

Allahabad High Court

Dr. Vinay Kumar S/O Shri ... vs The Director Of Education ... on 17 November, 2005

Equivalent citations: 2006 (3) JCR 537 All

Bench: A N Ray, S R Alam, A Bhushan

JUDGMENT Ajoy Nath Ray, C.J., S. Rafat Alam and Ashok Bhushan, JJ.

1. This is a reference made by a Division Bench in Civil Misc. Writ Petition No. 3538 of 2005 (Dr. Vinay Kumar v. the Director of Education (Higher), Allahabad and Ors.).

2. The three questions referred by the Hon'ble Division Bench will be found at the end of the judgement at internal Page 16.

3. The said three questions are set out below:-

1. Whether law laid down in Dr. Prakash Chandra Srivastava v. Director of Higher Education, Allahabad and Anr. 2003 (1) AWC 142 by this Court and followed in Alak Rani Gupta (km.) v. Director of Education (Higher) and Anr. 2003 (2) ESC 944, is contrary to and in violation of the letter and intent of the express language used by the legislature in Section 13 of the Act, 1980 read with Regulation 5 of Regulations, 1983? '

2. Whether it is permissible for the Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution to either add or amend a statutory provision by enunciating an interpretation, which in its opinion, is just and proper?

3. Whether there is a direct conflict between the ii,i ratio of the two cases Dr. Prakash Chandra Srivastava (supra) and Km. Alka Rani Gupta (supra) on one hand and that of in Dr. Ranjana Tiwari v. Director, Higher Education of U.P. and Ors. (2003) 3 E.S.C. (All) 1489 on the other, which deserves to be resolved by an authoritative pronouncement?

4. Brief facts of the case giving rise to this reference need to be noted for appreciating the questions referred to this Bench. The UP. Higher Education Service Commission established under Section 3 of the U.P. Higher Education Service Commission Act; 1980 issued advertisement No. 32 of 2002 advertfising several vacancies of lecturers in different subjects in various non Government Colleges. The petitioner applied for the post of Lecturer Mathematics, while applying he also gave first preference to a college, namely, K. K. College, Etawah, Under the Government order dated 7.4.1998 the petitioner was appointed to teach Mathematics in K.K. College, Etawah on honorarium basis with the approval of the Director of Education dated 7.2.2004. The Commission made selection and declared merit list against thirty eight posts of lecturers Mathematics in which list the name of the petitioner was also included as against other backward category candidates. The Committee of Management claimed to have given no objection dated 30lh November, 2004 for appointment of the petitioner in K.K. College, Etawah. Petitioner made a representation to the Director of Education praying for his placement in K.K. College, Etawah. Petitioner filed the present writ petition praying for a writ of mandamus commanding the respondent No. 1, the Director of Education (Higher) UP. Allahabad to make placement of the petitioner as Lecturer Mathematics in

K.K. College, Etawah in accordance with law laid down by this Court in case of Alka Rani Gupta (Km.) v. Director of Education (Higher) and Anr. 2003 (2) ESC 944. The Division Bench before whom the writ petition came for hearing finding itself unable to agree with the law laid down in the above mentioned judgement of Allka Rani Gutpa (Km.) v. Director of Education (Higher) and Anr. (supra) referred the above noted three questions for consideration by this Bench.

5. Sri P.S. Baghel learned counsel appearing for the " petitioner submitted that the law laid down by the Division Bench of this Court in Allka Rani Gutpa (Km.) v. Director of Education (Higher) and Anr. (supra) correctly interprets the provisions of Sections 12 and 13 of the Act as amended by U.P. Act No. 2 of 1992. He further submits that the view taken in Allka Rani Gutpa (Km.) v. Director of Education (Higher) and Anr. (supra) find support from an earlier Division Bench judgement of this Court, Dr. Prakash Chandra Srivastava v. Director of Higher Education, Allahabad and Anr. 2003 (1) A.W.C. 142. The petitioner who has been appointed to teach Mathematics on honorarium basis with the approval of the Director of Education in accordance with the Government order dated 7.4.1998 is also entitled for the benefit of ratio laid down in Allka Rani Gutpa (Km.) v. Director of Education (Higher) and Anr. (supra) (Paragraph 10). Sri Baghel submits that the provisions of Sections 12 and 13 of the Act have been consciously amended in 1992 providing for giving of preference of the college by a candidate and further by Section 13 sub Clause (3) it was mandated that due regard be given to the order of preference indicated by a candidate. Sri Baghel submits that. Regulations framed under the Act, namely, the U.P. Higher Education Service Commission (Procedure for Selection of Teachers) Regulations, 1983 having not been amended, the Regulations will give way to the provisions of Sections 12 and 13 as amended in 1992 and the preference given by a candidate cannot be ignored. He further contends that a teacher or Principal working in particular college on ad hoc basis/honorarium basis has right to placement in the same College as per his preference where the committee of management agrees to such placement.

6. Sri Baghel while interpreting Sections 12 and 13 as amended in 1992 submits that the Court has to interpret the same in a manner so that preference given by a candidate be given primacy which according to him is the intention of the Legislature in amending Sections 12 and 13 of the Act. He submits that the Court should consciously mould the law so as to serve the needs of time. Reliance has been placed on various judgements of the apex Court laying down various principles of statutory interpretation, namely, Bangalore Water Supply & Sewerage Board v. A. Rajjappa and Ors. Mohinder Singh Gill and Anr. v. The Chief Election Commissioner. New Delhi and Ors. Rattan Chand Hira Chand v. Askar Nawazjung (Dead) by LRS and Ors. Mrs. Sarojini Ramaswami v. Union of India and Ors. A.I.R. 1991 Supreme Court 672 Orient Paper and Industries Ltd. and Anr. etc. etc. v. State of Orissa and Ors. and Laxmi Devi v. Mukand Kanwar and Ors.

