REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3938-3939 OF 2008
Arising out of S.L.P. (C) NOS.19335-19336 OF 2003

BALBIR KAUR & ANR. — *APPELLANTS*

VERSUS

U.P. SECONDARY EDUCATION SERVICES SELECTION BOARD, ALLAHABAD & ORS. — *RESPONDENTS*

WITH

CIVIL APPEAL NOS. 3806-3817, 3828-3838,3841-3842,3844,3846-3864,3866-3901, 3903-3905, 3907-3921,4085-4087,3924-3937 OF 2008

[Arising out of SLP (C) NOS. 19368, 19779, 19780, 20860, 20877-20878, 20916, 20943, 20983, 21135, 21573, 21608, 21694-21704, 21707, 21708, 22525, 22679, 22904, 22934, 22935, 22975, 22976-22978, 22980, 23084, 23163, 23164, 23322, 23679, 23689, 23691, 23692, 24000, 24075, 24217, 24555 OF 2003, 11726, 11727, 14189, 1419-1423, 1486, 150, 1777, 1778, 1779, 1780-1781, 1782, 1783, 21567, 21568-21571, 2270, 2271, 2274, 2276, 24520, 2657, 26818, 2691, 2969, 2977, 3386, 3999, 4094-4095, 4285, 4783, 4784, 5781, 5786, 6380, 6383, 7125, 806, 814-816, 833, 834, 835, 836, 3009-3010, 3015, 11392, 11394 OF 2004, 124-125, 1605-1606, 9794, 18880, 14417-14418, 24475, 24535 OF 2005, SLP (C) N0 13613..OF 2008 [CC NO.8812 OF 2005], I.A.No.1-2 IN SLP (C) NO13618 .OF 2008 [CC NO.11142], SLP (C) NO. 1863-1864 OF 2004, SLP(C) NO. 16502 OF 2004

AND

CONTEMPT PETITION (C) NO.269 OF 2005 IN SLP (C) NO.2691 OF 2004

J U D G M E N T

Civil Appeal No. 3806 of 2008
(Arising out of SLP(C) No.19368 of 2003)
Civil Appeal No. 3807 of 2008
(Arising out of SLP(C) No.19779 of 2003)
Civil Appeal No. 3808 of 2008
(Arising out of SLP(C) No.19780 of 2003)
Civil Appeal No. 3809 of 2008
(Arising out of SLP(C) No.20860 of 2003)
Civil Appeal Nos. 3810-3811 of 2008
(Arising out of SLP(C) No.20877-20878 of 2003
Civil Appeal No. 3812 of 2008
(Arising out of SLP(C) No.20916 of 2003)
Civil Appeal No. 3813 of 2008
(Arising out of SLP(C) No.20943 of 2003)
Civil Appeal No. 3814 of 2008
(Arising out of SLP(C) No.20983 of 2003)
Civil Appeal No. 3815 of 2008
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Civil Appeal No. 3816 of 2008
(Arising out of SLP(C) No.21573 of 2003)
Civil Appeal No. 3817 of 2008
(Arising out of SLP(C) No.21608 of 2003)
Civil Appeal Nos. 3828-3838 of 2008
(Arising out of SLP(C) Nos.21694-21704 of 2003)
Civil Appeal No. 3841 of 2008
(Arising out of SLP(C) No.21707 of 2003)
Civil Appeal No. 3842 of 2008
(Arising out of SLP(C) No.21708 of 2003)
Civil Appeal No. 3844 of 2008
(Arising out of SLP(C) No.22525 of 2003)
Civil Appeal No. 3846 of 2008
(Arising out of SLP(C) No.22679 of 2003)
Civil Appeal No. 3847 of 2008
(Arising out of SLP(C) No.22904 of 2003)
Civil Appeal No. 3848 of 2008

(Arising out of SLP(C) No.22934 of 2003)
Civil Appeal No. 3849 of 2008
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Civil Appeal No. 3850 of 2008
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Civil Appeal Nos. 3851-3853 of 2008
(Arising out of SLP(C) Nos.22976-22978 of 2003)
Civil Appeal No. 3854 of 2008
(Arising out of SLP(C) No.22980 of 2003)
Civil Appeal No. 3855 of 2008
(Arising out of SLP(C) No.23084 of 2003)
Civil Appeal No. 3856 of 2008
(Arising out of SLP(C) No.23163 of 2003)
Civil Appeal No. 3857 of 2008
(Arising out of SLP(C) No.23164 of 2003)
Civil Appeal No. 3858 of 2008
(Arising out of SLP(C) No.23322 of 2003)
Civil Appeal No. 3859 of 2008
(Arising out of SLP(C) No.23679 of 2003)
Civil Appeal No. 3860 of 2008
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Civil Appeal No. 3862 of 2008
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(Arising out of SLP(C) No.24000 of 2003)
Civil Appeal No. 3864 of 2008
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(Arising out of SLP(C) No.24217 of 2003)
Civil Appeal No. 3867 of 2008
(Arising out of SLP(C) No.24555 of 2003)
Civil Appeal No. 3868 of 2008
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Civil Appeal No. 3870 of 2008
(Arising out of SLP(C) No.14189 of 2004)
Civil Appeal Nos. 3871-3875 of 2008
(Arising out of SLP(C) No.1419-1423 of 2004)
Civil Appeal No. 3876 of 2008

