

Reserved

Neutral Citation No. - 2024:AHC-LKO:6246-DB

A.F.R.

Court No. - 1

Case :- WRIT - A No. - 31192 of 2017

Petitioner :- Alka Tiwari And Others

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Secondary Education

Counsel for Petitioner :- Sameer Kalia, Birendra Pratap Singh, Meenakshi Singh Parihar

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

along with

Case :- WRIT - A No. - 21232 of 2021

Petitioner :- Lalmani Ram And Ors.

Respondent :- State Of U.P. Thru. Chief Secy. Govt. Of U.P. Lko. And Ors.

Counsel for Petitioner :- Onkar Singh, Surya Bhan Singh

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

along with

Case :- SPECIAL APPEAL No. - 513 of 2023

Appellant :- Ram Samujh

Respondent :- Suresh Narain And 3 Others

Counsel for Appellant :- Sharad Pathak

Counsel for Respondent :- Manish Misra, C.S.C.

along with

Case :- SPECIAL APPEAL No. - 507 of 2023

Appellant :- Amita Singh

Respondent :- Raj Kumar Singh And Others

Counsel for Appellant :- Sharad Pathak, Awdhesh Kumar Mishra

Counsel for Respondent :- Meenakshi Singh Parihar, C.S.C.

Hon'ble Attau Rahman Masoodi, J.

Hon'ble Om Prakash Shukla, J.

[Per A. R. Masoodi, J.]

- (1) Heard Sri S. K. Kalia, learned Senior Advocate assisted by Mr. Birendra Singh, learned counsel for the petitioners in Writ-A No. 31192 of 2017, Sri Onkar Singh, learned counsel for the

petitioners appearing in Writ-A No. 21232 of 2021, Sri Sharad Pathak, learned counsel for the appellant in Special Appeal Nos. 513 of 2023 and 507 of 2023, Sri Kuldeep Pati Tripathi, learned Additional Advocate General appearing for the State-respondents and Sri R. K. Singh Suryavanshi, learned Counsel representing the U. P. Public Service Selection Board.

- (2) By means of Writ-A No.31192 of 2017 filed under Article 226 of the Constitution, the veracity of Sub-Rule 18 of Rule 5 of the Uttar Pradesh Educational (General Education Cadre) Service Rules, 1992 has been challenged. The said Rule apparently provides for the ratio in which the Headmasters, Headmistresses and District Inspectors of Schools are to be considered for promotion to the post of Principal of Government Intermediate Colleges.
- (3) The petitioners, who are working on the post of Block Education Officers in different Blocks in the State of U.P., are challenging the impugned Office Memorandum dated 14.09.2021 have filed Writ Petition No. 21232 (SB) of 2021 as also for declaring the Rule 5 (18) of the Rules, 1992 as *ultra vires* for the reason that in the DPC held on 17.01.2018 for promotion on Group – B (Higher) posts, only Men and Women teaching branches were considered, while ignoring the candidates of inspecting cadre.
- (4) In Special Appeal Nos. 507 of 2023 and 513 of 2023, the appellants who are direct recruits have challenged the impugned orders, in respect of their posting, passed against them.
- (5) In nutshell the case of petitioners of Writ-A No. 31192 of 2017 is that on 18.04.1992, the State Government promulgated “The

Uttar Pradesh Educational (General Education Cadre) Service Rules, 1992” [briefly, it is stated as ‘**Rules, 1992**’] for the purpose of recruitment to Group ‘A’ and Group ‘B’ (higher) posts. Rule 5 of Rules, 1992 provides the source of recruitment to various posts of Group ‘A’ and Group ‘B’ (higher) posts. Sub-Rule 18 of Rule 5 of the Rules, 1992 stipulates 61%, 22% and 17% quota for Headmasters, Headmistresses and the incumbents posted on other equivalent teaching and non-teaching posts respectively for promotion on the post of Principal, Government Intermediate College (for Boys or Girls) as well as on other equivalent Group – B posts.

- (6) In the year 1992, the State Government for the purpose of appointment on the post of Lecturer in Government Intermediate Colleges also promulgated The Uttar Pradesh Special Subordinate Educational (Lecturer’s Cadre) Service Rules, 1992 [here-in-after it has been referred to as ‘**Lecturer Service Rules**’] and Rule 5 of the said Rules provides source of recruitment for the post of Lecturer and there are two separate branches for the post of Lecturer, i.e., Men and Women.
- (7) In the year 1993, the Uttar Pradesh Educational Teaching (Subordinate Gazetted) Service Rules, 1993 [in short, it is referred to as ‘**Rules, 1993**’] were promulgated governing appointment to the Headmasters and Headmistresses in Government Higher Schools and Rule 5 of the said Rules provides the source of recruitment to the post Headmasters and Headmistresses of Government Higher Secondary Schools.
- (8) As per Rule 5 (1) of the Rules, 1993, the post of Headmaster of Government Higher Secondary School would be filled up by promotion through Selection Committee in the ratio of 45% and 55% respectively from amongst substantively appointed men’s

branch (I) Lecturers who have completed three years service as such and Assistant Masters (L.T. Grade) who have completed twelve years service as such on the first day of the year of recruitment.

