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Court : Allahabad Lucknow

Decided On : May-14-2015

Judge : The Honourable Chief Justice Dr. Dhananjaya Yeshwant, Chandrachud, The Honourable Dr. Justice Devendra Kumar Arora &Amp; Narayan Shukla

Appeal No. : Service Single Nos. 1593, 1204 of 2001, 2835 of 2003, 6310 of 2005, 6753 of 2006

Appellant : Raeesul Hasan and Another

Respondent : State of U.P. Through Secy. Education and Others

Judgement :

Dr. D.Y. Chandrachud, C.J.

The present reference to the Full Bench was made by a learned Single Judge of this Court on 20 December 2006; the issue referred for adjudication being as follows:

"Which date will be relevant for the purpose of determination of criteria of availability and eligibility for promotion to the post of Lecturer grade i.e. the date on which vacancy occurs to forward to the Selection Committee/Commission or the first day of year of the recruitment when the vacancy is notified for recruitment?"

The Uttar Pradesh Secondary Education (Services Selection Board) Act, 1982 established a Board for the selection of teachers in institutions recognised under the Intermediate Education Act, 1921. The Statement of Objects and Reasons appended to the introduction of the Bill in the State Legislature furnished the following rationale for the constitution of a statutory Board:

"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."

Section 2 (l) defines the 'year of recruitment' as follows:

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

Section 10 provides for the procedure to be followed for making selections by direct recruitment and is to the following effect:

"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 sub-section (1)."

Under Section 11, on the notification of a vacancy under sub-section (1) of Section 10, the Board is required to hold examinations, where necessary, and interviews of the candidates and to prepare a panel of those found most suitable for appointment. The Board forwards the panel under sub-section (2) to an officer or authority referred to in sub-section (1) of Section 10. Such an officer or authority, in turn, has to intimate the names of the selected candidates to the Management of the Institution and the Management is obliged within a period of one month to issue a letter of appointment to the selected candidates1.

Chapter III of the Act deals with the procedure for selection by promotion. Section 12, which is a part of Chapter III, is in the following terms:

"12. Procedure of selection by promotion. -- (1) For each region, there shall be a Selection Committee, for making selection of candidates for promotion to the post of a teacher, comprising

(i) Regional Joint Director of Education: -- Chairman

(ii) Senior most Principal of Government

Inter College in the region: -- Member

(iii) Concerned District Inspector of Schools -- Member/

Secretary

(2) The procedure of selection of candidates for promotion to the post of a teacher shall be such as may be prescribed."

Section 32 stipulates that the provisions contained in the Intermediate Education Act, 1921 and its regulations would continue to be in force insofar as they are not inconsistent with the provisions of the Act or Rules or Regulations made under it, inter alia, for the purpose of selection, appointment and promotion in the rank of a teacher.

In exercise of the rule making powers, the State Government made the Uttar Pradesh Secondary Education Services Commission Rules, 19832, which were published in the U.P. Gazette on 10 January 1983. These were followed by the Uttar Pradesh Secondary Education Services Commission Rules, 19953, which were published in the U.P. Gazette on 5 August 1995. These were followed by the Uttar Pradesh Secondary Education Services Selection Board Rules, 19984 which were published in the U.P. Gazette on 8 August 1998. The controversy which has been raised in these proceedings, it is an admitted position, is governed by the Rules of 1998 with reference to which the question of law posed for decision by the Full Bench has to be answered. However, a reference to the Rules of 1983 and 1995 would be material to elucidate the correct interpretation of the rules which govern the field, having regard to the changes made in the subordinate legislation from time to time.

Rules of 1983:

Under Rule 4 (1), the Management was required to determine and intimate to the Commission in a prescribed proforma the number of vacancies existing or likely to fall vacant during the year of recruitment and, in the case of a post, other than that of the Head of an Institution, also the number of vacancies to be reserved for Scheduled Castes, Scheduled Tribes and other categories prescribed by the rules or orders of the State Government. Under Rule 4 (2), the statement of vacancies was to be sent by the Management to the Inspector by 15 September of the year of recruitment. The Inspector, in turn, would upon verification forward the statement to the Deputy Director by 15 October, with a copy to the Commission. The Deputy Director, under rule 4 (3), would forward the statement together with a consolidated subject-wise statement of various categories of vacancies to the Commission by 15 November. Under sub-rule (5), where a vacancy occurs at any

time during the session or after the requisition had been sent, the Management would have to notify the vacancy to the Inspector within 15 days of its occurrence upon which, the Inspector and the Deputy Director had to deal with it in the manner indicated in sub-rules (3) and (4) within 10 days of its receipt by them. Under sub-rule (6) of rule 4, where the Management has, for any recruitment year, failed to notify the vacancy or vacancies by the specified date, the Commission was empowered to call upon the Inspector to notify the vacancy or vacancies by such date as it would specify.