(Arising out of SLP(C) No.1486 of 2004)
Civil Appeal No. 3877 of 2008
(Arising out of SLP(C) No.150 of 2004)
Civil Appeal No. 3878 of 2008
(Arising out of SLP(C) No.1777 of 2004)
Civil Appeal No. 3879 of 2008
(Arising out of SLP(C) No.1778 of 2004)
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Civil Appeal Nos. 3881-3882 of 2008
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(Arising out of SLP(C) No.1782 of 2004)
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Civil Appeal No. 3891 of 2008
(Arising out of SLP(C) No.2271 of 2004)
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(Arising out of SLP(C) No.2276 of 2004)
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(Arising out of SLP(C) No.2657 of 2004)
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(Arising out of SLP(C) No.26818 of 2004)
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(Arising out of SLP(C) No.2969 of 2004)
Civil Appeal No. 3899 of 2008
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Civil Appeal No. 3900 of 2008
(Arising out of SLP(C) No.3386 of 2004)
Civil Appeal No. 3901 of 2008

(Arising out of SLP(C) No.3999 of 2004)
Civil Appeal No. 3905 of 2008
(Arising out of SLP(C) No.4285 of 2004)
Civil Appeal No. 3907 of 2008
(Arising out of SLP(C) No.4783 of 2004)
Civil Appeal No. 3908 of 2008
(Arising out of SLP(C) No.4784 of 2004)
Civil Appeal No. 3909 of 2008
(Arising out of SLP(C) No.5781 of 2004)
Civil Appeal No. 3910 of 2008
(Arising out of SLP(C) No.5786 of 2004)
Civil Appeal No. 3911 of 2008
(Arising out of SLP(C) No.6380 of 2004)
Civil Appeal No. 3912 of 2008
(Arising out of SLP(C) No.6383 of 2004)
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Civil Appeal No. 3918 of 2008
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Civil Appeal No. 3919 of 2008
(Arising out of SLP(C) No.834 of 2004)
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(Arising out of SLP(C) No.835 of 2004)
Civil Appeal No. 3921 of 2008
(Arising out of SLP(C) No.836 of 2004)
Civil Appeal No. 4085-4086 of 2008
(Arising out of SLP(C) Nos.3009-3010 of 2004)
Civil Appeal No. 4087 of 2008
Arising out of SLP(C) No.3015 of 2004)
Civil Appeal No. 3924 of 2008
(Arising out of SLP(C) No.11392 of 2004)
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(Arising out of SLP(C) No.11394 of 2004)
Civil Appeal Nos. 3926-3927 of 2008
(Arising out of SLP(C) Nos.124-125 of 2005)
Civil Appeal No. 3930 of 2008
(Arising out of SLP(C) No.9794 of 2005)
Civil Appeal No. 3931 of 2008
(Arising out of SLP(C) No.18880 of 2005)
Civil Appeal Nos. 3932-3933 of 2008

(Arising out of SLP(C) Nos.14417-14418 of 2005)

Civil Appeal No. 3936 of 2008
(Arising out of SLP(C) No 13613 of 2008)
[CC No.8812 of 2005]
Civil Appeal No. 3937 of 2008
(Arising out of SLP (C) No.13618 of 2008)
[CC No.11142 of 2005]
Contempt Petition (C) No.269 of 2005
in SLP (C) No.2691 of 2004

D.K. JAIN, J.:

Permission to file the Special Leave Petitions is granted.

2. Delay condoned.

3.Leave granted.

4.Challenge in this batch of appeals is to a common judgment rendered by a Division Bench of the High Court of Judicature at Allahabad in Special Appeal No. 159 of 2001 and other connected appeals, partly disagreeing with and reversing the view of the learned Single Judge in regard to the selection of Principals of various institutions, by direct recruitment.

5.To comprehend the controversy in these cases, it would suffice to refer to the facts in SLP (C) Nos.19335-19336 of 2003, which was otherwise treated as the lead case.

6. On 12th August, 1998, 24th December, 1999 and 3rd March, 2002, U.P. Secondary Selection Board (hereinafter referred to as the Board) issued advertisements inviting applications for direct recruitment to the posts of teachers, lecturers and the heads of several Institutions. In these appeals we are concerned with the selection of heads of the Institutions/Principals. The advertisements were issued under the U.P. Secondary Education Selection Board Act, 1982 (hereinafter referred to as the Principal Act). In the advertisement, the vacancies for the post of Principal in respective Institutions were indicated regionwise. The candidates were to be considered regionwise and results were also to be declared regionwise. The candidates were required to give the choice of not more than three institutions in order of preference and if he wanted to be considered for any particular institution or institutions and not for other institutions he could mention this fact in the application. In

addition to the candidates applying directly, the Board was also required to consider the names of two senior-most teachers of the Institution concerned. These two senior-most teachers were not required to apply but their names were to be forwarded by the management in accordance with Rule 11 (2) (b) of the U.P. Secondary Education Services Selection Board Rules, 1998 (for short 'the 1998 Rules'). Nonetheless, they could apply for other Institutions as well.

7. The said advertisements were challenged by the Principals, who were already heading some institutions on ad-hoc basis, and the senior-most teachers of various institutions mainly on the grounds that : (i) the cut off date i.e. 6th August, 1993 fixed by the 1998 amendment, for regularizing the ad-hoc Principals/teachers was arbitrary, discriminatory and violative of Article 14 of the Constitution of India (ii) the exclusion and inclusion of candidates eligible for selection was not in conformity with Appendix A of Regulation 1 of Chapter II of the Regulations framed under the U.P. Intermediate Education Act, 1921 (for short 'the Intermediate Act') (iii) the regionwise consideration and declaration of the result for the

post of Heads of the Institution, unlike the teachers, was violative of Articles 14 and 16 of the Constitution; (iv) sub rule (5) of Rule 12 was unreasonable and discriminatory as it gave undue importance to educational qualifications and no importance to the service record; (v) the manner of allocation of marks and the selection process was arbitrary and (vi) the Principal Act did not provide for any reservation for the post of the Head of the Institution for backward class or scheduled caste or scheduled tribe candidates, which was contrary to the provisions and in violation of the U.P. Public Service (Reservation for Scheduled Caste, Scheduled Tribe and Other Backward Classes) Act, 1994 (for short the 1994 Act).