- (9) According to Sub-Rule (3) of Rule 5 of Rules, 1993, the promotion would be made through Selection Committee in the ratio of 45% and 55% respectively from amongst substantively appointed (i) Lecturers who have completed three years service as such and Assistant Mistress (L.T. Grade) who have completed twelve years service as such on the first day of the year of recruitment.
- (10) During the period 1997 to 2001, the petitioners were initially appointed on the post of Lecturer (Women Branch) in Government Inter Colleges in the State of U.P. through Public Service Commission under the provisions of Rule 5 of the Lecturer Service Rules. Since then, they are discharging their duties on their respective posts.
- (11) By passage of time, the petitioners were promoted on the next higher post of Headmistress, Government Girls Higher Secondary Schools during the period 2013 to 2016 and were posted at different schools in the State of U.P.
- (12) On 18.07.2017, final seniority list of incumbents of The Uttar Pradesh Educational Teaching (Subordinate Gazetted) Service Women's Branch for the year 2013-14 was prepared and circulated. However, final seniority lists of Men's branch of the said Cadre for the years 2013-14, 2014-15 and 2015-16 were finalized and circulated vide letters of same date. Thereafter, they were sent to the Commission for consideration of

promotion of the incumbents of both branches on Group – B (higher) posts.

- (13) The apprehension of the petitioners is that on account of fixation of 61% quota for promotion of the incumbents on Men's branch, several persons junior to the petitioners are to be considered for promotion on higher post defeating the rightful claim of the petitioners for being considered for promotion on the said higher post alongwith their male counterparts who are on equal footing in the seniority positions.
- (14) According to Sri S. K. Kalia, learned Senior Advocate, assisted by Sri Birendra Pratap Singh, learned counsel for the petitioners, the ratio of 22% provided for the Headmistresses is arbitrary, unreasonable and without any rationale in view of the fact the number of Headmistresses is much large than the Headmasters in the State of the Government Higher Secondary Schools for Girls and Boys.
- (15) Considering the increased number of the posts of Headmistresses and the present number of the posts of Headmasters as well as Sub-rule under challenge, the Director, Secondary Education, U.P., Lucknow has already recommended the State Government to provide the quota, as per present sanctioned strength of the posts of Headmistresses, for promotions to the posts of Principal of Government Inter College and in this regard, he placed reliance on the letter dated 20.02.2019, contained in Annexure No.RA-1 to the rejoinder affidavit.
- (16) Sri S.K. Kalia, learned Senior Counsel, assisted by Sri Birendra Pratap Singh, has submitted that reconsideration of the rule under challenge by the State Government has not shown any

positive result despite the fact that as of now insofar as the figure of female headmistresses working in the feeding cadre is concerned, the same corresponds to 824 whereas the eligible candidates in the category of male, corresponds to 768 resulting into an imbalance in the matter of promotion on the post of Principal in intermediate colleges from two different sources of which the eligibility stands at par.

- (17) The prescribed percentage for female candidates is 22% whereas 61% posts are reserved for male candidates which is an apparent discrimination to which the functional female candidates are meted with, though being senior. This discrimination deserves to be viewed in the light of relevant data and the actual strength of eligible candidates working in the two feeding cadres.
- (18) Sri Kuldeep Pati Tripathi, learned Additional Advocate General appearing for the State-respondents and Sri R. K. Singh Suryavanshi, learned Counsel representing respondent No.3/Selection Board have submitted that Uttar Pradesh Educational (General Education Cadre) Service Rules, 1992 provides that 50% of the Group B posts shall be filled in by direct recruitment through U.P. Public Service Commission and remaining 50% of Group B posts shall be filled in by making promotions in consultation with Public Service Commission from amongst (a) Headmaster, Government Higher Secondary Schools and government Normal Schools and other equivalent posts of men's teaching branch (b) Headmistress Government Higher Secondary Schools for girls and Government Girls Normal School and other equivalent posts of women teaching branch and (c) Deputy Inspector of Schools (Boys & Girls) and other equivalent posts of inspecting and non-teaching side in ratio of 61%, 22% and 17% respectively.