The procedure for appointment by promotion was prescribed in Rule 9, which provided as follows:

"9. Procedure for appointment by promotion. -- (1) Where any vacancy is to be filled by promotion, all teachers working in L.T. or C.T. Grade, who possess the minimum qualifications and have put in at least 5 years continuous service as teacher, on the date of occurrence of vacancy shall be considered for promotion to the Lecturer or L.T. grade, as the case may be, without their having applied for the same.

Note-- For the purpose of this sub-rule, service rendered in any other recognised institution shall count for eligibility, unless interrupted by removal, dismissal or reduction to a lower post.

(2) The criterion for promotion shall be seniority subject to the rejection of unfit.

(3) The Management shall prepare a list of teachers, referred to in sub-rule (1), and forward it to the Commission through the Inspector with a copy of seniority list, service records (including the character rolls) and a statement in the proforma given in Appendix 'A'.

(4) Within three weeks of the receipt of the list from the Management under sub-rule (3), the Inspector shall verify the facts and forward the list to the Commission.

(5) The Commission shall, after calling for such additional information as it may consider necessary, intimate the name of selected candidate or candidates to the Inspector with a copy to the Manager of the Institution.

(6) Within 10 days of the receipt of the intimation from the Commission under sub-rule (5), the Inspector shall send the name of the selected candidate (s) to the Manager of the concerned institution and the provisions of sub-rules (3) and (4) of Rule 8 shall mutatis mutandis apply."

At this stage, what is material to be noted, is that under the Rules of 1983, five years' continuous service as a teacher working in the LT or CT grade on the date of occurrence of the vacancy was the condition of eligibility for being considered for promotion to the post of Lecturer or LT Grade, as the case may be.

Rules of 1995:

In the Rules of 1995, the following provision was made in respect of the source of recruitment in Rule 10:

"10. Source of recruitment. -- Recruitment to various categories of teachers shall be made from the following sources:

(a) Principal of an Intermediate By direct recruitment:

College or Head Master

of a High School

(b) Teachers of lecturers grade (i) 50 per cent by direct recruitment;

(ii) 50 per cent by promotion from amongst the substantively appointed teachers of the trained graduates (L.T.) grade;

(c) Teachers of trained graduates (L.T.) (i) 50 per cent by direct grade; recruitment;

(ii) 50 per cent by promotion from amongst the substantively appointed teachers of Certificate of Teaching (C.T.) grade:

Provided that if in any year of recruitment suitable eligible candidates are not available for recruitment by promotion, the posts may be filled in by direct recruitment:

Provided further that if in calculating respective percentages of posts under this rule there comes a fraction then the fraction of the posts to be filled by direct recruitment shall be ignored and the fraction of the posts to be filled by promotion shall be increased to make it one post."

Under Rule 11, the Management was required to determine the number of vacancies in accordance with Section 10 (1) and notify them to the Commission through the Inspector. Under Rule 11 (2), the statement of vacancies for each category of posts to be filled in by direct recruitment or by promotion, including the vacancies that were likely to arise due to retirement on the last day of the year of recruitment was required to be forwarded by the Management to the Inspector by 15 July of the year of recruitment. The Inspector, upon due verification, would prepare a consolidated statement by 31 July and forward it to the Commission. Under Rule 11 (4), where the Management did not notify the vacancies by the date specified or failed to notify them in accordance with sub-rule (2), the Inspector was entitled, on the basis of his records, to determine the vacancies and notify them to the Commission. The procedure for direct recruitment was specified in Rule 12. Rule 14, which dealt with the procedure for recruitment by promotion is as follows:

"14. Procedure for recruitment by promotion. -- (1) Where any vacancy is to be filled by promotion all teachers working in trained graduates (L.T.) grade or Certificate of Teaching (C.T.) grade, if any, who possess the qualifications prescribed for the post and have completed five years continuous service as such on the first day of the year of recruitment shall be considered for promotion to the lecturers grade or the trained graduates (L.T.) grade, as the case may be, without their having applied for the same.

