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 appellant. 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.

(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 Shikshsa 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 Ration 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

perusal of material on record, the question required to be addressed is whether Clauses 3, 7, 8 & 9 of the Government Order dated 26.06.2024 as well as the same Clauses of Circular dated 28.06.2024 are in violation of statutory provisions and Rules framed thereunder or not ?

Precedent & Resjudicata

32. At the very out-set, since the aspect of precedent & resjudicata has been raised by learned State Counsel, it would be appropriate to address the said issue prior to addressing any other issue.

33. As indicated herein-above, learned State counsel has adverted to the judgments rendered in similar circumstances in the cases of ***Govind Kaushik*** (supra), ***Neerja*** (supra) and Sarita Rani (supra) with the submission that once the aforesaid issue has already been adjudicated upon by Coordinate as well as Division Bench of this Court, it is not open for petitioners to re-agitate the same and that this Court also would be bound by principles of precedent/resjudicata.

34. In the case of ***Govind Kaushik*** (supra), vide order dated 29.07.2024, the following was observed:

"5.Today, Shri Abhishek Srivastava, learned CSC has placed on record written instructions dated 29.7.2024 received by him from the Director of Education (Basic). Copy of the same has been marked as 'X' and retained on record 4th paragraph of the said written instruction reads as below:

"माननीय उच्च न्यायालय की पृच्छा के सम्बन्ध में अवगत कराना है कि उ०प्र०, निःशुल्क एंव अनिवार्य बाल शिक्षा का अधिकार नियमावली 2011 के नियम-10 में निहित प्राविधान के दृष्टिगत शैक्षिक सत्र 2024-25, दिनांक 01 अप्रैल 2024 से प्रारम्भ होने के कारण दिनांक 30 जून, 2024 को यू-डायस पर उपलब्ध छात्र- संख्या को आधार मानते हुए छात्र शिक्षक अनुपात आगणित कर शासनादेश में दी गयी व्यस्थानुसार विद्यालयवार अधिसंख्य शिक्षक एंव शिक्षका चिन्हित करते हुए अन्तः जनपदीय स्थानान्तरण/समायोजन की प्रक्रिया की जायेगी तथा दिनांक-30.06.2024 के आधार पर छात्र-शिक्षक अनुपात में निःशुल्क एंव अनिवार्य बाल शिक्षा का अधिकार अधिनियम में प्राविधानानुसार विचलन की स्थिति में नियमानुसार कार्यवाही की जायेगी।"

6. In view of the stand taken by the State, it has to be recognised that the policy impugned in the writ petition has been partially modified so as to rely on the student-teacher ratio as on 30.06.2024 i.e. Academic Session 2024-25. Thereby the principal grievance of the petitioner has also been addressed.

7. As to the action taken/to be taken under the impugned policy, on query made, learned counsel for the respondent states that it would take at least six weeks to prepare ready list of teachers who may be considered for intra- district academic. However, Ms. Archana Singh, learned counsel appearing for the Board of Basic Education would further submit that at the stage of it becoming necessary, the eligible teachers would be given a choice of schools where they may be adjusted.

8. Seen in that light, in the first place, the principal grievance of the petitioner has been addressed by the State-respondents. Also, for any other grievance that may arise, we leave it open to the petitioners to approach the Court again, if cause of action arises.

9. With the aforesaid observations/directions, the writ petition stands disposed of."

35. In the case of ***Neerja & Ors.*** (supra), same Impugned Government Order

dated 26.06.2024 and the Circular dated 28.06.2024 were under challenge.

36. The Division Bench after noticing order passed in the case of ***Govind Kaushik*** (supra) entertained the said petition initially primarily on the ground that the time line indicated for determination of posts and identification of teachers who may be surplus is very short and may be conducted in a hurried manner. The Secretaries of the department concerned were thereafter required to file their personal affidavits to explain the exact manner in which determination of surplus post of teachers, identification of surplus teachers and adjustments at different schools was proposed to be made in order to assure the Court that the whole exercise was being done in a transparent manner. The relevant portion of order dated 02.08.2024 is as follows:-

"4. Prima facie, it does appear that entire exercise may be conducted in a hurried manner. Before we may pass any further order, Shri Arimardan Singh Rajpoot, learned Additional Chief Standing Counsel and Ms. Archana Singh, learned Counsel for the Board pray for time to obtain written instructions.

