

AFR
Reserved

Court No. - 17

Case :- WRIT - A No. - 8155 of 2022

Petitioner :- Committee Of Management Intermediate College
Natauli Thru. Manager And Another

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary
Education Civil Secrett. Lko. And 2 Others

Counsel for Petitioner :- Rakesh Chandra Tewari

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

ALONG WITH

Case :- WRIT - A No. - 621 of 2022

Petitioner :- Dr. Anupam Kumar Pandey

Respondent :- State Of U.P. Thru. Prin. Secy. Secondary Edu.
Govt.Of U.P. Civil Secrett. Lko Others

Counsel for Petitioner :- Pawan Kumar Pandey,Sharad Pathak

Counsel for Respondent :- C.S.C.,Raj Kr Singh Suryvanshi

AND

Case :- WRIT - A No. - 761 of 2022

Petitioner :- Radha Mohan Pandey

Respondent :- State Of U.P Thru. The Prin. Secy. Secondry
Education Govt. Of U.P.Civil Secrett.Lko. And Others

Counsel for Petitioner :- Pawan Kumar Pandey

Counsel for Respondent :- C.S.C.,Raj Kr Singh Suryvanshi

AND

Case :- WRIT - A No. - 1173 of 2022

Petitioner :- Thakur Prasad Upadhyay

Respondent :- State Of U.P. Thru. Prin. Secy. Secondary Education
Lko. And 3 Others

Counsel for Petitioner :- Pawan Kumar Pandey

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

AND

Case :- WRIT - A No. - 1285 of 2022

Petitioner :- Smt. Sunita Rani

Respondent :- State Of U.P. Thru. Prin. Secy. Secondary Edu. Lko. And Others

Counsel for Petitioner :- Pawan Kumar Pandey

Counsel for Respondent :- C.S.C.,Raj Kr Singh Suryvanshi

AND

Case :- WRIT - A No. - 1298 of 2022

Petitioner :- Punit Kumar Srivastava

Respondent :- State Of U.P. Thru. Prin. Secy. Secondary Education Lko. And 3 Others

Counsel for Petitioner :- Pawan Kumar Pandey

Counsel for Respondent :- C.S.C.,Raj Kr Singh Suryvanshi

AND

Case :- WRIT - A No. - 1612 of 2022

Petitioner :- Dr. Amit Kumar Pandey

Respondent :- State Of U.P. Thru. The Prin. Secy. Secondary Education Lko. And 3 Others

Counsel for Petitioner :- Sharad Pathak, Piyush Pathak

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

AND

Case :- WRIT - A No. - 1624 of 2022

Petitioner :- Vivek Kumar Upadhyay

Respondent :- State Of U.P. Thru. Its Addl. Chief Secy. Secondary Education Deptt. Lko. And 3 Others

Counsel for Petitioner :- Rakesh Chandra Tewari

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

AND

Case :- WRIT - A No. - 1684 of 2022

Petitioner :- Brijendra Kumar Sharma

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary Education Lko. And 3 Others

Counsel for Petitioner :- Yogendra Kumar Mishra,Ajeya Mishra
Counsel for Respondent :- C.S.C.,Raj Kr Singh Suryvanshi

AND

Case :- WRIT - A No. - 1881 of 2022

Petitioner :- Rajendra Prasad Tripathi
Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary
Edu. Lko. And Others
Counsel for Petitioner :- Pawan Kumar Pandey
Counsel for Respondent :- C.S.C.,Raj Kr Singh Suryvanshi

AND

Case :- WRIT - A No. - 2014 of 2022

Petitioner :- Sukhdeo Prasad
Respondent :- State Of U.P. Thru The Addl Chief Secy./ Prin Secy.
Secondary Education Deptt. Lko. And 4 Others
Counsel for Petitioner :- Ram Kumar Srivastava Ram Kumar,Anil
Kumar Akela,Pt. S. Chandra
Counsel for Respondent :- C.S.C.,Raj Kr Singh Suryvanshi

AND

Case :- WRIT - A No. - 7860 of 2022

Petitioner :- Brijendra Kumar Sharma
Respondent :- State Of U.P. Thru. Addl. Chief Secy./Prin. Secy.
Secondary Education Deptt. Lko. And 7 Others
Counsel for Petitioner :- Yogendra Kumar Mishra
Counsel for Respondent :- C.S.C.,Raj Kr Singh Suryvanshi

AND

Case :- WRIT - A No. - 8046 of 2022

Petitioner :- Sukhdeo Prasad
Respondent :- State Of U.P. Thru. Addl. Chief Secy./ Prin. Secy.
Secondary Education Deptt., Lko. And 7 Others
Counsel for Petitioner :- Ram Kumar Srivastava Ram Kumar,Anil
Kumar Akela,Pt. S. Chandra
Counsel for Respondent :- C.S.C.,Mahendra Kumar Srivastava,Raj

Kr Singh Suryvanshi

AND

Case :- WRIT - A No. - 8052 of 2022

Petitioner :- C/M Vidya Nagar Kisan Inter College Distt. Gonda Thru. Its Manager

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary Edu. Lko. And 5 Others

Counsel for Petitioner :- Pawan Kumar Pandey,Sharad Pathak

Counsel for Respondent :- C.S.C.,Raj Kr Singh Suryvanshi

AND

Case :- WRIT - A No. - 8066 of 2022

Petitioner :- C/M Janta Inter College, Babhnan, Dist. Gonda Thru. Its Manager

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary Education Lko. And 4 Others

Counsel for Petitioner :- Pawan Kumar Pandey,Sharad Pathak

Counsel for Respondent :- C.S.C.,Raj Kr Singh Suryvanshi

AND

Case :- WRIT - A No. - 8073 of 2022

Petitioner :- C/M Jang Bahadur Lal Banwari Lal Inter College, Reevan Distt. Gonda Thru. Manager

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary Education, Lko. And 5 Others

Counsel for Petitioner :- Sharad Pathak,Pawan Kumar Pandey

Counsel for Respondent :- C.S.C.,Raj Kr Singh Suryvanshi

AND

Case :- WRIT - A No. - 8078 of 2022

Petitioner :- Committee Of Management Dwapar Vidyapeeth Inter College Baraipara Maya Thru. Manager Faizabad

Respondent :- State Of U.P.Thru.Addl. Chief Secy. Secondary Edu. And 5 Others

Counsel for Petitioner :- Pradeep Kumar Singh

Counsel for Respondent :- C.S.C.,Ashish Kumar Shukla,Rishabh Tripathi,Sanjay Misra,Suyash Dwivedi

AND

Case :- WRIT - A No. - 8474 of 2022

Petitioner :- Anil Kumar Nigam

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary Education Deptt. Lko. And 6 Others

Counsel for Petitioner :- Meenakshi Singh Parihar, Prashant Kumar Singh

Counsel for Respondent :- C.S.C., Raj Kr Singh Suryvanshi

AND

Case :- WRIT - A No. - 8779 of 2022

Petitioner :- Dilip Kumar Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Edu. (Secondary) Lko. And Others

Counsel for Petitioner :- Virendra Mishra, Shradha Mishra

Counsel for Respondent :- C.S.C., R.K. Singh Suryavanshi, Raj Kr Singh

AND

Case :- WRIT - A No. - 8883 of 2022

Petitioner :- Reeta Tandon

Respondent :- State Of U.P. Thru. The Addl. Chief Secy. Secondary Education Deptt. Lko. And Others

Counsel for Petitioner :- Meenakshi Singh Parihar, Divyarth Singh Chauhan

Counsel for Respondent :- C.S.C., Raj Kr Singh Suryvanshi, Ravindra Kumar Ravi, Som Kartik Shukla

AND

Case :- WRIT - A No. - 69 of 2023

Petitioner :- Suryabala

Respondent :- The State Of U.P. Thru. Addl. Secy. Secondary Edu. Deptt. Lko. And 7 Others

Counsel for Petitioner :- Ram Pukar Singh

Counsel for Respondent :- C.S.C., Raj Kr Singh Suryvanshi

AND

Case :- WRIT - A No. - 134 of 2023

Petitioner :- Smt. Sunita Rani

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary Edu. Lko. And 4 Others

Counsel for Petitioner :- Sharad Pathak,Pawan Kumar Pandey

Counsel for Respondent :- C.S.C.,Raj Kr Singh Suryvanshi

AND

Case :- WRIT - A No. - 148 of 2023

Petitioner :- Durga Prasad Srivastava

Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Secondary Edu. Deptt. Civil Sectt. Lko. And 7 Others

Counsel for Petitioner :- Surendra Pratap Singh,Rajendra Pratap Singh

Counsel for Respondent :- C.S.C.

