accordance with law.

24. The applications of the remaining petitioners were entertained but they could not be transferred to another district either on the ground that there remained no vacancy due to fill up of posts by ongoing recruitments or they were lower in merit list prepared for transfer by award of marks which were awarded adopting a uniform policy. Thus, the refusal of inter-district transfer to the petitioners, does not suffer from any error of law.

25. The Board in transfer matters, has the authority to frame the guidelines qua the way and manner it has to conduct itself in the matter of effectuating transfer. On account of reintroduction of Rule 21 of the Rules 1981 or insertion of Rule 8(2)(d) in the Rules 2008, the authority of the Board to frame guidelines for effectuating inter-district transfer is not at all diluted or restricted. Guidelines have been framed to maintain transparency and rule out arbitrariness, so that one knows the contingency when an incumbent can be transferred and the parameters of exercise of authority. One of the function of Board is to control the imparting of basic education, to exercise supervision and control over the basic schools, and to take all such steps necessary for discharge of any power. Once under the rules, authority to accord approval, rests with the Board, then it has all authority to frame guidelines to conduct itself. Guidelines in question, in noway violate the Rules. The aforesaid is also the ratio of decision in the case of Reena Singh (supra)

26. When Rules 2008 was originally enacted, Rule 8 thereof merely provided for posting. By the First Amendment Rules, 2010, the Rules 2008 were amended by inserting sub-Rule (2) and Clauses (a) to (f). Rule 21 of the Rules 1981 was existing in its original form. It was amended by the 13th Amendment Rules, 2011 providing for consideration to inter-district transfer in order of preference (quoted in para-5 of the judgment in Reena Singh's case). By 15th Amendment Rules, 2012, the Rule 21 as inserted by 13th Amendment Rules, 2011, was repealed and Rule 21 as it existed in its original form, was again introduced. Thus, the main provision dealing with the transfer is Rule 21 of the Rules, 1981 which forms part of service conditions. Since Clause (d) of sub-Rule (2) of the Rule 8 of the Rules, 2008 still exists, therefore, it has to be harmoniously read with Rule 21 of the Rules, 1981. A conjoint reading of Rule 21 of the Rules 1981 as interpreted by this Court in the case of Reena Singh (supra) and Rule 8(2)(d) of Rules 2008, would reveal that no teacher has any right of Inter-district Transfer. Rule 21 of the Rules, 1981 and Rule 8(2)(d) of the Rules, 2008 providing for Inter-district transfer is an enabling provision only to entertain inter-district transfer applications of only female teachers to the place of residence of their husbands or in-laws' district on request or with the consent of the teacher herself subject to the approval of the Board. In Reena Singh's case (supra), it has been authoritatively pronounced that the Board has the authority to frame the guidelines qua the way and manner it has to conduct in the matter of effectuating transfer. Guidelines have been framed by the Board to maintain transparency and rule out pick and choose by authorities and also that one may know the contingency when application for inter-district transfer of an incumbent can be entertained and she can be transferred. Under the Rules, authority to accord approval, rests with the Board. Therefore, it has all authority to frame guidelines to conduct itself.