- (19) They have further submitted that the Departmental Promotion Committee (DPC) in its meeting held on 17.01.2018 had completed the selection proceedings for promotion on Group B posts. However, candidates belonging to (c) category, i.e., Deputy Inspector of Schools (Boys & Girls) had filed two writ petitions, namely, Writ Petition No. 1617 of 2018, *Uttar Pradesh Vidyalaya Nirikshak Sangh and others v. State of U.P. and others*, wherein vide order dated 12.01.2018, a co-ordinate Bench of this Court had stayed declaration of result of promotions & Writ Petition No. 1226 (SB) of 2018, *Padma Shekhar and others v. State of U.P. and others* respectively.
- (20) The next submission of the learned counsel for the respondents is that in exercise of powers conferred under Article 309 of the Constitution of India, the aforesaid Rules, 1992 have been framed, thus it cannot be said that the Rules are violative of Articles 14 and 16 of the Constitution of India.
- (21) He has contended that when on a particular post promotions are to be made from different sources, then it is the domain of the rule making authority to fix the quota of promotion from different posts by considering various relevant factors. Rule 5 of Rules, 1992 related to Group B posts so far as it fixes quota of different posts in the feeding cadre is perfectly constitutional and does not call for any interference by this Court.
- (22) The next contention of the learned Counsel for the respondents is that the cadre of men's branch is different to that of women's branch and seniority of both the cadres is prepared separately, therefore, it is absolutely incorrect to say that persons junior to them in the men's branch were more beneficial compared to them.

- (23) While continuing his submissions, he has emphasized that at present 768 posts of Headmasters in male branch, 824 posts of Headmistresses in female branch and 788 posts of Government Inter College (both male and female branch) are sanctioned. In this context, relying on the catena of judgments passed by the Apex Court, he has stated that any provision of Rules cannot be held to be arbitrary on the ground that the same is less beneficial to one particular group of employees. He further submitted that Rule Making Authority frames the Rules after taking into various factors and therefore, merely saying that it is beneficial to one particular group, the said Rules cannot be held to be violative of Articles 14 and 16 of the Constitution of India.
- (24) In rebuttal, learned Counsel appearing for the petitioners have submitted that the Rules under challenge providing the higher quota to the Headmasters for consideration of their promotion on Group – B posts including the post of Principal, Government Inter College (Boys & Girls) is irrational, arbitrary and violative of Articles 14 and 16 of the Constitution of India. Further, it vitiates the rightful claim of the petitioners for being considered for promotion on the aforesaid posts whereas there is no bifurcation of male and female on Group – B posts including the post of Principal, Government Inter College (Boys & Girls) and the posts of the Headmistresses (herein petitioners) are much more than Headmasters.
- (25) In continuity, he has submitted that where the promotion is to be made from different cadres, the quota of each cadre should be in ratio as per the cadre strength and the quota should not be irrational and arbitrary. In the present case, the cadre strength of the petitioners (Headmistress) is much higher than the cadre

strength of male branch and by means of the Rules under challenge, the higher quota for male branch has been provided for promotion on the post of Principal, Government Inter College (Boys & Girls) and Group – B posts which vitiates the rightful claim of the petitioners for being considered for their promotion on Group – B posts including the post of Principal, Government Inter College (Boys & Girls).

- (26) Further contention of learned counsel for the petitioners is that at the time of promulgation of impugned Rules, the cadre strength of Headmasters and Headmistress were 470 and 154 respectively as provided in Rules, 1993 and now the cadre strength of the Headmasters and Headmistress have been increased to 768 and 824 respectively as has been stated by the learned Additional Advocate General. In view of this, providing higher quota to the Headmasters (Male cadre) for consideration of their promotion on the higher post is illegal and arbitrary and cannot be sustained in the eyes of law.
- (27) **In the above context, the Director/respondent No.2 has sent a proposal in the form of letter dated 20.02.2019 to the State Government for providing quota of 33%, 33% and 34% to the Male Branch, Female Branch and Inspection Branch respectively.**
- (28) By moving an impeladment application, Vidhyalay Nirikshak Sangh through its Secretary has brought on record that initially, the total cadre strength of the Deputy Inspector of Schools in U.P. was 179 and in 2011, the State Government has merged the posts of Sub-Deputy Inspector in Deputy Inspector in Deputy Inspector/Block Education Officer and extended the cadre strength as 1031 posts.

- (29) Considered the submissions made by the learned Counsel for the parties and perused the records available on record.
- (30) The object of law sometimes comes in conflict with the plain and literal meaning of the statutory language and in such situations, the intention of legislation is bound to be derived from its object rather than the literal meaning of rules. Need to revisit such laws becomes imminent and the law makers ought not to show a repulsive role. The recruitment of the Principals of Government Inter Colleges is regulated under the Rules, known as, Uttar Pradesh Educational (General Education Cadre) Service Rules, 1992 [here-in-after it is referred to as '**Rules, 1992**']. Rule 5 of the Rules, 1992 prescribes the extent of percentage from various categories who can be considered for promotion as per Rule 16 of the said Rules.
- (31) It is well stated case of the State in the counter-affidavit that at the time of prescription of percentage between 'headmasters' and 'headmistresses' working in the feeding cadre, the relevant consideration was the strength of Government High Schools for boys and girls and with the passage of time, the strength of High Schools for Girls has considerably increased meaning thereby, that the High Schools established by the Government for girls are more in number than the boys as on date. The percentage prescribed under Rule 5 is thus questioned to have come in conflict and such a rule would serve no purpose under which the proportional prescription is based on sex. It is further argued that once Rule 16 lays down a non-discriminatory criteria, observance of Rule 5 on the aspect of percentage is violative of Articles 14 and 15 of the Constitution of India.
- (32) At the time when the writ petition was filed, a recommendation was forwarded by the Director, Secondary Education proposing

