

**Ghanshyam Das Damani** reported at (2018) 11 SCC 328.

3. Per contra, Shri Naveen Sinha, learned Senior Counsel assisted by Shri Tarun Agrawal, learned counsel for the respondent No.1 submits that the prerequisites of remand are satisfied in the facts of this case. The learned court below had the jurisdiction to remand the matter to the arbitrator. In this regard, reliance is placed on the judgement rendered by the Hon'ble Supreme Court in **National Highways Authority of India v. P. Nagaraju alias Cheluvaiah and another**, reported at (2022) 15 SCC.

4. Heard Shri Pranjali Mehrotra, learned counsel for the appellant and Shri Naveen Sinha, learned Senior Counsel assisted by Shri Tarun Agrawal, learned counsel for the respondent No.1.

5. While remanding the matter, the learned court below has opined that the arbitrator had erred in law by computing the compensation in the teeth of Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

6. It needs to be examined whether the learned court below was justified in remanding the matter to the arbitrator. In **P. Nagaraju alias Cheluvaiah (supra)** the question as regards the power of remand in proceedings under Section 34 of the Arbitration and Conciliation Act arose for consideration. Dealing with the distinction between the private contracts and the statutory contracts under the National Highways Act, the Supreme Court held as under:

"42. Having taken note of the said decision, though it is seen that it was held

so while considering the maintainability of petition under Section 11 of the Act, 1996 to exclude the right of the land loser to seek the appointment of an Arbitrator keeping in view the statutory provision in the NH Act, the larger perspective of such limited right to the land loser in the process of arbitration is also to be kept in view. Unlike the arbitration in a contractual matter where the parties from the very inception at the stage of entering into a contract would mutually agree to refer any future dispute to an arbitrator, at that very stage are aware that in the event of any dispute arising between the parties the contours of the right, remedy, and scope from the commencement of the arbitration up to the conclusion through the judicial process. The terms of arbitration and the rights and obligations will also be a part of the agreement and a reference to the same in the award will constitute sufficient reasons for sustaining the award in terms of Section 31(3) of Act, 1996. Whereas, in the arbitration proceedings relating to NH Act, the parties are not governed by an agreement to regulate the process of arbitration. However, in the process of determination of just and fair compensation, the provisions in Section 26 to 28 of RFCTLARR Act, 2013 will be the guiding factor. The requirement therein being adverted to, should be demonstrated in the award to satisfy that Section 28(2) and 31(3) of Act, 1996 is complied."

45. Therefore, while examining the award within the parameters permissible under Section 34 of Act, 1996 and while examining the determination of compensation as provided under Sections 26 and 28 of the RFCTLARR Act, 2013, the concept of just compensation for the acquired land should be kept in view while taking note of the award considering the sufficiency of the reasons given in the

award for the ultimate conclusion. In such event an error if found, though it would not be possible for the Court entertaining the petition under Section 34 or for the appellate court under Section 37 of Act 1996 to modify the award and alter the compensation as it was open to the court in the reference proceedings under Section 18 of the old Land Acquisition Act or an appeal under Section 54 of that act, it should certainly be open to the court exercising power under Section 34 of Act, 1996 to set aside the award by indicating reasons and remitting the matter to the Arbitrator to reconsider the same in accordance with law. The said exercise can be undertaken to the limited extent without entering into merits where it is seen that the Arbitrator has on the face of the award not appropriately considered the material on record or has not recorded reasons for placing reliance on materials available on record in the background of requirement under RFCTLARR Act, 2013."

47. Under the scheme of the 1996 Act it would not be permissible to modify the award passed by the learned Arbitrator to enhance or reduce the compensation based on the material available on record in proceeding emanating from Section 34 of Act, 1996. The option would be to set aside the award and remand the matter. In this regard it would be apposite to take note of the observation in *M. Hakeem (supra)*, as hereunder:-

"42. It can therefore be said that this question has now been settled finally by at least 3 decisions of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the

UNCITRAL Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in *Redfern and Hunter on International Arbitration*, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the "limited remedy" under Section 34 is coterminous with the "limited right", namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996."