8. On the basis of rival stands of the parties, including the State, the learned Single Judge formulated as many as 15 points for determination.

9. The learned Single Judge answered all the 15 points, so formulated, against the writ petitioners. Consequently, vide order dated 14th February, 2001, all the writ petitions were dismissed.

10. Being aggrieved, the writ petitioners carried the matter in Special Appeals to the Division Bench. The Division Bench affirmed the view taken by the learned Single Judge on all the points except on one point (No.(iii)), namely, in regard to the requirement of minimum qualification mentioned in the advertisements. The Division Bench held that under sub rule (5) of Rule 15 of the Rules, the qualification as laid down in Appendix A of Regulation 1 of Chapter II of the Intermediate Act had been adopted for appointment to the post of teachers, which includes Principals. For the post of Principal, the said provision provides only for 4 years teaching experience of class IX to XII and not the teaching experience of 4 years as Lecturer, as prescribed in the advertisements. Therefore, by prescribing in the advertisement 4 years teaching experience as a Lecturer, the Board had exceeded its jurisdiction, which, being contrary to law could not be permitted. Thus, the Division Bench came to the conclusion that the advertisement issued by the Board prescribing teaching experience of 4 years as Lecturer for the post of Principal of an Intermediate College was contrary to the statutory requirement of academic

qualifications stipulated in Appendix A of Regulation 1 of Chapter II of Intermediate Act, as adopted by sub rule 5 of Rule 15 of the Rules and as a result thereof it was possible that many candidates having 4 years teaching experience of class IX and X could not apply, resulting in serious prejudice to them. Accordingly, the appeals were allowed and the selections made in pursuance of the said advertisements were set aside. It is this common judgment which is questioned in these appeals by the selected candidates.

11. Although we have heard learned counsel for the parties on all the issues which have been answered by the Division Bench against the writ petitioners, we shall first deal with the central point, namely, the prescription of minimum teaching experience as Lecturer, stipulated in the impugned advertisements, on which the Division Bench disagreed with the learned Single Judge and has struck down the advertisements and quashed the entire selection process for the said post.

12. Mr. Rakesh Dwivedi, learned senior counsel appearing in the lead case for the selected candidates, the appellants herein, submitted that in the light of the 'Note' appended to sub-rule (5) of Rule XII of the 1998 Rules, the requirement of minimum experience as stipulated in Appendix A of Regulation 1 of Chapter II of the Regulations framed under the Intermediate Act, stands modified and, therefore, the advertisements being in conformity with the 'Note' could not be struck down as being in conflict with the said Appendix. Learned counsel argued that the 'Note' expresses the legislative intent and being a part of the Rules, framed in terms of Section 35 of the Principal Act, has full efficacy and cannot be ignored. In support of the proposition that Notes/Explanations are one of the modes by which the legislature expresses itself and the words used therein alone being the repository of legislative intent, any 'Note' or the 'Explanation' must be construed according to its plain language and not on *a priori* considerations, reliance was placed on the decisions of this Court in ***Dattatraya Govind Mahajan & Ors.*** *Vs.* ***State of Maharashtra & Anr.***[1]***, Rani***

[1] (1977) 2 SCC 548

Choudhury *Vs.* ***Lt. Col. Suraj Jit Choudhury***[2] and ***M/s. Aphali Pharmaceuticals Ltd.*** *Vs.* ***State of Maharashtra & Ors.***[3]. It was also contended that in view of Section 32 of the Principal Act, the said Appendix has to give way to the new Rules and, therefore, with regard to the post of a Principal, insofar as the experience is concerned, the minimum qualification would stand modified in terms of the said 'Note'. It is, thus, asserted that there is no conflict between the contents of the impugned advertisements and the relevant Rules.

13. Dr. R.G. Padia, learned senior counsel appearing on behalf of the ad-hoc Principals, on the other hand, submitted that insofar as the academic qualifications under Rule 5 of the 1998 Rules are concerned, qualifications specified in Regulation 1 of Chapter II of the Regulations made under the Intermediate Act having been adopted for the purpose of 1998 Rules as well, the minimum qualification for the post of Principal cannot be at variance with what is specified in the said Appendix, which includes experience of teaching classes

2 (1982) 2 SCC 596
3 (1989) 4 SCC 378

IX to XII and, therefore, experience of teaching classes IX & X had been erroneously excluded in the impugned advertisements. It is pleaded that Rule 12 (5) of the 1998 Rules cannot have the effect of altering or modifying the conditions of qualifying experience mentioned in the Appendix of the said Regulations.

14. In order to appreciate the rival stands on the issue, it would be expedient to briefly notice the historical background of the statutory provisions relating to the selection of heads of educational institutions in the State of U.P. Prior to the enactment of the Principal Act, by U.P. Act No.5 of 1982, selections for the posts of Head of the educational institutions were made as per the provisions of the Intermediate Act by the Selection Committee constituted by the Committee of Management, managing the institution, with the prior approval of the concerned District Inspector of Schools. Minimum qualifications for the post of the Head in an Institution were prescribed in Appendix A in reference to Regulation 1 of Chapter II of the Intermediate Act. However, with the coming into force of the Principal Act, with effect from

14th July, 1981, selections for the posts were entrusted to a Commission, in order to ensure that good and competent persons were selected and appointed to the said posts. Relevant rules in this behalf were framed by the State Government for the first time in the year 1983, called the U.P. Secondary Education Services Commission Rules, 1983. However vide Notification dated 13th July, 1998, the 1998 Rules, enforced with effect from 8th August, 1998, were notified. As noted above, selections in question were held under the 1998 Rules.