7. Sri S.M.A. Kazmi, learned Additional Advocate General submitted that the Division Bench judgement in Alka Rani's case (supra) in so far as it carves out an exception with regard to ad hoc teacher working in the same college does not lay down the correct law. He submits that the selection by Commission is merit based and the preferences given by a candidate are taking into consideration according to merits of the candidates. He submits that the proposition of law as laid down in paragraph 9 of the said judgement clearly spells out the scheme under the Act and the Regulations. Sri Kazmi submits that the Court while interpreting the statute cannot add a word to a

provision or subtract a word from the provision. He submits that the Court while interpreting the provision can only interpret the law and cannot legislate. He submitted that the amended provisions of Sections 12 and 13 of the Act do not provide that the placement of the candidate be made in different college only on the basis of preference given go by to the merit of the candidate. Sri Kazmi also placed reliance on various judgements of the apex Court on statutory interpretation namely, Sri Ram Ram Narain Medhi and Ors. v. The State of Bombay; 1981 (Supp) Supreme Court Cases 87 S.P. Gupta v. Union of India and Anr.; P.K. Unni v. Nirmala Industries and Ors. ; Dadi Jagannadham v. Jammulu Rammulu and Ors. and 2005 J.T. Volume (6) 160 State of Kerala and Anr. v. P.V. Neelakandan Nair and Ors.

8. Before we proceed to consider the submissions of both the parties it is necessary to look the relevant statutory provisions on the subject. The UP. Higher Education Service Commission has been established for the selection of teachers for appointment to the colleges affiliated to or recognised by the University. Section 11 of the Act provides for powers and duties of the Commission which includes power and duties to frame proper guide lines on matters relating to method of recruitment of teachers of college, to make recommendation to the management regarding the appointment of selected candidates. Section 12 provides that the management shall make appointment only on the recommendation of the Commission. The management shall notify vacancy to the Commission. The manner of selection of persons for appointment to the post of teachers to a college shall be such as may be determined by the regulation. Section 13 provides for ;recommendation by the Commission after holding the interview with or without examination of the candidates. Section 12 and 13 of the Act as it originally stood is extracted below :-

12. Management to make appointments etc. only on the recommendations of Commission,_(1) Notwithstanding anything to the contrary P. Gupta v. Union of India and Anr. P. K. Unni v. Nirmala Industries and Ors. Padi Jagannadham v. Jammulu Rammulu and Ors. and 2005 J. T. Volume (6) 160 State of Kerala and Anr. v. P. v. Neelakandan Nair and Ors. contained in the Uttar Pradesh State Universities Act, 1973 or in the Statutes made thereunder, every appointment as a teacher of any college shall, after the date notified under Sub-section (1) of Section 3, be made by the management only on the recommendation of the Commission.

(2) For the purpose of making appointment of a teacher under Sub-section (1), the management shall notify the vacancy to the Commission.

(3) The manner of selection of persons for appointment to the posts of teachers of a college shall be such as may be determined by regulations;

Provided that the Commission shall, with a view to inviting talented persons give wide publicity in the State to the vacancies notified under Sub-section (2).

(4) k The provisions of this Section shall not apply to the appointment of a teacher, vacancy in respect whereof has been advertised in accordance with Sub-section (10) of Section 31 of the Uttar Pradesh State Universities Act, 1973 at any time before the commencement of this Act.

(5) Every appointment made in contravention of the provisions of this Section shall be void.

13. Recommendation of the Commission.-(1) The Commission shall as soon as possible, after the notification of vacancy under Sub-section (2) of Section 12, hold interview (with or without examination) of the candidates and recommend the names of not more than three candidates for appointment to every post of a teacher. Such names shall be arranged in order of preference.

(2) Where candidates referred to in Sub-section (1) fail to join the post or where they are otherwise not available for appointment, the commission may, on the request of the management recommend up to two more names of persons found suitable on the basis of the examination or interview held under the said sub- Section.

(3) Every recommendation of the Commission under Sub-section (1) or Sub-section (92) shall be valid for a period of one year from the date of such recommendation.

9. Section 31 empowers the Commission to make regulations with the previous approval of the Government. Regulations were framed by the Commission namely, the UP. Higher Education Service Commission (Procedure for Selection of Teachers) Regulations, 1983. Regulation 4 deals with determination and intimation of vacancies. Regulation 5 provides for notification of vacancies, submission of application and indication of preference. Regulation 6 deals with the procedure for selection. Regulation 6 (4) provides for preparation of list in order of merit which provided that the names shall not be more than three times the number of vacancies or the number of vacancies plus four whichever is more. Regulation 7 Sub-regulation (3) provides for offering the post of Principal "Degree College in order of merit with due regard to the preference given by the candidates. Regulation 5, Regulation 6 Sub-regulation (4) and Regulation 7 are extracted below :-

5. Notification of vacancies submission of application and indication of preference.- The Commission shall advertise the vacancies in three issues of at least three newspapers. The Commission shall send a copy of advertisement to the Director and may, if it considers proper, also send a copy thereof to the District Inspector of Schools and to the Colleges. Such advertisement shall, inter alia, indicate the total number of vacancies as also the number of vacancies in women's colleges and other colleges separately, the names of the college (s) and where they are situate and shall require the candidates to apply in prescribed form and to give if he so desires, the choice of not more than five colleges in order of preference. Where a candidate wishes to be considered for a particular college or colleges only and for no other, he shall mention the fact in his application;

Provided that where the number of colleges is large or for any other reason the Commission considers it inexpedient, it may, instead of mentioning the names and particulars of the colleges in the advertisement, send the copy thereof to the colleges and to the District Inspector of Schools and mention in the advertisement that particulars of" the colleges may be seen in the office of the Commission, the office of the District Inspector of Schools or in the Colleges;

Provided also that the Commission shall not be bound by the Choice given by the candidate and may, in its discretion, recommend him for appointment in a college other than indicated by him."

6. Procedure for selection,___ (1)...

(2)...