Notes - For the purposes of this sub-rule, regular service rendered in any other recognised institution shall be counted for eligibility, unless interrupted by removal, dismissal or reduction to a lower post.

(2). The criterion for promotion shall be seniority subject to the rejection of unfit.

(3) The Management shall prepare a list of teachers referred to in sub-rule (1), and forward it to the Commission through the Inspector with a copy of seniority list,

service records, including the character rolls, and a statement in the proforma given in Appendix "A".

(4) Within three weeks of the receipt of the list from the management under sub-rule (3), the Inspector shall verify the facts from the record of his office and forward the list to the Commission.

(5) The Commission shall consider the cases of the candidates on the basis of the records referred to in sub-rule (3) and may call such additional information as it may consider necessary. The Commission shall forward the panel of selected candidates within one month to the Inspector with a copy thereof to the Deputy Director.

(6) Within ten days of the receipt of the panel from the Commission under sub-rule (5), the Inspector shall send the name of the selected candidate to the management of the institution which has notified the vacancy and the management shall accordingly on authorization under its resolution issue the appointment order in the proforma given in Appendix 'E' to such candidate."

Rule 14 of the Rules of 1995, made a conscious departure from the language of Rule 9 of the Rules of 1983 in regard to the procedure for appointment by promotion. Whereas Rule 9 (1) required five years' continuous service as a teacher on the date of the occurrence of vacancy, Rule 14 (1) of the Rules of 1995 required five years' continuous service on the first day of the year of recruitment.

Rules of 1998:

Rule 2 (e) defines the expression 'vacancy' as follows:

"(e) 'Vacancy' means a vacancy arising out as a result of death, retirement, resignation, termination, dismissal or removal of a teacher or creation of new post or appointment or promotion of the incumbent to any higher post in a substantive capacity."

Under Rule 5, a candidate for appointment to a post of teacher has to be possessed of the qualifications specified in Regulation 1 of Chapter II of the

Regulations made under the Intermediate Education Act, 1921.

Rule 10 provides for the source of recruitment in the following terms:

"10. Source of recruitment. -- Recruitment to various categories of teachers shall be made from the following sources:

(a) Principal of an Intermediate College By direct recruitment

or Headmaster of a High School.

(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 grade (i) 100 per cent by direct recruitment except the category of institutions mentioned below in 2 (ii); (ii) Those Intermediate colleges and High Schools in which teachers of attached primary section are getting salary under provisions of U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971, 75 per cent posts shall be filled by direct recruitment and the remaining 25 per cent posts shall be filled by promotion from amongst those trained graduate teachers of attached primary section who have completed 5 years of satisfactory service:

Provided that if in any year of recruitment suitable eligible candidates are not available for recruitment by promotion, the posts, may be filled in by direct recruitment:

Provided further that if in calculating respective percentages of posts under this rule, there comes a fraction then the fraction of the posts to be filled by direct recruitment shall be ignored and the fraction of the posts to be filled by promotion shall be increased to make it one post."

Rule 11 makes provisions for the determination and notification of vacancies and insofar as is relevant provides as follows:

"11. Determination and notification of vacancies. -- (1) For the purposes of direct recruitment to the post of teacher, the Management shall determine the number of vacancies in accordance with sub-section (1) of Section 10 and notify the vacancies through the Inspector, in the Board in the manner hereinafter provided.

(2) (a) The statement of vacancies for each category of post to be filled in by direct recruitment including the vacancies that are likely to arise due to retirement on the last day of the year of recruitment, shall be sent in quadruplicate, in the proforma given in Appendix 'A' by the Management to the Inspector by July 15 of the year of recruitment and the Inspector shall, after verification from the record of his office, prepare consolidated statement of vacancies of the district subject-wise in respect of the vacancies of lecturer grade, and group-wise in respect of vacancies of trained graduates grade. The consolidated statement so prepared shall, along with the copies of statement received from the Management, be sent by the Inspector to the Board by July 31, with a copy thereof to the Joint Director:

... ...