27. The word "entertain" has not been defined either in the Act 1972 or in the Rules, 1981 or the Rules, 2008. In the case of M/s Lakshmi Ratan Engineering Works Ltd. vs. Assistant Commissioner (Judicial) 1st Sales Tax Kanpur Range, Kanpur and another [AIR 1968 SC 488 (paras 7 to 10)], Hon'ble Supreme Court interpreted the word "entertain" used in the proviso to Section 9 of the U.P. Sales Tax Act, 1948 and held that the word "entertain" means "admit to consideration" and when the proviso speaks of the entertainment of the appeal, it means that the appeal such as was filed, will not be admitted to consideration unless there is satisfactory proof available of the making of the deposit of admitted tax. The judgment in the case of M/s Lakshmi Ratan Engineering Works Ltd. (supra) has been consistently followed by Hon'ble Supreme Court including in Hindustan Commercial Bank Ltd. vs. Kunnu Sahu (dead) through legal representatives [(1971) 3 SCC 124 (Para-4)] and State of Haryana vs. Maruti Suzuki Ltd. and others [(2000) 7 SCC 348 (para-8)]. Similar view has also been taken by this Court in Awan Lal vs. Kunj Bihari Lal, 1962 All. 42; Dhoom Chand Jain vs. Chaman Lal Gupta, AIR 1962 All. 543; Kundan Lal vs. Jagannath, AIR 1962 All. 547; Haji Rahim Bux vs. Shami Ullah and sons, AIR 1963 All. 320; Smt. Jagdeep vs. Ram Awtar, AIR 1965 All. LJ 1135; Nazira Begum vs. Syed Ali, AIR 1974 All. 104; Sita Ram Jwala Prasad vs. Commissioner of Sales Tax, 1980 (45) STC 410 at 413 and R.R. Engineering Company vs. Commissioner of Sales Tax, 1983 (52) STC 174 at 176. The law laid down in the afore-noted binding judgments of Hon'ble Supreme Court and of this Court interpreting the meaning of the word "entertained", when applied to understand the meaning of the word "entertained" used in Rule 8(2)(d) of the Rules, 2008, leads to an irresistible conclusion that the applications for inter-district transfer of teachers can be entertained subject to guidelines/ policy decision of the Board. If applications of teachers for inter-district transfer is outside the contingency for inter-district transfer provided in the guidelines/ decision of the Board,

then such applications need not to be even admitted for consideration.

28. In view of the above discussion, the question No.(b) is answered as under:

Petitioners do not have any right for transfer or a right for consideration of their application for transfer. Applications for inter-district transfer may be entertained by the competent authority only if such applications for inter-district transfer are within the four corners of the provisions of the Rule 21 of the Rules, 1981 read with Rule 8(2)(d) of the Rules, 2008 and the guidelines framed by the Board for transfer.

Question No.(c):- Whether in the absence of any stipulation either in Rule 21 of the Rules, 1981 or in Rule 8(2)(d) of the Rules, 2008, inter-district transfer to the petitioners working in aspirational districts, can be denied?

29. Keeping in view the crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all, an obligation was imposed upon the State Government in the directive principles of State policy under Article 41 read with Article 45 of the Constitution of India so as to secure the right of education which led Hon'ble Supreme Court to pronounce a historical decision in the case of Unni Krishnan J.P. vs. State of Andhra Pradesh [(1993) 1 SCC 645] which stretched the limits of Article 45 by reading right to free education as a fundamental right of children upto the age of 14 years so as to enable them to receive education as a matter of right which were also supported by the recommendations of the Law Commission of India being Report No.165. In these circumstances, the Parliament enacted The Constitution (Eighty Sixth Amendment) Act 2002, by inserting a new fundamental right being Article 21A, as under:

"Article 21-A. Right to education. - The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. "

30. Having regard to the aforesaid constitutional provisions and the ground reality that number of children, particularly children from disadvantaged groups and weaker sections remain very large who dropped out of schools before completing elementary education, therefore, the Parliament enacted The Right of Children to Free and Compulsory Education Act, 2009.

31. In the case of Bhartiya Seva Samaj Trust vs. Yogeshbhai Ambalal Patel and another [(2012) 9 SCC 310 (para-24)], Hon'ble Supreme Court referred to its earlier judgment in Ashok Kumar Thakur vs. Union of India [(2008) 6 SCC 1] and held, as under:-

"24. Right to education flows directly from Article 21 and is one of the most important fundamental rights. In Ashoka Kumar Thakur v. Union of India (2008) 6 SCC 1, while deciding the issue of reservation, this Court made a reference to the provisions of Articles 15(3) and 21-A of the Constitution, observing that without Article 21-A the other fundamental rights are rendered meaningless. Therefore, there has to be a need to earnestly on implement Article 21-A. Without education a citizen

may never come to know of his other rights. Since there is no corresponding constitutional right to higher education - the fundamental stress has to be on primary and elementary education, so that a proper foundation for higher education can be effectively laid. Hence, we see that education is an issue, which has been treated at length in our Constitution. It is a well accepted fact that democracy cannot be flawless; but, we can strive to minimize these flaws with proper education. Democracy depends for its very life on a high standard of general, vocational and professional education. Dissemination of learning with search for new knowledge with discipline all round must be maintained at all costs."