(3)...

(4) The Commission shall prepare two separate lists of selected candidates, one of the women candidates only and the other a 'general list' of all the candidates (including women candidates included In the first list). The names of women candidates who specifically opt not to be posted in women's colleges shall not be included in the list of women candidates. The names of the candidates in the two lists shall be arranged in order of merit and the number of names shall not be more than three times the number of vacancies or the number of vacancies plus four whichever is more.

7. Recommendation for appointment:-

(1)The Commission may recommend the names of upto three candidates, in order of merit, for each post.

(2) The post of Principal shall-

(a) in the case of women's colleges, be offered to the candidates in the list of women candidates, and

(b) in the other colleges, be offered to the candidates in the general list after striking out the names of the women candidates who have been offered posts under Clause (a).

(3) The posts of the Principal of degree colleges in the higher grade shall be offered in order of merit with due regard to the preference given by the candidates and the posts in the lower grade shall similarly be offered to the candidates standing next in order of merit.

(4) The procedure, mentioned in sub regulations (2) and (2) shall, mutatis mutandis, be followed in respect of the posts of teachers, other than principal.

10. The provisions of the Act were amended by the U.P. Act No. 2 of 1992 by which Sections 12 to 14 of the Act were substituted. Section 12 sub Clause (4) second proviso provided that the candidates shall be required to indicate their order of preference for the various colleges vacancies wherein have been advertised. Section 13 sub Clause (1) provides for Commission to send a list to the Director recommending the names of the candidates found most suitable. The names are required to be arranged in order of merit. Section 13 sub Clause (3) provides that the Director shall having due regard in the prescribed manner, to the order of preference, if any indicated by the candidates intimate to the management the name of the candidate from the list. Sections 12 and 13 of the Act as amended in 1992 are extracted below :-

12. Procedure for appointment of teachers,___ (1) Every appointment as a teacher of any college shall be made by the management in accordance with the provisions of this Act and every appointment

made in contravention thereof shall be void.

(2) The management shall intimate the existing vacancies and the vacancies, likely to be caused during the course of the ensuing academic year, to the Director at such time and in such manner, as may be prescribed.

Explanation,____ The expression "academic year" means the period of 12 months commencing on July 1.

(3) The Director shall notify to the Commission at such time and in such manner as may be prescribed a subject- wise consolidated list of vacancies intimated to him from all colleges.

(4) The manner of selection of persons for appointment to the post of teachers of a college shall be such, as may be determined by regulations:

13. Recommendation of the Commission.-(1) The Commissioner shall, as soon as possible, after the notification of vacancies to it under Sub-section (3) of Section 12, hold interview (with or without examination) of the candidates and send to the Director a list recommending such number of names of candidates found most suitable in each subject as may be, so far as practicable, twenty five per cent more than the number of vacancies in that subject. Such names shall be arranged in order of merit shown in the interview, or in the examination and interview if an examination is held.

(2) The list sent by the Commission shall be valid till the receipt of a new list from the Commission.

(3) The Director shall having due regard in the prescribed manner, to the order of preference if any indicated by the candidates under the second proviso to Sub-section (4) of Section 12, intimate to the management the name of a candidate from the list referred to in Sub-section (1) for being appointed in the vacancy intimated under sub- Section (2) of Section 12.

(4) Where a vacancy occurs due to death, resignation or otherwise during the period of validity of the list referred to in Sub-section (2) and such vacancy has not been notified to the commission under Sub-section (2) and such vacancy has not been notified to the Commission under Sub-section (3) of Section 12, the Director may intimate to the management the name of a candidate from such list for appointment in such vacancy.

(5) Notwithstanding anything in the preceding provisions, where to abolition of any post of teacher in any college, services of the person substantively appointed to such post is terminated the State Government may make suitable order for his appointment in a suitable vacancy, Whether notified under sub- Section (3) of Section 12 or not in any other college and thereupon the Director shall intimate to the management accordingly.

(6) The Director shall send a copy of the intimation made under Sub-section (3) or Sub-section (4) or Sub-section (5) to the candidate concerned.

11. Anr. provision worth noticing is that Section 16 of the Act which provided for ad hoc appointment was omitted by the amending Act. After noticing the relevant statutory provisions, before we proceed to find out the legislative scheme as spelled out from the aforesaid provisions it is necessary to consider the submissions raised by counsel for both the parties for applying principles for interpretation of statutes as contended by both the parties. Sri Baghel for the proposition that the statute to be read and constructed with reference to the new provisions and not with reference to the provisions which originally existed, placed reliance on judgements of the apex Court in *Orient Paper and Industries Ltd. and Anr., etc. etc. v. State of Orissa and Ors.* (supra) and *Laxmi Devi v. Mukand Kanwar and Ors.* (supra). In *M/s. Orient Paper and Industries Ltd. and Anr., etc. etc. v. State of Orissa and Ors.* (supra) the apex Court considered the amendment made by Act No. 15 of 1987 in Orissa Forest Produce (Control of Trade) Act, 1981 interpreted the provisions as stood after amendment. There cannot be any dispute with the proposition laid down by the apex Court in the above case. While interpreting the scheme of the Act the amendment has to be looked into and given due consideration.

12. The judgement of the apex Court in *Bangalore Water Supply and Sewerage V. A. Rajappa and Ors.* (supra) which approved the observation of Lord Denning, L.J., in *Seaford Court Estates Ltd. v. Asher* (1949) 2 All. England Report 155 has been heavily relied. The relevant observation of the apex Court in paragraphs 147 and 148 are extracted below :-

147. My learned brother has relied on what was considered in England a somewhat unorthodox method of construction. in *Seaford Court Estates Ltd. v. Asher*, where Lord Denning, L.J., said:

When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give ' force and life to the intention of legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

When this case went up to the House of Lords it appears that the Law Lords disapproved of the bold effort of Lord Denning to make ambiguous legislation more comprehensible. Lord Simonds found it to be " a naked usurpation of the legislative function under the thin disguise of interpretation". Lord Morton (with whom Lord Goddard entirely agreed) observed: " These heroics are out of place" and Lord Tucker said " Your Lordships would be acting in a legislative rather than a judicial capacity if the view put forward by Denning, L.J., were to prevail.