AND

Case :- WRIT - A No. - 263 of 2023

Petitioner :- Shashi Bala Singh

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary Education Deptt. Lko. And 7 Others

Counsel for Petitioner :- Brijesh Kumar Singh

Counsel for Respondent :- C.S.C.

AND

Case :- WRIT - A No. - 395 of 2023

Petitioner :- Radhey Shyam Pandey

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Of Madhyamik Edu. Lko. And 8 Others

Counsel for Petitioner :- Ravi Kant Mishra,Pt. S. Chandra

Counsel for Respondent :- C.S.C.,Neeranjan,Pramod Kumar Singh,Sanjay Misra

AND

Case :- WRIT - A No. - 533 of 2023

Petitioner :- Kaleem Ahmad

Respondent :- State Of U.P. Thru. Addl. Chief Secy./ Prin. Secy. Secondary Education Deptt., Lko. And 3 Others

Counsel for Petitioner :- Yogendra Kumar Mishra

Counsel for Respondent :- C.S.C.,Raj Kr Singh Suryvanshi

AND

Case :- WRIT - A No. - 566 of 2023

Petitioner :- Smt. Sadhna Pandey

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary Edu. Lko. And 5 Others

Counsel for Petitioner :- Girish Chandra Verma

Counsel for Respondent :- C.S.C.,Gyanendra Nath,Raj Kr Singh Suryvanshi

AND

Case :- WRIT - A No. - 799 of 2023

Petitioner :- Aparna Tripathi

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Secondary Edu. Dept. Lko. And 6 Others

Counsel for Petitioner :- Rakesh Kumar Tripathi,Puneet Tripathi

Counsel for Respondent :- C.S.C.,Raj Kr Singh Suryvanshi

Hon'ble Pankaj Bhatia,J.

1. This bunch of petitions have been filed raising various grounds to the appointments made in terms of the Advertisement No.03 of 2013 published by the respondent no.2 for filling up the posts of Principals in the recognized Intermediate Colleges and the High Schools recognized under the provisions of The U.P. Intermediate Education Act, 1921 and in terms of the powers conferred upon the Board by virtue of The Uttar Pradesh Secondary Education (Services Selection Boards) Act, 1982 (in short 'the 1982 Act') read with

The Uttar Pradesh Secondary Education Services Selection Board Rules, 1998. In the various writ petitions, there are numerable grounds of challenge to the selections made, however, there is one common thread running across all the writ petitions being the filling up the vacancies initiated by the Advertisement No.03 of 2013 and culminating in the appointments made in the year 2022 after about 9 years is itself arbitrary and violative of Articles 14 and 16 of the Constitution of India. I propose to decide this common question that has arisen in all the writ petitions pertaining to the selections made in pursuance to the Advertisement No.03 of 2013, as such, all the writ petitions are being decided by means of this common order.

2. For the sake of brevity, the averments as made in leading Writ-A No.1612 of 2022 are being referred.
3. The petitioner in the said writ petition claims to be appointed in the institution known as Rajarshi Tandon Inter College, Ram Nagar, Athgawan, District Pratapgarh which is a recognized institution under the provisions of U.P. Intermediate Education Act and drawn salary on the post of teacher. The respondent no.2 issued an Advertisement No.03 of 2013 intending to fill up the post of Principal in the added intermediate colleges. The said advertisement is appended as Annexure-1 to the writ petition. In terms of the said advertisement, applications were invited from the eligible candidates upto 31.01.2014. It is informed that the said date was subsequently extended to February, 2014. The name of the institutions where the posts of Principals were vacant are also appended along with Annexure No.1.

4. It is stated that despite issuing an advertisement no steps were being taken by the respondent no.2 and suddenly in the year 2022, a decision was taken to call for two senior most teachers to fill their details on the online portal. After 10.01.2022, the manner in filling up the form etc. was also notified through an advertisement which is appended as Annexure No.5 to the writ petition. It is claimed by some of the petitioners that the petitioners names were sent by the Committee of Management, and the petitioners were called for interview, however, they were denied the permission to undergo the interview which led to the filing of the writ petition being Writ-A No.372 of 2022. The said writ petition was decided along with other writ petitions by means of a common judgment dated 25.02.2022, whereby the High Court framed two issues on the pleadings and the submissions made by the parties which are as follows:

"1. Whether the petitioners were eligible and within the zone of consideration for selection and appointment on the post of Principal which fell vacant in their Institution under Rule 11-(2) (b) of the U.P. Secondary Education Services Selection Board, Rules, 1998 and were advertised in pursuance to the Advertisement No. 1 of 11 or Advertisement No. 3 of 2013, as the case may be ?

2. Whether the eligibility of petitioners and their claim to be in the zone of consideration for selection and appointment as Principal under Rule 11(2)(b) of the Rules, 1998 is to be considered with respect to the date fixed for calling the candidates for interview in pursuance to the Advertisement No. 1 of 2011 or 3 of 2013, as the case may be, if not; whether the petitioners have locus standi to maintain these writ petitions staking their claim for being

considered in pursuance to the said Advertisements for appointment under Rule 11(2)(b) of the Rules, 1998 on the post of Principal of the Institution wherein they claim to be working as Ad-hoc Principal as of now ?"

5. This Court ultimately decided the aforesaid issues against the petitioners therein holding that the petitioners were neither the senior most teachers of the institution at the time of advertisement nor they were having the requisite qualification on the date of advertisement and thus, the writ petitions were dismissed, however, after dismissing the writ petition, considering the eligibility of the petitioners, this Court proceeded to record as under:

"In view of the above discussion, this Court is of the opinion that none of the petitioners were amongst the two senior most teachers of the institution as per Rule 11(2)(b) of the Rules, 1998 at the relevant time of sending requisition hence they were not within the zone of consideration for the post of Principal or Headmaster advertised vide Advertisement No. 1 of 2011 or 3 of 2013. They did not fulfill the requisite qualification or experience at the relevant time. Their eligibility and claim of being within zone of consideration is not to be fixed on the basis of date of Interview in respect of Advertisement No. 01 of 2013 or 03 of 2013. Therefore, they do not have any locus standi to maintain these writ petitions in their present form, especially as, they have not challenged the said advertisements on the ground of inordinate delay of about 10 or more years in holding the selections, except in Writ - A No. 317 of 2022, where, Advertisement No. 3 of 2013 has been challenged but not on this ground and bereft of this ground, the challenge is not maintainable at the behest of said petitioners, for the reasons already given, as already discussed above.

All the questions framed are answered accordingly.

The petitioners may if otherwise permissible in law and if there is no order or direction of the Courts for completing the selection process pertaining to Advertisement No. 03 of 2013 and if the selection has not been completed as yet in the sense Interview etc. has not been held, raise a challenge on the ground of long delay in completing the same if they are otherwise eligible for the posts in question, subject of course to the rights of opposite parties to raise the plea of delay and laches , if any etc., in this regard. As regards Advertisement No. 01 of 2011 the selection is over with regard to petitioners institution, therefore, it is too late in the day for them.

This apart, it is also for the State Government and/or the Board to consider as to how far it is justified and reasonable to keep a recruitment process pending for almost 10 or more years, during which many of the candidates whether they be from one source or another, for direct recruitment, may have become ineligible for various reasons such as exceeding maximum age or having retired etc. and whether in such a scenario if the recruitment process is not completed within reasonable period of 2 or 3 years, should not the advertisement be cancelled and vacant posts be re-advertised so that others who may have become eligible for consideration from either source of recruitment in the interregnum, may also participate therein? Appropriate measures should be taken in this regard for the future."

6. In the light of the said liberty and the observations made by the High Court in the judgment dated 25.02.2022, the petitioners have filed the present petitions challenging the advertisement itself on various grounds including the ground

of inordinate delay in making appointments after issuance of advertisement.