an equitable percentage for all the three sources of recruitment, namely, males, females and the officers from Inspection Wing. This recommendation made by the Director of Secondary Education does not seem to have sailed through for the reasons best known to the Government. On the contrary, the premise which was relevant for promulgation of the aforesaid Rule has lost its significance and the object of law demands that the percentage so stipulated having become obsolete has to be read in the reasonable manner that may serve the purpose of law.

- (33) We are conscious of the fact that the Constitutional Courts cannot act as legislators to add or subtract anything from the plain reading of the Statute but the purpose of law, if it can be read without exceeding to the limits of judicial domain, a provision may be read as a whole so as to serve its objects. The Court would hasten to reproduce the relevant Rules 5 and 16 of the Rules 1992 as under:

“5. Source of recruitment – Recruitment to the various categories of posts in the Service shall be made from the following sources :

- (1) Director of Education By promotion through the (Secondary), Director of Selection Committee from Education (Basic), Uttar amongst substantively Pradesh, Director, State appointed additional Council of Educational Directors mentioned at Research and Training, serial Numbers 6 to 12 of Uttar Pradesh, Director the Appendix I who have Adult Education, Uttar completed three years Pradesh and Director, Urdu Service as such, on the first and Oriental Languages, day of the year of Uttar Pradesh. recruitment.
- (2) Additional Director of By promotion through the Education (Secondary), Selection Committee from Additional Director of amongst persons who are Education (Basic), substantively appointed to Additional Director of the posts mentioned at Education (Correspondence serial Numbers 13 to 16 of

- Course), Additional the Appendix I and who
 Director of Education (Non- have completed five years
 Formal Education), service, as such on the first
 Additional Director of day of the year of
 Education (Vocational recruitment.
 Education), Additional
 Director of Education
 (Hills) and Additional
 Director of Education
 (Women Education).
- (3) Joint Director of Education By promotion through the
 (Finance, Training, Women Selection Committee from
 and Basic Education), amongst persons who are
 Secretary, Board of High substantively appointed to
 School and Intermediate the posts mentioned at
 Education, Uttar Pradesh, serial numbers 18 to 23 of
 Director, State Educational the Appendix I and who
 Technology Institute, have completed five years
 Lucknow and Principal, service, as such, on the first
 State Institute of School day of the year of
 Sports, Faizabad. recruitment.
- (4) Director, State Institute of By transfer from amongst
 Science Education. officers mentioned at serial
 number (3) who possess
- (5) Deputy Directors of the qualifications
 Education, Regional Deputy mentioned against the posts
 Director of Education, in the Appendix II. By
 Regional Inspectress of promotion through the
 Girls Schools, Principal, Selection Committee from
 State Institute of Education, amongst persons who are
 Allahabad, Additional substantively appointed to
 Secretary, Board of High the posts mentioned at
 School and Intermediate Serial numbers 25 to 33 of
 Education Regional Offices, the Appendix I and who
 Additional Secretary have completed six years
 (Administration) at service, as such, on the first
 Headquarters, Secretary day of the year of
 Board of Basic Education, recruitment.
 Uttar Pradesh and Senior
 Advisor (Non-Formal
 Education), State Institute
 of Education.
- (6) Director, Bureau of By transfer from amongst
 Psychology, Allahabad. officers mentioned at serial
 number (5) who possess

the qualifications mentioned in the Appendix II against the post.

- (7) District Inspector of Schools (boys and girls), Selection Committee from Regional Assistant Director amongst persons who are of Education (Basic), substantively appointed to Principal and Senior the posts mentioned at Research Officer, Govt. serial numbers 44 to 63 of Central Pedagogical the Appendix I and who Institute, Allahabad, Text- have completed six years Books Officer, Additional service, as such, on the first Secretary Text-Book, day of the year of Additional Secretary recruitment.
(Recognition) Board of High School and Intermediate Education, Uttar Pradesh, Adviser (Non-formal Education), Vice-Principal and Associate Director of State Institute of Education, Allahabad, Registrar, Departmental Examinations, Assistant Director of Education at Head quarters, Joint Secretary, Board of Basic Education, Uttar Pradesh, Principal Government Training College for Women, Allahabad.
- (8) Assistant Director, State By transfer from amongst Institute of Science officers mentioned at Serial Education. number (7) who possess the qualifications mentioned against each post in the Appendix II.
- (9) Professor of Mathematics at the State Institute of Science Education.
- (10) Professor of Physics at the State Institute of Science Education.
- (11) Professor of Chemistry at