148. k Perhaps, with the passage of time, what may be described as the extension of a method resembling the "arm-chair rule" in the construction of wills, Judges can more frankly step into the shores of the legislature where an enactment leaves its own intentions in much too nebulous or uncertain a state. In *M. Pentiah v. Muddala Veeramallappa*, Sarkar, J., approved of the reasoning, set out above, adopted by Lord Denning. And, I must say that, in a case where the definition of "industry" is left in the state in which, we find it, the situation perhaps calls for some judicial heroics

to cope with the difficulties raised.

13. Further strong reliance has been placed on paragraph 19 of the apex Court judgement in Mohinder Singh Gill and Anr. V. The Chief Election Commissioner. New Delhi and Ors. which is extracted below :-

19. The old articles of the supreme lex meet new challenges of life, the old legal pillars suffer new stresses. So we have to adapt the law and develop its latent capabilities if novel situations, as here, are encountered. That is why in the reasoning we have adopted and the perspective we have projected, no literal nor lexical but. liberal and visional is our interpretation of the ' articles of the Constitution and the provisions of the Act. Lord Denning's words ;are instructive:

Law does not stand still. It move's continually. Once this is recognised, then the task of the Judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time, must not be a mere mechanic, a mere working mason, laying brick on brick, without thought to the overall design. He must be an architect_ thinking of the structure as a whole building for society a system of law which Is strong, durable and just. It is on his work that civilised society itself depends.

The invulnerable barrier of Article 329(b).

14. Further, the observations of the apex Court made in paragraph 7 in Union of India and Anr. V. Raghubir Singh (dead) by Lrs. Etc. has been relied which are to the following effect :-

7. India is governed by a judicial system identified by a hierarchy of courts, where the doctrine of binding precedent is cardinal feature of its jurisprudence. It used to be disputed that Judges make law. Today, it is no longer a matter of doubt that a substantial volume of the law governing the lives of citizens and regulating the functions' of the State flows from the decisions of the superior courts. There was a time" observed Lord Reid "When it was thought almost indecent to suggest; that Judges make law they only declare it.... But we do not believe in fairy tales any more". In countries such as the United Kingdom, where Parliament as the legislative organ is supreme and stands at the apex of the constitutional structure of the State, the role played by judicial law-making is limited. In the first place the function of the courts is restricted to the interpretation of laws made by Parliament and the courts have no power to question the validity of Parliamentary statutes, the Diceyan dictum holding true that the British Parliament is paramount and all powerful In the second place, the law enunciated in every decision of the courts in England can be superseded by an Act of Parliament. As Cockburn CJ observed in Ex parte Canon Selwyn : (1872) 36 JP 54):

There is no judicial body in the country by which the validity of an Act of Parliament could be questioned. An act of the Legislature is superior in authority to any Court of Law.

And Ungood 'Thomas J. in Cheney v. Conn 1968) 1 All. ER 779 referred to a Parliamentary statute as "the highest form of law... which prevails over every other form of law". The position is substantially different under a written Constitution such as the one which governs us. The Constitution of India,

which represents the Supreme Law of land, envisages three distinct organs of the State, each with its own distinctive functions, each a pillar of the State. Broadly, while Parliament and the State Legislature in India enact the law and the Executive government implements it, the Judiciary sits in judgment not only on the implementation of the law by the Executive but also on the validity of the legislation sought to be implemented. One of the functions of the superior judiciary in India is to examine the competence and validity of legislation, both in point of legislative competence as well as its consistency with the Fundamental Rights. In this regard, the courts in India possess a power not known to the English Courts.. Were a statute is declared invalid in India it cannot be reinstated unless constitutional sanction is obtained therefor by a constitutional amendment or an appropriately modified version of the statute is enacted which accords with constitutional prescription. The range of judicial review recognised in the superior judiciary of India is perhaps the widest and the most extensive known to the world of law. The power extends to examining the validity of even an amendment to the Constitution, for a now it has been repeatedly held that no constitutional amendment can be sustained which violates the basic structure of the Constitution. (See *Kesavananda Bharati v. State of Kerala* ; *Indira Nehru Gandhi v. Raj Narain* (1975) Supp. SCC 1; *Minerva Mills Ltd. v. Union of India* (1980) 2 SCC 591 and recently in *S.P. Sampath Kumar v. Union of India* . With this impressive expanse of judicial power, it is only right that the superior courts in India should be conscious of the enormous responsibility which rest on them. This is specially true of the Supreme Court, for as the highest Court in the entire judicial system the law declared by it is, by Article 141 of the Constitution, binding on all courts within the territory of India.

15. On the other hand, the reliance has been placed on apex Court judgement in *Sri Ram Ram Narain Medhi V. The State of Bombay* and paragraph 38 has been referred which has been extracted below:-

38... If the language of the enactment is clear and unambiguous it would not be legitimate for the Courts to add any words thereto and evolve therefrom some sense which may be said to carry out the supposed intentions of the legislature. The intention of the Legislature is to be gathered only from the words used by it and no such liberties can be taken by the Courts for effectuating a supposed intention of the Legislature. There is no warrant at all, in our opinion, for adding these words to the plain terms of Article 31A(1)(a) and the words "extinguishment or modification of any such rights" must be understood in their plain grammatical sense, without any limitation of the type suggested by the petitioners.