7. The submission of Sri Sharad Pathak, the Counsel for the petitioners is based upon the interpretation of the provisions of the U.P. Secondary Education (Services Selection Board) Act, 1982 and the Rules framed in pursuance to Section 35 of the 1982 Act (U.P. Act No.5 of 1982) known as 'The Uttar Pradesh Secondary Education Services Selection Board Rules, 1998'. The Counsel for the petitioners takes this Court through the provisions of the 1982 Act particularly Sections 2(a), 2(l), 10, 11, 12, 16 of the 1982 Act. He also draws my attention to the Rules 10, 11 and 12 framed by virtue of powers conferred under Section 35 of the Act.
8. The first submission of the Counsel for the petitioners is that delaying the appointment in pursuance to the advertisement for the period of more than 9 years itself is fatal to the entire selection process and is contrary to the mandate of the Act for which the Act was enacted and is violative of Articles 14 and 16 of the Constitution of India.
9. The Counsel for the petitioners next submits that even otherwise the mandatory provisions contained in Rules 11 and 12 particularly Rules 12(6) and 12(8) have not been followed while making the selections in pursuance to the advertisement. He thus argues that the advertisement and the selections made in pursuance thereof are liable to be quashed.
10. Sri R.K. Singh Suryvanshi, learned Counsel appearing on behalf of Board places reliance on the counter affidavit wherein he draws my attention to justify the delay in making

the selection after the issuance of the advertisement in the year 2013. The relevant paragraph no.3 of the counter affidavit, justifying the long delay, filed by the respondent no.2 reads as under:

"3. That the brief facts of the case are as follows for kind consideration of this Hon'ble Court: -

1. That an advertisement (Advertisement No. 03/2013) was published by the Board for the appointment on the post of Principal of the institution which was modified on 06.02.2014 and the last date for submission of the application form was 25.02.2014 but the selection for the post of Principal pursuant to the Advertisement No. 01/2011 was challenged in Writ Petition No. 6550/2014 in which an interim order was passed on 03.02.2014 which has been modified on 28.11.2018.

II. That the order passed by the Hon'ble Single Judge dated 24.10.2018 has been challenged in Special Appeal No.1289 of 2019 which was disposed of by this Hon'ble Court on 08.01.2019 therefore after selection proceeding pursuant to the advertisement no.01/2011 has been finalized. It is relevant to point out here that due to the pendency of the writ petition, the selection proceeding pursuant to the advertisement no.01/2011 could not be completed and after completion of the selection process, final result was published by the Board in which some of the selected candidates have attained the age of superannuation. It is further brought to the notice of the Hon'ble Court that the selection process with respect to the Advertisement No. 01/1999-2000 was not able to attain fruition in the stipulated timeline for the reason of the matter being under consideration before the Hon'ble

Court and the Hon'ble Apex Court and after the decision of the Hon'ble Apex Court in the case of Balbeer Kaur dated 16-05-2008, the selection process with regard to the said advertisement was finally completed. Similarly, the selection for Advertisement No. 01/2011 could only be completed after the decision of the Hon'ble Court in Writ Petition No. 6550/2014 (Harish Chandra Dixit & others versus State of U.P. & others) in which an interim order was passed on 03.02.2014 which has been modified on 28.11.2018 and order dated 18-10-2019 passed in Special Appeal Defective No.1289/2018 (Prem Chandra Tripathi & others versus State of U.P. & others). It is further brought to the notice of the Hon'ble Court that Advertisement No. 02/2013 and 03/2013 could not attain finality in the stipulated time as the written examination and Interview for the post of Lecturer was ongoing and the members of the Board, including the Chairman were not present from 2017 for a period of around one and a half year and therefore the process for recruitment for the Advertisement No.03/2013 could not be completed within the stipulated time. It is most humbly submitted before the Hon'ble Court that the delay that has happened in the selection process in due to the circumstances and the situation prevailing at the particular time and there has been not wilful neglect or delay in the entire proceedings, rather it is only for the reasons as explained above that the selection process was not able to be finished within the stipulated time.

III. That in respect of the advertisement no.03/2013, a writ petition being Writ-A No.10609/2021 was filed by Dr. Dileep Kumar Awasthi and others vs State of U.P. and others) which was disposed of on 07.10.2021 with a direction to

exclude the candidates who have attained the age of superannuation.

IV. That for completion of selection pursuant to the advertisement no.03/2013, a Writ Petition bearing Writ-A No.14975/2019 was filed before this Hon'ble Court which was disposed of on 30.09.2019 with a direction to the Board to take appropriate steps for completion of the selection pursuant to the advertisement no.03/2013. In compliance of the order passed by this Hon'ble Court dated 30.09.2019, the Board had decided to complete the selection process by 31.01.2022. It is further stated that for non-compliance of the order passed by this Hon'ble Court dated 30.09.2019 a Contempt Petition No.3069/2021 has been filed in which the Hon'ble Court has passed a detail order for completion of the selection process and in compliance of the aforesaid order. the Board has issued the necessary instruction by order dated 02.01.2022 by which the District Inspector of Schools and the management were directed to submit the relevant papers of two senior most teachers who were eligible on the last date for submission of the application form i.e. 25.02.2014 through online mode."

11. Sri R.K. Singh Suryvanshi further draws my attention to argue that once the issue has been decided by this Court in the case of Vivek Kumar Upadhyay vs State of U.P. and others [Writ-A No.364 of 2022), nothing remains to be adjudicated by this Court.
12. Sri Ranvijay Singh, learned Standing Counsel adopts the arguments of Sri Suryvanshi and justifies the appointments made in pursuance to the Advertisement No.03 of 2013 despite the long delay.

13. Sri Som Kartik Shukla, learned Counsel appearing for some of the selected candidates justifies the appointments and adopts the arguments advanced by the Counsel for the Board. He also argues that the petitioners have no right to file the petitions after the issues were decided by this Court in *Vivek Kumar Updhyay (Supra)*.
14. Sri G.C. Verma and Sri B.K. Singh besides adopting the arguments as raised by Sri Sharad Pathak have pointed out certain other discrepancies in the appointments made in pursuance to the Advertisement No.03 of 2013; like the Board not following the statutory period of 21 days for issuing interview letter by registered post as provided under Regulation 8(6) of The U.P. Secondary Education Services Selection Board (Procedure and Conduct of Business) First Regulations, 1998. The Board not publishing the new list of senior most teachers after their requisition of 16.03.2022. The portal for scrutinizing of the credential of the candidates on the Board's website was closed on 16.01.2022 and thus, the petitioners were deprived and prevented their rights to scrutinize the details as the requisition itself was made on 16.03.2022.
15. It was further argued that the Board undertook the process of selection from 24.03.2022 to 12.04.2022, the date on which some of the petitioners were discharging their duties being in-charge of the examinations being held which prevent them from appearing in the interview. It was further argued that the Chairman of the Board alone has undertaken the entire recruitment process and there was no member in the Board duly appointed at the time of recruitment, contrary to the

requirement of statutory strength under Section 4 of the 1982 Act as amended.

16. As already recorded above, I proposed to decide the writ petitions on the common question that has arisen across the writ petitions, *that being whether the process of selection initiated by issuance of Advertisement No.03 of 2013 and culminating in the selections made in the year 2022 will stand the scrutiny of Articles 14 and 16 of the Constitution of India on the ground of inordinate delay.*
17. To appreciate the issue that has arisen for decision it is essential to look into the provisions of the statutory enactment through which the selections have been made.
18. The State of U.P. with an intent to regulate the educational institutions at the intermediate stage promulgated the Uttar Pradesh Intermediate Education Act, 1921. The said act has undergone various amendments from time to time in terms of the provisions contained in the said Act. The State of U.P. enacted and proposed to establish a Board to take place of the Allahabad University in regulating and supervising the system of the high school and the intermediate educations in the Uttar Pradesh and for prescription of the courses. Subsequent thereto in the year 1982, the State of U.P. promulgated the Act known as 'The Uttar Pradesh Secondary Education (Services Selection Boards) Act, 1982' being U.P. Act No.05 of 1982 for establishing the Services Selection Board for the selection of teachers in the institutions recognized under the Uttar Pradesh Intermediate Education Act. The statement and objects for promulgation of the said Act is as under:

"The appointment of teachers in secondary institutions recognised by the Board of High School and Intermediate Education was governed by the Intermediate Education Act, 1921 and regulations made thereunder. It was felt that the selection of teachers under the provisions of the said Act and the regulations was some times not free and fair. Besides, the field of selection was also very much restricted. This adversely affected the availability of suitable teachers and the standard of education. It was therefore, considered necessary to constitute Secondary Education Service Commission at the State level, to select Principals, Lecturers, Head-masters and L.T. Grade teachers, and Secondary Education Selection Boards at the regional level, to select and make available suitable candidates for comparatively lower posts in C.T./J.T.C./ B.T.C. Grade for such institutions."