7. After laying down the aforesaid proposition of law, the arbitration proceedings were remanded to the arbitrator with the following directions:

"84.2. The arbitration proceedings bearing Case Nos.:

LAQ(A)/NH-275/CR/137/2017-18,

LAQ(A)/NH-275/CR/134/2017-18,

LAQ(A)/NH-275/CR/135/2017-18,

LAQ(A)/NH-275/CR/132/2017-18,

LAQ(A)/NH-275/CR/139/2017-18,

LAQ(A)/NH-275/CR/41/2019-20 are remanded to the Deputy Commissioner and Arbitrator, NH-275, Ramanagar District, Ramanagar and Case No.LAQ/ARB/BNG/NH-275/CR-02/ 2/ 2018-19 is remanded to Deputy Commissioner and Arbitrator, Bangalore Rural District."

8. The judgement of the Supreme Court in **Kinnari Mullick (supra)** relied upon by the appeal is not applicable to this case. **Kinnari Mullick (supra)** arose out of a private contract between the parties. In the instant case as in **P. Nagaraju alias**

**Cheluvaiah (supra)** there exists a statutory arbitrator. Private contracts between parties which contemplate the appointment of an arbitrator and the cases where the statutory arbitrators are appointed under the statute fall in two separate classes.

9. Thus the judgement rendered in **Kinnari Mullick (supra)** being distinguishable is of no avail to the appellants. Further, the said judgement had been considered by the Hon'ble Supreme Court in **P. Nagaraju alias Cheluvaiah (supra)** while rendering its judgement in the aforesaid case.

10. The arbitration appeal is dismissed.

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**(2024) 11 ILRA 7**

**ORIGINAL JURISDICTION**

**CIVIL SIDE**

**DATED: LUCKNOW 06.11.2024**

**BEFORE**

**THE HON'BLE MANISH MATHUR, J.**

Writ A No. 5232 of 2024  
with other connected cases

**Pushkar Singh Chandel & Ors.**

**...Petitioners**

**Versus**

**State of U.P. & Ors.**

**...Respondents**

**Counsel for the Petitioners:**

Amit Mishra, Dileep Kumar Mishra

**Counsel for the Respondents:**

C.S.C., Abhinav Singh, Pradeep Tiwari,  
Prashant Kumar Singh, Ran Vijay Singh,  
Ravi Prakash Yadav, Rishabh Tripathi

**A. Civil Law - Transfer of teachers employed in Basic Schools - Constitution of India, Article 14 - Intelligible differentia - Transfer/adjustment of teachers to**

**maintain Pupil-Teacher Ratio – Right of Children to Free and Compulsory Education Act, 2009, Sections 19 and 25 – U.P. Basic Education Act, 1972 – U.P. Basic Education (Teachers) Service Rules, 1981, Rule 21 – Legality of Clauses 3, 7, 8, & 9 of Government Order dated 26.06.2024 and Circular dated 28.06.2024 – Proceedings initiated for fulfilment of the pupil-teacher ratio. Clause 7 of the Government Order provides that shifting of teachers would be affected by transferring teachers under the principle of "last come, first go", whereby the junior-most teacher would be shifted out first. *Held* : Impugned Government Order does not indicate any reasoning as to why the principle of "last in, first out" is required to be followed for transfer/adjustment of teachers."Last in, first out" does not have any rational nexus with the object sought to be achieved by the Act of 2009. There is no provision in the Act of 2009 or rules framed thereunder for transfer/adjustment to be made in keeping with the norms prescribed under Schedule by transferring the junior-most teacher of a school/district. If the procedure prescribed under the impugned clauses is kept intact, the real purpose or effect of such a condition would entail frequent transfer of junior teachers while keeping intact the posting of senior teachers for all times to come, since a teacher after transfer and joining in another district would *ipso facto* remain a junior. By introducing such a concept, a classification has been made pertaining to those teachers who have been posted in a particular school longer than others who have been posted there subsequently. For such a classification, no intelligible differentia has been indicated either in the Government Order, the Circular, or even in the counter affidavit filed by the opposite parties – Court held the classification to be discriminatory and failing the test of reasonable classification in the context of Article 14 of the Constitution of India. B. U.P. Basic Education (Teachers) Service Rules, 1981, Rules 5 & 8 - Legality of Clause 3 of Government Order dated 26.06.2024 – Clause 3 of the Government**