(3) If, after the vacancies have been notified under sub-rule (2), any vacancy in the post of a teacher occurs, the Management shall, within fifteen days of its occurrence, notify to the Inspector in accordance with the said sub-rule and the Inspector shall within ten days of its receipt by him send it to the Board.

(4) Where, for any year of recruitment, the Management does not notify the vacancies by the date specified in sub-rule (2) or fails to notify them in accordance with the said sub-rule, the Inspector shall on the basis of the record of his office, determine the vacancies in such institution in accordance with sub-section (1) of Section 10 and notify them to the Board in the manner and by the date referred to in the said sub-rule. The vacancies notified to the Board under this sub-rule shall be deemed to be notified by the Management of such institution."

Rule 12 specifies the procedure for direct recruitment.

Rule 14 deals with the procedure to be followed for recruitment by promotion and is in the following terms:

"14. Procedure for recruitment by promotion: (1) Where any vacancy is to be filled by promotion all teachers working in trained graduates grade or Certificate of Teaching grade, if any, who possess the qualifications prescribed for the post and have completed five years continuous regular service as such on the first day of the year of recruitment shall be considered for promotion to the lecturers grade or the trained graduates grade, as the case may be, without their having applied for the same.

Notes- For the purposes of this sub-rule, regular service rendered in any other recognized institution shall be counted for eligibility unless interrupted by removal, dismissal, or reduction to a lower post.

(2) The criterion for promotion shall be seniority subject to the rejection of unfit.

(3) The Management shall prepare a list of teachers referred to in sub-rule (1), and forward it to the Inspector with a copy of seniority list, service records, including the character rolls, and a statement in the pro forma given in Appendix 'A'.

(4) Within three weeks of the receipt of the list from the Management under sub-rule (3), the Inspector shall verify the facts from the record of his office and forward the list to the Joint Director.

(5) The Joint Director shall consider the cases of the candidates on the basis of the records referred to in sub-rule (3) and may call such additional information as it may consider necessary. The Joint Director shall place the records before the Selection Committee referred to in sub-section (1) of Section 12 and after the committee's recommendation, shall forward the panel of selected candidates within one month to the Inspector with a copy thereof to the Management,

(6) Within ten days of the receipt of the panel from the Joint Director under sub-rule (5) the Inspector shall send the name of the selected candidates to the Management of the institution which has notified the vacancy and the Management shall accordingly on authorization under its resolution issue the appointment order in the proforma given in Appendix 'F' to the such candidate."

In Rule 14 of the Rules of 1998, a change has been brought about from the corresponding provision of Rule 14 (1) of the Rules of 1995, inter alia, by requiring the completion of five years' continuous regular service instead of five years' continuous service. The provisions contained in Rule 9 of the Rules of 1983 stipulated that where a vacancy was required to be filled in by promotion, teachers in the L.T. or C.T. Grade, who possessed the minimum qualifications and had at least five years' continuous service as teachers were to be considered for promotion. The norm of five years' continuous service as teacher was under Rule 9 to be considered on the date of the occurrence of vacancy. In the Rules of 1995, a conscious departure was made while formulating Rule 14 which dealt with the procedure for recruitment by promotion. Rule 14 stipulated that all teachers working in the trained graduates/L.T. Grade or Certificate of Teaching grade, who possess the minimum qualifications prescribed and have completed five years' continuous service on the first day of the year of recruitment, would be considered for promotion. Similarly, in Rule 14 of the Rules of 1998, all teachers working in the trained graduates grade or Certificate of Teaching grade, who possess the qualifications prescribed and have completed five years' continuous regular service on the first day of the year of recruitment are to be considered for promotion to the lecturer's grade. Hence, both in the Rules of 1995 and in the Rules of 1998, the norm of five years' continuous service or, as the case may be, five years' continuous regular service has to be assessed on the first day of the year of recruitment. The year of recruitment is, as we have noted, defined in Section 2 (l) of the Act to be a period of twelve months commencing from the first day of July of a calendar year. The norm in the Rules of 1983 requiring five years' continuous service on the date of the occurrence of vacancy is substituted in the Rules of 1998 by five years' of continuous regular service on the first day of the year of recruitment. In view of the change which has been brought about in the subordinate legislation, the interpretation of Rule 14 of the Rules of 1998 cannot be based on the provisions of Rule 9 of the Rules of 1983. A conscious departure was made from the position as it obtained in Rule 9 of the Rules of 1983, first in Rule 14 of the 1995 Rules and in the corresponding provision of the 1998 Rules. The legislative change must have and be given a meaning. Moreover, in the 1998 Rules, it is the Joint Director on the recommendation of the Selection Committee