16. The apex Court in 1981 (Supp.) Supreme Court Cases 87 *S.P. Gupta V. Union of India* and Anr. has again considered and said the entire law on the subject. The seven Judges Bench of the apex Court had considered the principle of statutory interpretation and after considering several earlier cases on statutory interpretation following was laid down in paragraphs 273, 274 and 275 :-

273. Thus, on a full and complete consideration of the decisions classified under the various categories, the propositions that emerge from the decided cases of this Court and other foreign courts are as follows (1) Where the language of a statute is clear and unambiguous, there is no room for the application either of the doctrine of *casus omissus* or of pressing into service external aids, for in such a case the words used by the Constitution or the statute speak for themselves and it is not

the function of the court to add words or expressions merely to suit what the courts think is the supposed intention of the legislature.

(2) Where, however, the words or expressions used in the constitutional or statutory provisions are shrouded in mystery, clouded with ambiguity and are unclear and unintelligible so that the dominant object and spirit of the legislature cannot be spelt out from the language, external aids in the nature of parliamentary debates, immediately preceding the passing of the statute, the report of the Select Committees or its Chairman, the Statement of Objects and Reasons of the statute, if any, or any statement made by the sponsor of the statute which is in close proximity to the actual introduction or insertion of the statutory provision so as to become, as it were, a result of the statement made, can be pressed into service in order to ascertain the real purport, intent and will of the legislature to make the constitutional provision workable.

We might make it clear that such aids may neither be decisive nor conclusive but they would certainly assist the courts in interpreting the statute in order to determine the avowed object of the Act or the Constitution as the case may be.

(3) Except in the aforesaid cases, a mere speech of Member made on the floor of the House during the course of a parliamentary or legislative debate would not be admissible at all because the views expressed by the speaker may be his individual views which may or may not be accepted by the majority of the Members present in the House.

(4) Legislative history of a constitutional provision though not directly germane for the purpose of construing a statute may, however, be used in exceptional cases to denote the beginning of the legislative process which result in the logical end and the finale of the statutory provision but in no case can the legislative history take the place of or be a substitute for an interpretation which is in direct contravention of the statutory provision concerned.

(5) Where the scheme of a statute clearly shows that certain words or phrases were deliberately omitted by the legislature for a particular purpose or motive, it is not open to the court to add those words either by conforming to the supposed intention of the legislature or because the insertion or the omission suits the ideology of the Judges deciding the case. Such a course of action would amount not to interpretation but to interpolation of the statutory or constitutional provisions, as the case may be and is against all the well-established canons of interpretation of statutes.

274. The main reason behind the principles enunciated above is that the legislature must be presumed to be aware of the expanding needs of the nation, the requirements of the people and above all, the dominant object which the legislation seeks to subserve.

275. Thus, where the language is plain and unambiguous the court is not entitled to go behind the language so as to add or supply omissions and thus play the role of a political reformer or of a wise counsel to the legislature.

17. Again Anr. Constitution Bench of Supreme Court in : Dadi Jagannadham V. Jammulu Ramulu and Ors. laid down following in paragraph 13 :-

13. We have considered the submissions made by the parties. The settled principles of interpretation are that the court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the court would not go to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there.

18. From the pronouncement of the apex Court as noted above, it is clear that for interpreting a statute intention of the legislature has to be ascertained. While interpreting a statute the court adopts an interpretation which carry forward the object of the legislature and advances the legislative scheme. The Court could not add word to the statutes or read words in the statute which are not there,. Moreso when the literal reading produces an intelligible result. True, the law is not static and the Court is to adopt an interpretation which advances the legislative object, remedies the defect.

19. In the present case we have to look the legislative scheme to find out as to what legislative intent is spelled out from the amended provisions of Sections 12 and 13 on which much emphasis has been laid by Sri Baghel.

20. It is relevant to note that the amended Section 12 (4) still provides that the manner of selection of persons for appointment to the post of teachers of the College shall be such as may be determined by regulation. For manner of selection of persons for appointment we have to revert to the regulation and the regulations have not been given a go-by with regard to manner of selection. As noted above under unamended provision it was the Commission's power to send the list to the management for appointment against a post but by amendment made under Section 13 now the Director has been empowered to forward the list. The provision of giving choice by a candidate of not more than five colleges in order of preference was very much there in Regulation 5 which has now been provided for in amended Section 12(4) second proviso. Prior to amendment in Sections 12 and 13 the regulation did provide for placement in order of merit with due regard to the preference given by the candidates. Regulations 7 clearly spells out the scheme. The selection of teachers is merit base selection and in placement of the candidate merit has to play role. Section 12 (3) of amended Section provides " the Director shall having due regard in the prescribed manner, to the order of preference". The emphasis of the counsel for the petitioner is that the word "due regard" used in Section 13 (3) spells out a shift in intention of the legislature for giving more emphasis in preference of a candidate.

21. As noted above the word "due regard" was mentioned in Regulation 7 Which has now been mentioned in Sections 12 and 13.

22. The word "due regard" has been defined in Black's Law Dictionary Sixth Edition in following manner "Due regard" Consideration in a degree appropriate to demands of the particular case."

23. The word "due regard" came for consideration before the Madras High Court in T.P. Sundaralingam v. The State of Madras and Ors. . The Division Bench while considering the word "due regard" in context of Rice Milling Industry (Regulation) Act (1958) made following observation:-

...All that is meant by the expression "due regard" in Section 5(4) is that the licensing authority must pay proper attention to the several circumstances mentioned by the Sub-section in balancing the considerations for grant or refusal of a permit, that is to say, in balancing the facts and circumstances to form an opinion that in order to ensure adequate supply of rice, it is necessary to grant the permit....