- the State Institute of Science Education.
- (12) Professor of Botany at the State Institute of Science Education.
- (13) Senior Research Psychologist, Bureau of Psychology, Allahabad.
- (14) Director, State Hindi Institute, Varanasi.
- (15) Principal, Government Basic Training College, Varanasi.
- (16) Principal, Government Constructive Training College, Lucknow.
- (17) Principal, English Language Teaching Institute, Allahabad.
- (18) District Basic Education (i) 50% by direct Officer, Associate Inspector recruitment through the of Schools. Principals combined State Services Government Intermediate Examination conducted by Colleges (for boys or girls), the Commission. Assistant Deputy Director of Education, Personal Assistant to Director of Education (Secondary and Basic), Deputy Text-Books Officer, Deputy Secretary, and Additional Deputy Secretary, Board of High School and Intermediate Education, Uttar Pradesh at Headquarters and Regional offices, Assistant Deputy Director of Education (Correspondence Course), State Institute of Education, (ii) 50% by promotion through the Commission from amongst substantively appointed :
- (a) Head Masters, Government Higher Secondary Schools and Government Normal Schools and other equivalent posts of Men's Teaching Branch.
- (b) Head Mistress,

Uttar Pradesh, Allahabad, Government Higher Education Expansion Secondary Schools for Officer, Vice Principal Girls and Government Government Basic Training Girls Normal Schools and Colleges, Varanasi, other equivalent posts of Research Professor, Women teaching Branch, Government Basic Training and College, Varanasi, Senior Research Professor, State (c) Deputy Inspectors of Institute of Education, Schools (Boys and Girls) Allahabad, Vice and other equivalent posts Principal/Professor, on the inspecting and non-Government Central teaching side, in the ratio Pedagogical Institute, of 61%, 22% and 17% Allahabad, Principal Junior respectively, who have Basic Training Colleges completed three years Officer on Special Duty service, as such, on the first (Non-Formal Education), day of the year of District Non-Formal recruitment. Education Officer, Associate Regional Inspectress of Girls School, Vice Principal and Professor, Government Training College for Women, Allahabad, Principals for Government Training Colleges for Women.

- (19) Science Promotion Officer, By transfer from amongst Professor State Institute of officers mentioned at serial Science Education, number (18) who possess Psychologist and Regional the qualification mentioned Psychologist, Professor and against each post in the Associate Professor, English Appendix-II. Language, Teaching Institute Assistant Director, State Hindi Institute, Inspector Sanskrit Pathshalas, Uttar Pradesh, Inspector Arabic Madarsas, Law Officer Directorate of Education, Uttar Pradesh, Principal, Government Physical Training College, Rampur, Professor Craft Government Constructive

Training College, Lucknow,
Statistical Officer, State
Institute of Education and
Directorate of Education,
Uttar Pradesh, Allahabad,
Principal, Government
College of Physical
Education for Women,
Allahabad, Principal
Government Women
College of Home Science,
Allahabad and Principal,
Government Nursery
Training College, Allahabad
and Agra, Reprography
Officer :

Provided that if sufficient number of suitable eligible persons in respect of the posts mentioned at serial Nos. (1), (2), (3), (5) and (7) are not available for promotion, the requisite length of service may be relaxed by the Government.

16. Procedure for recruitment by promotion through the Commission – *Recruitment by promotion through the Commission shall be made on the basis of seniority subject to the rejection of unfit in accordance with the Uttar Pradesh Promotion by Selection in Consultation with Public Service Commission (Procedure) Rules, 1970 as amended from time to time.*”

- (34) From the record, it comes out that for increasing the quota of promotion against Group B posts of U.P. Educational (General Education Cadre) under the Inspecting Branch, Writ-A No. 1617 of 2018, U.P. Vidyalaya Nirikshak Sangh and others v. State of U.P. and others, Writ-A No. 9561 of 2021, Arjun Singh and others v. State of U.P. and others have been filed at Allahabad, whereas Writ-A No. 21232 of 2021, Lalmani Ram v. State of U.P. and others and Writ Petition No. 1226 (SB) of 2018, Padma Shekhar and others v. State of U.P. & others have been filed at Lucknow.