**Order stipulates that transfer/adjustment would also take into account the number of *Shiksha Mitra* employed in a particular school. Held – Inclusion of *Shiksha Mitra* for determining Pupil-Teacher Ratio under Clause 3 of the Government Order is contrary to statutory provisions. Rule 5 and Rule 8 of the 1981 Service Rules stipulate specific sources of recruitment and qualifications for Assistant Teachers, which cannot be diluted through executive instructions. Qualifications required for appointment as an Assistant Teacher are not required for appointment as a *Shiksha Mitra*. Government Order equating Assistant Teachers with *Shiksha Mitra* treats unequals as equals. Executive orders cannot override statutory rules. Executive orders may supplement but not supplant statutory provisions. (Paras 60, 61, 62, 63)**

**Allowed.** (E-5)

**List of Cases Cited:**

1. Smt. Reena Singh Vs St. of U.P. & ors., *Writ Petition No. 25238 (S/S) of 2018*
2. Govind Kausik & ors. Vs St. of U.P. & ors., *Writ A No. 10686 of 2024, dated 29.07.2024*
3. Neerja & ors. Vs St. of U.P. & ors., *Writ A No. 9970 of 2024, dated 14.08.2024*
4. Jitendra Singh Rajput & anr. Vs St. of U.P. & ors., *Writ A No. 11049 of 2024*
5. Sarita Rani & ors. Vs St. of U.P. & ors., *Writ A No. 19345 of 2018, order dated 12.09.2018*
6. U.P. Gram Panchayat Adhikari Sangh & ors. Vs Daya Ram Saroj & ors., (2007) 2 SCC 138
7. Mary Pushpam Vs Televi Curusunary & ors., *Civil Appeal No. 9941 of 2016*
8. Pandit M.S.M. Sharma Vs Dr. Shri Krishan Sinha & ors., *AIR 1960 SC 1186*
9. Charanjit Lal Vs U.O.I., *AIR 1951 SC 41*
10. U.O.I. Vs Elphinstone Spinning and Weaving Co. Ltd., (2001) 1 SCC 139
11. St. of Uttaranchal Vs Sandeep Kumar Singh & ors., (2010) 12 SCC 794
12. St. of M.P. Vs Narmada Bachao Andolan & anr., (2011) 7 SCC 639
13. Kalyan Chandra Sarkar Vs Rajesh Ranjan @ Pappu Yadav & anr., (2005) 2 SCC 42
14. Bilkis Yakub Rasool Vs U.O.I., (2024) 5 SCC 481
15. Census Commissioner & ors. Vs R. Krishnamurthy, (2015) 2 SCC 796
16. Ramesh Chandra Sharma & ors. Vs St. of U.P. & ors., (2024) 5 SCC 217
17. Association for Democratic Reforms & anr.(Electoral Bond Scheme) Vs U.O.I. & ors., (2024) 5 SCC 1
18. Senior Superintendent of Post Office Vs Izhar Hussain, (1989) 4 SCC 318
19. St. of U.P. & ors. Vs Anand Kumar Yadav, *SLP No. 32599 of 2015*
20. Amarendra Kumar Mohapatra Vs St. of Orissa & ors., (2014) 4 SCC 583

(Delivered by Hon'ble Manish Mathur, J.)

1. Heard Mr. H.G.S. Parihar learned Senior Counsel assisted by Ms. Minakshi Parihar Singh, Mr. Sudeep Seth learned Senior Counsel assisted by Mr. Onkar Singh, Mr. Upendra Nath Misra learned Senior Counsel assisted by Mr. Ramesh Kumar Dwivedi and Mr. Amrendra Nath Tripathi learned counsel assisted by Mr. Mridul Bhatt, Mr. Uirech Pandey and Mr. Sharda Mohan Tiwari learned counsel for petitioners and other learned counsels for petitioners in connected writ petitions, learned State Counsel and Mr. Ranvijay Singh learned counsel for U.P. Basic Education Board, Prayagraj as well as Mr. Anuj Mishra, Mr. Pradeep Tiwari, Mr. Ravi Prakash Yadav, Mr. Rishabh Tripathi and Mr. Prashant Kumar Singh learned counsel for opposite parties.

2. Since a common cause of action has been agitated in all the writ petitions, the same are being disposed of by a common judgment.

3. In writ A No. 5232 of 2024 this Court vide order dated 23.08.2024 had granted liberty to opposite parties to file a composite counter affidavit instead of separate counter affidavits so that the matter may be decided finally. In pursuance thereof, counter affidavit was filed on behalf of State and vide order dated 29.08.2024, statement of learned State Counsel that a composite counter affidavit has been filed only on legal issues and not factual ones, which was adopted for all the connected writ petitions was recorded. Rejoinder affidavit to the same has also been filed.

