entire salary till their claim is decided afresh.

150. The directions issued is only pertaining to the appointments made against short term vacancy/*ad hoc* appointment upto 30.12.2000. Those cases in which appointment has been made post 2000, the judgment and directions given by this Court would not apply.

151. In view of the above, the issue raised in these bunch of petitions stand answered and the educational authorities to proceed in accordance with the directions as given above.

152. All the writ petitions stand **disposed of.**

(2024) 9 ILRA 1512
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 25.09.2024

BEFORE

THE HON'BLE J.J. MUNIR, J.

Writ A No. 68692 of 2006

C/M Digvijay Nath Inter College ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Petitioner:
Mr. Sarvesh Pandey, Advocate

Counsel for the Respondents:
Mr. Girijesh Kumar Tripathi, Addl. C.S.C.

A. Education Law – Extension of maintenance grant – Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971- The Right of Children to Free and Compulsory Education Act, 2009 - Uttar Pradesh Junior High Schools (Payment of Salaries of Teachers and other Employees) Act, 1978.

Non-receipt of compensatory grants could not be a ground to exclude the primary section of the Institution, as it would create a class within a class, which had no reasonable nexus with the object sought to be achieved by the scheme. (Para 12)

B. In this case, since the Institution is an intermediate college, the question of extension of grant-in-aid to its primary section, that is otherwise claimed to be an integral part of it, has to be decided under the provisions of the Act of 1971, and not the Uttar Pradesh Junior High Schools (Payment of Salaries of Teachers and other Employees) Act, 1978 (for short, 'the Act of 1978'). The position of law that a high school or an intermediate college, which is an institution governed by the Act of 1971, would be regarded as an integral whole and the teachers of its attached primary section, if part of that whole or as it is described in *Jai Ram Singh* a 'composite integrality', would entitle the teachers of the primary section to salaries paid out of the Exchequer under the Act of 1971. (Para 20)

The conclusions in *Jai Ram Singh* and the orders made w.r.t. the attached primary sections of recognized and aided high schools or intermediate colleges, do not spare a shadow of doubt that **the attached primary section of an intermediate college, like the Institution, cannot be denied grant-in-aid, subject to satisfaction of the test of 'composite integrality'.** The fact that the attached primary section of the Institution is an integral part of it, has not been seriously disputed by the respondents. Rather, it has not been disputed at all. In the day when the order of this Court was set aside by the Division Bench in Special Appeal Defective No. 1193 of 2013, there was insistence by the St., almost with reverence about the cut-off date, on which permission was granted for attachment to the primary section of an institution, be it a high school or an intermediate college or a junior high school. The only difference in the policy carried in the GOs dated 06.09.1989 and

01.10.1989 on one hand, and the one carried in the GO dated 27.10.2016 on other, was that whereas under the GOs of 1989, the cut-off date for permitting attachment or more than that submitting compensation St.ments in regard to grant for the attached primary sections of intermediate colleges was 01.04.1971, under the GO dated 27.10.2016, the policy spelt out the date for passing an order of attachment as 21.06.1973. (Para 23)

This Court is, therefore, of opinion that on the right to receive maintenance grant for the attached primary section of the Institution, the Government concede the position of 'composite integrality' as regards the attached primary section. The attached primary section of the Institution would, therefore, clearly be entitled to receive grant-in-aid already provided to them under the GO dated 09.12.2014, as amended on 15.03.2024. Since the right of children to receive free and compulsory education, who are in the age-group of 6- 14 years, is ultimately the right, that is subject matter of action in this writ petition, we cannot permit the said right to depend upon the mere edifice of an executive order with its inherent vagaries of what is known as policy and the change of which is at times more unpredictable than the weather. The right involved here, which is one belonging to students in the age- group of 6-14 years, must stand on more firm footing. It would require the shadows of the impugned order to be annihilated by this Court out of existence. And, further, a command by us for the continued payment of the maintenance grant to the attached primary section of the Institution. (Para 27)

C. Words and Phrases – (i) "*institution*" - The expression "institution" has been defined under the enactment to mean a recognised institution which is receiving a maintenance grant from the St. Government.

The expression "institution" as defined under the 1971 Act does not exclude a primary section which meets the test of composite integrality with a High School or Intermediate college. The contention that the benefit of the 1971 Act can only apply if all sections of a composite institution are in receipt of financial aid is negated. Teachers of primary sections attached to High Schools and Intermediate colleges, notwithstanding the fact that the said section is not in receipt of financial aid, would be entitled to the benefit of the 1971 Act. (Para 21)

(ii) "*recognition*" - The word "recognition" is defined under the 1921 Act to mean recognition for the purposes of preparing candidates for admission to the examinations conducted by the Board.

On a conjoint reading of these two provisions it would be evident that an institution is contemplated to be one which holds the requisite permission and authority to admit students desirous of taking the examinations conducted by the Board and is in receipt of a maintenance grant.

In light of the construction accorded to Section 2(b) by the Court, it is manifest that a primary section which is a homogenous part of a recognised and aided high school or intermediate institution would fall within the ambit of the 1971 Act. Secondly such a primary section viewed in light of the principle of composite integrality as propounded herein above cannot be understood to be a separate or distinct component. It would, irrespective of the fact that it may not be in receipt of a maintenance grant, remain an integral component of that institution. The teachers of such a primary section cannot therefore be denied the protection of the 1971 Act. (Para 20)

Writ petition allowed. (E-4)

Precedent followed:

1. St. of U.P. & ors.Vs Pawan Kumar Divedi & ors., (2014) 9 SCC 692 (Para 11)

2. Jai Ram Singh & ors.Vs St. of U.P. & ors., 2019 (6) ADJ 255 (Para 11)

3. Ramji Tiwari & ors.Vs District Inspector of Schools & ors., (1997) 1 UPLBEC 690 (Para 12)

4. Paripurna Nand Tripathi & anr. Vs St. of U.P. & ors., 2015 (3) ADJ 567 (DB) (Para 14)

Present petition assails the order dated 17.11.2006, passed by the Director of Education (Secondary), refusing extension of maintenance grant to the attached primary section of the Digvijay Nath Inter College, Chowk Bazar, Maharajganj.

(Delivered by Hon'ble J.J. Munir, J.)

1. This writ petition has come up for hearing after remand by the Division Bench in an appeal under Chapter VIII Rule 5 of the Rules of Court carried by the State from the judgment and order dated 19.10.2012, allowing the writ petition.