15. It appears that in order to obviate the difficulty faced by the ad-hoc teachers and the Principals/Heads of the Institution, who had been continuing on the post for a long time and to bring an end to adhocism, the Principal Act was amended in the year 1985 by which Section 31-A was inserted, regularizing certain appointments. Another amendment was made in the Principal Act in the year 1991, inserting Section 33-A for regularizing some more ad-hoc appointments. It was enforced on 7th August, 1993. In the year 1993, by another amendment in the Principal Act, Section 33-B was introduced,

regularizing some more ad-hoc appointments. In the year 1995, by way of an amendment in the Principal Act, enforced with effect from 28th December, 1994, four Regional Selection Boards, which were established by the 1993 amendment, were abolished and one Commission for the entire State was provided for. In the year 1998, yet another amendment, effective from 20th April, 1998, was made to the Principal Act, entrusting the entire selection process to the Board in place of the Commission. By the said amendment, Section 33-C was also inserted in the Principal Act by which ad-hoc teachers and Heads, who were appointed not later than 6th August, 1993, were sought to be regularized.

16. The pivotal Rule 5 of the 1998 Rules, prescribes academic qualifications for appointment to the post of teacher. It reads as follows:

> "5.**Academic qualifications.**-A candidate for appointment to a post of teacher must possess qualifications specified in Regulation 1 of Chapter II of the Regulations made under the Intermediate Education Act, 1921."

17. Chapter II of the Intermediate Act deals with appointment of heads of institutions and teachers. Regulation 1 of the said Chapter stipulates that the minimum qualification for appointment as heads of institutions and teachers in any recognized institution, whether by direct recruitment or otherwise, shall be as given in Appendix A. As per the said Appendix, the essential qualification for the post of head of the institution is as follows:

"Essential Qualification

S.No.	Name of the post & educational training experience	Age	Desirable qualification
1	2	3	4

1.	Head of the institution (1) Trained M.A. or M.Sc. or M.Com. or M.Sc. (Agri) or any equivalent post-graduate or any other degree which is awarded by corporate body specified in above-mentioned para one and should have at least teaching experience of four years in classes 9 to 12 in any training institute or in any institution or University specified in above-mentioned para one or in any degree college affiliated to such University or institution, recognized by Board or any institution affiliated from Boards of other States or such other institutions whose examinations are recognized by the Board, or should the condition is also that he/she should not be below 30 years of age. Or	Mini mum 30 years

2.	First or second class post-graduate degree along with teaching experience of ten years in intermediate classes of any recognized institutions or third class post-graduate degree with teaching experience of fifteen years.	
	Or	
3.	Trained post-graduate diploma-holder in science. The condition is that he has passed this diploma course in first or second class and have efficiently worked for 15 or 20 years respectively after passing such diploma course."	

18. Part III of the 1998 Rules lays down the procedure for recruitment to various categories of teachers. Rule 10 (a) thereof provides that the mode of recruitment of Principal of an Intermediate College or Headmaster of a High School shall be by direct recruitment. The number of vacancies for the purpose of direct recruitment are determined and notified in

the manner laid down in Rule 11. Rule 12 lays down the procedure for direct recruitment. Relevant portion thereof reads thus:

> **"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 and Other Backward Classes of citizens in at least two daily newspapers, having wide circulation in the State, and call for the applications for being considered for selection in the proforma 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) … … …
> (3) … … …
>
> (4) The Board shall prepare lists for each category of posts on the basis of quality points specified in Appendix 'B' or Appendix 'C', as the case may be, marks in written examination and marks for experience as follows:

(i) 30 per cent marks on the basis of quality points;

(ii) 40 per cent marks on the basis of the written examination; and

(iii) 20 per cent marks for experience more than the required experience in such manner that 4 marks shall be allotted for having doctorate's degree and 2 marks shall be given for each year of such experience with maximum of 16 marks.

Notes (1) - The teaching experience for this purpose shall be counted only for the recognized High School/Intermediate College(s) or Junior High School and such certificate shall actually mention the date of appointment, date of joining and the scale of pay and duly signed by the Principal/Headmaster and countersigned by the District Inspector of Schools or Zila Basic Shiksha Adhikari, as the case may be, with full name of the countersigning authority.

(2) Any Wrong information submitted in this regard shall make the applications of such candidates liable to be rejected and for this the candidate himself shall be solely responsible.

(5) The Board shall, in respect to the selection for the post of Headmaster and Principal, allot the marks in the following manner-

(i) 60 per cent marks on the basis of quality points specified in Appendix 'D';

(ii) 20 per cent marks for having experience more than the required experience, 1 mark for each research paper published with a maximum of 4 marks and 2 marks for each year of such experience with a maximum of 16 marks; and

(iii) 10 per cent marks for having doctorate degree.

Note.- For the purpose of calculating experience the service rendered as Headmaster of Junior High School or as assistant teacher in a High School/Intermediate College shall be counted in the case of selection of Headmaster; and for selection of Principal, the service rendered as Headmaster of a High School or as a Lecturer shall only be counted. The provision of sub-rule (4) of Rule 12 regarding the certificate of experience shall *mutatis mutandis* apply.