4. Petitions have been filed challenging Clauses 3,7,8 and 9 of the government order dated 26.06.2024 as well as similar clauses indicated in the circular dated 28.06.2024 issued by the Basic Education Board.

5. The aforesaid government order and circular have been issued purportedly in terms of Right to Education Act 2009 and the rules framed by the State Government in 2011 thereunder whereby proceedings have been initiated for fulfilment of the pupil-teacher ratio in accordance with the schedule prescribed under sections 19 and 25 of the Act of 2009.

6. Clause 3 of the government order, loosely translated prescribes that for the academic Session 2023-24 and as per the student strength as on 31.03.2024, teachers are required to be shifted from such schools where they are surplus as per the bench mark of the pupil-teacher ratio to schools

where such bench mark remains unfulfilled. It also indicates that such shifting would be on the basis of length of service of a teacher in a particular district.

7. Clause 7 of the government order provides that such shifting of teachers would be effected by transferring teachers on the basis of their length of service in a particular district as per their date of appointment under the principle of last come first go whereby the junior most teacher would be shifted out first.

8. Clause 8 of the government order indicates by and large the same factor of last come first out principle but also requires the bench mark to be determined by taking into the account the number of Shiksha Mitra/ Contractual Teachers available in a school.

9. Clause 9 of the government order prescribes that such inter district transfer will be in terms of the U.P. Basic Education Teachers Service Regulations 1981 as well as notifications dated 2010 and 2014 issued by the National Teachers Education Board and also provides such transfers to take place on the basis of last come first out.

10. It is relevant to indicate that all the petitioners are employed in basic schools and are governed by provisions of the U.P. Basic Education Act 1972. Section 13 of the Act of 1972 indicates that the Uttar Pradesh Board of Basic Education constituted under section 3 thereof (hereinafter referred to as Board) would carry out such directions as are issued to it from time to time by State Government for efficient administration of the Act. It primarily prescribes control of the State Government over the board. Section 13(A)

gives an overriding effect of the Act of 1972 over and above the U.P. Panchayat Raj Act, 1947, U.P. Municipalities Act 1916 and the U.P. Municipal Corporation Act 1959.

11. Under Section 19 of the Act of 1972, power has been conferred upon the State Government to make rules for carrying out purposes of the Act.

12. In terms of such power, the State Government framed the U.P. Basic Education (Teachers) Service Rules 1981. Rule 21 of the said rules prescribes a procedure for transfer to the effect that there shall be no transfer of any teacher except on the request of or with the consent of teacher concerned and in either case, approval of the board shall be necessary.

13. Subsequent to implementation of the aforesaid Act and rules framed thereunder, the Central Government exercising its concurrent powers under Schedule VII of the Constitution of India framed the Right of Children to Free and Compulsory Education Act, 2009. Section 18 of the said Act provides that no school is to be established without obtaining certification of registration while section 19 indicates the norms and standards for school and specifically provides that no school shall be established/recognized under section 18 unless it fulfils the norms and standards specified in schedule. In cases where school has been established before commencement of the Act but did not fulfil the norms and standard specified, three years time from the date of commencement of the Act was provided to fulfil such norms and standards, failing which recognition under section 18 could be withdrawn.

14. Section 25 of the Act pertains to maintaining pupil-teacher ratio and states that within three years from the date of commencement of the Act, the appropriate government and the local authority shall ensure that pupil-teacher ratio as specified in the schedule is maintained in each school. Section 26 pertains to filling up of vacancies of teachers with appointing authority duty bound to ensure that vacancy of teachers in school under its control shall not exceed 10% of the sanctioned strength.

15. Section 35 of the Act conferred powers on the Central Government, appropriate government or the local authority to issue guidelines for the purposes of implementation of provisions of the Act.

16. In terms of sections 19 and 25 of the Act, the schedule prescribes norms and standards for a school with item No.1 pertaining to number of teachers required.

17. In terms of power conferred, the Central Government framed Rules of 2010 with the State of U.P. subsequently following by framing U.P. Right of Children to Free and Compulsory Education Rules 2011.

18. Rule 10 of the Rules of 2011 prescribes that the extended period of admission in a school shall be three months from the date of commencement of academic year of school i.e. 30th September after commencement of the session.