19. By means of the said 1982 Act, a 'Board' was established for selecting the teachers and the principals or headmasters. The definition of 'Teachers' as contained in Section 2(k) of the 1982 Act is as under:

"(k). 'Teacher' means a person employed for imparting instruction in an institution and includes a Principal or a Headmaster."

20. In sub-section (l) of Section 2 of the 1982 Act, the 'Year of recruitment' is defined, which is as under:

"(l). 'Year of recruitment' means a period of twelve months commencing from first day of July of a calendar year."

21. The Board established under Section 3 of the said 1982 Act is conferred with the powers and duties as defined under Section 9, one of them being to take decision on matters relating to method of direct recruitment of teachers. The said 1982 Act by virtue of Section 10 provides for the procedure and selection by direct recruitment, which is quoted hereinbelow:

"10. Procedure of selection by direct recruitment. (1) For the purpose of making appointment of a teacher, by direct recruitment, the management shall determine the number of vacancies existing or likely to fall vacant during the year of recruitment and in the case of a post other than the post of Head of the Institution, also the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes, the Scheduled Tribes and other Backward Classes of citizens in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 and notify the vacancies to the Board in such manner and through such officer or authority as may be prescribed.

(2) The procedure of selection of candidates for direct recruitment to the post of teachers shall be such as may be prescribed:

Provided that the Board shall, with a view to inviting talented persons, give wide publicity in the State to the vacancies notified under subsection (1).

22. After taking the steps as recorded under Section 10, the Board is saddled with making the selection by preparation of panel of candidates as enumerated under Section 11, which is quoted hereinbelow:

"11. Panel of candidates. (1) The Board shall, as soon as may be, after the vacancy is notified under sub-section (1) of Section 10, hold examinations, where necessary, and interviews, of the candidates and prepare a panel of those found most suitable for appointment.

(2) The panel referred to in sub-section (1) shall be forwarded by the Board to the officer or authority referred to in sub-section (1) of Section 10 in such manner as may be prescribed.

(3) After the receipt of the panel under sub-section (2), the officer or authority concerned shall in the prescribed manner intimate the Management of the Institution the names of the selected candidates in respect of the vacancies notified under sub-section (1) of Section 10.

(4) The management shall, within a period of one month from the date of receipt of such intimation, issue appointment letter to such selected candidate.

(5) Where such selected candidate fails to join the post in such institution within the time allowed in the appointment letter or within such extended time as the Management may allow in this behalf," or where such candidate is otherwise not available for appointment, the officer or authority concerned may, on the request of the Management, intimate, in the prescribed manner, fresh name or names from the panel forwarded by the Board under sub-section (2)."

23. Till the Board was to make the selection in terms of the mandate of Sections 10 and 11, the provisions with regard to the filling up the posts of *ad hoc* Principals or Headmasters is

elaborated under Section 18 of the 1982 Act, which is quoted hereinbelow:

"18. Ad hoc Principals or Headmasters. (1) *Where the Management has notified a vacancy to the Board, in accordance with sub-section (1) of Section 10 and the post of the Principal or the Headmaster actually remained vacant for more than two months, the management shall fill such vacancy on purely ad hoc basis by promoting the seniormost teacher.*

(a) in the lecturer's grade in respect of a vacancy in the post of the Principal.

(b) in the trained graduate's grade in respect of a vacancy in the post of the Headmaster.

(2) Where the Management fails to promote the seniormost teacher under sub-section (1) the inspector shall himself issue the order of promotion of such teacher and the teacher concerned shall be entitled to get his salary as the Principal or the Headmaster, as the case may be, from the date he joins such post in pursuance of such order of promotion.

(3) Where the teacher to whom the order of promotion is issued under sub-section (2) is unable to join the post of the Principal or the Headmaster, as the case may be, due to any act or omission on the part of the management, such teacher may submit his joining report to the Inspector, and shall thereupon be entitled to get his salary as the Principal or the Headmaster, as the case may be, from the date he submits the said report.

(4) Every appointment of an ad hoc Principal or Headmaster under sub-section (1) or sub-section (2) shall cease to have effect from when the candidate recommended by the Board joins the post."

24. Section 34 of the 1982 Act empowers the Board with the prior approval of the State Government to make regulations prescribing fees for holding selections, for holding interviews and laying down the procedure to be followed by the Board for discharging its duties and performing its functions under the Act. Section 35 confers the powers upon the State Government to make rules for carrying out the purposes of the Act.
25. In terms of the powers conferred by virtue of Section 35 of the 1982 Act, the State Government notified the Rules known as 'The Uttar Pradesh Secondary Education Services Selection Board Rules, 1998' (hereinafter referred to as 'the 1998 Rules').
26. Part-II of the said Rules provides for the necessary qualifications which are required for direct recruitment to a post of teacher. Part-III of the said Rules specifically provides for recruitment of teachers in different categories. Rule 10(a) of Part-III provides that the Principal of an intermediate college or Headmaster of high school can be appointed only by direct recruitment, whereas for the teachers of lecturer grade and the teachers of trained graduate category, in the said recruitment was different and for teachers attached primary section, the method of recruitment is different. Rule 10 is quoted hereinbelow:

"10. Source of recruitment.-Teachers will be recruited in different different categories through following sources:

- (a) Principal of an Intermediate College or Headmaster of a High School By direct recruitment
- (b) Teachers of lecturer's grade (i) 50 per cent by direct recruitment;
(ii) 50 per cent by promotion from amongst substantively appointed teachers of the trained graduates grade.
- (c) Teachers of trained graduates category by direct recruitment Provided that such intermediate colleges and high schools where attached primary teachers are receiving salary under provisions of the Uttar Pradesh High School and Intermediate Colleges (payment of Salaries of Teachers and other employees) Act, 1971, 75 per cent of the posts will be filled by direct recruitment and the rest of the 25 per cent of the posts will be filled through promotion of those trained graduate teachers of attached primary section who have completed satisfactory services of five years:
Provided further that where there is no eligible candidate available for recruitment through promotion in any recruitment year, the posts may

be filled through direct recruitment:

Provided also that while calculating the percentage of different posts under the same recruitment, if a fraction occurs, the fraction of direct recruitment will be excluded and the fraction of posts to be filled through promotion will be increased by one to create one post.

(d) Teachers of attached Note- For the recruitment of primary section cent per the teachers of attached cent by direct primary section, the minimum recruitment. qualification shall be in accordance with National Council for Teacher Education. Recruitment will be excluded and the fraction of posts to be filled through promotion will be increased by one to create one post.

27. Rule 11 of the 1998 Rules provides for determination and notification of vacancies. Rule 12, which is very relevant for the present case, lays down the procedure to be followed by the Board for direct recruitment. Rule 12 in its entirety is quoted hereinbelow:

"12. Procedure for direct recruitment. (1) The Board shall, in respect of the vacancies to be filled by direct recruitment, advertise the vacancies including those reserved for candidates belonging to Scheduled Castes, Scheduled Tribes, Other Backward Classes and

other reserved categories as applicable to Government service from time to time, in at least two daily newspapers, having wide circulation in the State and call for the applications for being considered for selection in the pro forma published in the advertisement. For the post of Principal of an Intermediate College or the Headmaster of a High School, the name and place of the institution shall also be mentioned in the advertisement and the candidates shall be required to give the choice of not more than three institutions in order of preference and if he wishes to be considered for any particular institution or institutions and for no other institution, he may mention the fact in his application.

(2) The Board shall scrutinize the applications and in respect of the post of teacher in lecturers, trained graduates grade and attached primary section shall conduct written examination. The written examination shall consist of one paper of general aptitude test of two hours, based on the subject. The centres for conducting written examination shall be fixed in district headquarters only and the investigators shall be paid honorarium at such rate as the Board may like to fix.

(3) The Board shall evaluate the answer sheets through examiner to be appointed by the Board or through Computer and the examiner shall be paid honorarium at the rate to be fixed by the Board.

(4) The Board shall prepare list for posts of Lecturers on the basis of marks obtained in the written examination and marks for special merits as follows -

(a) 85 per cent marks on the basis of written examination;

(b) 10 per cent marks on the basis of interview which shall be divided in the following manner namely:

(i) 4% marks on the basis of general knowledge;

(ii) 3% marks on the basis of personality test;

(iii) 3% marks on the basis of ability of expression.