(6) The Board, having regard to the need for securing due representation of the 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, call for interview such candidates who have secured the maximum marks under sub-clause (4) above and for the post of Principal/Headmaster, 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 senior-most 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 Board shall hold interview of the candidates and 10 per cent marks shall be allotted for interview. The marks obtained in the written test and the quality points by the eligible candidates shall not be disclosed to the members of the Interview Board:

Provided further that in the interview, ten per cent marks shall be divided in the following manner:

(i) 4 per cent marks on the basis of subject/general knowledge;

(ii) 3 per cent marks on the basis of personality; and

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

(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 in 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 vacancies 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.
…… ….. …..”

19. As noted supra, Rule 5 of the 1998 Rules deals with academic qualifications for appointment to the post of teacher and contemplates that a candidate must possess qualification as specified in Regulation 1 of Chapter II of the Regulations made under the Intermediate Act. As per Appendix A of the

Intermediate Regulations, a candidate should have four years experience of teaching classes X to XII. However, the 'Note' appended to sub rule (5) of Rule XII excludes the teaching experience of Assistant Teacher for being construed as qualifying him for the post of Principal of an Intermediate College, although the afore-extracted Appendix A provides for it. The 'Note' clearly stipulates that for selection to the post of the Principal of an Intermediate College, with which we are concerned, for the purpose of calculating the experience, services rendered as Headmaster of a High school or as a Lecturer only has to be taken into consideration. Obviously, the expression 'teaching experience' as contemplated in the 'Note' would apply both to the required experience and the experience more than that and, therefore, even for required experience only service rendered as Headmaster/Lecturer is relevant.

20. It is trite that true nature of a statutory provision has to be determined from the content of the provision, its import gathered from the language implied and the language construed in the context in which the provision was enacted.

In ***Dattatraya Govind*** *(supra) and* ***Rani Choudhury*** *(supra),* this Court has said that mere description of a certain provision, such as explanation, is not decisive of its true meaning. It is the intention of the legislature which is paramount and mere use of a label cannot control or deflect such intention. In ***Dattatraya Govind's case***, it was observed that the legislature has different ways of expressing itself and in the last analysis the words used alone are the true repository of legislative intent.

21. Applying the aforenoted principles, we are of the opinion that the 'Note' appended to sub rule (5) of Rule 12 of the 1998 Rules has the effect of modifying the conditions of qualifying experience mentioned in Appendix A of the Regulations under the Intermediate Act.

22. Having come to the said conclusion, the issue which still survives for consideration is whether for appointment to the post of Principal, the qualifying experience as stipulated in the said 'Note' would apply or the one prescribed in the Appendix-A to Regulation I of Chapter II of the Regulations

made under the Intermediate Act. In our view, answer to the question can be found in Section 32 of the Principal Act, which provides that the provision of the Intermediate Act and Regulations made thereunder will continue to be in force in case they are not inconsistent with the Principal Act and the Rules made thereunder. As noted hereinbefore 'Note' to sub rule (5) of Rule 12 of 1998 Rules prescribes the requirement of experience for the post, which is different from what is prescribed in the said Appendix A and, therefore, there being a conflict between the two provisions, in the teeth of Section 32, the said 'Note' shall have an overriding effect over Appendix A insofar as the question of experience is concerned. In this view of the matter, we are in agreement with the learned Single Judge that the impugned advertisements were in conformity with the said 'Note' and, therefore, the selection procedure could not be faulted on that score. We do not think that the contention of the writ petitioner that some persons who had essential qualifications had been excluded from consideration or any person who ought not to have been considered for the said post had been considered for selection,

is well founded. We have, therefore, no hesitation in holding that the Division Bench had erred in law in reversing the decision of the learned Single Judge on the point.

23. We may now advert to other points on which the Division Bench has endorsed the view taken by the Single Judge and has negatived the stand of the respondents. As noted above, out of the fifteen points formulated and decided by the learned Single Judge, the Division Bench had disagreed with him only on the issue regarding the requirement of minimum qualification mentioned in the advertisements. In order to ward off any preliminary objection regarding the right of the respondents to be heard on the points decided against them by the Division Bench, without preferring independent petitions, Dr. Padia, learned counsel for the respondents sought our permission to be heard on these points. In order to assert Respondents' right of being heard on the points answered against them, learned counsel placed reliance on the decisions of this Court in ***Ramanbhai Ashabhai Patel*** *Vs.* ***Dabhi Ajitkumar Fulsinji and Ors***[4], ***J.K. Cotton***

[4] AIR 1965 SC 669

Spinning & Weaving Mills Company Ltd. *Vs.* ***Collector of Central Excise***[5], ***Jamshed Hormusji Wadia*** *Vs.* ***Board of Trustees, Port of Mumbai and Anr.***[6], ***Bharat Kala Bhandar Ltd.*** *Vs.* ***Municipal Committee, Dhamangaon***[7], ***Nalakath Sainuddin*** *Vs.* ***Koorikadan Sulaiman***[8] and ***Management of Northern Railway Co-operative Society Ltd.*** *Vs.* ***Industrial Tribunal, Rajasthan, Jaipur and Anr.***[9]

24. In ***Ramanbhai's case*** *(supra)* this Court had said that while dealing with an appeal before it, this Supreme Court has the power to decide all the points arising from the judgment appealed against and even in the absence of an express provision like Order XLI, Rule 22 of the Code of Civil Procedure, it can devise an appropriate procedure to be adopted at the hearing. It was observed that there could be no better way of supplying the deficiency than by drawing upon the provisions of a general law like the Code of Civil Procedure and adopting such of those provisions as are suitable. It was held that normally a party in whose favour the judgment