5. In view of the facts noted above, written instructions alone may not be sufficient. Let personal affidavits of the Secretary, Basic Education Board, U.P., Prayagraj and the Additional Chief Secretary, U.P. Basic Education to ensure the exact manner in which the determination of surplus post of teachers, identification of surplus teachers and adjustment at different schools is proposed to be made as may assure the Court that the whole exercise is being done in a transparent manner.

6. Put up as fresh on 08.08.2024.

7. It has further been assured that no transfer order may be passed till the next date of listing. "

37. In pursuance of the aforesaid directions, personal affidavits of the Secretaries concerned were filed whereafter on 08.08.2024 the following order had been passed :

"1. Heard Shri Navin Kumar Sharma, learned counsel for the petitioners, Shri Abhishek Srivastava, learned Chief Standing Counsel along with Dr. D.K. Tiwari, learned Additional Chief Standing Counsel for the State and Ms. Archana Singh, learned Counsel for the Board.

2. In compliance of the last order, personal affidavit of Principal Secretary, Basic Education, Government of U.P., Lucknow and Secretary, Basic Education Board, U.P., Prayagraj have been filed today. They are taken on record.

3. The timelines indicated in paragraph-9 of the affidavit filed by the Principal Secretary, Basic Education, Government of U.P., Lucknow and paragraph-7 of the Secretary, Basic Education Board, U.P., Prayagraj do appear to address the concern expressed in the last order.

4. Learned counsel for the petitioner prays for time.

5. Put up as fresh on 14.08.2024.

6. In the meantime, the process indicated in paragraph-9 of the affidavit of Principal Secretary, Basic Education, Government of U.P., Lucknow and paragraph-7 of the Secretary, Basic Education Board, U.P., Prayagraj may go on.

7. Restrain placed on the transfers is thus vacated. "

38. The petition was thereafter disposed of vide order dated 14.08.2024 in the following term:

"7. The position noted in the above two orders has not changed in the meantime. The respondents are proceeding as per the schedule noted above. All grievance being voiced by the petitioners are to be addressed accordingly.

8. At present, no occasion exists to test the constitutionality of the policy inasmuch as firm cause of action is not seen to have arisen to the petitioners. At present, it is only an apprehension being voiced. Concrete legal action may arise only if the rights of the petitioners are altered as a result of all the process of declaration of surplus teachers and their reallocation being completed as has been disclosed to the Court and as has been noted above.

9. Thus, leaving it open to the petitioners to approach this Court again, if cause of action survives or arises, at present writ petition stands disposed of. "

39. It is thus evident that neither in the case of ***Govind Kaushik*** (supra) nor in the case of **Neeraj** (Supra), the aspect which has been raised by learned counsel for petitioners in the present writ petition, were considered or adjudicated upon. In both cases, the only aspect considered was the cut off date of 30.06.2024 prescribed for determination of Pupil Teacher Ratio. The aspects of other conditions in clauses 3, 7, 8 & 9 have not been adverted to at all.

40. It is also relevant to indicate that at the time of passing of the aforesaid orders, no list of surplus teachers had been issued whereas in the present scenario, it has been submitted by learned counsel for petitioners and admitted by learned counsel for the Board that a list of surplus teachers District wise has been prepared.

41. With regard to reliance placed by learned State Counsel on the case of ***Sarita Rani*** (supra), it is evident that the said petition was filed challenging only the transfer order dated 18.08.2018. The impugned Government Order and the Circular were not under challenge.