(c) 5 per cent marks on the basis of following special merits, namely:

(i) 2% marks for having Doctorate Degree;

(ii) 2% marks for having Master of Education (M.Ed.) degree;

(iii) 1% marks for Bachelor of Education (B.Ed.) degree:

Provided that no marks under this clause shall be awarded to a candidate who has obtained marks under sub-clause (ii),

(iv) 1% marks for the participation in any national level sports competition through State team.

(5) The Board shall hold interview of the candidates and 15% marks shall be allotted for interview. Marks in the interview shall be divided in the following manner :

- (a) 6% marks on the basis of subject/general knowledge;
- (b) 4% marks on the basis of personality test;
- (c) 5% marks on the basis of ability of expression.
- (6) The Board, having regard to the need for securing due representation of candidates belonging to the Scheduled Castes/ Scheduled Tribes and Other Backward Classes of citizens in respect of the post of teacher in lecturers and trained graduates grade, shall call for interview such candidates who have secured the maximum marks under sub-clause (4) above/ and for the post of Principal/Headmaster, shall call for interview such candidates who have secured maximum marks under sub-clause (5) above in such manner that the number of candidates shall not be less than three and not more than five times of the number of vacancies:
- Provided that in respect of the post of the Principal or Headmaster of an institution the Board shall also in addition call for interview two seniormost teachers of the institution whose names are forwarded by the management through Inspector under clause (b) of sub-rule (2) of Rule 11.*
- (7) The marks obtained in the quality points as referred to in sub-rule (5) by the eligible candidates shall not be disclosed to the members of the interview board.
- (8) The Board then, for each category of post, prepare panel of those found most suitable

for appointment in order of merit as disclosed by the marks obtained by them after adding the marks obtained under sub-clause (4) or sub-clause (5) above, as the case may be, with the marks obtained in the interview. The panel for the post of Principal or Headmaster shall be prepared institution-wise after giving due regard to the preference given by a candidate, if any, for appointment in a particular institution whereas for the posts in the Lecturers and trained graduates grade, it shall be prepared subject-wise and group-wise respectively. If two or more candidates obtain equal marks, the name of the candidate who has higher quality points shall be placed higher in the panel and if the marks obtained in the quality points are also equal, then the name of the candidate who is older in age shall be placed higher. In the panel for the post of Principal or Headmaster, the number of names shall be three- times of the number of the vacancy and for the post of teachers in the lecturers and trained graduates grade, it shall be larger (but not larger than twenty-five per cent) than the number of vacancies.

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

- (9) *In the case of Lecturer grade, the Board shall at the time of interview after showing the lists of institutions which have notified the vacancy to it, require the candidates to give, if she/he so desires, the choice of not more than five, such institutions in order of preference where if selected, he/she may wish to be appointed and in the case of teachers in*

trained graduate grade and attached primary teachers such choices shall be given to candidates after preparation of merit list on the basis of written examination by the board.

(10) The Board shall after preparing the panel in accordance with sub-rule (8), allocate the institutions to the selected candidates in respect of the posts of teachers in lecturers and trained graduates grade in such manner that the candidate whose name appears at the top of the panel shall be allocated the institution of his first preference given in accordance with sub-rule (9). Where a selected candidate cannot be allocated any of the institutions of his preference on the ground that the candidates placed higher in the panel have already been allocated such institutions and there remains no vacancy in them, the Board may allocate any institution to him as it may deem fit.

(11) The Board shall forward the panel prepared under sub-rule (8) along with the name of the institutions allocated to selected candidates in accordance with sub-rule (10) to the Inspector with a copy thereof to the Joint Director and also notify them on its notice board."

28. Rule 13 of the aforesaid 1998 Rules mandates for the inspector to notify the panel so selected by the Board for allocation of the institution under Rule 12. Rule 13 is quoted below:

"13. Intimation of names of selected candidates. (1) The Inspector shall, within 10

days of the receipt of the panel and the allocation of institution under Rule 12,-

(i) notify it on the notice board of his office;

(ii) intimate the name of selected candidate to the Management of the institution which has notified the vacancy, with the direction that on authorisation under resolution of the management, an order of appointment, in the proforma given in Appendix 'E' be issued to the candidate by registered post within 15 days of the receipt of the order or within such extended time, as may be allowed to him by the management, and also intimating him that on his failure to join within the specified time, his appointment will be liable to be cancelled;

(iii) send an intimation to the candidate, referred to in clause (ii), with the direction to report to the Manager within fifteen days of the receipt of the order of appointment by him from the Manager or within such extended time as may be allowed to him, by the Management.

(2) The Management shall comply with the directions, given under sub- rule (1) and report compliance thereof to the Board through the Inspector.

(3) Where the candidate, referred to in sub-rule (1) fails to join the post within the time allowed in the letter of appointment or within such extended time as the Management may

allow in this behalf or where such candidate is otherwise not available for appointment, the Inspector may, on the request of the Management, intimate fresh name or names standing next in order of merit on the panel, under intimation to the Joint Director and the Board, and the provisions of sub-rules (1) and (2) shall mutatis mutandis apply.

(4) The Joint Director shall monitor and ensure that the candidates selected by the Board joins the institution in the specified time and for this purpose, he may issue such direction to the inspector he thinks proper.

(5) Where a candidate selected by the Board could not join in an allocated institution due to non-availability of vacancy or for any other reason, the District Inspector of School shall recommend to the Board for the adjustment of such candidate against any other vacancy notified to the Board in any other institution. On receipt of the recommendation of the District Inspector of School the Board shall allocate such candidate to another institution in a vacancy notified to the Board."

29. The other Rules need not detain this Court, as the same are not concerned with the issues to be decided by this Court as framed hereinabove.
30. From the plain reading of the statement of objects, sections of the 1982 Act as well as the 1998 Rules framed thereunder, it can be easily deciphered that the intent and object of setting up the Board for making recruitment is to ensure
- (i) that the selection of the teachers is free and fair,

(ii) is not restricting; and

(iii) to make suitable teachers available in a time bound manner so as to promote the main objective of imparting quality educations.

The ills that were prevalent in recruitment prior to establishing the Board, thus, the recruitment to be made by the Board in respect of the principals of the institution with which we are concerned in the present case, enjoins upon the Board a duty to ensure that the selection of the principal is very fair, timely and not restricted so as to attract the best talent available for the job.

31. The duties conferred upon the Board for making the direct recruitment that flow from Section 10 of the said 1982 Act makes it very clear that the Board shall initiate the process of recruitment with a view to inviting talented persons and for that purpose to give wide publication in the State in respect of the vacancies which are notified under sub-section (1). Section 11 of the said Act and further makes it mandatory for the Board to take steps for appointment of the candidates found suitable for appointment *as soon as* may be after the vacancies notified under Section (1) of Section 10. A conjoint reading of Sections 10 and 11 of the 1982 Act make it mandatory and casts a duty upon the Board to ensure that the selections should be done as soon as the vacancies are notified.
32. It is interesting to note that the sources of recruitment of Principals as specified in Rule 10 of the 1998 Rules makes it clear that the Principal of an intermediate college or

Headmaster of a high school can be appointed only by direct recruitment.

33. In the hierarchy of the teachers working in any institution, there are two categories, one being the lecturers, whose appointment is 50% by direct recruitment, and 50% by promotions from amongst the substantively appointed trained graduate teachers.
34. The recruitment of teachers under 'trained graduate category' is further to be done in the ratio 75% by direct recruitment and 25% through promotion of trained graduate teachers of the attached primary section who have completed satisfactory services of 5 years. Thus on a plain reading of Rule 10, it becomes clear that the avenues of promotion are closed after the teacher having become the lecturer and thus with a view to provide an avenue to promotion, provisions was made in Rule 12 giving opportunities to 2 senior most teachers of the institution to be called for interview along with the persons who have applied for the direct recruitment and who have to undergo written examination, from a plain reading of Rule 12 of the Rules 1998, it is clear that the posts of the Headmaster is to be filled up through direct applicants who have to undergo written examination and who have to compete with 2 senior most teachers of the institutions whose names are to be forwarded by the Management through Inspector under Rule 11(2)(b) of the 1998 Rules.
35. With the objective of attracting the best talent in terms of the mandate of the Act, there is a provision contained in Rule 12(a) making it obligatory for the Board to send the names for

appointment to the post of Principal and Headmaster which should be three times of the numbers of the vacancies.