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5 (1998) 3 SCC 540
6 (2004) 3 SCC 214
7 AIR 1966 SC 249
8 (2002) 6 SCC 1
9 AIR 1967 SC 1182

appealed from has been given is not granted special leave to appeal from it and, therefore, considerations of justice require that in appropriate cases a party placed in such a position should be permitted to support the judgment in his favour, even upon the grounds which were negatived in that judgment. Subsequently, explaining the issue a little further, in ***Jamshed Hormusji Wadia's case*** *(supra)* it was observed that the permission to the respondent to support the decree or decision under appeal by laying challenge to a finding recorded or issue decided against him is not given because Order 41 Rule 22 CPC is applicable to appeals preferred under Article 136 of the Constitution; it is because of a basic principle of justice applicable to Courts of superior jurisdiction. It was, thus, held that a person who has entirely succeeded before a Court or Tribunal below cannot file an appeal solely for the sake of clearing himself from the effect of an adverse finding or an adverse decision on one of the issues as he would not be a person falling within the meaning of the words 'person aggrieved'. However, in an appeal or revision, as a matter of general principle, the party who has an order in

his favour, is entitled to show that even if the order was liable to be set aside on the grounds decided in his favour, yet the order could be sustained by reversing the finding on some other ground which was decided against him in the court below.

25. In the light of the aforenoted legal position, we permitted Dr. Padia to address us on those points which were decided by the High Court against the respondents.

26. To start with, Dr. Padia contended that the High Court was not correct in holding that there could not be any reservation for the post of head of a high school or an intermediate college. According to the learned counsel, in all public appointments made by the Union Public Service Commission or the State Public Service Commission, provision for reservation is always made in respect of Scheduled Castes and Backward Class category candidates. It was argued that under the provisions of 1994 Act, in all appointments to be made in the State Public Service, reservation in terms of the said Act had to be provided for and, therefore, by not

providing for similar reservation in the advertisements in question, selections made pursuant thereto are per se illegal, being violative of Article 16(4) of the Constitution. In support, reliance was placed on a Division Bench decision of the Allahabad High Court in the case of ***Onkar Datt Sharma & Ors.*** *Vs.* ***State of U.P. & Ors.***[10] wherein it was held that for the post of a head of the institution in degree/post-graduate colleges throughout the State of U.P., the principle of reservation as provided under the 1994 Act would apply. According to the learned counsel, the reservation Act (the 1994 Act) being a special statute, it would prevail over the Principal Act. Relying on the decision of this Court in ***Dr. Suresh Chandra Verma & Ors.*** *Vs.* ***The Chancellor, Nagpur University & Ors***[11]***.,*** it is urged that if the advertisements are held to be bad for ignoring the provision for reservation, these have to be struck down in entirety.

27. Learned counsel for the appellants, on the other hand, submitted that the post of Principal being a single post, the provisions of the 1994 Act shall have no application.

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10 [(2001) 2 UPLBEC 1149]

11 (1990) 4 SCC 55

According to the learned counsel, the heads of several institutions are neither treated nor do they belong to a common cadre. Their employers are different. The Board only makes the selection of the head of the institution concerned and the appointment letters are issued by the respective committees of the management. It was further submitted that though the Principal Act was enacted in the year 1982, yet Section 10 thereof expressly excludes the post of Principal from the purview of 1994 Act, which applies only to the post of teachers. It was asserted that the post of the Principal being a single cadre post, the policy of reservation cannot be applied as it would amount to 100 per cent reservation, which is not permissible in law. In support, reliance was placed on the decisions of this Court in ***Dr. Chakrdhar Paswan*** *Vs.* ***State of Bihar***[12], ***Bhide Girls Education Society*** *Vs.* ***Education Officer, Zila Parishad Dilip Motyhare*** *Vs.* ***Bhide Girls Education Society***[13], ***P.G. Chaturvedi*** *Vs.* ***State of U.P.***[14], ***Gujarat University Association*** *Vs.* ***C. Chattopadhyay***[15] and ***Ramesh Chandra***[16]

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12 (1988) 2 SCC 214
13 (1993) Suppl. 3 SCC 527
14 (1995) Suppl. 1 SCC 157
15 (1998) 4 SCC 1
16 (2004) 12 SCC 333

28. Having examined the issue in the light of the 1994 Act, Section 10 of the Principal Act and the settled position in law, we are of the view that the stand of the respondents is not well founded. Under Section 10 of the Principal Act, the management is required to intimate the number of vacancies to be filled by way of selection by direct recruitment. While doing so, the management is also required to intimate the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens in accordance with the 1994 Act. However, Section 10 expressly excludes the post of the Principal from the purview of the 1994 Act. Thus, from a plain reading of the said provision, the intention of the Legislature is manifestly clear. The legislature, in its own wisdom did not think it proper to provide for any reservation under the 1994 Act for the post of head of the institution. Indubitably, there is no challenge to the validity of Section 10 of the Principal Act. Moreover, the post of the Principal in an educational institution being in a single post cadre, in the light of the clear dictum laid down by this Court, such a post

cannot be subjected to reservation. It will result in 100 per cent reservation, which is not permissible in terms of Articles 15 and 16 of the Constitution of India. In ***PGI Chandigarh's case*** *(supra)* a Constitution Bench of this Court, while holding that plurality of posts in a cadre is a *sine qua non* for a valid reservation, affirmed the view taken in ***Chakradhar Paswan*** *Vs.* ***State of Bihar and Ors.***[17]**.** In that case, it was held that there cannot be any reservation in a single post cadre and the decisions to the contrary, upholding reservation in single post cadre either directly or by device of rotation of roster were not approved. Besides, as noted above, neither the Principal Act, nor the rules made thereunder or the 1994 Act provide for clubbing of all educational institutions in the State of U.P. for the purpose of reservation and, therefore, there is no question of clubbing the post of the Principals in all the educations institutions for the purpose of applying the principle of reservation under the 1994 Act. We are, therefore, in agreement with the High Court that the advertisements impugned in the writ petition were not vitiated for want of provision for reservation. It is also pertinent to note that none

[17] (1988) 2 SCC 214

of the respondents belong to the reserved category of Scheduled Castes or Scheduled Tribes or other Backward Classes. All of them are from the general category. Therefore, even otherwise they have no *locus standi* to raise the plea of reservation.