42. The judgments cited by learned State Counsel with regard to judicial discipline are clearly required to be followed. However, the aspect of precedent has also been explained by the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh versus Narmada Bachao Andolan and Another, (2011) 7 SCC 639*** in the following terms:-

"64. The court should not place reliance upon a judgment without discussing how the factual situation fits in with a fact situation of the decision on which reliance is placed, as it has to be ascertained by analysing all the material facts and the issues involved in the case and argued on both sides. A judgment may not be followed in a given case if it has some distinguishing features. A little difference in facts or additional facts may make a lot of difference to the precedential value of a decision. A judgment of the court is not to be read as a statute, as it is to be remembered that judicial utterances have been made in setting of the facts of a particular case. One additional or different fact may make a world of difference between the conclusions in two cases. Disposal of cases by blindly placing reliance upon a decision is not proper. (Vide MCD v. Gurnam Kaur

(1989) 1 SCC 101, Govt. of Karnataka v. Gowramma (2007) 13 SCC 482 and State of Haryana v. Dharam Singh (2009) 4 SCC 340.)"

43. Even in the case of ***Daya Ram Saroj*** (supra) cited by learned State Counsel, reliance has been placed on another three judge Bench of the Hon'ble Supreme Court in the case of ***Kalyan Chandra Sarkar versus Rajesh Ranjan alias Pappu Yadav and another, (2005) 2 SCC 42***, wherein it was held that the **findings** of a higher Court or a coordinate Bench must precede a serious consideration.

44. Upon consideration of aforesaid judgments, it is thus apparent that a judgment of a Larger Bench is binding on other Benches for the ratio decidendi and law enunciated as has been held in the case of ***Bilkis Yakub Rasool versus Union of India, (2024) 5 SCC 481*** in the following manner:-

"153. Thus, although it is the ratio decidendi which is a precedent and not the final order in the judgment, however, there are certain exceptions to the rule of precedents which are expressed by the doctrines of per incuriam and sub silentio. Incuria legally means carelessness and per incuriam may be equated with per ignoratium. If a judgment is rendered in ignoratium of a statute or a binding authority, it becomes a decision per incuriam. Thus, a decision rendered by ignorance of a previous binding decision of its own or of a court of coordinate or higher jurisdiction or in ignorance of the terms of a statute or of a rule having the force of law is per incuriam. Such a per incuriam decision would not have a precedential value. If a decision has been rendered per incuriam, it cannot be said that it lays down good law, even if it has not been expressly overruled vide Mukesh K. Tripathi v. LIC (2004) 8 SCC 387, para 23. Thus, a decision per incuriam is not binding.

154. Another exception to the rule of precedents is the rule of sub silentio. A decision is passed sub silentio when the particular point of law in a decision is not perceived by the court or not present to its mind or is not consciously determined by the court and it does not form part of the ratio decidendi it is not binding vide Arnit Das (1) v. State of Bihar (2000) 5 SCC 488."

45. Upon applicability of aforesaid judgments in the present facts and circumstances of the case, it is thus evident that the judgments cited by learned State Counsel are clearly inapplicable as a precedent since the issues raised in this petition were never considered or adjudicated upon and would thus not bind this Court on the principles of either precedent or *res judicata.*

46. The objection so raised by learned State Counsel on the aforesaid ground therefore stands rejected.

Question Answered:-

47. With regard to aforesaid question, the grounds raised in challenge thereto pertain primarily to the aspect of last in first out as well as inclusion of Shiksha Mitra for purposes of determining Pupil-Teacher Ratio.

(a) Last in first out.

48. A perusal of the aforesaid condition indicated in the impugned

Clauses of the Government Order does not indicate any reasoning as to why the aforesaid principle is required to be followed for transfer/adjustment of teachers in order to adhere to the Pupil-Teacher Ratio in accordance with Schedule to Sections 19 and 25 of the Act of 2009. It is quite evident that by introducing such a concept, a classification has been made by the opposite parties pertaining to those teachers who have been posted in a particular School longer than others who have been posted there subsequently. In order to address challenge to said policy, it would also be apposite to refer to judgment rendered by the Hon'ble Supreme Court in the case of ***Census Commissioner and Others versus R. Krishnamurthy, (2015) 2 SCC 796*** in which the aspect of judicial review of public policy has been explained in the following manner:-

"31. In M.P. Oil Extraction v. State of M. P.(1997)7 SCC 592, a two-Judge Bench opined that: (SCC p. 611, para 41)

"41.... The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State."