36. It is essential to note that the Rule 13 makes it mandatory for the Inspector to make the appointments immediately after the selection is done. From the scheme of the Act and the Rules framed thereunder, it is clear that the powers conferred upon the Board for making the selection to the post of Headmaster have to be initiated by issuance of an advertisement and has to culminate in the selections made by the Board after following the mandatory provisions as contained in Rule 12. The said exercise has to be conducted by the Board as soon as the vacancies notified under Section 10(1) of the 1982 Act, which also have a direct relation with the year of recruitment as defined under Section 2(1) to the said Act. Thus in terms of the mandate of the Act and the 1998 Rules time is of some essence.
37. In the present case admittedly the advertisement was issued in the year 2013, that being step taken by the Board in terms of Rule 12 after the notification of vacancies under Section 10 of the 1982 Act. For no good reasons, the Board did not take any steps which they were required to do under Section 11 of the 1982 Act and continued to wait for about 9 years for holding the examination. The defence taken for the delay as argued by Sri Suryvanshi is that certain litigation from the recruitment proposed by the earlier Advertisement No.01 of 2011 were pending, as such, no steps were taken by the Board for selecting the candidates in terms of the mandate of clause upon the particular Board by virtue of Section 11 of the 1982 Act or the Rules 12 of the 1998 Rules, merits rejection as

being wholly arbitrary, *moreso*, as there was no order by any court in respect of appointments to be made under Advertisement No.03 of 2013. This Court cannot lose sight of the facts that there is no defence taken by the State or the Board that there was any interim order passed by any Court of law preventing the Board from taking the steps under Section 11 for holding the examination or for finalizing the select list in terms of mandate cast under Rule 11.

38. The result of delay in taking steps under Section 11 is that various candidates who were found eligible and had applied in terms of Advertisement No.03 of 2013 either became uninterested or otherwise became ineligible, did not participate in the interview. The 2 senior most teachers of the institutions who had a vested right of being considered for selection in terms of the right vested in them by virtue of Rule 12(6) of the 1998 Rules and were eligible in terms of the Advertisement No.03 of 2013 also got adversely affected as the senior most teachers had either retired or lost interest in the process on account of inordinate delay. Thus the pool from which the selection were to be made got shrunk considerably.
39. The steps taken by the Board in March, 2022 whereby it called the list of two senior most teachers of the various institutions with a view to give them a chance to participate in the selection process in terms of the right vested in them by virtue of Rule 12(6) of the 1998 Rules, were nothing but a band aid solution on a deep wound and were bound to fail as the said teachers, did not have the eligibility as they were admittedly not the senior most teachers in terms of the requirement as specified in the Advertisement No.03 of 2013.

This fact got fortified by the decision of this Court in the case of *Vivek Kumar Upadhyay vs State of U.P. and others [Writ-A No.364 of 2022; decided on 25.02.2022 along with other connected petitions]* wherein this Court found that the eligibility for consideration in terms of the Advertisement No.03 of 2013 has to be the eligibility as on the last date prescribed in the advertisement and subsequently acquired qualification would not make the person eligible for consideration for selection and the same would also led to dismissal of writ petition by this Court vide judgment dated 25.02.2022.

40. The result of the delay caused by the Board without there being any justifiable reason was that the direct recruits for making the selections as prescribed under Rule 12(1) got shrunk because of either the person losing interest or otherwise becoming ineligible and the pool under Rule 12(6) comprising of two senior most teachers also either got shrunk or totally evaporated as the two senior most teachers who were eligible at the time when the Advertisement No.03 of 2013 was issued, either superannuated or had lost interest somehow. The said delay caused by the Board has resulted in making selections from the depleted pool, as noted above. The said action of he Board clearly defied the very object of enactment of the Act as it made the *field of selection restricted*. The delay caused by the Board in making appointments has promoted ad hocism prescribed under Section 18 which prevailed in all these years.
41. It was also clearly contrary to the mandate cast on the Board by virtue of Section 11 of making the process of holding

written examination as soon as the vacancies are notified, the said action also violates the powers conferred upon the Board to make effort for appointment so as to attract the best possible talent. The said action of the Board causing inordinate delay in making the selection has to be testified by this Court on the anvil of the mandate cast by virtue of Articles 14 and 16 of the Constitution of India.

42. Article 14 of the Constitution of India repels any action of the State which is arbitrary and not in consonance with the substantive or procedural due process. Article 14 is the genus of which Article 16 is the species. Article 16 casts a duty on the State or its instrumentality to ensure that there is an equality of opportunities to all the citizen in matters relating the employment and appointment to any office under State without any discrimination subject to the powers conferred upon the State of making provisions as prescribed under Article 16(4), Article 16(4)(a) and Article 16(4)(b).
43. The rights of the citizen under Article 14 and Article 16 are required to be protected in the event the action of the State or its instrumentality is found to be not in consonance with the mandate of Articles 14 and 16. Article 16 also casts a duty on the State to provide for equality and opportunity in the service of the State to all its citizen (of course subject to they possessing the qualification). Any action which denies the equality of opportunity to all the citizen would thus be clearly violative of Article 16.
44. It is well settled that although the State has the freedom to take decision for selection of the candidates, however, it does not confer any unbridled powers on the State to do so without

following the procedural requirement as specified or at the cost of fair play and on the grounds of arbitrariness. It is equally true that any action of the State which results in unfairness would have to be held as unjust and in violation of Articles 14 and 16 of the Constitution of India.

45. In the said background, I propose to deal with the judgments referred by the Counsel for the parties.
46. The Hon'ble Supreme Court in the case of ***Chandgi Ram vs University of Rajasthan; (2001) 10 SCC 556*** considered the effect of delay in completion of a recruitment process and the intervention permissible by the courts and recorded as under in para 7 of the said judgment:

"7. However, after hearing learned Counsel for the parties, we do not feel it appropriate on the facts of this case to await any response from the State Government. We heard learned Counsel for the parties at length. We find such problems, as in the present case, arises quite often when delay is made in making the regular selection. If the authorities fill up these vacancies at the earliest, this culture of ad hocism cannot develop. This deteriorates the fibre of the institution effecting the very foundation of our culture specially when it is in the educational field. Even Section 3(3) of the Act does permit ad hoc appointment but only for a short period, not to continue for years. Institutions not filling vacancies for a long time develop the culture of ad hocism. Some time not filling is for a coloured purpose to favour one or the other. This has to be denounced. This not only permits irregular appointees to continue for long but thwarts a regularly competent appointees to

come in, deteriorating the very standard of the institution. This brings in internal struggle to appoint or continue one or other ad hoc appointees leading to inter se contest in courts, as in the present case, taking a large cake of time in the courts. However, aforesaid facts reveal that the post for which there is a contest, has already been advertised for its filling as far back in the year 1998, yet the process did not progress further. It is now not in dispute that this post is a sanctioned post for which the University has already issued the aforesaid advertisement. The only difficulty felt by the University though belated, is the Memorandum of Understanding [MOU] issued by the State Government to the University of Rajasthan which is annexed along with the affidavit of one Rajendra Babo Srivastava, Assistant Registrar (Estt. II), University of Rajasthan. The submission is, under it the University of Rajasthan can neither create any new post nor fill up any vacant post without obtaining permission of the Government of Rajasthan. The short question for our consideration is, whether on the facts and circumstances of this case, this MOU could be an obstacle in the way of the University to fill up the aforesaid vacant post. We do not find this to be any obstacle in the way of the University. We firstly want to record, the University created all this situation by not filling up these vacant posts for a long number of years and now is taking a defence under the garb of this MOU. We find this stand of MOU is taken now before this Court as no such stand was taken earlier before the High Court. Even this MOU is annexed without any date with an affidavit without stating when and how this MOU was communicated to the University. It is however not disputed that this MOU, if it

existed, was born after the aforesaid advertisement for filling up the posts. Without going into the merit of this MOU on admitted facts when the process of filling up of the vacancies started long before this MOU was born, this MOU could not be any impediment to fill up these posts."