29. It was then contended by learned counsel for the respondents that under Section 10 of the Principal Act, vacancies are to be notified in respect of each year of recruitment and if the vacancies are clubbed together, the basic purpose of notifying the vacancies every year in terms of the said Section will get frustrated, which cannot be permitted in law. According to the learned counsel, 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. Therefore, the person who became eligible subsequently could not be considered in respect of the vacancies occurring in respect of the earlier recruitment year. The stand of the learned counsel is that in the present recruitment, the Board wrongly clubbed all such vacancies by taking recourse to the

second proviso to Rule 11(2) (a) of the 1998 Rules. Learned counsel asserts that in the light of clear provision of Section 10 of the Principal Act, the said Rule cannot be resorted to.

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 yearwise 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.

31. It was then submitted by Dr. Padia that there was difference in the Hindi and English version of the notification given in Appendix D framed in terms of Rule 12(5) (i) of the 1998 Rules, on the basis whereof quality points were to be calculated. According to the learned counsel, in the Hindi version weightage to the percentage of marks in the high school, intermediate, graduate and post-graduate degree was in the ratio of 1,2,4 and 8 respectively whereas in the English version it was only 1,2,3 and 4. The submission was that in case the Hindi version was followed then maximum marks that could be awarded, as calculated in terms of Appendix D would be 174 and in case English version was to be followed then it would come to only 124. Further, the Board had scaled the said marks upto 300 by multiplying the quality point marks of the candidate by 300/174 as the total marks out of which the merit was to be declared had been taken as 500 and 60 per cent of it came to 300. But this was down by following the Hindi version. The contention was that in case the English version was to be followed, the quality point marks had to be calculated after giving due weightage for graduate

and post-graduate degree and also it was to be scaled upto 300 by multiplying the quality point marks of 300 by 124 and not by 174, which would result in some difference. Learned counsel contended that though the State Government had issued a corrigendum on 17th January, 2001 and the English version of the Appendix B, C and D of the Rules was corrected, the English translation of the corrigendum was published only on 31st January, 2001. According to the learned counsel, this amounted to a retrospective amendment, carried out with a view to validate the result and, therefore, the same was violative of Article 166 of the Constitution. Learned counsel urged that the corrigendum also suffered from a technical defect inasmuch as the same had to be issued only in the name of the Governor and not by the Secretary as was done in the instant case.

32. We are of the view that insofar as the final results are concerned, the issue raised is of no consequence. Admittedly, there was no ambiguity in the Hindi version of the said Appendix, which had been followed by the Board. Though, technically the respondents stand that the corrigendum had

not been issued strictly as per the procedure prescribed may have some substance but we are convinced that in the final analysis no prejudice has been caused to them because the stated discrepancy had been rectified and the English version had been brought in consonance with the Hindi version. In this view of the matter, we deem it unnecessary to dilate on the scope and effect of Article 348(3) of the Constitution, to which reference was made by learned counsel for the parties.

33. Dr. Padia also contended that the regionwise selection and declaration of the results for the post of the Principals is not only violative of the procedure prescribed in Section 10 of the Principal Act; it will also lead to discriminatory results. It was pleaded that the procedure adopted is against the spirit of Articles 14 and 16 of the Constitution and the principles of law enunciated by this Court in ***Radhey Shyam Singh & Others, etc.*** *Vs.* ***Union of India & Ors.***[18], ***Nidamarti Maheshkumar*** *Vs.* ***State of Maharashtra and Ors.***[19] and ***Minor P. Rajendran*** *Vs.* ***State of Madras & Ors.***[20]

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18 (1997) 1 SCC 60
19 (1986) 2 SCC 534
20 AIR 1968 SC 1012

34. In our view, the said contention is also not well-founded. There is no warrant for accepting as a general proposition that a regionwise or districtwise selection is per se violative of equality clause enshrined in Articles 14 and 16 of the Constitution. It would be discriminatory only when the person, who alleges discrimination, demonstrates certain appreciable disadvantages, qua similarly situated persons, which he would not have faced but for the impugned State action. Therefore, the onus was on the writ petitioners to show by cogent material that by resorting to regionwise selection, they were placed in some disadvantageous position as compared to their counterparts or that in this process merit was the casualty.