2. This writ petition is directed against the order of the Director of Education (Secondary) dated 17th November, 2006, refusing extension of maintenance grant to the attached primary section of the Digvijay Nath Inter College, Chowk Bazar, Maharajganj. The writ petition has been preferred by the Management of the aforesaid College. Beyond laying a challenge to the order of the Director of Education, denying the maintenance grant, the petitioners further seek a mandamus to the respondents to extend grant-in-aid to the attached primary section of the College under the provisions of the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 (for short, 'the Act of 1971').

3. The short facts, giving rise to this petition, are these:

The Digvijay Nath Inter College, Chowk Bazar, Maharajganj (for short, 'the Institution') is an intermediate college, recognized under the Intermediate Education Act, 1921 (for short, 'the Act of 1921'). Salaries to teachers and other employees of the Institution, other than the primary section, are paid out of the maintenance grant extended by the State under the provisions of the Act of 1971. The Institution has an attached primary section, teaching students from Classes 1 to 5. The primary section, according to the petitioners, is housed in the same premises as Classes 6 to 12 and under the supervision and control of the same Principal and the Management. In substance, the Institution says that they are an integral whole from Class 1 to 12. The District Inspector of Schools, Gorakhpur vide order dated 04.03.1972 granted recognition to the primary section of the Institution, followed by an order of the District Inspector of Schools dated 07.07.1972, granting permission to the Institution to run an attached primary section.

4. It is the petitioners' case that the Committee of Management appointed teachers and other staff to manage the attached primary section. The petitioners say that they were not included in the list of 393 institutions, teaching High School and Intermediate Classes, whose attached primary sections were brought under maintenance grant vide Government Order dated 06.09.1989. It is the petitioners' case that 15 sections were acknowledged to be functional in the primary section of the Institution by the District Inspector of Schools vide his order dated 30.08.1991. The Institution, according to the petitioners, is situate in a remote area, away from the City of Gorakhpur, now part of Maharajganj. It is more than 20 kilometers away from the District Headquarters of Maharajganj. It lies on the Nepal Border. The petitioners say that the Institution was recognized in the year 1972, but not included in the list of institutions by the State Government to whose primary

sections maintenance grant was provided. The petitioners, therefore, requested the State Government through the District Inspector of Schools that they be provided maintenance grant for their attached primary section. It appears that the petitioners' case was recommended by the Deputy Director of Education to the Director of Education by his memo dated 24.10.1991.

5. Since the Director of Education did not pass any orders on the endorsed request of the petitioners, they instituted Civil Misc. Writ Petition No.43123 of 1997 with a prayer that the Director of Education be commanded to pass appropriate orders on the letter of the Deputy Director of Education dated 24.10.1991, recommending the petitioners' case. This Court by an order dated 24.08.1998 disposed of the last mentioned writ petition with a direction to the Director of Education to decide the petitioners' claim within three months of the production of a certified copy of the order made in the writ petition, after hearing the parties concerned. The Director of Education by his order dated 08.09.1999, in compliance with the orders of this Court dated 24.08.1998, rejected the petitioners' representation for the extension of maintenance grant to their attached primary section. The petitioners questioned the said order by means of Civil Misc. Writ Petition No.9173 of 2000 before this Court, where they sought a mandamus to the respondents, that would include the Government, to extend the benefit of the Act of 1971 to the teachers of the primary section of the Institution and release the necessary grant. This writ petition was heard after exchange of affidavits with this Court disapproving the orders denying extension of maintenance grant on irrelevant considerations and wrongfully doubting the orders, recognizing and permitting the attached primary section of the Institution to function as part of it. The matter was, therefore, remanded to the Director of Education to decide the petitioners' claim afresh, bearing in mind the guidance in the judgment, and, particularly, the criteria laid down by the Government for recognition and provision of maintenance grant under the Act of 1971 to attached primary sections, within a period of three months from the date of production of a certified copy of the judgment passed by this Court. This judgment was placed for necessary action before the Director of Education, U.P. by the petitioners through a communication dated 28.11.2005. The petitioners' claim was once again rejected for the provision of a maintenance grant to their attached primary section vide order dated 17.11.2006.

6. Aggrieved by the order of the Director of Education dated 17.11.2006 (for short, 'the impugned order'), this writ petition has been instituted.

7. A notice of motion was issued on 18.12.2006, and, in due course, a counter affidavit was put in on behalf of respondent No.3, the District Inspector of Schools, Maharajganj (for short, 'the DIOS'), to which the petitioners filed a rejoinder. It was on these pleadings that the writ petition was heard and allowed by this Court vide judgment and order dated 19.10.2012. The order impugned was quashed and a *mandamus* issued to the respondents to enlist the teachers and employees working in the attached primary section of the Institution for the provision of salaries under the Act of 1971, in accordance with law.

8. Disillusioned by the said judgment and order dated 19.10.2012 passed by this Court, the State of U.P. carried a special appeal to the Division Bench, being Special Appeal Defective No.1193 of 2013. The said appeal was allowed by a judgment and order dated 14.09.2017, setting aside the judgment dated 19.10.2012 passed by this Court and restoring the present writ petition to its original file and number, with a direction to hear and decide it afresh, bearing in mind the remarks of the Division Bench. This is how the present writ petition has come up for hearing afresh.

9. Heard Mr. Sarvesh Pandey, learned Counsel for the petitioners in support of this petition and Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel, appearing on behalf of the respondents.

10. The petition, as agreed by learned Counsel for the parties, has been heard on the affidavits already on record, except an added affidavit dated 19.04.2024 of the Director of Education filed by Mr. Girijesh Kumar Tripathi, the learned Additional Chief Standing Counsel. The learned Counsel for the petitioners waived his right to file a rejoinder to the last mentioned affidavit.

11. Upon hearing learned Counsel for the parties, this Court must remark that in view of much change to the position of the law earlier laid down by the Supreme Court after the Constitution Bench in **State of U.P. and others v. Pawan Kumar Divedi and others, (2014) 9 SCC 692,** and in consequence, the principles enumerated, apart from the orders made by this Court **in Jai Ram Singh and others v. State of U.P. and others, 2019 (6) ADJ 255,** the entire contours of the issue and rights of parties, would much change from the day as these stood, when judgment in this petition was earlier rendered, and also the time when the Division Bench set aside that judgment with a remand. This Court allowed the writ petition earlier fundamentally on two premises. The first was that the order impugned was manifestly illegal in that, that it was wrong to suspect the recognition and attachment granted to the primary section of the Institution by the District Inspector of Schools in the year 1972 or infer that the primary section was non-existent, because the Institution was not included in the list of 393 institutions, whose primary sections were brought under grant-in-aid vide Government Order dated 06.09.1989. This Court was of opinion that the approach of the respondents was wrong on this count, because the permission to start the primary section in the year 1972 and its attachment, in support of which orders were made, could not be doubted on a presumption, unless the genuineness of those documents was examined. The genuineness of the recognition and the permission could not be condemned, merely because on the basis of a survey done in the year 1989, the primary section of the school was not included in the list of 393 institutions, to whom maintenance grant was extended for their attached primary sections. The finding on this score was held by this Court, by the judgment earlier rendered, to be perverse.