(Emphasis supplied by me)

32. The right of children under Article 21A of the Constitution of India, cannot be restricted only to free and compulsory education and should also be extended to have quality education without any discrimination on economic, social and cultural grounds.

33. To achieve the object of the Act, 2009 and its expressed provisions so as to ensure implementation effectively the provisions of the Act for education for free and compulsory education to children in disadvantaged areas, the Central Government identified 115 highly backward districts/ areas in the country out of which eight districts namely Siddharth Nagar, Shravasti, Behraich, Sonbhadra, Chandauli, Fetehpur, Chitrakoot and Balrampur, are in Uttar Pradesh. Through the Niti Ayog, the Central Government has framed policy for development in these districts including the elementary education to children. The programme 'Transformation of Aspirational Districts' has been launched by Hon'ble Prime Minister. Policy decision or direction may be issued by the Central Government in exercise of powers conferred under Section 35 of the Act, 2009. Emphasis with regard to no transfer of employees from Aspirational districts finds mention in the general transfer policy of the State Government dated 29.03.2018, which has been quoted above.

34. No transfer of teachers from districts where the vacancy of teachers is more than 15% is reflected from the Government Orders dated 13.06.2017 as amended from time to time. The petitioners could not point out any unconstitutionality in this policy decision.

35. The U.P. Basic Education Board has issued guidelines dated 10.06.2018 for inter-district transfer of teachers in which it has been provided that no transfer shall be made from districts where the vacancy of teachers is more than 15% and also from districts which have been identified by the Government of India as Aspirational districts namely, Siddharth Nagar, Shravasti, Behraich, Sonbhadra, Chandauli, Fetehpur, Chitrakoot and Balrampur. Thus, this guideline cannot be said to be violative of either the provisions of the Act 2009, the Act 1972, the Rules 1981 or the Rules 2008 or the Government Orders and the policy decision of the Government of India.

36. The Board in transfer, has the authority to frame the guidelines qua the way and manner it has to conduct itself in the matter of effectuating transfer. On account of reintroduction of Rule 21, the authority of the Board to frame guidelines for effectuating inter-district transfer is not at all diluted or restricted. Guidelines have been framed to maintain transparency and rule out arbitrariness, so

that one knows the contingency when an incumbent can be transferred and the parameters of exercise of authority. One of the function of Board is to control the imparting of basic education, to exercise supervision and control over the basic schools, and to take all such steps necessary for discharge of any power. Once under the rules, authority to accord approval, rests with the Board, then it has all authority to frame guidelines to conduct itself. Guidelines in question, in noway violate the Rules.

37. The decision not to transfer any teacher from Aspirational districts is a uniform decision which has been taken by the Board in furtherance of the very object of the Act 2009 and policy decision of the Government so as to ensure free and compulsory education to most disadvantaged districts identified as Aspirational districts. While answering the Question No.(b) above, I have held that transfer applications for inter-district transfer may be entertained subject to approval or guidelines of the Board. Once the Board has taken a decision not to transfer any Assistant Teacher from Aspirational districts, the decision cannot be interfered with, particularly when it seeks to achieve object of the Act, 2009 and the petitioners have no right of inter-district transfer.

38. In view of the aforesaid, the Question No.(c) is answered as under:-

The petitioners working as Assistant Teachers in Aspirational districts have no right for inter-districts transfer. Petitioners do not have any legally protected or judicially enforceable subsisting right to ask for mandamus for transfer from the aspirational districts. Therefore, their applications for inter-district transfer have been lawfully rejected in view of the decision of the Board.

39. So far as the writ petition of the petitioners for transfer to District Ballia is concerned, I find that transfer could not be made as there was no vacancy. Since the petitioners - Assistant Teachers have no right of transfer under the Rules, therefore, the writ petitions have no merit.

40. In view of the above discussion, all the writ petitions fail and are hereby dismissed.

Order Date :- 13.08.2018 NLY