19. Rule 21 of the said Rules indicates the procedure for maintaining pupil teacher ratio in each school. The relevant Rule is as follows: -

*"21. Maintaining of Pupil Teacher Ratio in each school (Section 25). - (1) The sanctioned strength of teachers in every school shall be notified by the District Magistrate of the respective district. Such notification shall be displayed on the district website, the sanctioned strength of teachers in a school shall be informed to the respective school and local authority:*

*Provided that the District Magistrate, shall, within two months of such notification, redeploy teachers of schools having strength in excess of the sanctioned strength prior to the notification referred to in sub-rule (1).*

*(2) In order to maintain the specified pupil-teacher ratio, the District Magistrate shall review the sanctioned strength of teacher in every school every year before the month of July and redeploy the teachers as per requirement."*

20. The impugned government order and circular have thereafter been issued by the State Government purportedly in exercise of powers conferred under the aforesaid Acts and Rules for the purposes of maintaining pupil-teacher ratio in the State of U.P.

21. Mr. H.G.S. Parihar learned Senior Counsel has assailed the aforesaid conditions of the government order on the ground that principle of last come first out as indicated to be a mode of transfer of teachers is illegal being contrary to the statutory provisions as well as arbitrary and therefore violative of Articles 14 and 16 of Constitution of India inasmuch as it would entail frequent transfers of junior teachers while maintaining senior teachers in the same school for years together.

22. It is further submitted that aforesaid clauses are contrary to the provisions of the Act of 2009, Rules of 2011 as well as against the Service Rules of 1981 applicable upon petitioners. He has placed reliance on judgment rendered by Co-ordinate Bench of this Court in the case of **Smt. Reena Singh versus State of U.P. and others, writ petition No. 25238 (S/S) of 2018** to submit that the present issue was also agitated in the said writ petition which was allowed by means of judgment and order dated 11.12.2018 striking down the provision of last come first out. It is therefore submitted that the impugned conditions are violative of aforesaid judgment. It is further submitted that as per Rule 21 of the Rules of 2011, it is only the District Magistrate who has been granted power to review and notify the sanctioned strength of every school before July but by means of impugned government order and circular, cut off date of 31.03.2024 has been prescribed for determining the pupil-teacher ratio, which therefore is contrary to the said Rule. He further submits that by means of impugned government order and circular, a provision is sought to be brought into existence which is contrary to the mandate of the Act of 2009 and rules framed thereunder. He has therefore challenged the cut off date for determination of pupil-teacher ratio indicated in the impugned government order.

23. Mr. Sudeep Seth, learned Senior Counsel has also raised challenge to the principle of last and first out with the submission that such a mode of transfer is not stipulated under the Act of 2009. He submits that executive instruction can only supplement statutory provisions but cannot supplant them as is being sought to be done in the present case since neither the Act of

2009 nor the Rules framed thereunder prescribe any such mode of transfer. He further submits that the aforesaid principle of last and first out is also contrary to Rule 21 of the Service Rules of 1981. Learned counsel further submits that Rules 15 and 16 of the Rules of 1981 provides for minimum qualification of teacher with relaxation of minimum qualification but does not include a Shiksha Mitra who does not come under the definition of teacher in terms with the National Council for Technical Education notification dated 23.08.2010. He has also submitted that the principle of last in and first out being adopted by the State Government is patently arbitrary since it would entail repeated transfers/adjustment of a Junior Teacher who would thus remain junior for all times to come without any transfer of Senior Teachers. He has also submitted that for such a policy to be valid, the U.P. Basic Education Act of 1972 as well as Service Rules of 1981 would be required to be amended.

24. Mr. Upendra Nath Mishra, learned Senior Counsel while adopting the arguments of his predecessors, further submits that the Pupil-Teacher Ratio is required to be determined as per the schedule to Section 25 of the Act of 2009 as well as the Rules of 2011 and is to be maintained as per each class and not as per Pupil Teacher Ratio of the entire School, which is the criteria being adopted by the opposite parties. He has also submitted that executive instructions cannot supplant statutory provisions. Learned counsel has adverted specifically to schedule under Sections 19 and 25 of the Act of 2009 to submit that the norms and standards for maintaining Pupil Teacher Ratio specifically advert to such ratio to be maintained for each class for the first to

fifth class whereafter for each subject. It is submitted that the aforesaid conditions are being violated by opposite parties who have prescribed the procedure without adverting to the aforesaid norm.