12. The second count, on which the impugned order was found flawed, was that it proceeded to hold the petitioners disentitled to a grant for their primary section, because they were not in receipt of compensatory grants prior to 1971, whereas this issue was no longer *res integra* in view of the judgment of this Court in **Ramji Tiwari and others v. District Inspector of**

Schools and others, (1997) 1 UPLBEC 690. It was opined by this Court, while rendering the judgment since set aside by the Division Bench, that the decision in Ramji Tiwari (supra) placed the law firm on the point that the object of enlisting a school for receipt of grant-in-aid was to provide education at the primary level, which has been held to be a fundamental right. This Court then opined, *"while looking to the object of the scheme and the purpose sought to be achieved, it does not sound reasonable to exclude the institution from the scheme of grant-in-aid only on the premise that it was not receiving the compensatory grants from the State Government."* It was remarked that non-receipt of compensatory grants could not be a ground to exclude the primary section of the Institution, as it would create a class within a class, which had no reasonable nexus with the object sought to be achieved by the scheme.

13. For a fact, it was remarked by this Court on the earlier occasion that the primary section of the Institution is located in one premises. The distinction, therefore, made between teachers, who would teach primary classes and those engaged in teaching the higher ones, is without basis. There were further remarks about the lack of distinction, as far as entitlement to grant is concerned, between teachers teaching classes 6 to 8, on one hand, and 1 to 5, on the other, but those may now not be relevant. In fact, the rather unconventional course of noting the remarks in the judgment, that has already been set aside by the Division Bench, is to bring into relief, almost a sea-change in the law, on the premise of which, the Division Bench proceeded to set aside the judgment earlier rendered, or for that matter, those on which this Court earlier entered judgment. The order of remand, passed by the Division Bench in Special Appeal Defective No.1193 of 2013, may be noted for every material word of it, which reads:

"The judgment and order of learned Single Judge dated 19.10.2012, passed in Writ-A No.68692 of 2006 is liable to be set aside on the ground of non-consideration of essential conditions required to be satisfied under the letter of Director, Education, U.P. dated 21.10.1989, enclosed at page 119 and which has also been referred to in the order of learned Single Judge. The said letter refers to the Government Order dated 6.9.1989 as well as Government Order dated 1.10.1989 and further clarifies that only such primary institutions affiliated to high school and intermediate colleges would be brought on the grant-in-aid as attached primary section which satisfy the following conditions:

(a). Primary section was treated to be part of the main institution prior to 1.4.1971 and compensation statements were submitted treating the primary institution as part of the intermediate colleges prior to 1.4.1971, and

(b). The institution was granted recognition from Class 1 to Class 9 under one order of District Inspector of Schools.

We find that there has been complete non consideration of the aforesaid two conditions in the order of learned Single Judge before issuing the direction for payment of salary to the teachers of the primary section said to be attached to Digvijay Nath Inter College, Chowk Bazar, Maharajganj.

In our opinion satisfaction of the conditions mentioned in the government order referred to above is a condition precedent for such a direction being issued. In absence of any finding having been

recorded in that regard the judgment and order of writ court cannot be legally sustained specifically in the circumstance that the Government Order dated 21.10.1989 was not under challenge."

14. It must be remarked that long since the policy of extending affiliation to the attached primary sections of junior high schools or high schools and intermediate colleges was framed by the State Government through a Government Order dated 06.09.1989, and, the later Order dated 01.10.1989, the constitutional perspective about the sacrosanctity of the right to free and compulsory education for children in the age group of 6-14 years underwent a seminal change. It had come to be judicially recognized as a facet of Article 21 of the Constitution, but the right to free and compulsory education for children in the age-group of 6-14 was still a weak current, driven by debate about the sacrosanctity of the right on one hand, and, the economic limitations of the State, on the other. To add to it, was a distinctive feature of the issue in the context of the State of U.P., where a Basic Education Board had been set up, taking over avowedly the entire responsibility of educating children from classes 1 to 5, with no share of this responsibility with private hands. It was the assumption of this wholesome responsibility by the State through the Uttar Pradesh Basic Education Act, 1972 (for short, 'the Act of 1972') that much difficulty arose with regard to aiding attached primary sections of junior high schools, high schools and intermediate colleges. It was in the context of the setting up of the Basic Education Board in the year 1972 and the existing schools managed by local bodies that the Board took over that the policy regarding extension of maintenance grant to attached primary sections of junior high schools, high schools and intermediate colleges, privately managed, became the subject matter of much litigation. The cut-off dates, that were prescribed in the grant-in-aid policy embodied in the Government Orders dated 06.09.1989 and 01.10.1989, as regards recognition and attachment permissions, were asserted by the State to be relevant. However, the right to free and compulsory education, being engrafted as a separate fundamental right in the Constitution by the 86th Amendment Act, 2002, the judicially recognized fundamental right became a formal constitutional charter. The Right of Children to Free and Compulsory Education Act, 2009 (for short, 'the Act of 2009') was then enacted to legislatively give effect to the fundamental right embodied under Article 21-A of the Constitution. It was these and other accompanying changes that led a Division Bench of this Court in **Paripurna Nand Tripathi and another v. State of U.P. and others, 2015 (3) ADJ 567 (DB)** to remark and direct as follows:

"18. In the State of Uttar Pradesh, most of the institutions providing basic education have been established by societies registered under the Societies Registration Act, 1860 by private managements. The State Government has framed policy guidelines and has issued executive orders/circulars/administrative orders from time to time laying down standards/norms for providing grant-in-aid to unaided institutions. Unless those conditions are fulfilled by private institutions, the State Government does not take liability for the payment of salaries of the teachers and other employees of such institutions.

19. After the enactment of the Act, 2009 and the law laid down by the

Supreme Court in **Society for Unaided Private Schools of Rajasthan (supra), Bhartiya Seva Samaj Trust (supra) and State of Uttar Pradesh and others v. Pawan Kumar Divedi and others, (2014) 9 SCC 692,** we are of the view that the State Government may revisit its age old policy in the light of the constitutional amendment and the law laid down by the Supreme Court on the subject.