47. The Hon'ble Supreme Court further in exercise of powers prescribed under Article 142 issued certain directions for holding the interview and permitting the candidates after issuing directions for fresh advertisement, the said directions are contained in para 9 of the *Chandgi Ram's case (supra)*, which is as under:

"9. We also make it clear that apart from the candidates who are entitled to participate in this selection in pursuance to the said earlier advertisement, a fresh advertisement in accordance with rule, if any, be also made by the University within three weeks from today, entitling fresh candidates also to apply for the same. During this interregnum, the University will take expeditiously all proceedings for the due Constitution of the Selection Committee including obtaining nominations from the State Government, if any required. Since the State Government has already been served in this matter, we direct the State Government to nominate one, if any required for the Constitution of the Selection Committee, so that no delay is caused in making selection within the aforesaid timetable. We would not have given this timetable to expedite the selection but for the inordinate delay caused by the University in making this selection. We deprecate this culture of ad hocism and hope in future it is only

used for a stopgap arrangement i.e. for a short period."

The observations made by the Hon'ble Supreme Court and recorded above apply with full vigour in the present case as the delay caused has promoted the culture of ad hocism.

48. The next judgments in the case of ***Madan Mohan Sharma vs State of Rajasthan; (2008) 3 SCC 724*** and in the case of ***Maharashtra State Road Transport Corporation and others vs Rajendra Bhimrao Mandve and others; (2001) 10 SCC 51*** wherein the Hon'ble Supreme Court held that criteria for selection cannot be altered by the authorities in the middle or after the process of selection has commenced and the only proper recourse was to recall the foregoing advertisement and issue a fresh advertisement as per the Rules.
49. The judgment of the Hon'ble Supreme Court rendered in the case of ***Chandgi Ram (supra)*** was followed by the High Court of Punjab and Haryana while delivering the judgment of ***Balprit Singh and another vs Chandigarh Administration and others; 2016 SCC OnLine P&H 9902*** wherein a period of three years delay was held to be an inordinate delay and the Court was also swayed by the fact that on account of such delay certain person had become eligible.
50. Some of the similar issues was also considered by the High Court of Delhi in the case of ***Syed Mehedi vs Government of NCT of Delhi and others; 2019 SCC OnLine Del 9015*** wherein the High Court had the occasion to consider the aspect of delay and had directed for granting age relaxation to various persons in the context of the dispute raised before it.

51. The Counsel for the petitioners has placed reliance in the case of *Naushad Anwar and others vs State of Bihar and others; (2014) 11 SCC 203* wherein the Hon'ble Supreme Court on the allegations of inordinate delay of four years in the process of recruitment had issued directions to the following effect:

“19. We are anguished by the very thought of the selection process dragging on for as long as four years between 2008 and 2012. Such inordinate delay and indolence is totally undesirable not only because it violates the fundamental rights of candidates who have qualified for appointment during the intervening period but also because it depicts a complete failure on the part of all concerned in regulating the selection and appointment process with a view to ensuring that the same is fair, objective and transparent. We cannot help saying that several questions have bothered us in regard to the selection process itself which leaves much to be desired but since there is no challenge to the selection or the appointments made pursuant thereto, we refrain from making any observation in regard to those aspects. All that we need say is that the selection and appointment of such a large number of employees under the local bodies ought to have been conducted in a more orderly fashion and more importantly the same should have been completed within the time-frame stipulated for the purpose of such reasonable extension thereof as may have become absolutely inevitable. A selection process that lingers on for years can hardly measure up to the demands of objectivity, fairness and transparency especially when the method by which inter se merit of candidates was determined is neither stipulated in the Rules nor any guidelines issued for the selection

Committee to follow have been placed before us.”

52. The next judgment cited by the Counsel for the petitioners is in the case of ***Renu and others vs District and Sessions Judge, Tis Hazari Courts, Delhi and another; (2014) 14 SCC 50*** wherein the Hon’ble Supreme Court while considering the issue of employment had made the following observations:

“16. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others.”

53. The Counsel for the petitioner cited the judgment in the case of ***K. Shekar vs V. Indiramman and others; (2002) 3 SCC 586*** wherein the Hon’ble Supreme Court had made the following observations:

“29. However the appellants are correct in their submission that the High Court should not have directed the selection of an Assistant Professor on the basis of the 1989 advertisement. That advertisement related to appointments in the

Deaddiction Unit. NIMHANS's statement that the setting up of the Deaddiction Unit in NIMHANS had been abandoned because of lack of funds has been categorically refuted by respondent 1. Without going into the controversy having regard to the lapse of several years on account of the pendency of the litigation before different Courts, it would not be appropriate to direct the process initiated in 1989 to be completed more than 11 years later. The vacancy created by the setting aside the appellant's appointment will have to be filled and a fresh advertisement will have to be issued by NIMHANS in accordance with its Cadre and Recruitment Rules. The unfortunate consequence that the appellant will suffer by reason of the setting aside of his appointment as Assistant Professor in NIMHANS cannot be avoided on any equitable considerations although the harshness may be mitigated to some extent.”

54. The next judgment cited by the Counsel for the petitioners is the case of ***Pradip Gogoi and others vs State of Assam and others; (1998) 8 SCC 726*** wherein the Hon'ble Supreme Court had made the following observations by passing the orders in paras 1 and 2, which are as under:

“1. It is distressing to note a common feature that after making advertisement and recruitment conducted, the vacancies that arose thereafter though existing, no action was being taken to have them notified through the Public Service Commission and recruitment made so that all the eligible candidates would have opportunity to apply for recruitment as per the rules and their claim considered. The story is repeated in this case. Though advertisement

was made in 1991, on 19-11-1993, after select list was prepared, appointments were made, but vacancies existing thereafter could not be filled in. Consequentially people, including the petitioners, had approached the High Court for their appointment. The High Court, following the judgment of this Court reported in State of Bihar v. Secretariat Asstt. Successful Examinees Union 1986, has directed to fill up the vacancies existing up to the date of recommendation by the Public Service Commission from the waiting list. Preparation of waiting list became a spinning ground for corruption and denial of constitutional right to equality to eligible candidates awaiting recruitment. It has become an endemic spectacle to witness. It is settled law that even an eligible candidate has a fundamental right to lay his claim for consideration in his own right for recruitment to an office or post under the State under Article 16(1) of the Constitution. The process of selection not being taking place due to non-notification by the appropriate authority, is having a deleterious effect on the psyche of the people. The dereliction of duty is seriously eroding the constitutional rights under Article 16(1) and is a source to circumvent due process of selection.

2. Though Mr Goswamy, learned counsel appearing for the petitioners, is right in contending that opportunity should be given to such people and the petitioners too would have had also applied for appointment having considered their cases awaiting for such an appointment since their cases were tested by the Public Service Commission and kept in the waiting list, omission to appoint them affects their rights seriously under Article 16(1) of the Constitution. We cannot give a direction to

consider their cases for appointment from the wait list. The sympathetic vibrations are also responsible for this sagging problem and moral degeneration. Under these circumstances, we are constrained not to accede to the persuasive request made by Mr Goswamy. However, the authorities are directed to notify forthwith vacancies to the Public Service Commission and the Public Service Commission would take necessary expeditious action for recruitment and recommend the names to the authorities expeditiously, so that the existing vacancies would be filled up and the petitioners and all eligible candidates would also be eligible to apply.”

55. The Counsel for the petitioners has further relied upon the judgment of the Hon’ble Supreme Court in the case of ***Jagdish Prasad vs State of Rajasthan and others; (2011) 7 SCC 789*** wherein the selection process was held to be bad as it violated the Rules as well as the judgment in the case of ***Sachin Kumar and others vs Delhi Subordinate Service Selection Board (DSSSB) and others; (2021) 4 SCC 631***.
56. The Counsel for the petitioners has also cited judgments rendered by the Hon’ble Supreme Court in the cases of ***Dr. Ms. O.Z. Hussain vs Union of India; 1990 Supp SCC 688, Food Corporation of India and others vs Parashotam Das Bansal and others; (2008) 5 SCC 100*** and in the case of ***Deepak Agarwal and another vs State of Uttar Pradesh and others; (2011) 6 SCC 725***.to argue that the promotional avenues are must in the government service.
57. On the other hand, the Counsel for the respondent Sri Suryvanshi has relied upon the judgment rendered in the case

of *Vivek Kumar Upadhyay vs State of U.P.* (Writ-A No.364 of 2022, decided on 25.02.2022 along with other connected writ petitions) wherein the petitioners had challenged the non-consideration of their claim arising out of the same Advertisement No.03 of 2013. The Court found them to be ineligible in terms of the requirements as were prescribed under the Advertisement No.03 of 2013, however, the issue with regard to the delay in making the process of appointment by virtue of the said advertisement was left open and the relevant paras of the said judgment have already been incorporated hereinabove.