who has to forward candidates for promotion. This power in the 1995 Rules was with the Commission.

The change, which has been brought out by the Rules of 1995 followed by the Rules of 1998 from the position as it obtained in the Rules of 1983 for filling up vacancies by promotion, was noticed in a judgment of a Division Bench of this Court in Kashi Prasad Sharma v. State of U.P. and Ors5. In that case, a learned Single Judge had directed consideration of the candidature of the petitioner for promotion if he was eligible and if a vacancy existed under the Rules of 1998. The Joint Director of Education, however, held against the petitioner on the ground that on the date of the occurrence of vacancy, he was not eligible. A second writ petition filed in order to challenge the order of the Joint Director of Education, resulted in the acceptance of those findings. Noticing the change in the legal position, the Division Bench in a special appeal held as follows:-

"4.... It may be noted here that after the said Rules, 1983, there are the Rules, 1995 and the Rules, 1998. Rule 10 of the Rules 1983 and the proviso thereof provides that as and when any vacancy occurs and if the suitable eligible candidates are not available for recruitment by promotion, the posts may be filled in by direct recruitment. There is significant departure in subsequent Rules, 1995 as well as in the Rules, 1998. It is clear that there is a change which was brought out in the Rules, 1995. The proviso of rule 10-C of the Rules, 1995 makes it very clear that if under any year of recruitment suitable eligible candidates are not available for recruitment by promotion the posts may be filled in by direct recruitment. Therefore, if suitable eligible candidates are not available for recruitment in the year by promotion only then process of direct recruitment shall be adopted. The learned single Judge did not consider the subsequent Rules, 1995 and the Rules, 1998 and decided the matter on the Rules, 1983, although he himself directed the Joint Director of Education to consider the candidature of the petitioner for promotion, if he is eligible and there exists a vacancy under the existing Rules, 1998. In view of this, we are of the view that learned single Judge was not correct in arriving at his conclusion and accordingly the order passed by the learned single Judge stands set aside."

A subsequent decision of a Division Bench of this Court in Subhash Prasad vs. Regional Selection Committee Gorakhpur6 dealt with a situation where a vacancy in the lecturer's grade had occurred on 1 July 1997. On the date of the occurrence of vacancy, the respondent was alone an eligible candidate. However, by the date on which the Committee of Management sent its resolution, the appellant had also become eligible. The issue which fell for consideration before the Division Bench was whether the date of the occurrence of vacancy or the first day of the recruitment year could be taken to be the relevant date for determining the eligibility and suitability of the candidate for promotion. The Division Bench noted that under regulation 6 of Chapter II of the Regulations framed under the U P Intermediate Education Act, 1921, the pre-requisite condition for becoming eligible for promotion was that a teacher must have to his credit a minimum of five years' continuous substantive service on the date of occurrence of the vacancy. The Division Bench noted that the requirement of five years' continuous service as a teacher on the date of the occurrence of vacancy was also specified in Rule 9 of the Rules of 1983. In this background, the Division Bench observed as follows:

"23. In the present case considering the facts and circumstances as brought on record, this date has to be taken as the first of July, 1997 as the Management had to send the statement of vacancies to the Inspector by 15th of July as mandated in Rule 11 of the Rules of 1995. It is, therefore, obvious that five years' continuous service which stood prescribed as one of the minimum eligibility criterion must have been completed in the present case latest by 1st July 1997. The appellant could not, by any stretch of imagination, be taken to have to his credit five years' continuous service by the aforesaid date. He was, therefore, clearly ineligible for being considered for promotion in the next above Lecturer grade as against the vacancy falling in the promotion quota."