32. In State of M.P. v. Narmada Bachao Andolan, (2011) 7 SCC 639 after referring to the State of Punjab v. Ram Lubhaya Bagga (1998) 4 SCC 117, the Court ruled thus: (SCC pp. 670-71, para 36)

"36. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power. (See Ram Singh Vijay Pal Singh v. State of U.P.,(2007) 6 SCC 44, Villianur lyarkkai Padukappu Maiyam v. Union of India (2009) 7 SCC 561 and State of Kerala v. Peoples Union for Civil Liberties (2009) 8 SCC 46.)"

33. From the aforesaid pronouncement of law, it is clear as noon day that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the court is not expected to sit as an appellate authority on an opinion."

49. Thus judicial review of policy decisions can be interfered with only in case the policy framed is absolutely capricious, not informed by reasons or totally arbitrary offending basic requirement of Article 14 of the Constitution of India.

50. In the present case, it is apparent that a classification as indicated

hereinabove has resulted due to applicability of the principle of last in first out as per the impugned Government Order and Circular. As already noticed, no reasoning whatsoever has been indicated either in the Government Order or in the Circular for such a classification to be effected. The aspect of reasonable classification has been enunciated and explained by Supreme Court in the case of ***Ramesh Chandra Sharma and Others versus State of U.P. and Others, (2024) 5 SCC 217*** and it was held that for any classification to survive the test of Article 14, it should be based on intelligible differentia having a rational nexus to the object sought to be achieved by law.

51. The said concept was also explained in detail in the case of ***Association for Democratic Reforms and Another (Electoral Bond Scheme) versus Union of India and Others, (2024) 5 SCC 1*** and it was held that Article 14 is an injunction to both the legislative as well as the executive organs of the State to ensure equality before law and equal protection of the laws. It was also reiterated that the aspect of any classification not to be discriminatory should require satisfaction of the condition that it is based on some intelligible differentia and must have a rational relation to the object sought to be achieved by the legislation. Relevant portion of the judgment is as follows:-

"187. At the outset, the relevant question that this Court has to answer is whether a legislative enactment can be challenged on the sole ground of manifest arbitrariness. Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. Article 14 is an injunction to both the legislative as well the executive organs of the State to secure to all persons within the territory of India equality before law and equal protection of the laws Basheshar Nath v. CIT, 1958 SCC Online SC 7. Traditionally, Article 14 was understood to only guarantee non-discrimination. In this context, courts held that Article 14 does not forbid all classifications but only that which is discriminatory. In State of W.B. v. Anwar Ali Sarkar,(1952) 1 SCC 1, S.R. Das, J. (as the learned Chief Justice then was) laid down the following two conditions which a legislation must satisfy to get over the inhibition of Article 14: first, the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others; and second, the differentia must have a rational relation to the object sought to be achieved by the legislation. In the ensuing years, this Court followed this "traditional approach" to test the constitutionality of a legislation on the touchstone of Article 14. Kathi Raning Rawat v. State of Saurashtra, (1952)."

52. The aspect was thereafter discussed in detail and it was held that subordinate legislation could be challenged and tested not only vis-a-vis its conformity with the parent statute but also on the aspect of manifest arbitrariness. The concept of manifest arbitrariness was also explained that it would be applicable in cases where a provision lacked adequate determining principle, if the purpose was not in consonance with constitutional values. It was held that for applying this standard, a distinction between ostensible purpose and real purpose was required to be ascertained and a provision would be manifestly arbitrary in case it was not in

accordance with the said principles. The relevant portions of judgment are as follows:-

"200.1. A provision lacks an "adequate determining principle" if the purpose is not in consonance with constitutional values. In applying this standard, Courts must make a distinction between the "ostensible purpose", that is, the purpose which is claimed by the State and the "real purpose", the purpose identified by courts based on the available material such as a reading of the provision Chandrachud and Nariman, JJ. in Joseph Shine, (2019) 3 SCC 39 and..... "

204. The above discussion shows that manifest arbitrariness of a subordinate legislation has to be primarily tested vis-à-vis its conformity with the parent statute. Therefore, in situations where a subordinate legislation is challenged on the ground of manifest arbitrariness, this Court will proceed to determine whether the delegate has failed "to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statute or, say, the Constitution. "Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India, (1985) 1 SCC 641. In contrast, application of manifest arbitrariness to a plenary legislation passed by a competent legislation requires the Court to adopt a different standard because it carries greater immunity than a subordinate legislation. We concur with Shayara Bano v. Union of India, (2017) 9 SCC 1 that a legislative action can also be tested for being manifestly arbitrary. However, we wish to clarify that there is, and ought to be, a distinction between plenary legislation and subordinate legislation when they are challenged for being manifestly arbitrary."