58. The next judgment cited by the Counsel for the respondent Sri Suryvanshi is in the case of *Mohan Singh and others vs State of U.P. and another* (Writ-A No.700 of 2022, decided on 20.06.2022) wherein the petitioners were found to be ineligible on the basis of their qualification as on the date of advertisement. The special appeal preferred against the said judgment being Special Appeal No.515 of 2022 (decided on 18.08.2022) also came to be dismissed.
59. The Counsel for the respondent Sri Suryvanshi has also cited an order dated 30.09.2019 passed in *Writ-A No.14975 of 2019 (Manish Kumar Tripathi vs State of U.P. and another)* wherein directions were given to the petitioner therein to approach the Board. It is not understandable as to how the said order is of any relevance to the present case.
60. The Counsel for the respondents Sri Suryvanshi has further cited the judgment in the case of *State of Haryana and others vs Ajay Walia (Ms); (1997) 6 SCC 255*. The said case was dismissed on the ground of laches.

61. The Counsel for the respondent has further relied upon the judgment in the case of ***Ramesh Chandra Shah and others vs Anil Joshi and others*** [Civil Appeal Nos.2802-2804 of 2013 arising out of SLP (C) Nos.30581-30583 of 2012, decided on 03.04.2013] wherein the Hon'ble Supreme Court repelled the challenge to the recruitment on the behest of the candidates who had participated in the recruitment and have waived their rights to question to the advertisement. The said judgment would have not applicability to the facts of the present case as the petitioners were held to be ineligible to participate in terms of the Advertisement No.03 of 2013.
62. The next judgment cited by the Counsel for the respondent Sri Suryvanshi is in case of ***Sankar Mondal vs The State of West Bengal and others*** (Civil Appeal No.1924 of 2010, decided on 15.02.2022) wherein the issue of police verification was the issue, the Supreme Court did not interfere in his favour as the recruitment process should be completed and the petitioners have waited for seven long years in raising the grievances.
63. The next judgment cited by the Counsel for the respondents Sri Suryvanshi is in the case of ***Union of India and others vs. N. Murugesan and others; (2022) 2 SCC 25***. In the said case, the petitioner was denied the relief merely on the ground of delay and laches.
64. In the present case, the judgments cited by the Counsel for the respondents could not be of any help as the cause of action giving rise to the petitioners to approach this Court flew from the action of the Board of inviting the list of two senior most teachers in the year 2022 itself and the Court holding them to be illegible for consideration in the case of *Vivek Kumar*

Upadhyay (supra) and giving them liberty to challenge on limited ground of inordinate delay. The other judgments cited by the Counsel for the respondents pertain to the requirement of qualification at the time of issuance of advertisement which issue has attained finality.

65. It is well settled that the requirement of eligibility is to be satisfied as on the cut off date prescribed in the advertisement and subsequently acquired qualification would not make a person eligible, however, in the present case, we are concerned with the delay in the process of recruitment and whether the said delay would satisfy the test of Articles 14 and 16 of the Constitution of India. It is relevant to note that this Court had entertained writ petitions arising out of the same advertisement in Writ-A No.20668 of 2022 Brij Pal Singh vs U.P. Secondary Education Service Selection Board wherein this Court had granted an interim order, however, as I am deciding the entire writ petitions, the interim order would not have any effect on the decision.
66. In the light of the arguments raised at the bar, it stands established that the Board has clearly restricted the pool of available candidates available for selection and has not followed the mandate as prescribed under Section 11 of the 1982 Act of conducting the written examination as soon as they are notified. The expression “as soon as” cannot be interpreted to mean that the action is taken after nine years, although no time limit is fixed, the phrase “as soon as” has to be interpreted to be within a reasonable time in the context of recruitment to be made, the year of recruitment and the intent for which the advertisement is issued. The scope and the ambit

of the phrase “as soon as may be” was considered by a constitution bench of the Supreme Court in the case of *Abdul Jabar Butt vs State of J&K; 1957 SCR 51* as under,

“6....The question is — what is the span of time, which is designated by the words “as soon as may be”? The observations of Dysant, J. in King's Old Country, Ltd. v. Liquid Carbonic Can. Corpn., Ltd. [(1942) 2 WWR 603, 606] quoted in Stroud's Judicial Dictionary 3rd Edn., Vol. 1, p. 200 are apposite. Said the learned Judge, “to do a thing ‘as soon as possible’ means to do it within a reasonable time, with an understanding to do it within the shortest possible time”. Likewise to communicate the grounds ‘as soon as may be may well be said to mean to do so within a reasonable time with an understanding to do it within the shortest possible time. What, however, is to be regarded as a reasonable time or the shortest possible time? The words “as soon as may be” came for consideration before this Court in Ujagar Singh v. State of the Punjab [1951 SCC 170 : (1952) SCR 756] . At pp. 761-62 this Court observed that the expression meant with a “reasonable despatch” and then went on to say that “what was reasonable must depend on the facts of each case and no arbitrary time limit could be set down”. In Keshav Nilakanth Joglekar v. Commissioner of Police, Greater Bombay [Supreme Court Petition No. 102 of 1956, decided on September 17, 1956] the word “forthwith” occurring in Section 3(3) of the Indian Preventive Detention Act (4 of 1950) came up for consideration. After observing that the word “forthwith” occurring in Section 3(3) of that Act did not mean the same thing as “as soon as may be” used in Section 7 of the same Act and that the former was more peremptory than the latter, this

Court observed that the time that was allowed to the authority to communicate the grounds to the detainee and was predicated by the expression “as soon as may be” was what was “reasonably convenient” or “reasonably requisite”. Whenever the question of reasonableness arises in computing the period of time the Court has perforce to have regard to the particular circumstances of the case in which the question arises for decision. It may not be possible in many cases to affirmatively say or to precisely quantify the period of time by reference to hours, days, or months nevertheless, it is possible having regard to the circumstances of the case, to say whether the thing done was or was not done “as soon as may be” i.e. within the time which was reasonably convenient or requisite. It cannot be disputed and indeed it has not been disputed by the learned Attorney-General that sub-section (1) does prescribe a period of time within which the communication is to be made and this time begins to run from the date the detention under the order takes effect.”

Though the above mentioned observations were made in the context of the interpretation of the Article 22, the definition of the phrase “as soon as may be” i.e. within the time which is reasonably requisite would apply with full vigour to the interpretation of Section 11(1) of the 1982 Act.

67. The Board further erred in calling for the names of two senior most teachers in the year 2022 despite that they did not senior most as per the cut off date prescribed in the advertisement, thus, the Board changed the rules midway which is not permissible and on that count also, the Board was at error in

calling for the said names which fact also gets fortify in the case of *Vivek Kumar Upadhyay (supra)*.

68. The Board, I have no hesitation in holding, has failed on all the said fronts and thus on all the grounds as noted above, I have no hesitation in holding that the action of the Board in making the recruitment after nine years is violative of Article 14 of the Constitution of India.
69. The selections so made have clearly deprived the eligible candidates (two senior most teachers) of their rights under Rule 12(6) of the 1998 Rules and also the candidates who acquired qualifications after 2014 as they are deprived of being considered only on account of delay by the Board. The rights of the petitioners have also been violated, as the appointment through the direct recruitment is indirectly an avenue of promotion available to the senior most teachers which is otherwise not available in terms of Rule 10 of 1998 Rules. The entire process of selection is also bad as the pool from which the selection are to be made by the Board has got shrunk only on account of inordinate delay in completing the process of appointment and has thus resulted in violation of Article 16 of the Constitution of India.
70. Thus for all the reasons recorded above, all the appointments made by the Board in pursuance to the Advertisement No.03 of 2013 are set aside as being violative of Articles 14 and 16 of the Constitution of India. The Board shall now take steps for recruitment by issuing fresh advertisements with all expeditions strictly in accordance with law.

71. Till such steps as directed are taken by the Board, the arrangement as provided in the 1982 Act particularly Section 18 shall continue to govern the recruitment to the posts of Principals and the Headmasters.
72. In view of above, all the writ petitions stand *allowed*.

Order Date :01.02.2023
akverma

(Pankaj Bhatia, J)