24. The apex Court had occasion to consider the word "due regard" in context of Criteria for promotion- Selection-Merit- cum- suitability with due regard to seniority" in 1995 Supp (1) Supreme Court Cases, Sarat Kumar Dash and Ors. V. Biswajit Patnaik and Ors.. Following was observed by the apex Court in paragraphs 7 and 8 :-

7. In Capoor Case this Court has stated with regard to the principle thus: (SCC P.856, para 37) When Regulation 5(2) says that the selection for inclusion in the list shall be based on merit and suitability in all respects with due regard to seniority, what it means is that for inclusion in the list, merit and suitability in all respects should be the governing consideration and that seniority should play only a secondary role. It is only when merit and suitability are roughly equal that seniority will be a determining factor, or if it is not fairly possible to make an assessment inter se of the merit and suitability of two eligible candidates and come to a firm conclusion, seniority would tilt the scale. But, to say, as the High Court has done, that seniority is the determining factor and that it is only if the senior is found unfit that the junior can be thought of for inclusion in the list is, with respect, not a correct reading of Regulation 5(2). I do not know what the High Court would have said had Regulation 5 (2) said; "Selection for inclusion in the select list shall be based on seniority with due regard to merit and suitability.

Would it have said that the interpretation to be put upon the hypothetical Sub-regulation (2) is the same as it put upon the actual sub-regulation.

8. In case of merit- cum-suitability, the seniority should have no role to play when the candidates were found to be meritorious and suitable for higher posts. Even a juniormost man may steal a march over his seniors and jump the queue for accelerated promotion. This principle inculcates dedicated service and accelerates ability and encourages merit to improve excellence. The seniority would have its due place only where the merit and ability are approximately equal or where it is not possible to assess inter se merit and the suitability of two equally eligible competing candidates who come very close in the order of merit and ability. Under those circumstances, the seniority will play its due role and calls it in aid for consideration. But in case where the relative merit and suitability or ability have been considered and evaluated and found to be superior, then the seniority has no

role to play. In our view the PSC has evolved correct procedure in grading the officers and the marks have been awarded according to the grading. It is seen that the four officers have come in the grading of 'B'. In consequence, the PSC had adopted the seniority of the appellants and Panda in the lower cadre in recommending their cases for appointment in the order of merit.

25. From the definition of word "due regard" as noted above given in Black's Law Dictionary and the observations of the apex Court as quoted above it is clear that "due regard" means regard to a factor which is due according to the statutory scheme. It is also to be noted that Section 13(3) refers to "due regard" in the prescribed manner. Thus "due regard" used in Section 13(3) cannot be interpreted as only regard as sought to be canvassed by the counsel for the petitioner. In case the interpretation suggested by the counsel for the petitioner is accepted the placement of the candidate shall only depend on preference indicated by a candidate that will give a go by to the entire merit scheme. The above interpretation cannot be accepted which can be explained by giving a simple illustration. In merit list ten candidates have given their first preference of a particular college. For recommending the name of the candidate for the particular vacancy in a college, the preference of the candidate higher in merit has to be accepted. The amendment made in Sections 12 and 13 does not indicate that merit base scheme of recommendation of names against the particular vacancy has been given a go by. The merit is pivotal factor and the preference of the candidate has to be given effect to as far as possible. In the event for a particular college no one has given preference person lower in merit may get placement in that college when his chance comes for consideration. The interpretation sought to be canvassed by the counsel for the petitioner does not fall along with the legislative scheme as indicated by amended provision of Sections 12 and 13 of the Act and the Regulations. It is true that those provisions of the regulation which can not stand along with the amended provisions of Sections 12 and 13 has to be treated as not operative but those part of the regulation which is not in conflict with any provisions of the Act, has still to be followed. This view of ours is re-enforced with express provisions of Sections 12 (4) of the amended provision which still refers to and relies the regulation for the manner of selection of persons for appointment.

26. In the case of Alka Rani Gupa (supra), a Division Bench of this Court said as follows in paragraph 9, which is set out below:-

9. Thus the legal position which emerges from the above provisions in the Act and Regulations is as follows :

(i) Where a large number of candidates are selected for various institutions by the Commission, the Commission has to prepare a select list in accordance with the merit determined by the Commission.

(ii) The candidate who is on the top of the select list will be given his first preference.

(iii) Then the candidate who is at serial position No. 2 in the select list will be considered by the Director. If his first choice has already been filled by the candidate at the top of the select list then this candidate will be given his second choice, otherwise he will get his first choice.

(iv) Then we come to the candidate who is on the third position in the select list. If the choice of his first preference has not been already allotted to a candidate higher than him in the select list he will be given that institution, otherwise he will be given his second choice, unless that too has been allotted to the candidate above him, in which case he will be allotted the institution of his third choice. In this way the Director will do the placement.

27. However, in the very said same case the Bench went on to carve out exceptions from the said Rule in the very next two paragraphs, namely, paragraphs 10 and 11. Those two paragraphs are also set out below:-

10. In our opinion this is the only logical and reasonable method for making placement of a candidate selected by the Commission and if this is not followed there is bound to be chaos, corruption, arbitrariness, casteism etc. There shall be only one exception to the above method and procedure for making placement, namely that if there is an ad hoc Principal already working in the College, or Lecturer working in the said College who has been selected by the Commission for the post of Principal, then the ad hoc Principal/Lecturer should be given placement in the same College as Principal provided that the management has no objection.

11. We are laying down this exception in view of the division bench decision of this Court in Dr. Prakash Chandra Srivastava v. Director of Higher Education, Allahabad and Anr. 2003(1) AWC 142. In paragraph 10 of the said decision it has been observed that problems and disputes arise between the Principal and the management when the management is forced to issue an appointment order in favour of a person against its wishes. Thrusting an unwilling Principal on an unwilling management is not in the interest of the institution. This is the only exception to the method and procedure of placement, which we have laid down in this judgment.

28. Dr. Prakash Chandra's case, which is mentioned in the referring questions and also in paragraph 11 of Alka Rani's case (supra), was about the appointment of a Principal in a College where persons higher in the merit list had indicated that very same college in their order of preference, although such preferences were at Item Nos. 4 or 5.