25. Learned State counsel on the basis of the two counter affidavits dated 31.07.2024 and 29.08.2024 has refuted submissions advanced by learned counsel for petitioners with the submission that transfer is an incidence of service and once the petitioners having voluntarily chosen their cadre after appointment, are bound by the terms and conditions of service. It is submitted that the impugned Government Order and Circular have been issued to further the beneficial provisions of the Act of 2009 and Rules framed thereunder to ensure that the norms and standards prescribed under the Act are fulfilled. It is submitted that the education of children is of utmost importance for which maintenance of Pupil Teacher Ratio in the Basic Schools is an obligation upon State Government due to which the impugned policy has been framed.

26. It is submitted that there is an imbalance regarding teachers working in schools conducted and controlled by the Basic Education Board inasmuch as excess teachers have been appointed in certain Basic Schools viz-a-viz strength of students while other schools have less number of teachers in comparison to the strength of students, which is required to be balanced in view of the statutory provisions.

27. Learned State Counsel further submits that in similar circumstances, the conditions of such transfer/adjustment was challenged in the case of *Govind Kausik & Ors. versus State of U.P. & Ors., Writ A No.10686 of 2024* which was disposed of

vide order dated 29.07.2024. It is submitted that subsequently the said order was considered by Division Bench of this Court in the case of *Neerja & Ors. versus State of U.P. & Ors., Writ A No.9970 of 2024* which too was disposed of vide order dated 14.08.2024 specifically indicating that at present no occasion exists to test the constitutionality of policy since no firm cause of action is seen to have arisen to the petitioners. It is submitted that the aforesaid judgment in the case of *Neerja* (supra) has thereafter been followed by various other Coordinate Benches such as in the case of *Jitendra Singh Rajput & Another versus State of U.P. & Ors., Writ A No.11049 of 2024*.

28. Learned State counsel has also adverted to another judgment rendered by Coordinate Bench of this Court dated 12.09.2018 passed in the case of *Sarita Rani & Ors. versus State of U.P. & Ors., Writ A No.19345 of 2018* to submit that the same policy issued earlier by means of Government Order dated 20.07.2018 was under challenge and the said Writ Petition was thereafter dismissed. It is submitted that the said judgment of learned Single Judge in the case of *Sarita Rani* (supra) was thereafter upheld in Special Appeal No.1035 of 2018 vide judgment and order dated 23.10.2018. He has therefore submitted that keeping in view principles of judicial discipline as well as res judicata, the present petition is liable to be rejected. He has placed reliance on judgments rendered by Hon'ble the Supreme Court in the case of *U. P. Gram Panchayat Adhikari Sangh and Ors. versus Daya Ram Saroj & Ors., (2007) 2 SCC 138, Mary Pushpam versus Televi Curusunary & Ors. , Civil Appeal No.9941 of 2016, Pandit M.S.M. Sharma versus Dr. Shri Krishan Sinha and*

*others AIR 1960 SC 1186, Charanjit Lal versus Union of India AIR 38 SCC page 1951, Union of India versus Alphinstone Shipping and Weaving Company Limited voted in 2001 Vol.1-IV SCC page 139* as well as in the case of *State of Uttranchal versus Sandeep Kumar Singh & Ors., (2010) 12 SCC 794*.

29. Learned State Counsel has also submitted that in case a lis in the realm of policy decision qua public interest has been conclusively decided, the said would be binding between the parties. It has also been submitted that it is settled law that presumption is always in favour of constitutionality of an enactment and burden is upon the person who challenges it to indicate a clear transgression of the constitutional principle. He submits that even if a classification has been resorted to, courts should not hold it to be invalid merely because the benefit might have been extended to other persons for whom the law was made and that it is the legislature which is the best judge of needs of particular classes. It is further submitted that while examining a particular statute, the legislative intent for striking a balance with regard to letter and spirit of the statute is required.

30. Mr. Ran Vijay Singh, learned counsel appearing for the Board has also adopted submissions of learned State Counsel to submit that the power to deploy teachers is inherent in the Board in terms of the Service Rules of 1981 as well as the Act of 2009 and the Rules of 2011. He has also taken the plea of precedent in terms of judgments in the cases of *Govind Kaushik* (supra), *Neerja* (supra) and *Sarita Rani* (supra).

31. Upon consideration of submissions advanced by learned counsel for parties and