20. Undoubtedly, now it is the State's responsibility to provide free and compulsory education to the children of the age of six to fourteen years. Private institutions, which are imparting education to children of the said age group, in fact, are performing and sharing the obligations of the State. Therefore, an obligation is cast upon the State Government not only to provide the grant-in-aid to such institutions but to provide infrastructure also subject to reasonable conditions laid down by it. Providing education to the children of the age of six to fourteen years shall be a mirage unless qualitative education is provided to them.

21. In the State of Uttar Pradesh, the large majority of children of the said age group come from the marginalized sections of the society. Most of the institutions providing primary and basic education are situated in rural and semi-urban areas. To provide quality education it is necessary that trained and competent teachers are appointed and necessary infrastructure is also made available to such institutions. The teachers in private unaided institutions are working in pitiable conditions. No good teacher would like to work in such institutions. Thus, the students will be deprived of quality education.

22. In view of the supervening events, we are of the view that the order of the learned Single Judge dated 29 August 2014 and the order of the State Government dated 10 January 2002 need to be set aside and are, accordingly, set aside. The matter is remitted to the State Government to reconsider it in the light of the law referred to above. The State Government may reconsider its policy of 1989 in respect of the grant of aid to the unaided institutions in the light of the constitutional amendment, the Act of 2009 and the law laid down in the judgments referred above."

15. In compliance with the command of this Court in **Paripurna Nand Tripathi** *(supra)*, the State formulated a policy regarding extension of grant-in-aid to primary educational institutions attached to non-government aided junior high schools, high schools and intermediate colleges. The revised policy was carried in a Government Order dated 27.10.2016. Under the changed policy, claims of various institutions, seeking maintenance grant for their attached primary sections, the institutions being private aided ones, to wit, junior high schools, high schools or intermediate colleges, or still more, distinctly recognized and unaided primary schools or junior basic schools, as these are called, were all rejected by Government Orders dated 13.07.2017. Both the Government Orders, embodying the policy, and the later one of 13.07.2017, disposing of claims of different categories of primary or junior basic schools, were challenged before this Court in a batch of writ petitions, that came to be decided in **Jai Ram Singh** *(supra).*

16. Now, before this Court may examine what **Jai Ram Singh** has decided and what would be the impact of that decision on the rights of the petitioners here, it must be remarked that this Court would stand formally relieved of examining

the issues remitted to us in terms of the order of remand, because the two issues relevant under the grant-in-aid policy applicable under the Government Orders dated 06.09.1989 and 01.10.1989, now stand effaced in terms of the revised policy on the subject carried in the Government Order dated 27.10.2016. As would be presently seen, the Government Order dated 27.10.2016 would also not oblige this Court to examine something of the likeness of the issues remitted under the old policy carried in the Government Orders dated 06.09.1989 and 01.10.1989, because Clause 1 of the Government Order dated 27.10.2016 to the extent it prescribes a cut-off date (21.06.1973) as well as Clauses 1.1 and 1.2 thereof, were struck down by this Court in **Jai Ram Singh** as arbitrary and irrational. Of course, a slew of other directions were issued in **Jai Ram Singh**, including ones commanding the State to re-formulate its policy, bearing in mind the remarks in **Jai Ram Singh**. Much of the rights, which the petitioners assert now, stand concluded in terms of the holding of this Court in **Jai Ram Singh**. **Jai Ram Singh** is, therefore, a decision of seminal importance, governing the rights of the petitioners, now suited in this writ petition. Eschewing much detail of the many facts and the issues considered in **Jai Ram Singh**, that may not be relevant to the petitioners' rights, far simplified now, it would be apposite to note that this Court in **Jai Ram Singh** considered the batch of writ petitions in four groups, that can best be understood by a reference to paragraph No.4 of the report, which reads:

"4. The writ petitions in this batch can be broadly classified as falling in the following categories:

GROUP A- Recognised and unaided primary sections attached to junior high schools/high schools and intermediate colleges.

GROUP B- Recognised and unaided junior high schools.

GROUP C- Recognised and unaided Primary Schools.

GROUP D-Unaided Primary School With Unaided Junior High School."

17. Before proceeding further, it must be remarked that for the most part, the directions made in **Jai Ram Singh** and the holding that would be relevant to the issue here, would relate to Group A of the writ petitions decided there. This is for the reason that the petitioners are an intermediate college and the provision of maintenance grant that they seek is one for their attached primary section. This was the subject matter of consideration in **Jai Ram Singh** in writ petitions marked as Group A. The policy regarding extension of maintenance grant to the attached primary section of a high school or intermediate institution, amongst others, as already said, was revised and embodied in the Government Order dated 27.10.2016 and this Government Order was the subject matter of challenge, besides another, in **Jai Ram Singh**. The Government Order dated 27.10.2016 (relevant part) reads:

"1. बेसिक शिक्षा विभाग के सर्व शिक्षा अभियान के तहत प्रदेश में 300 की आबादी तथा 01 किलोमीटर की दूरी पर नवीन प्राथमिक विद्यालय खोले जाने की नीति है। प्रदेश में 2055 बस्तियाँ ऐसी हैं, जहाँ निःशुल्क एवं अनिवार्य बाल शिक्षा अधिकार अधिनियम, 2009 के context में प्राथमिक विद्यालय उपलब्ध नहीं हैं। अतएव मात्र ऐसी बस्तियो में दिनांक 21-6-1973 के पूर्व से स्थापित सम्बद्ध प्राइमरी विद्यालयों के प्रस्ताव को ही अनुदान पर लिए जाने के सम्बन्ध में विचार किया जायेगा। इस तरह के विद्यालयों के प्रस्ताव पर निम्न प्रतिबंधो के तहत विचार किया जा सकेगा-

1.1 सम्बद्ध प्राइमरी विद्यालय की स्थाई मान्यता कक्षा-1 से 8 तक एक साथ प्रदान की गयी हो।

1.2 प्राइमरी कक्षाओं की सम्बद्धता का आदेश जिला विद्यालय निरीक्षक द्वारा दिनांक 21-6-1973 के पूर्व निर्गत किया गया हो।

1.3 सम्बद्ध प्राइमरी प्रभाग एक ही प्रधानाचार्य के नियंत्रण में हो और प्राइमरी कक्षाओं के लिए पृथक से प्रधानाध्यापक की नियुक्ति न की गयी हो।

1.4 प्राइमरी कक्षायें हाईस्कूल तथा इण्टर कक्षाओं के साथ एक ही प्रांगण में संचालित हो तथा एक ही प्रबंधतंत्र के नियंत्रण में हो।