35. In the present case, neither Section 10 of the Principal Act nor any other statutory provision forbids regionwise selection. Besides, no restriction was imposed upon the candidates insofar as their choice for the regions was concerned. An eligible candidate could apply in any of the regions and his application was to be considered in accordance with the Rules. It has neither been pleaded nor can it be held that the

right of any eligible candidate to apply in a particular zone was curtailed or that an equal opportunity to compete had been denied to the respondents. It is not even the case of the respondents that a less meritorious candidate has been selected on account of regionwise selection. The ratio of the decisions, relied upon by learned counsel for the respondents is not attracted to the facts of the present case. In the aforenoted decisions, zonewise, districtwise and unitwise allocation of seats and/or preparation of separate merit list for each zone in respect of candidates who appeared at the centres within the same zone were held to be discriminatory on the ground that by resorting to these procedures, the objective of selecting the best possible candidates was defeated. In all these cases, the petitioners had successfully demonstrated that as a result of zonewise or districtwise allocations, more meritorious candidates were denied admissions/employment and candidates with low merit were selected, which is not the case here. As noted above, in the present case the respondents have neither pleaded nor placed on record any material to show that as a result of regionwise

selection they have not been selected despite the fact that they were more meritorious as compared to the selected candidates. In our opinion, therefore, the selection process cannot be struck down as violative of the principles enunciated in Articles 14 and 16 of the Constitution.

36. It was then argued by learned counsel for the respondents that Section 33C inserted by the Amending Act is wholly arbitrary, illegal and discriminatory inasmuch as though it had been enforced with effect from 20th April, 1998, it provided for regularization of only such ad-hoc Principals who had been appointed on or before 6th August, 1993. According to the learned counsel, the said cut off date is arbitrary and discriminatory as there is no nexus or relationship with the object sought to be achieved i.e. regularization of ad-hoc Principals as it would exclude ad-hoc Principals who had been appointed after 6th August, 1993 and prior to 20th April, 1998, the date of enforcement of the said provision. It was also pointed out that by the aforementioned provisions of regularization incorporated in the Principal Act by the Amendment Acts of 1993 and 1991, all ad-hoc Principals, who

were working on the date of enforcement of those Amendment Acts were regularized whereas in the instant case a gap of five years had been left between the cut off date and the enforcement of the Amendment Act, which according to the learned counsel, is wholly unreasonable and arbitrary. It was then pleaded that the cut off date of 6th August, 1993 deserves to be struck down and all Principals who were working on ad-hoc basis up to the date of enforcement of Section 33C are entitled to be regularized.

37. We are unable to persuade ourselves to agree with learned counsel for the respondents. Admittedly, Section 33C of the Principal Act was inserted with effect from 20th April, 1998 providing for the regularization of ad-hoc Principals who had been appointed by promotion on or after 31st July, 1988 but not later than 6th August, 1993, in accordance with Section 18 of the Principal Act, which pertained to ad-hoc appointments. Section 16 of the Principal Act which contemplates that all appointments will be made through the Selection Board, was substituted by the 1993 Amendment Act and was enforced with effect from 7th August, 1993. It prohibited appointments

of teachers and heads of the institutions, except on the recommendation of the Commission. However, by virtue of Section 1(2) of the 1993 Amendment Act, the date of enforcement of the Amendment Act was left to the State Government and it was by virtue of Notification dated 7th August, 1993 that the State Government prescribed 7th August, 1993 as the date on which the Amendment Act except Section 13 thereof was to come into force. Though Section 18 was reintroduced by the 1995 Amendment Act with certain conditions yet the Legislature fixed 6th August, 1993 as the cut off date as the State Government had decided to make regular selections and steps in that behalf had already been initiated. Thus, it cannot be held that fixing of 6th August, 1993 as the cut off date for regularization is arbitrary or whimsical, warranting interference by the Court. Moreover, the State is not obliged to regularize all ad-hoc appointments merely on the strength of their continuance on the post for a long period, particularly when their original appointments were not made by following a due process of selection as envisaged in the

relevant rules. (See also: ***Secretary, State of Karnataka & Ors.*** *Vs.* ***Umadevi (3) & Ors.***[21])

38. In view of the aforegoing discussion, the appeals are allowed; the judgment of the Division Bench to the extent it has reversed the decision of the Single Judge is set aside; the decision of the learned Single Judge is restored and as a consequence, the writ petitions filed by the respondents stand dismissed.

Civil Appeal No. 3897 of 2008
(Arising out of SLP(C) No.2691 of 2004)
Civil Appeal Nos. 3928-3929 of 2008
(Arising out of SLP(C) Nos.1605-1606 of 2005)
Civil Appeal No. 3861 of 2008
(Arising out of SLP(C) No.23691 of 2003)
Civil Appeal Nos. 3903-3904 of 2008
(Arising out of SLP(C) Nos.4094-4095 of 2004)
Civil Appeal No. 3913 of 2008
(Arising out of SLP(C) No.7125 of 2004)
Civil Appeal Nos. 3915-3917 of 2008
(Arising out of SLP(C) Nos.814-816 of 2004)
Civil Appeal No. 3934 of 2008
(Arising out of SLP(C) No.24475 of 2005
Civil Appeal No. 3935 of 2008
(Arising out of SLP(C) No.24535 of 2005)

[21] (2006) 4 SCC 1

39. Delay condoned.

40. Leave granted.

41. The challenge in these appeals is to the interim orders passed by the High Court in regard to the selection of Principals of various institutions, pursuant to the advertisements dated 12th August, 1998, 24th December, 1999 and 3rd March, 2002. In view of our judgment and order in Civil Appeals (Arising out of SLP (C) Nos.19335-36 of 2003) and other connected appeals, these appeals are also allowed and the impugned orders passed by the High Court are set aside.

42. In view of our order in the main appeals, all pending Applications and Contempt Petitions stand disposed of.

43. No order as to costs.

SLP (C) Nos.1863-64 of 2004 and SLP (C) No.16502 of 2004

44. These petitions are delinked. Be listed in usual course.

.....CJI.
(K.G. BALAKRISHNAN)

.....J.
(R.V. RAVEENDRAN)

.....J.
(D.K. JAIN)

NEW DELHI
MAY 16, 2008.