53. Upon applicability of aforesaid judgment in the present facts and circumstances of the case, it is thus required to be seen as to whether the classification so made would survive the test of Article 14 or not.

54. As would be evident from the counter affidavit filed by opposite parties as well as submissions made by learned State Counsel, the impugned clauses are sought to be protected on the premise that they have been issued to further the scope and object of the Act of 2009 and the rules framed thereunder.

55. However, a perusal of Sections 19 and 25 indicates only the aspect of maintaining Pupil-Teacher Ratio as per the Schedule. The ostensible purpose of such norms and standards to be maintained is clearly that no School or Class is deprived of a teacher in accordance with pupil strength.

56. It is also discernible that there is no provision incorporated 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.

57. If the aforesaid 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 in accordance with Rule 21 of the Rules of 2011 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.

58. This condition therefore, is clearly not in accordance with real intention and purpose of the Act of 2009 and the rules framed thereunder. Such a classification also does not adhere to the test that it should be based on any intelligible differentia since no such intelligible differentia has been indicated either in the Government Order, the Circular or even in the counter affidavit filed by the opposite parties. Furthermore, the procedure as indicated for last in first out also does not appear to have any rational nexus with the object sought to be achieved by the Act of 2009 and the rules framed thereunder.

59. In view of such discussion, this Court finds the classification so made to be discriminatory and failing the test of reasonable classification in the context of Article 14 of the Constitution of India.

(b) Inclusion of Shiksha Mitra in parity with Assistant Teachers under Clause 3 of the Government Order.

60. Another aspect which is required to be taken into consideration is that executive orders can only supplement statutory provisions, the purpose of which it purports to further but it can neither supplant nor override such provisions as has already been held by the Hon'ble Supreme Court in the case of ***Senior Superintendent of Post Office versus Izhar Hussain, (1989) 4 SCC 318.***

61. It is also relevant to notice that impugned Clause 3 of the Government Order stipulates that such transfer/ adjustment would also take into effect by considering the number of Shiksha Mitra employed in a particular School.

62. The inclusion of Shiksha Mitra as a condition for determination of Pupil-Teacher Ratio, is quite against the statutory conditions of service indicated in the Service Rules of 1981 under which Rule 5 pertains to sources of recruitment and indicates that Assistant Masters and Assistant Mistresses in Junior Basic Schools are to be recruited by direct recruitment as stipulated in Rule 14 and in other cases by promotion through Rule 18. Rule 8 indicates academic qualifications for such Assistant Masters and Mistresses and stipulates a Bachelor Degree from a University established by law in India or a Degree recognized by the Government equivalent thereto with any other training course recognized by the Government as equivalent thereto. Other certificates such as the Basic Teacher Certificate and Degree in Elementary Education etc. are also prescribed alongwith Basic Teacher Certificate, whereas by means of U.P. Basic Education (Teachers) Service (22nd Amendment) Rules 2018, whereby Rule 8 was amended defines a 'Shiksha Mitra' to mean a person working as such in Junior Basic Schools run by the Basic Shiksha Parishad under Government Orders prior to commencement of the U.P. Right of Children to Free and Compulsory Education Rules, 2011 or a person, who has been a Shiksha Mitra and appointed as an Assistant Teacher in terms of judgment rendered by the Hon'ble Supreme Court in the case of ***State of U.P. and Others versus Anand Kumar Yadav, SLP No.32599 of 2015.***

63. The aforesaid aspect makes it evident that the qualifications required for purposes of appointment as an Assistant Teacher are not required for appointment as a Shiksha Mitra and, therefore, the Government Order clearly erred in equating Assistant Teachers with Shiksha Mitra. Evidently unequals have been treated as equals.