29. The material paragraphs of Dr. Prakash Chandra's case (supra) are paragraphs 4, 5, 9 and 10. Those paragraphs from the said judgment are set out below:-

4. In the counter- affidavit filed by Dr. R.K. Baslas, Director of Higher Education, U.P., it is stated that appointment on the post of Lecturer and Principal in an affiliated college (other than a Government college) is made in accordance with Higher Education Services Commission Act and the procedure for making appointment is given in Section 12 of the said Act. It is averred that the Director of Higher Education, UP., is no bound to make a placement order according to the choice of the candidate and the same has to be done in a prescribed manner by taking into consideration the roster made in accordance with UP. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Backward Classes) Act, 1994. It is admitted that the petitioner has been selected for the post of Principal and his name finds place at SI. No. 28 in the merit list of the selected candidates of general category. It is also admitted that the petitioner had given his first preference for placement

in the institution in question, namely, Lala Laxmi Narain Degree College, Sirsa, Allahabad. However, the stand taken is that Anr. candidate, namely, Dr. Sadhu Singh Chauhan, whose name finds place at Sl. No. 13 in the list prepared on the basis of roster had also given his preference for the same institution. The specific plea taken in paragraph 3 (h) of the counter-affidavit is that as Anr. candidate, whose name happens to be higher than the petitioner in the list prepared according to the roster, has already given preference for the institution in question, it is not possible to recommend the name of the petitioner for his appointment as Principal of the institution as his position in the merit list is lower.

5. In the rejoinder- affidavit filed by the petitioner, it is averred that institution in question was the fourth choice of Dr. Sadhu Singh Chauhan in order of preference. A placement order had been passed in his favour by the Director of Higher Education, UP., for his appointment as Principal of Sahkari Snatakottar Mahavidyalaya, Mehrawan, Jaunpur and he has already joined there. It is further averred that most of the selected candidates had already been given placement orders and even amongst those who have been left, no one had given his first preference for the institution in question.

9. It is not in dispute that Dr. Sadhu Singh Chauhan had given his fourth preference for the institution in question while it is the first preference of the petitioner. A placement order was issued in favour of Dr. Sadhu Singh Chauhan for his appointment as Principal of Sahkari Snatakottar Mahavidyalaya, Jaunpur and he has already joined there. The result of selection made by the Higher Education Service Commission was declared nearly one and half years back on 18.4.2001. Placement orders have already been passed for most of the selected candidates. None of the selected candidates who have not yet been given a placement order, have indicated their choice for the institution in question. The petitioner has given his first preference for the institution. In these circumstances, we see no justification why a placement order should not be made in favour of the petitioner for his appointment as Principal of the college in question.

10. Sirsa is a small town and is situate at a distance of about 60 Kms. From Allahabad city. It is not even a tehsil headquarters. Not many selected candidates would be keen for their placement in the institution in question. The petitioner is working in the institution since October, 1971, when the same was established. He was promoted as reader in August, 1998 and, thereafter, he is officiating as Principal since March, 1994. The material on record shows that it is during this period, when the petitioner became the officiating Principal, that B.Sc. (Biology and Mathematics groups) and B.,Ed. Classes have started in the college. Having put in 31 years in the institution, he must be fully familiar with the teaching and other staff working there. The Manager of the college has also written to the Director of Higher Education that a placement order be issued for appointing the petitioner as Principal of the institution as during his tenure, the institution has made considerable progress. It is apparent that the management wants the petitioner to be appointed as regular Principal of the institution and his appointment there would not create any kind of problem or dispute between the Principal and the management, which sometimes takes place when the management is forced to issue an appointment order in favour of a person against its wishes. The post of Principal is not transferable and one has to spend his entire career in the institution where he has joined. Not many are, therefore, keen to join in an institution which is in rural area and those from far off places are

quite reluctant to do so. Thrusting an unwilling Principal on an unwilling management is not in the interest of the institution. On overall consideration of the matter, the appointment of the petitioner as Principal of the institution will be eminently just and proper.

30. From the above paragraphs, it will be clear that although the higher merit list candidate Chauhan was still not appointed when the writ petition has been filed and thus Dr. Prakash Chandra has a contestant on the scene who was higher in merit, by the time the writ petition came to be disposed of, Chauhan has already got appointment in some other college. Thus the writ matter could be disposed of only in one way, i.e. by placing Dr. Prakash Chandra in his college of preference as the seat of Principal there was then empty.

31. However, the Division Bench went on to make observations giving a lot of weight to the management preference. This management preference in case of ad hoc Principals has been also given a lot of weight in Alak Rani's case (supra) in paragraphs 10 and 11.

32. The Division Bench in the case of Dr. Ranjana Tiwari (supra) took a different view. This view can be basically found in paragraph 34 of the judgment, which is set out below:-

34. Thus in view of the above, if the discretion is to be exercised judicially and if the provisions of the Act and the Regulations are read together we find no scope of discretion of the statutory authority in making the placement, as it is to be made exclusively on merit. A candidate higher in the merit list has to be offered the place of his first choice, if available, without making any adjustment in favour of a person working therein on ad hoc basis. The matter requires to be considered in the light of the provisions of Section 13(20) of the First Statute of the University of Gorakhpur which provides that a senior teacher can be appointed as an officiating Principal till a regular Principal is appointed. The said provision does not create any right in favour of a person working on ad hoc basis to continue if he is so selected regularly and not vacating the post for duly selected candidate over and above him in merit list who had given choice for the said college. Officiating for a long period of time should not create a premium for him as the duly selected candidate over and above him in merit cannot be held responsible for the inaction of the Commission for not making the appointment in time or for college in notifying the vacancy expeditiously.

33. According to the view in Dr. Ranjana Tiwari's case (supra), the continuance of an ad hoc Principal in a particular college does not have any value at all. There is a direct conflict between Dr. Ranjana Tiwari's case (supra) and the dicta in Prakash Chandra's case (supra) as affirmed and supported in Alka Rani's case (supra) in paragraph 11.