1.5 कक्षा-5 उत्तीर्ण छात्रों को कक्षा-6 में बिना टी0सी0 के प्रवेश दिया जाता हो। प्राइमरी विभाग उच्चतर माध्यमिक विद्यालय/ इण्टर कालेज का अभिन्न अंग हो।"

18. One of the central issues, that were dealt with in **Jai Ram Singh**, was the importance of the order of attachment, and a fortiori the date of that order, *as a sine qua non* to the extension of grant-in-aid to the primary section of a high school or intermediate institution, or may be even a junior high school under the Government Order dated 27.10.2016. In answering the imperative of an authority of the Education Department, passing an order approving the attachment of a primary section to an existing high school or intermediate institution, or for that matter, a junior high school, and further, the date of that order made relevant under the revised policy carried in the Government Order dated 27.10.2016, this Court held in **Jai Ram Singh** thus:

"41. Before we proceed to deal with the primary questions of law which arise, it would be appropriate to briefly deal with the issue of attachment of primary sections as understood by the State and the orders that were passed in connection therewith.

42. The State prior to the passing of the 1972 Act [and in some cases even thereafter] passed formal orders recognising primary sections attached to junior high schools, high schools and intermediate colleges. These orders appear to have been passed taking note of the fact that these primary sections were operating from a common campus, under the control of a common management, administered by one Headmaster and a seamless progression of students from classes I to V to class VI and onwards.

43. On 21 June 1973, a Government Order was issued mandating that henceforth no orders of attachment would be passed. This order was essentially issued since by that time the Board had come to be established and various primary schools and institutions functioning till then under the control of local bodies came to be transferred and vested in the Board in accordance with the provisions of the 1972 Act.

44. While various orders of attachment evidently came to be passed even after the issuance of the 21 June 1973 order, we are really not concerned with the validity of those orders. The fundamental issue which needs to be considered is the character and the legal imperative of these orders existing in respect of an institution for it to claim the benefits of coverage under the 1971 and 1978 Acts.

45. At the very outset it needs to be stated that no statutory provision was referred to by the respondents to which these orders of attachment were traceable. The respondents also do not rely upon any provision, statutory or otherwise, in terms of which an order of attachment was liable to be made before the primary section could be accorded legal recognition of being an integral part of a larger institution.

46. Whether the various sections of an institution imparting education to different tiers of classes are integrated, fundamentally and on first principles, is an issue of fact. A primary section which is an

integral part of an institution, be it a junior high school, high school or intermediate college, would remain and be entitled to be recognised in law as such irrespective of an order of attachment made by the respondents. An institution would be entitled in law to be treated and viewed as one unit if its various components satisfy the tests propounded in Vinod Sharma I. This would not and cannot depend upon an order of attachment existing in this respect. An issue of whether an institution is "one unit" would have to be considered bearing in mind the determinative factors which were formulated in Vinod Sharma I and whether that institution has the requisite attributes of integrality. This would, as noted above, be an issue which would have to be tested on the anvil of the factors that were formulated in Vinod Sharma I in respect of each individual institution and in any case would not be dependent upon the existence or absence of an order of attachment.

47. In view of the above discussion, this Court is of the firm view that an order of attachment, whether made before or after the 21 June 1973 Government Order, cannot be determinative of the oneness of an institution. If the institution otherwise has the attributes as evolved in Vinod Sharma I it would be entitled to be considered and viewed as "one unit"."

(emphasis by Court)

19. The restrictions imposed, subject to which maintenance grant could be extended to the attached primary section of a high school or an intermediate institution, or for that matter, a junior high school, carried in Clauses 1, 1.1 and 1.2 of the Government Order dated 27.10.2016, were held to be arbitrary by this Court in **Jai Ram Singh** in terms of the following remarks:

"58. However, turning then to the further restrictions imposed by the State in the impugned policy document, the Court finds itself unable to hold in favour of the State or to sustain the restrictions as imposed. The restriction of grant being extended to only those institutions in these 2055 localities which had been established or an order of attachment made prior to 21 June 1973 appears to be wholly irrational. This Court has already held that the issue of attachment is clearly of no relevance since whether there exists composite integrality between a primary section and other components of an educational institution is essentially an issue of fact to be found and gathered in each individual case. The issuance of formal orders of attachment are also not traceable to any statutory power or obligation. If a primary section, therefore, has come to be accorded recognition post 21 June 1973 and otherwise meets the test of composite integrality then it clearly cannot be denied the benefits of grant in aid. The date of its attachment, be it prior to or post 21 June 1973 is not shown or established to have any rational nexus to the entitlement to grant in aid. Denial of financial aid to an institution which otherwise exists in these 2055 localities merely because the primary section came to be attached after 21 June 1973 is wholly arbitrary and unsustainable. Regard must also be had to the fact that this stipulation is evidently a reiteration of a condition which existed in the original policy document of 6 September 1989. The State has failed to justify the perpetuation of this condition after a lapse of three decades. In fact the imposition of this condition was faulted by a learned Judge of the Court in Committee of Management

Field Marshall General Manek Shaw Uchhatar Madhyamik Vidyalaya, Writ Petition No. 6241 of 1992 decided on 7 January 1993, in the following terms: -

"…..It is true that the Government by its letter dated 21.6.1973 has directed that primary sections of Higher Secondary institutions will not be permitted to be attached to them for payment of salary after the date of that letter, namely, 21.6.1973; but the Government itself by its letter dated 6.9.1989, granted such a recognition to 393 Higher Secondary institutions, whereby the benefits of the Act has been extended to the teachers and other employees working in primary sections of these institutions. As mentioned hereinabove, the primary section was attached to the college right from 1971 and there is no prohibition in any of the aforementioned Government orders against giving benefit of the Act to the primary section of the college. The basis on which the benefit of the Act has been denied to the primary section of the college, as such, cannot be sustained."

The aforesaid decision was affirmed by the Division Bench of the Court which dismissed Special Appeal No. 397 of 1993 filed by the Director of Education. Of more relevance, however, are the following observations as were made by the Supreme Court in Mata Tapeshwai Saraswati Vidya Mandir:-

"……It is by virtue of the amended provisions of Section 13-A that a class within a class was being sought to be created in perpetuity. The application of the 1978 Act only to educational institutions which received grant-in-aid prior to 30th June, 1984, has, in our view, been rightly held to be arbitrary by the High Court. Such provision is in violation of the equality clause enshrined in Article 14 of the Constitution.