- (35) With regard to the anomalies caused due to determination of the seniority amongst the employees of the U.P. Subordinate Inspection Branch, Writ Petition No. 15196 of 2016, Shiv Nandan Singh v. State of U.P. & others has been filed at Allahabad wherein an order dated 05.04.2016 was passed to the extent that till 31.07.2016, the final seniority list appended to the order of Director of Education (Basic), Uttar Pradesh, Lucknow dated 12.02.2016 shall not be implemented.
- (36) Further, it reveals from the record that **a Committee was constituted by the State Government vide its Office Memorandum dated 05.10.2021 under the Chairmanship of Special Secretary, Department of Secondary Education, U.P., Lucknow and the said Committee has submitted its recommendation on 26.10.2021.**
- (37) From the record, it also comes out that the issue in the present writ petition is not only related to the determination of quota of promotion amongst the employees of the Department of Secondary Education and the Department of Basic Education but it also involves the complex exercise of re-structuring of cadre and a policy decision is required to be taken in the matter. By moving an application dated 01.11.2021, the opposite party No.1 prays that interest of justice would suffice, **if this Court grants reasonable time to complete the process of amendment in the Rules of 1992 and re-structure the cadre by making necessary amendments in the Rules of 1992 and to take a decision in terms of the order dated 14.07.2021 passed by this Court.**
- (38) On 18.10.2019, 22.11.2019, 06.07.2021, 14.07.2021, 07.10.2021, 01.08.2023 and 28.10.2023, different Co-ordinate

Benches have passed the following orders for amendment in Rules, 1992 by the competent authority. For ready reference, they are reproduced as under:-

18.10.2019

“Heard Shri S. K. Kalia, learned Senior Advocate assisted by Shri Birendra Pratap Singh, learned counsel for the petitioner and Shri Manjiv Shukla, learned Addl. Chief Standing Counsel.

By means of the present writ petition, the petitioners have challenged the validity of Sub-rule 18 of Rule-5 of the Uttar Pradesh Educational (General Education Cadre) Service Rules, 1992 (hereinafter referred to as "Service Rules, 1992").

The challenged has, broadly, made on the ground that when the Service Rules, 1992 was framed, at that point of time, there were 470 posts of Headmasters and 154 posts of Headmistresses. Keeping in view the number of posts of Headmasters and Headmistresses, the provision of promotion to the post of Principal of Government Inter College (Boys & Girls) was made in the Service Rules, 1992.

As per provisions, 61% quota and 22% quota for Male Branch i.e. for Headmasters and for Female Branch i.e. for Headmistresses, respectively, was fixed in the Service Rules, 1992 for promotion to the posts of Principal of Government Inter College.

The position has now been changed regarding the posts of Headmasters and Headmistresses and at present, there are 1071 sanctioned posts of the Headmistress and 867 posts of Headmasters in the Government Inter College and on account of fixation of 61% quota of promotion for Headmasters, the claim of the petitioners is defeating as several junior persons to the petitioners would be promoted on the post of Principal of Government Inter College and being so, the Sub-rule under challenge in the present writ petition is in violation of Article 14 of the Constitution of India.

Shri S.K. Kalia, learned Senior Advocate assisted by Shri Birendra Pratap Singh, Advocate submitted that the ratio provided of 22% for the Headmistresses is arbitrary, unreasonable and without any rationale as the number of

Headmasters are much less than the Headmistresses in the State in the Government Higher Secondary Schools for Girls and Boys.

Shri S.K. Kalia, learned Senior Advocate submitted that considering the increased number of the posts of Headmistresses and the present number of the posts of Headmasters as well as Sub-rule under challenge, the Director, secondary Education, U.P., 8-Park Road, Lucknow has already recommended the State Government to provide the quota, as per present sanctioned strength of the posts of Headmistresses, for promotions to the posts of Principal of Government Inter College and in this regard, he placed reliance on the letter dated 20.02.2019 as contained in Annexure No.RA-1 to the rejoinder affidavit.

Learned Additional Chief Standing Counsel requests that he may be granted a short time to seek instructions in the matter particularly with respect to letter dated 20.02.2019.

Time is granted to learned Addl. Chief Standing Counsel for the said purpose.

List in the week commencing 04.11.2019.”

22.11.2019

“Vide order dated 18.10.2019, the learned Additional Chief Standing Counsel was directed to seek instructions particularly with respect to the letter dated 20.2.2019 sent by the Director (Madhyamik) to the State Government regarding amendment in U.P. Educational (General Education Cadre) Service Rules, 1992 in order to remove discrepancies in the quota meant for promotion of male and female teachers on the post of Principal, Government Intermediate Colleges.

Learned Standing Counsel informs that he has not been able to get complete instructions in the matter.

Learned Standing Counsel shall seek complete instructions; particularly on the point as to whether the State Government is proposing to amend the said rules in this regard and whether in the meantime any promotions are going to be made on the basis of existing rules.

List on 3.12.2019.”

06.07.2021

“The matter is taken up through video conferencing.

Vide order dated 22.11.2019, the Court had directed the learned Standing Counsel to seek complete instructions particularly on the point as to whether the state Government is proposing to amend the U.P. Educational (General Education Cadre) Service Rules, 1992 in order to remove discrepancies in the quota meant for promotion of male and female teachers on the post of Principal, Government Intermediate Colleges and whether in the meantime, any promotions are going to be made on the basis of existing rules.

Learned Standing Counsel has not received any instructions.

He prays for and is allowed one week and no more time to seek complete instructions failing which the matter shall be heard finally on the basis of pleadings and documents available on record.

List on 14.7.2021.”