Consideration of judgment in the case of Smt. Reena Singh (supra)

64. Learned counsel for petitioners have also adverted to judgment rendered by coordinate Bench of this Court in the case of ***Smt. Reena Singh*** (supra) to submit that the impugned clauses of Government Order and Circular are against the dictum indicated therein. A perusal of aforesaid judgment clarifies the aspect that conditions 2 (2) (1) and 2 (3) (4) of the Government Order dated 20.07.2018 and the Circular dated 16.08.2018 pertaining to list of surplus teachers prepared was under challenge primarily on the ground of arbitrariness and challenge to the concept of last in first out as well as the change in academic session as apparent from Paragraphs 11(V), 24, 26 and 27 of the judgment, which are as follows:

"11(V)They next submitted that under Right to Free and Compulsory Education Act, 2009 and under the Rules of 1981, it has not been provided that the transfer / adjustment shall be made on the basis of "last in first out", as has been provided under the Government Order dated 20.07.2018. They further submitted that neither under Rule 21 of U.P. Basic Education (Teachers) Service Rules, 1981 nor in the Act No.35 of 2009 there is provision for making transfer by adopting a policy of "last in first out", therefore, the action of the respondents is arbitrary in nature.

"(24) Under Clause 2(3) of the Government Order dated 20.07.2018, it has been provided that how the adjustment of the teachers shall be made and while prescribing the procedure, no provision has been made with respect to the candidates, who are being transferred from other districts and also in respect of the new admission. The criteria would have been to first accommodate those teachers, who have been transferred from other districts in those schools, in which the pupil-teacher ratio is less than the prescribed limit and then to post the fresh appointees on those posts and thereafter, the teachers already working should have been redeployed and adjusted on the remaining posts.

(26) In view of the overall consideration of the relevant rules on the subject and the government order and circular under challenge, this Court records that the law is settled that executive instruction can only supplement the statutory law and cannot supplant the law. In the case in hand, the Government Order dated 20.07.2018 is in violation to the statutory provisions and has over ridden the rules, which have been framed by the rule making authorities in exercise of power conferred upon it by the Act of 2009.

(27) On perusal of the Government Order dated 20.07.2018 and circular dated 16.08.2018, it has been provided that transfer / adjustment shall be made on the basis of "last in first out". The transfers are made in exigencies of service in public interest or on administrative grounds. To meet out the public interest in imparting education to the students admitted in the academic session in consonance with the provisions contained under Right of Children to Free and Compulsory Education Act, 2009 and rules framed thereunder, the pupil-teacher ratio and deadline in this regard has been fixed from the date of start of session. There is clear cut violation of the act and rules, wherein specific provision was provided in regard to maintenance of the pupil-teacher ratio. The authority has also been defined under the act and rules to determine the pupil-teacher ratio. While issuing the government order and circulars, all these provisions have been ignored by the State Government. Therefore, the policy of the

State Government is faulty and shall not fulfill the scope to provide free and compulsory education to the children and is contrary to the Right of Children to Free and Compulsory Education Act, 2009 and Right of Children to Free and Compulsory Education Rules, 2010. "

65. The aforesaid paragraphs of the judgment make it evident that the concept of last in first out, which was a procedure adopted earlier also by the State in the Government Order dated 20.07.2018 and the Circular dated 16.08.2018 was held to be arbitrary. Despite the fact that said judgment has attained finality since it was not challenged, the opposite parties have reiterated the aforesaid condition in the impugned Government Order and Circular, which is clearly contrary to the aforesaid judgment.

66. The preceding discussion is self evident with regard to the fact that the aspect of last in and first out has already been held to be invalid by Co-ordinate Bench decision of this Court in the case of **Reena Singh** (supra). In such circumstances the impugned government orders which have been passed without noticing or adverting to the judgment of Reena Singh (supra) can at best be considered to come within the realm of a validation provision.