26. If it was the intention of the State Government to extend the benefit of the grant-in-aid Scheme to 1000 unaided permanently recognized (A Class) Junior High Schools by its advertisement dated 9th September, 2006, then it would not be fair, as has been rightly held by the High Court, to exclude such unaided institutions which besides imparting education at the Junior High School level were also imparting education, either at the Primary or the Higher Secondary level, from the grant-in-aid scheme, inasmuch as, they too continued to have Junior High Schools imparting education for classes 6 to 8."

59. Similarly the stipulation in clause 1.1 which places a precondition of an eligible institution being one which had been granted permanent recognition to run classes I to VIII by a composite order is, in the considered view of this Court, wholly arbitrary. Undisputedly in numerous instances institutions in the State have come to be established in phases and over a period of time. The grant of recognition whether from classes VI to VIII in the first instance and addition of Classes I to V thereafter or vice versa cannot be said to be a rational basis for determining whether the institution should be accorded financial aid. Even if the primary section came to be established and recognised subsequently in a school which was originally imparting education to classes VI to VIII, the same cannot be a disqualification for grant in aid. As long as the institution is established to have composite integrality between its various components and tiers it would be eligible in law to be considered for grant in aid.

60. The condition imposed in the policy document that an order of attachment should have been passed prior to 21 June 1973 must also suffer the same fate. An institution is liable to be viewed as

one unit as long as it is established that its various components are a homogeneous whole. The issuance of a formal order of recognition of homogeneity cannot be treated as a pre condition. This quite apart from the fact that the cut off date of 21 June 1973 itself is of no consequence for reasons noted above.

61. On an overall conspectus of the aforesaid conclusions, the Court finds itself unable to sustain either the cut off date of 21 June 1973 as prescribed in paragraph 1 or conditions 1.1 and 1.2 of the Government Order of 27 October 2016. Similarly, the condition of a common campus must be understood in light of the observations made under Heading 'K'."

(emphasis by Court)

20. It must be remembered in this case that since the Institution is an intermediate college, the question of extension of grant-in-aid to its primary section, that is otherwise claimed to be an integral part of it, has to be decided under the provisions of the Act of 1971, and not the Uttar Pradesh Junior High Schools (Payment of Salaries of Teachers and other Employees) Act, 1978 (for short, 'the Act of 1978'). The position of law that a high school or an intermediate college, which is an institution governed by the Act of 1971, would be regarded as an integral whole and the teachers of its attached primary section, if part of that whole or as it is described in **Jai Ram Singh** a 'composite integrality', would entitle the teachers of the primary section to salaries paid out of the Exchequer under the Act of 1971, has led to the following remarks by this Court in **Jai Ram Singh**:

"76. The expression "institution" has been defined under this enactment to mean a recognised institution which is receiving a maintenance grant from the State Government. The word "recognition" is defined under the 1921 Act to mean recognition for the purposes of preparing candidates for admission to the examinations conducted by the Board. On a conjoint reading of these two provisions it would be evident that an institution is contemplated to be one which holds the requisite permission and authority to admit students desirous of taking the examinations conducted by the Board and is in receipt of a maintenance grant. Undisputedly primary sections in this batch which form part of a high school or intermediate institution are claimed to be an integral part of institutions which are receiving maintenance grant for the high school and intermediate sections and have also been authorised by the Board to admit students who seek to take the exams conducted by it. The issue essentially would be whether the mere fact that the primary sections of such institutions do not receive a maintenance grant would take them outside the ambit of the 1971 Act.

77. In the considered view of this Court, the expression "institution" as used in the 1971 Act is not liable to be understood or interpreted in the manner suggested. Firstly and on a consideration of the plain language as employed, any institution which is recognised and in receipt of maintenance grant is covered. It would, therefore, on fundamental principles be incorrect to deconstruct that provision by way of an interpretational exercise to mean that part of an institution which is in receipt of financial aid. Secondly the expression "institution" must be viewed as having been used in a compendious manner. This would clearly be reasonable and logical since merely because a particular component or section of the institution be not in receipt of financial aid,

would not detract from that institution otherwise being recognised and in receipt of a maintenance grant. Any other manner of interpretation would entail the provision being read as requiring all components and sections of that institution to be in receipt of aid independently in order to fall within the ambit of the statute.

78. It is not disputed that various privately managed high schools and intermediate colleges in receipt of a maintenance grant stand covered and have been extended the benefit of this legislation. If the argument advanced on behalf of the respondents were to be accepted, various privately managed high schools and intermediate colleges receiving a maintenance grant with attached primary sections which may not be in receipt of financial aid from the State may stand removed and exorcised from the 1971 Act.

79. Lastly and as has been held above, this Court is of the considered view that the word "institution" must necessarily be understood as an amalgam and a compound made up of various homogenous components. This path would be in line with the reasoning underlying Vinod Sharma I and III as well Pawan Kumar Dwivedi. Viewed from the above angles it is evident that merely because an unaided primary section attached to a high school or intermediate college which is recognised and in receipt of a maintenance grant, is not in receipt of financial aid from the State, it would not stand placed outside the scope and ambit of the 1971 Act. Any other construction would lead not only to an anomalous situation, it would lead to the statute itself being rendered discriminatory and unconstitutional. It was this very aspect which was frowned upon in Pawan Kumar Dwivedi albeit with reference to the provisions of the 1978 Act.

80. In light of the construction accorded to Section 2 (b) by the Court, it is manifest that a primary section which is a homogenous part of a recognised and aided high school or intermediate institution would fall within the ambit of the 1971 Act. Secondly such a primary section viewed in light of the principle of composite integrality as propounded herein above cannot be understood to be a separate or distinct component. It would, irrespective of the fact that it may not be in receipt of a maintenance grant, remain an integral component of that institution. The teachers of such a primary section cannot therefore be denied the protection of the 1971 Act."

(emphasis by Court)

21. The conclusions summarized in **Jai Ram Singh**, those that are relevant to the issue here, read:

"A. An order of attachment has not been established to have any statutory backing. At least no provision, statutory or otherwise, has been referred to evidence a legal imperative of such an order existing in favour of an institution as a pre condition for it being viewed as one unit.

B. Whether a particular institution fulfills the tests formulated in Vinod Sharma-I would be an issue of fact to be determined in respect of each individual institution. While an institution may be made up of various sections or compartments its oneness would have to be tested on the principles of composite integrality as evolved in this decision. In order to meet the test of composite integrality, it must be established that the institution exists as an amalgam of various components indelibly fused together to constitute a singular whole. The requirement of a common campus cannot

be recognised as a determinative factor. The issue of composite integrality would have to be answered upon a cumulative consideration of all relevant factors.