14.07.2021

“Heard Mr. S.K. Kalia, learned Senior Advocate assisted by Mr. Sameer Kalia, learned counsel for the petitioners and learned Standing Counsel on behalf of the State.

Vide order dated 6.7.2021, we had directed learned Standing Counsel to seek instructions in the matter whether the State Government is proposing to amend the U.P. Educational (General Education Cadre) Service Rules, 1992 in order to remove discrepancies in the quota meant for promotion of male and female teachers on the post of Principal, Government Intermediate Colleges and whether in the meantime, any promotions are going to be made on the basis of existing rules.

Learned Standing Counsel appearing on behalf of the State has placed before us the copy of instructions send to him vide letter dated 13.07.2021 by the Principal Secretary, Basic Education, Government of U.P.

informing therein that the opinion from the Madhyamik Shiksha Vibhag are awaited and there is a proposal to amend the said Rules. Since it is a policy decision, as such, the opinion of the Madhyamik Shiksha Vibhag and Basic Shiksha Vibhag are required to be considered.

In view of above, it is clear that the State Government is contemplating to amend the said Rules.

We direct the State Government to take appropriate decision in this regard expeditiously, say, within a period of one month from today.

Till a decision with respect to the proposal for amending U.P. Educational (General Education Cadre) Service Rules, 1992 is not taken, no promotion of teachers on the post of Principal, Government Intermediate Colleges shall be considered or made on the basis of existing Rules.

List after one month."

01.11.2021

"Heard Shri S.K. Kalia, learned Senior Advocate, assisted by Shri Birendra Pratap Singh, learned Counsel for the petitioners and Sri Q.H. Rizvi, learned Standing Counsel for the State/respondents no.1 and 2.

On 22.09.2021, a Co-ordinate Bench of this Court has passed the following order :-

"Learned Additional CSC prays for and is granted two weeks and no more time to seek instructions in the matter and apprise the Court about the decision taken by the State Government in terms of order dated 14.07.2021, failing which Principal Secretary, Department of Secondary Education, U.P. shall appear before this Court with relevant records to assist the Court.

List this case on 07.10.2021."

Learned Standing Counsel, on the basis of instructions, has submitted that in compliance of the order dated 22.09.2021, steps have been taken by the State Government on the issue on 05.10.2021 but the State

Government has yet to have arrived at the final decision in the matter, for which he seeks some more time.

In response, learned Senior Advocate appearing on behalf of the petitioner has argued that several orders have been passed by this Court on the issue in the instant writ petition but till date no final decision has been taken by the State Government on the issue.

Considering the aforesaid, in the interest of justice, three weeks further time is granted to the respondents to take decision in terms of the order dated 14.07.2021 and the decision so taken shall be brought on record by means of personal affidavit of the Principal Secretary, Department of Secondary Education, Government of U.P., Lucknow by the next date of listing, failing which the Principal Secretary, Department of Secondary Education, Government of U.P., Lucknow, shall appear in person.

Let the matter be listed on 01.11.2021 before the appropriate Bench.”

01.08.2023

“1. Sri S.K. Kalia, learned Senior Counsel, assisted by Sri Birendra Pratap Singh, has submitted that reconsideration of the rule under challenge by the State Government has not shown any positive result despite the fact that as of now insofar as the figure of female headmistress working the feeding cadre is concerned, the same corresponds to 824 whereas the eligible candidates in the category of male, corresponds to 768. This has resulted into an imbalance in the matter of promotion on the post of Principal in intermediate colleges from the two sources of which the eligibility stands at par.

2. The prescribed percentage for female candidates is 22% whereas 61% posts are reserved for male candidates which is an apparent discrimination to which the functional female candidates are meted with though being senior. This discrimination deserves to be viewed in the light of relevant data and the actual strength of eligible candidates working in the two feeding cadres.

3. This is certainly a matter which the government ought to have considered having regard to the attending facts and figures. The rule of reservation is to balance the right of consideration equitably. We hope and expect that

the State shall make an earnest endeavour to resolve any challenge to the rule made by any of the aggrieved party.

4. Sri Amitabh Rai, learned Addl CSC prays for a month's time to seek instructions from the State in the light of what has been observed above.

5. List in the month of September, 2023.”

28.10.2023

“1. Sri Kuldeep Pati Tripathi, learned Additional Advocate General has prayed for adjournment.

2. It is also pointed out that detailed reasons as per the record shall be apprised to the Court as to why the recommendation made by the Director of Secondary Education, U.P. vide letter dated 20.2.2019 for altering the quota percentage in promotion on the post of Principal, Government Inter Colleges from different sources was not found justifiable in the rules.

3. Application for impleadment i.e. C.M. Application No. IA/19/2023 is allowed to the extent of intervention. The newly added parties shall have a right to argue the case on legal issues.