In the view of the Division Bench:

"27. We are clearly of the opinion that taking into consideration the scheme underlying the U P Secondary Education Services Selection Board Act, 1982 and the Rules of 1995 framed thereunder, it was obligatory to compute the five years' continuous service ending on the first day of the year of recruitment which had to

be taken to be that year of recruitment in which the vacancy was ascertained for being forwarded to the Commission on through the Inspector ensuring that it reached the Inspector by 15th of July. The zone of consideration or the field of eligibility of eligible and suitable candidates cannot be permitted to be enlarged at the whim of the Committee of Management or get enlarged on account of its failure to either ascertain the vacancy or send it to the Inspector in the manner prescribed or delay the action contemplated under Rule 14 (3) of the Rules of 1995."

These observations would indicate that while construing the provisions of Rule 11 of the Rules of 1995, the Division Bench noted that the Management has to send the statement of vacancies to the Inspector under sub-rule (2) by 15 July. Hence, in the view of the Division Bench, the minimum criterion of eligibility had to be met on 1 July 1997. The Division Bench observed that it was obligatory to compute the five years' continuous service ending on the first day of the year of recruitment which had to be taken to be that year of recruitment in which the vacancy was ascertained for being forwarded to the Commission through the Inspector. The zone of consideration of eligible candidates could not, in the view of the Division Bench, be enlarged at the whim of the Committee of Management or on account of its failure to either ascertain the vacancy or send it to the Inspector in the manner prescribed.

The Rules of 1998 make another departure which is evident if Rule 11 of the Rules of 1995 is read in juxtaposition to Rule 11 of the Rules of 1998. Rule 11 (2) of the Rules of 1995 requires that the statement of vacancies for each category of posts to be filled in by direct recruitment or by promotion had to be forwarded by the Management to the Inspector by 15 July of the year of recruitment. In contrast, Rule 11 (2) (a) of the Rules of 1998, requires that the statement of vacancies for each category of posts to be filled in by direct recruitment has to be forwarded by the Management to the Inspector by 15 July of the year of recruitment. In fact, sub-rule (1) of Rule 11 of the Rules of 1995, required the Management to determine the number of vacancies in accordance with sub-section (1) of Section 10 and notify them through the Inspector to the Commission in the manner thereafter provided. In contrast, under Rule 11 (1) of the Rules of 1998, for the

purpose of direct recruitment to the post of teacher, the Management is required to determine the number of vacancies in accordance with sub-section (1) of Section 10 and notify them through the Inspector. The consequence which is envisaged in sub-rule (4) of Rule 11 takes effect where the Management does not notify the vacancies by the date specified in sub-rule (2) or fails to notify them in accordance with the said sub-rule. Under the Rules of 1998, sub-rules (1) and (2) of Rule 11 apply only to direct recruitment in contrast to the corresponding provisions under the Rules of 1995.

At this stage, it would be necessary to advert to the decision of the Supreme Court in Balbir Kaur and Anr. v. U P Secondary Education Services Selection Board, Allahabad and Ors.7 In that case, the provisions of Section 10 of the U P Secondary Education Services Selection Board Act, 1982 came up for consideration together with the provisions contained in Rule 11 of the Rules of 1998. The submission which was urged before the Supreme Court was that under Section 10 of the principal Act, the vacancies are to be notified in respect of each year of recruitment and if they are clubbed together, the basic purpose of notifying the vacancies every year in terms of the provisions would be frustrated. The submission before the Supreme Court was that since the vacancies have to be notified each year, it would naturally mean that they are also to be filled up each year from amongst the eligible candidates available in respect of that recruitment year. Hence, it was urged that a person who becomes eligible subsequently could not be considered in respect of the vacancy occurring in respect of an earlier recruitment year. Finding that the submission lacked substance, the Supreme Court observed as follows:

"30. We do not find much substance in the contention. Section 2 (l) of the Principal Act, as amended by the U.P. Secondary Service Commission and Selection Board (Amendment) Act, 1992 defines "year of recruitment" to mean a period of twelve months commencing from 1st day of July of a calendar year. Section 10 of the Principal Act prescribes the procedure for determination of number of vacancies and directs the management to determine the number of vacancies, `existing or likely to fall vacant during the year of recruitment'. On a bare reading of the provision, it is manifestly clear that when a selection is held in a "year of

recruitment" then all the existing vacancies and the vacancies likely to fall vacant during the year of recruitment are clubbed and notified. Moreover, Section 11 of the Principal Act also contemplates preparation of a panel of the selected candidates with respect to the vacancies notified under Section 10 (1) thereof. It is clear that though it may be desirable for better administration but neither Section 10 nor 11 of the Principal Act nor the 1998 Rules as such mandate that selection or determination of vacancies must be year wise and, therefore, all the vacancies which are "existing or which are likely to fall vacant during the year of recruitment" can be clubbed irrespective of the year of occurrence of the vacancy. Moreover, second proviso to Rule 11 (2) (a) also contemplates that the vacancies existing on the date of commencement of these Rules as well as the vacancies which are likely to arise on 30th June, 1998, shall be included in the consolidated statement by the management and sent to the Board for making selection which shows that all the existing vacancies irrespective of the year of occurrence can be clubbed for being filled up together by the Board. In this view of the matter, it cannot be said that Rule 11 (2) (a) is in conflict with the provisions of Section 10 (1) of the Principal Act, as is sought to be pleaded on behalf of the respondents. We have, therefore, no hesitation in endorsing the view taken by the High Court that the Board and the Management have not committed any error in clubbing vacancies which were existing on the date of selection."

(emphasis supplied)

The expression 'year of recruitment' is used in several legislative enactments in the area of service jurisprudence and has been the subject of judicial precedent. In Harish Chandra Ram v. Mukh Ram Dubey and Ors.8, the Supreme Court held that as and when recruitment takes place, the cases of all the candidates including the reserved candidates must be considered according to rules which would arise only when the recruitment takes place. In that context, the Supreme Court observed as follows:

"5....So, as and when recruitment takes place the cases of all the candidates including reserved candidates must be considered according to rules which would arise only when recruitment takes place. Take for instance an hypothetical case. A

and B are eligible for consideration and were considered in 1980 for two vacancies and B was found suitable and was appointed to one vacancy in 1982. One more vacancy arose in 1983. In the year 1983, A, C and D were considered. A and D were promoted in 1984. The recruitment years are 1982 and 1984, and not 1980 when one vacancy existed or 1983 when two vacancies existed. So each year is not the year of recruitment. As and when recruitment takes place in a particular year, it would be the year of recruitment."

"6.... It is thus clear that the recruitment year is the year in which the recruitment takes place, but not each three successive years in which the vacancy exists...."

Similarly, in Malik Mazhar Sultan and Anr. vs. U P Public Service Commission and Ors.9, the Supreme Court considered the expression 'year of recruitment' in Rule 4 (m) of the Uttar Pradesh Judicial Services Rules, 2001, which defined the expression to mean a period of twelve months commencing from the first day of July of the calendar year in which the process of recruitment is initiated by the appointing authority. The Supreme Court held that where the process of recruitment was initiated by the appointing authority on 23 November 2002, the year of recruitment had rightly been determined as 1 July 2002 to 30 June 2003, having regard to Rule 4 (m).

In Union of India vs. Madras Telephones Scheduled Castes and Scheduled Tribes Social Welfare Association10, the Telegraph Engineering Service (Class II) Recruitment Rules, 1996, required the eligibility list of candidates passing a departmental qualifying examination to be prepared in accordance with the instructions of the Government. The instructions provided that a separate list shall be prepared for each year of recruitment/appointment. The Tribunal directed that the list shall be prepared on the basis of the year of passing the qualifying examination and not on the basis of the year of recruitment. This was held to be contrary to law by the Supreme Court. The Supreme Court held that the Tribunal would be re-writing the rule which was impermissible.

In Suraj Parkash Gupta and Ors. v. State of J and K and Ors.11, the Supreme Court rejected the submission that an appointment on direct recruitment would be ante-dated from the date of the occurrence of a vacancy in the quota, even if on

that date the said person was not directly recruited. The seniority could only be based upon the length of service. The same principle was laid down in the State of Uttranchal and Anr. v. Dinesh Kumar Sharma12. Similarly, in Jagdish Ch. Patnaik and Ors. v. State of Orissa and Ors.13, the Supreme Court has held that the year in which the vacancies arose against which the recruitment has been made would not be looked at, at all, for determination of the inter se seniority between direct recruits and promotees.