34. We are basically to answer the question whether the ad hoc continuance of a Principal or a Teacher in a college is to be given some weight or even any weight by the Director when he makes the intimation under Section 13(3). We are also to answer the question whether the possibility of future conflict between the management and the Principal is to be considered by the Director when making that intimation.

35. We are of the opinion that the Director cannot give any weight at all to the preference of the management in the selection of a particular candidate as their Principal or their Teacher.

36. The Education Act of U.P. and the Rules and Regulations thereunder have been framed for various purposes, one of which is to see to it that the management does not staff its college only in the manner it likes, that the staff is selected with a view to proper education of the students and the children and the best possible available candidates are put in the teaching jobs. The tendency of the management to favour its own candidates for extraneous reasons is negated by the manner and procedure of the selection, which is given in these educational schemes and Acts. We find that in Section 13 there are only two factors for grading or a candidate for a particular college. The first gradation is made as per Section 13(1), on the basis of interview with or without examination and this gradation is called the merit list.

37. This merit list is not the only list. Though the management has no say in the matter, the employee, i.e., the prospective Principal or the prospective Teacher has a say of his own. He can make a preference for a college.

38. In our opinion, the Director at the time of making intimation is to take into account only two things, in regard to every candidate, namely the candidate's merit position as determined under Section 13(1) and the preferential list of colleges or institutions given by the candidate himself.

39. How the Director is to allot the candidates to the different colleges on the basis of these two items and these two items only are, with respect, correctly laid down by the Division Bench in paragraph 9 in Alka Rani's case (supra) and we agree with that paragraph in toto.

40. In our opinion the Director does not use a discretionary power in making intimations under Sub-section (3) of Section 13. Instead of the Director, any other person with an equally logical mind as the Director will also be able to perform the same act but the Director has been given the authority, so as to carry conviction and to make it safe for the colleges to follow the recommendations and intimations coming under his signature.

41. The working of Sub-section (3) of Section 13 shows that Director's action is compulsorily prescribed by the said Sub-section. Although the said Sub-section does not refer to the merit list at all yet as laid down in paragraph 9 of Dr. Alka Rani's case (supra) the merit list must be considered by the Director and in this regard the Director cannot disregard Sub-section (1) of Section 13 and the exercise performed under that Sub-section. The exercise by the Director is performed thereafter and must be performed thereon.

42. Regarding long standing ad hoc Principals working in a particular college and a liking that the management might have developed for that Principal, we say simply this, that it is for the Principal to decide whether he wants to stay on in the same college or not. If the management has had the Principal for, say 20 years then the Principal has also worked under the management for 20 years. Under the scheme of the Act the management has no say but if the Principal prefers working on in the said college he can always indicate the said college as his first preference and if his position in

the merit list is good and proper he will get his college and the college will also get him, although not because they want him, but because he wants them.

43. About the possible difficulties of practical working, as apprehended in Dr. Prakash Chandra's case (supra) and in paragraphs 10 and 11 of Dr. Alka Rani's case (supra), we are of the opinion that these are in the realm of conjecture and hypothesis. Difficulties in practical working can arise at any point of time in any person's career. A mere long association with a particular place or a particular college does not necessarily mean that the employee wants to go on in the same way or that a new person will not be able to do his job even better than he was doing so far. Under the scheme of Section 13, the colleges and the candidates are paired by looking at the merit list and the candidate's preference, that pairing has to be accepted by the management and by the candidate. Without pressing the similarity too far it is very much like what used to be and still sometimes is, an arranged marriage. When a man and woman are brought together or a candidate and a college are brought together and a relationship is spelt out there is no reason why the relationship should not go on as normally as in any other case. Divorces and employment disputes can occur whether the relationship is new or whether the relationship is old. Considering the language of Section 13(3), we do not feel free to read into this Sub-section an exception of the type spelt out in paragraphs 10 and 11 of Dr. Alka Rani's case (supra). In our opinion the, practical necessities do not require such violent interpretation and departure from the language of the Sections of the Act or the regulations. We have been able to find no manner in which the management choice can be given any weight, however slight in the placement of a candidate.

44. In this view of the matter we abide by what was said in paragraphs 9 and 10 first sentence only of Dr. Alka Rani's case (supra) and respectfully disapprove what was said in that case in paragraphs 10 crest and 11. We make it clear that we approve of the first sentence in paragraph 10 of Dr. Alka Rani's case (supra) but disapprove only of the later part of that paragraph where the exception is spelt out.

45. We agree with the judgment in Dr. Ranjana Tiwari's case (supra) and we respectfully disapprove of the dicta in Dr. Alka Rani's case which are mantioned above.

46. Thus the questions are answered as follows:-

Answer to the first question:-

The law laid down by the Division Bench of this Court in Alka Rani's case (supra) in paragraph 10 (Second Part of paragraph 10) and paragraph 11 do not lay down the law correctly and are contrary to provisions of Section 13 of the Act and Regulation, 1983. The Division Bench judgment in Dr. Prakash Chandra's case (supra) do not lay down any such ratio as was relied on by the Division Bench in Alka Rani's case. The observations in paragraph 10 of the judgment in Dr. Prakash Chandra's case were on the facts of the said case and were not the reasons for issuing direction for placement in the said case.

47. Answer to the second question :-

It is permissible for a Court to interpret statutory provisions but not to amend or add to it.

48. Answer to the third question:-

The conflict between Dr. Prakash Chandra's case (supra) and Dr. Alka Rani's case (supra) on the one hand and the case of Dr. Ranjana Tiwari's (supra) on the other, is resolved as set out in this judgment by preferring the view given in Dr. Ranjana Tiwari's case (supra). We add out of abundant caution that in Dr. Prakash Chandra's case no principle was acted upon or was necessary to be acted upon in giving the decision of the case and, therefore, paragraph 10 of the judgment is largely obiter and based only on the facts of that case.

49. The matter will now go back before the Division Bench for decision on merits