4. List/put up on 1.11.2023 for further hearing.”

- (39) At the time of appointment of petitioners during the period 1997-2001 on the posts of Headmistresses of Government High Schools (Women Branch) or equivalent, separate criteria for men and women was fixed. By passage of time, they were also promoted to the higher post of Headmasters of the Government High Schools (Men Branch) or equivalent during the period 2013-16. When the seniority list prepared for the Women Branch for the year 2013-14 was circulated on 18.07.2017, they have come to know that the seniority lists of Men's Branch of the teaching cadre for the years 2013-14, 2014-15 and 2015-16 were finalized and circulated and sent to the Commission for consideration of promotion of the incumbents to the promotional post on Group 'B' higher posts, they filed Writ A

No. 31192 of 2017 on the ground that fixation of 61% quota for promotion to Men's branch is arbitrary and unreasonable.

- (40) Even, in the Rules, it has been mentioned that 61% is reserved for Men's branch and 22% is reserved for women's branch. Rest of 17% was reserved for Deputy Inspectors of Schools (Boys and Girls) and other equivalent posts on the inspecting and non-teaching side.
- (41) During pendency of the aforesaid writ petition, the Director, Secondary Education has sent a proposal to the State Government for modifying the percentage to them as 33%, 33% and 34%, in place of 61%, 22% and 17% correspondingly vide his letter dated 20.02.2019, a copy whereof has been brought on record as Annexure No.RA1 to the rejoinder affidavit.
- (42) Thereafter, number of orders have been passed by this Court to ascertain the position whether the State Government has approved the proposal sent by the Director or not, which evoked no response from them.
- (43) The State Government has also constituted a Committee vide its Office Memorandum dated 05.10.2021 under the Chairmanship of Special Secretary, Department of Secondary Education, U.P., Lucknow and the said Committee after considering the entire matter and deliberating the views of members of associations at different levels has forwarded its suggestions to the State Government on 26.10.2021. So far more than two years have passed, but the State Government regard being had to the object of rules has not taken any decision in the matter.
- (44) Before concluding, we would like to mention here that the petitioners are working on the post of Headmistresses of Government High Schools (Women Branch) or equivalent and

they are being considered for promotion on the fixed quota of 22% on Group 'B' higher posts, whereas the Headmasters of Government High Schools (Men Branch) or equivalent are being considered on the fixed quota of 61%. In this regard, the Court is of the considered opinion that the role of the Constitution of India in ensuring gender justice owing its duty to the people must be accomplished through judicial process as is being recognized in modern times. It is thus appropriate that the rule making authorities should meaningfully address the gender discrimination and respond to challenges by stimulating the whole legal system towards equality and without leaving behind any trace of gender discrimination.

- (45) Article 14 of the Indian Constitution guarantees Women the right to equality and Article 15 (1) explicitly prohibits discrimination on the basis of sexual orientation, and Article 15 (3) provides for measures seeking to protect women by empowering the state to provide them with special provisions. Article 16 of the Constitution provides for equal opportunities for all, in matters relating to public employment or appointment to any office and specifically prohibits discrimination on the basis of sex. These articles read together leave us with no manner of doubt that the Constitution of India recognizes equality for women in all the spheres of life besides employment and any practice that degrades women's rights must be discouraged.
- (46) In view of what has been stated above, we **dispose of** Writ-A Nos. 31192 of 2017 and 21232 of 2021 and direct the State Government to take a decision on the suggestions made by the Director, Secondary Education, contained in Annexure No.RA1 to the rejoinder affidavit and the suggestions forwarded by the Committee in this regard on 26.10.2021 as also in the light of

aforesaid orders passed by this Court, to amend the Rules, 1992 as early as possible.

- (47) In the meantime, we also direct the authorities concerned to consider the Headmasters and Headmistresses working in Boys and Girls Government High Schools under a combined eligibility list drawn in accordance with Rule 16 of the Rules, 1992 so as to exhaust the total (61 + 22 = 83%) quota meant for the teaching staff (male & female) till the statutory Rules are suitably amended prescribing the respective percentage for teaching and non-teaching streams. Any interim order to the contrary passed by this Court on 14.07.2021 shall stand overruled and the process of selection shall be carried out as per the direction issued here-in-above. Non-teaching wing shall also be given the benefit of 17% quota till the rules are suitably amended.
- (48) Since the appellants of Special Appeal Nos. 513 of 2023 and 507 of 2023 are direct recruits and they have been appointed on the post of Principals of Government Inter Colleges by the U.P. Public Service Commission under 50% quota reserved for direct recruits, both the Special Appeals directed against the interlocutory orders are **allowed** and the impugned orders passed in their cases by the Writ Court are set aside. It shall be open to the State to streamline postings as per the administrative exigencies and take appropriate decision in accordance with law.
- (49) No order as to costs.

(Om Prakash Shukla, J.) (Attai Rahman Masoodi, J.)

Order Date :- 23.01.2024
lakshman

Alka Tiwari and others v. State of U.P. and others and three connected writ petitions