In Km. Poonam v. State of U P and Ors. 14a Division Bench of this Court followed the decision in Subhash Prasad (supra) as well as an earlier decision in Shyam Narain Mishra vs. District Inspector of Schools, Allahabad15. The Division Bench observed that this Court has repeatedly held that for the purpose of eligibility and qualification, it is the year of recruitment in which the vacancy occurred which would be relevant and not the date on which the management sought to fill in the vacancy. In Shyam Narain Mishra (supra), the Division Bench held that if the year of recruitment was allowed to be reckoned with reference to the date on which the Management decided to proceed with the recruitment, that would make the year of recruitment uncertain and may confer arbitrary power upon the management to delay its decision in order to defeat the lawful claim of a teacher of the institution. Shyam Narain Mishra's case held that since the date of the occurrence of vacancy is certain, the first day of July of such year would be the year of recruitment as it would prevent the Management from enlarging the zone of consideration or deferring the year of recruitment.

We are unable to subscribe to the correctness of the view which has been expressed in the decision in Km. Poonam and in the earlier decisions which it followed. The duty of the Court, while interpreting any legislation, is to give effect to the plain meaning of the words used by the legislature. In the course of interpretation, it is not open to the Court, to re-write the words of the statute. Section 2 (l) of the Act specifically defines the 'year of recruitment' to mean a period of twelve months commencing from the first day of July of a calendar year. Rule 14 contains an express provision by which, where any vacancy is to be filled in by promotion, all teachers working in the trained graduates grade or Certificate of Teaching grade who possess the qualifications prescribed and have completed

five years' continuous regular service on the first day of the year of recruitment shall be considered for promotion. The expression 'all' must be given its plain and natural meaning. Every teacher who fulfills the norm of eligibility on the first day of the year of recruitment has to be considered for promotion. A teacher who fulfills the prescribed norm cannot be excluded on the ground that he/she did not fulfill the condition of eligibility when the vacancy occurred at an anterior point in time. The Court cannot substitute the words "year in which the vacancy occurred" for the words "year of recruitment". That is not the function of the Court. The year of recruitment must mean what the legislature has defined it to mean. This must particularly hold good in the context of the history of the subordinate legislation. As we have noted, Rule 9 of the Rules of 1983 which related to promotion, defined 'eligibility' with reference to the date of the occurrence of a vacancy. Those words were specifically substituted when the Rules of 1995 were framed. In the Rules of 1998 as well, Rule 14, as we have noted, refers to the year of recruitment and not to the year in which the vacancy has occurred. There is no basis in the contention that the first proviso to Rule 10 would indicate a different interpretation. All that the proviso lays down, is that if in any year of recruitment, suitable and eligible candidates are not available for recruitment by promotion, the post may be filled in by direct recruitment. This proviso means that a post can be filled in by direct recruitment, if suitable and eligible candidates are not available in the year of recruitment for promotion. This does not indicate that the eligibility of candidates has to be determined not with reference to the year of recruitment, but with reference to the year in which the vacancy occurred. Such a construction would also be plainly contrary to the law laid down in the judgment of the Supreme Court in Balbir Kaur (supra). The Supreme Court has specifically held that the Rules of 1998 do not mandate that the selection or determination of vacancies must be year-wise. All vacancies which exist or are likely to fall vacant, during the year of recruitment, can be clubbed irrespective of the year of the occurrence of vacancies. The submission that the management can arbitrarily widen the zone of consideration, if this construction is adopted does not commend itself. The criterion for promotion under Rule 14 (2) is seniority subject to the rejection of the unfit. The position of a senior employee is adequately safeguarded by Rule 14 (2) subject to satisfaction of fitness. The authorities have sufficient powers to ensure

that vacancies in the promotional stream are not kept unfilled to the detriment of the educational requirements of students.

For these reasons, we answer the reference by holding that it is not the date on which the vacancy has occurred, but the year of recruitment which is relevant for the determination of eligibility for promotion to the Lecturers' grade under the Rules of 1998. The reference is answered in the aforesaid terms. All the writ petitions shall now be placed before the regular Bench according to roster for disposal in the light of the present judgment.

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