67. It is well settled that once judicial pronouncements have been made with regard to validity or otherwise of statute, subordinate legislation or even administrative or executive orders, the same are required to be followed unless validation laws are subsequently passed since the power to validate a law declared invalid is within the exclusive province of legislature. However such subsequent enactments or executive orders would have to answer the scrutiny that the vice that rendered it invalid by a judicial pronouncement has been cured and is now consistent with the rights guaranteed by part III of the Constitution. It is only when answer to such scrutiny is in the affirmative that the validation provision can be held to be effective.

68. The aforesaid aspect has been enunciated by Hon'ble Supreme Court in the case of **Amarendra Kumar Mohapatra versus state of Orissa and others** (2014) 4 SCC 583 in the following manner:-

" 25. Judicial pronouncements regarding validation laws generally deal with situations in which an Act, Rule, action or proceedings has been found by a court of competent jurisdiction to be invalid and the legislature has stepped in to validate the same. Decisions of this Court which are a legion take the view that while adjudication of rights is essentially a judicial function, the power to validate an invalid law or to legalise an illegal action is within the exclusive province of the legislature. Exercise of that power by the legislature is not, therefore, an encroachment on the judicial power of the Court. But, when the validity of any such Validation Act is called in question, the Court would have to carefully examine the law and determine whether (i) the vice of invalidity that rendered the Act, Rule, proceedings or action invalid has been cured by the validating legislation, (ii) whether the legislature was competent to validate the Act, action, proceedings or Rule declared invalid in the previous judgments, and (iii) whether such validation is consistent with the rights guaranteed by Part III of the Constitution.

It is only when the answer to all these three questions is in the affirmative that the Validation Act can be held to be effective and the consequences flowing from the adverse pronouncement of the Court held to have been neutralised. Decisions of this Court in Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality [(1969) 2 SCC 283] , Hari Singh v. Military Estate Officer [(1972) 2 SCC 239] , Madan Mohan Pathak v. Union of India [(1978) 2 SCC 50 : 1978 SCC (L&S) 103] , Indian Aluminium Co. v. State of Kerala [(1996) 7 SCC 637] , Meerut Development Authority v. Satbir Singh [(1996) 11 SCC 462] and ITW Signode India Ltd. v. CCE [(2004) 3 SCC 48] fall in that category."

69. Another aspect which is worth noticing is that in Clause 7 of the Government Order, a further prescription has been made for determination of junior most teacher. It stipulates that seniority would be determined on the basis of length of service in a particular district and where it is same, would be determined on the basis of date of birth.

70. The same appears to be in stark contrast to determination of seniority of teachers under Rule 22 of the Service Rules of 1981, whereby seniority is required to be determined according to the order in which the names appear in the select list prepared in terms of Rule 17 or 17 (A) or 18 as the case may be.

71. So far as the aspect of cut off date challenged in the aforesaid government order and circular is concerned, this Court is not adverting to the same since this aspect has already been considered in the Division Bench Judgment of **Neerja** (supra).

72. In view of aforesaid discussion, it is evident that the impugned Clauses of the Government Order dated 26.06.2024 and the Circular dated 28.06.2024 are manifestly arbitrary and, therefore, the Clauses 3, 7, 8 and 9 of the aforesaid Government Order and Circular are hereby quashed by issuance of writ in the nature of certiorari. Accordingly, above writ petitions succeed and are **allowed**. Parties to bear their own costs.

(2024) 11 ILRA 24
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 06.11.2024

BEFORE

THE HON'BLE ALOK MATHUR, J.

Writ A No. 9755 of 2024

Ravikant Shukla ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Anuj Kudesia, Surya Prakash Singh

Counsel for the Respondents:
C.S.C.

A. Civil Law - Departmental Disciplinary Proceedings - Suspension - Judicial Review of suspension order - Constitution of India,1950 - Article 226 - Order of suspension can be interfered where it is shown that the said order has been passed without jurisdiction or no inquiry is contemplated or the charges levelled against the delinquent government servant are vague and bald and even proved will not entail a major penalty. Merely because the government servant feels that the allegations are false will not be a ground in itself for this Court to assume the jurisdiction and to embark on an inquiry to determine the veracity of the allegations levelled against the government servant. In the instant case, the Court found that the allegations were