C. Clause 1 of the Government Order dated 27 October 2016 of the State restricting the grant of financial aid to 2055 localities which remain unserviced in the first instance is not found to be arbitrary or irrational. However, the further condition imposed alongwith the above stipulation and restricting financial aid only to such institutions in these localities which were established prior to 21 June 1973 is irrational and unsustainable.

D. Both Clauses 1.1 and 1.2 of the Government Order dated 27 October 2016 are liable to be struck down as being wholly perverse and violative of Article 14 of the Constitution.

E. Vinod Sharma-I, II, III and Pawan Kumar Dwivedi do not principally rest upon a construction of the provisions of the statutory enactments applicable. The core principle deducible from these decisions is that all teachers of an attached primary section which constitutes an integral and composite component of the institution as a whole cannot be discriminated against or denied the protection of the 1971 and 1978 Acts per se. These decisions recognised the rights of such teachers traceable to Article 14 of the Constitution.

F. The expression "institution" as defined under the 1971 Act does not exclude a primary section which meets the test of composite integrality with a High School or Intermediate college. The contention that the benefit of the 1971 Act can only apply if all sections of a composite institution are in receipt of financial aid is negated. Teachers of primary sections attached to High Schools and Intermediate colleges, notwithstanding the fact that the said section is not in receipt of financial aid, would be entitled to the benefit of the 1971 Act."

22. It would also be relevant in the context of the issue here to refer to the order that was made in **Jai Ram Singh**:

"94. Clause 1 of the Government Order dated 27 October 2016 to the extent of prescribing the cut off date of 21 June 1973 as well as Clauses 1.1 and 1.2 thereof are struck down as being as arbitrary and wholly irrational. The State shall in consequence revisit and reframe the impugned Policy in light of the observations made in this judgment. The orders of 13 July 2017 insofar as they defer reconsideration for a period of five years consequentially stand set aside to that extent.

95. Writ Petitions in Group A insofar as they relate to primary sections attached to recognised and aided high schools or intermediate colleges covered by the provisions of the 1971 Act cannot be denied the protection of that statute. The petitions in this group falling under the aforesaid class shall stand allowed. The State is consequently directed to bring teachers falling in this class within the ambit of the 1971 Act subject to the requisite exercise being undertaken to assess that they satisfy the test of composite integrality.

96. Writ Petitions in Group A relating to primary sections attached to junior high schools are not covered under the provisions of the 1978 Act. No relief can be granted to them in light of the 2017 Amendments. The petitions preferred at their instance shall stand disposed of subject to liberty being reserved to challenge the 2017 Amendments as

introduced in the 1972 and 1978 Acts, if so chosen and advised.

97. Writ Petitions falling in Group B are allowed. The State shall in consequence reconsider their claims for grant in aid in light of the policy that may be framed in light of the directions issued herein above.

While Writ Petitions falling in Group C to the extent that they assailed the Government Order dated 27 October 2016 are disposed of in light of the directions issued above, no further consequential relief can be granted presently in their favour in the absence of a challenge to the 2017 Amendments introduced in the 1972 and 1978 Acts. Their right to assail these amendments is preserved to be raised in independent proceedings. Similarly writ petitions falling in group 'D' stand disposed of insofar as the challenge to the impugned Government Orders are concerned. The unaided primary sections thereof cannot be granted any relief in the absence of a challenge to the 2017 Amending Acts. Their right to assail the same is preserved. The junior high schools in this group shall however be entitled to assert their claims afresh for grant in aid in light of the conclusions recorded in the body of the judgment."

23. The holding in sub-paragraphs A, B, C, D, E and F of the conclusions in **Jai Ram Singh** and the orders made with regard to the attached primary sections of recognized and aided high schools or intermediate colleges, do not spare a shadow of doubt that the attached primary section of an intermediate college, like the Institution, cannot be denied grant-in-aid, subject to satisfaction of the test of 'composite integrality'. The fact that the attached primary section of the Institution is an integral part of it, has not been seriously disputed by the respondents. Rather, it has not been disputed at all. In the day when the order of this Court was set aside by the Division Bench in Special Appeal Defective No.1193 of 2013, there was insistence by the State, almost with reverence about the cut-off date, on which permission was granted for attachment to the primary section of an institution, be it a high school or an intermediate college or a junior high school. The only difference in the policy carried in the Government Orders dated 06.09.1989 and 01.10.1989 on one hand, and the one carried in the Government Order dated 27.10.2016 on other, was that whereas under the Government Orders of 1989, the cut-off date for permitting attachment or more than that submitting compensation statements in regard to grant for the attached primary sections of intermediate colleges was 01.04.1971, under the Government Order dated 27.10.2016, the policy spelt out the date for passing an order of attachment as 21.06.1973.

24. There was a further requirement in the Government Orders of 1989 for granting permanent recognition to the attached primary section and Classes 1 to 8 together, which would virtually work out to a unified permission for the primary section and classes up to the 8th by a single order. This policy was also revised, as already noticed more than once, in terms of the Government Order dated 27.10.2016 pursuant to a command of the Division Bench of this Court in Special Appeal Defective No.994 of 2014, bearing in mind the great constitutional and seminal changes that had come about in consequence of introduction of a new and named fundamental right under Article 21-A of the Constitution, providing for a right to free and compulsory education to

children in the age-group of 6-14 years, the enactment of the Act of 2009 to give effect to the fundamental right and so on. But, the revised policy carried in the Government Order dated 27.10.2016 did no more than bring about cosmetic changes. It altered the cut-off date from 01.04.1971 to 21.06.1973, prior to which affiliation to the attached primary section ought have been granted to the primary section of an attached junior high school, high school or intermediate college. The condition regarding the attached primary section receiving permanent recognition from Classes 1 to 8 together or by a single order was also retained. The retention of these conditions about a cut-off date for grant of affiliation by the District Inspector of Schools and recognition for Classes 1 to 8 together by a single order was really an old wine in a new bottle. It did little to change and adjust to the measurably enlarged dimensions of the right to free and compulsory education for children in the age-group of 6-14 years, in consequence of introduction of Article 21-A in Chapter III of the Constitution, the enactment of the Act of 2009, and, above all, the way the right was linked to Article 14 of the Constitution by the holding of the Constitution Bench in **Pawan Kumar Divedi** *(supra)*. It was for these reasons and all others assigned in **Jai Ram Singh** that Clauses 1, 1.1 and 1.2 of the Government Order dated 27.10.2016 were struck down as arbitrary and irrational by this Court, and, more than that, what was emphasized by this Court was the concept of 'institutional integrality' of the attached primary section with the higher section or part of the institution to entitle the primary section to grant-in-aid under the Act of 1971. Indeed, the right of a child in the decisive age-group of 6-14 years would remain illusory if artifices, such as a cut-off date for the grant of affiliation or recognition by the District Inspector of Schools to the attached primary section, introduced through an executive order of the Government, were allowed to frustrate that right.

25. So far as the validity of principles laid down or the orders made in **Jai Ram Singh** are concerned, the same have attained finality with the Division Bench of this Court dismissing the two special appeals by the State against the said judgment, being Special Appeal Defective No.1135 of 2019 and Special Appeal Defective No.20 of 2020 vide common judgment and order dated 17.11.2020. The judgment has also been upheld, though not relevant for the purpose of issues involved in this petition, at the instance of teachers, not of attached primary sections of high schools or intermediate colleges, but primary schools or attached primary sections of junior high schools, who were not granted relief, though their rights were acknowledged. In substance, therefore, the law, that has been laid down by Yashwant Varma, J. in **Jai Ram Singh**, appears to be the settled position, contrary to which no binding authority of a later date, or a Larger Bench of our Court or the Supreme Court, has been brought to my notice.

26. Much to the contrary in the affidavits filed on behalf of the State on 19.04.2024, which is a personal affidavit of the Director of Education, U.P., it is averred that in compliance with the judgment and order of this Court passed in the present writ petition on 19.10.2012, since set aside in Special Appeal and following contempt proceedings, grant-in-aid to the attached primary section of the Institution was extended by the State Government by a Government Order dated

09.12.2014. The said Government Order carried a condition that the grant provided to the attached primary section of the Institution would be subject to final result of Special Appeal Defective No.1193 of 2013, that was preferred by the State Government and at the relevant time pending. It is then said in this affidavit that the Special Appeal came to be allowed with a remand to this Court to decide the writ petition afresh on parameters indicated with reference to the then operative policy of the State Government carried in the Government Orders of 1989. But, before the Special Appeal was decided, on 14.09.2017 a Division Bench of this Court in **Paripurna Nand Tripathi** issued directions to the State Government to revise its old policy of 1989 with regard to the extension of maintenance grant to the attached primary sections of junior high schools, high schools and intermediate institutions. Accordingly, the Government re-formulated their policy, which was embodied in the Government Order dated 27.10.2016. It then held field about how and on what parameters grant-in-aid was to be extended to the attached primary sections of intermediate colleges etc. This Government Order dated 27.10.2016, and a fortiori the revised policy, was struck down by this Court in **Jai Ram Singh**. It is fairly acknowledged in the affidavit filed by the Director of Education vide paragraph No.11 that the conditions mentioned in the Government Orders of 1989, marked (a) and (b) by the Division Bench in the order of remand, are no longer in existence, since the new and revised policy brought by the Government was struck down in the material part by this Court in **Jai Ram Singh**. Accordingly, the Government Order dated 09.12.2014, extending grant-in-aid to the Institution was amended on 15.03.2024 to delete that part of the order, which made the extension of maintenance grant to the attached primary section of the Institution, subject to the result of the Special Appeal. The Government Order dated 15.03.2024 has further directed that the grant extended by the Government Order dated 09.12.2014 would continue perpetually.

27. This Court is, therefore, of opinion that on the right to receive maintenance grant for the attached primary section of the Institution, the Government concede the position of 'composite integrality' as regards the attached primary section. The attached primary section of the Institution would, therefore, clearly be entitled to receive grant-in-aid already provided to them under the Government Order dated 09.12.2014, as amended on 15.03.2024. Since the right of children to receive free and compulsory education, who are in the age-group of 6-14 years, is ultimately the right, that is subject matter of action in this writ petition, we cannot permit the said right to depend upon the mere edifice of an executive order with its inherent vagaries of what is known as policy and the change of which is at times more unpredictable than the weather. The right involved here, which is one belonging to students in the age-group of 6-14 years, must stand on more firm footing. It would require the shadows of the impugned order to be annihilated by this Court out of existence. And, further, a command by us for the continued payment of the maintenance grant to the attached primary section of the Institution.

28. In the result, this writ petition succeeds and is **allowed.** The impugned order dated 17.11.2006 passed by the Director of Education (Secondary), Government of U.P., Lucknow is hereby **quashed**. A *mandamus* is issued to each of

the respondents to provide regular maintenance grant to the attached primary section of the Institution, under the Act of 1971, in the same manner as the high school and intermediate sections.

29. There shall be no order as to costs.

(2024) 9 ILRA 1530
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 26.09.2024

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE PRASHANT KUMAR, J.

Special Appeal No. 601 of 2024

Constable No. 118 Awadhes Kumar Pandey ...Appellant
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Appellant:
Balwant Singh

Counsel for the Respondents:
C.S.C.

A. Service Law – Departmental proceedings – Dismissal - U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 - Rule 14(1) - Whether the dismissal of petitioner from service pursuant to departmental enquiry was justified?

In a departmental enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials, which are legally probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. The essence of judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender or independence of judgment vitiate the conclusions reached, such finding even though of a domestic tribunal, cannot be held good. (Para 27)

(i) From brief analysis of the facts of the case, the alleged incident does not inspire confidence at all. The alleged incident is said to have happened at the petitioner's residence. In the departmental enquiry five witnesses were examined. Except Ram Nageena Singh, Sub Inspector, no other witnesses had directly or indirectly supported the occurrence as they were not eye-witnesses. The St.ment of Shri Ram Nageena Singh is also different in the departmental enquiry as well as in criminal trial. One thing is clear that he was not the eye witness of the alleged incident. (Para 26)

(ii) The other charge is of absence of two days from duty. **If the absence is due to compelling circumstances under which it is not possible to report or perform duty such absence cannot be held to be willful and employee cannot be held to be guilty of misconduct**. (Para 28)

In the instant case, neither Inquiry Officer nor Appellate Authority found absence of appellant willful. Evidence produced by the appellant to substantiate his claim was ignored by the authorities concerned and on the basis of irrelevant facts and surmises the petitioner was held guilty. (Para 29)

Since the charges on which the punishment was invoked even imposed are taken to be correct, what is now left at this belated stage to be considered and examined is, as to whether the punishment imposed was commensurate with the said charges or not. (Para 30)

B. Jurisdiction – Irrationality and perversity are recognised grounds of judicial review. The High Court normally does not interfere with the quantum of