forwarded to the Committee, but the same was returned only on the ground of delayed submission.

3. It is submitted by learned counsel for the petitioner that the petitioner being a widow, the authority ought to have taken a pragmatic view of the matter inasmuch as husband of the petitioner having died during treatment, the widow was badly shocked and could recover after sometime only.

4. From the perusal of the letter dated 17.12.2024, I find that the petitioner's claim for reimbursement has been returned only on the ground that it was not be submitted within 90 days period prescribed under the Rules.

5. In my considered view, if an employee has died during treatment, his wife/heirs should not be harassed for technical reasons. Such a rule that prescribes for submitting medical bills for reimbursement may at times be put to strict compliance where employee is alive but in case of heirs where employee has died during treatment, such rules should not be permitted to come in the way of reimbursement of genuine claims of medical bills. The provision is liable to be held directory in nature.

6. I may further observe that where an employee and his heirs are entitled to certain incidental benefits of service, delay can not be permitted to operate as bar by applying law of limitation. No provision is placed before this Court that claims for reimbursement after 90 days shall be liable to be rejected compulsorily. Thus reason given by the authorities in returning the medical bills, therefore as such, cannot be countenanced.

7. In view of what has been observed and held above, this Court hereby directs petitioner to submit again the medical bills before the Executive Engineer, Public Works Department, Raebareilly within a period of four weeks, and in the event medical bills are submitted as directed hereinabove, the concerned respondent, this time, shall clear the same as per relevant rules by taking appropriate decision within a period of two weeks from the date of presentation of medical reimbursement bills.

8. This petition stands **disposed of** as above.

(2025) 3 ILRA 286
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.03.2025

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE MS. NAND PRABHA SHUKLA, J.

Special Appeal No. 703 of 2024

State of U.P. & Ors. ...Appellants
Versus
Mahendra Paliwal & Anr. ...Respondents

Counsel for the Appellants:
S.C., Tej Bhanu Pandey

Counsel for the Respondents:
Kunal Shah, Prabhakar Awasthi, Shailendra Kumar Gupta

Civil Law – Allahabad High Court Rules, 1952 – Chapter VIII - Rule 5 - Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 – Rule 10 & 10(1) - Intra court Appeal – a sanctioned post of Assistant Teacher (English) fell vacant at Junior High School - The Committee of Management sought permission -

granted by the Basic Education Officer – Advertisement - recruitment initiated - candidates applied - after the selection process, name of the petitioner/respondent no. 1 was recommended by selection committee - The Basic Education Officer declined approval for the selection, citing non-compliance with Rule 10 of Rules, 1978 - The rule required the recommendation of three candidates, but only two names were forwarded - petitioner challenged this decision – writ allowed - application of Legal Maxims - "Doctrine of impossibility - *"Lex Non Cogit Ad Impossibilia"* (the law does not compel the impossible) and *"Nemo Tenetur Ad Impossibilia"* (no one is bound to do the impossible) - court finds that, - the rule is directory, not mandatory, and the Government Order in question was issued much after the Advertisement, therefore not applicable in the case, therefore, it was impossible for the Committee of Management to have sent the names of more than 3 candidates as only one candidate had turned up for the interview – held, the special appeal was dismissed as the earlier judgment had not been challenged, and the propositions of law laid down in it were accepted by the St. – hence, court upheld the validity of the selection process – appeal dismissed, accordingly. (Para – 11, 12, 13)

Appeal Dismissed. (E-11)

List of Cases cited:

1. Neelima Srivastava Vs St. of U.P. reported in AIR 2021 SC 3884 Nishith Rai v. St. of U.P.: (2018) 3 All.L.J. 683,

2. Smt. Rani Vs Deputy Director of Consolidation reported in 1959 RD 102 : AIR 1959 ALL 525,

3. St. of M.P. Vs Narmada Bachao Andolan & anr. reported in AIR 2011 SC 1989.

(Delivered by Hon'ble Siddhartha Varma, J.
&
Hon'ble Ms. Nand Prabha Shukla, J.)

1. When in the institution known by the name of the Junior High School, Sayer, Maudaha, District - Hamirpur, a sanctioned post of assistant teacher in the subject in English fell vacant, the Committee of Management had sought the permission of the Basic Education Officer to initiate the proceedings for recruitment on the said post. The permission for recruiting on the post of assistant teacher was granted vide order dated 18.5.2018. In pursuance thereof, advertisements were issued in newspapers having wide circulation on 23.5.2018. The petitioner/respondent no.1 along with other candidates applied for interview and after a due process of selection, the petitioner's name was recommended for selection vide recommendation dated 12.3.2019. The select committee, comprising the principal of the school, Manager of the Committee of Management of the Institution and the Block Education Officer, who was the nominee of the Basic Education Officer, had made the necessary recommendation. However, when the Basic Education Officer had declined on 23rd November, 2021, to grant the approval of the selection of the petitioner/respondent no.1 on the ground that the process of selection as was adopted by the Selection Committee was contrary to the provisions of Rule 10(1) of the Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978, (hereinafter referred to as "the Rules of 1978) stating that only two names were recommended in the panel of selected candidates by the Select Committee instead of 3 names as was mandatorily provided in the Rule 10 of the Rules of 1978, Writ – A No. 404 of 2022 (Mahendra Paliwal vs. State of U.P. & 4 others) was filed.

2. The procedure for selection is provided in Rule 10 (1) of the Rules of

1978 and since the learned counsel for the appellants took the Court through the Rule 10 of the Rules of 1978, it is being reproduced here as under:-

"10. Procedure for selection. *(1) The Selection Committee shall, after interviewing such candidates as appear before it on a date to be fixed by it in this behalf, of which due intimation shall be given to all the candidates, prepare a list containing as far as possible the names, in order of preference, of three candidates found to be suitable for appointment.*

(2) The list prepared under clause (1), shall also contain particulars regarding the date of birth, academic qualifications and teaching experience of the candidates and shall be signed by all the members of the Selection Committee.

(3) The Selection Committee shall, as soon as possible, forward such list, together with the minutes of the proceedings of the Committee to the management.

(4) The Manager shall within one week from the date of receipt of the papers under clause (3) send a copy of the list to the District Basic Education Officer.

(5) (i) If the District Basic Education Officer is satisfied that-

(a) the candidates recommended by the Selection Committee possess the minimum qualifications prescribed for the post;

(b) the procedure laid down in the rules for the selection of Headmaster or assistant teacher, as the case may be, has been followed he shall accord approval to the recommendations made by the Selection Committee and shall communicate his decision to the management within two weeks from the date of receipt of the papers under clause (4).

(ii) If the District Basic Education Officer is not satisfied as aforesaid, he shall return the papers to the management with the direction that the matter shall be reconsidered by the Selection Committee.

(iii) If the District Basic Education Officer does not communicate his decision within one month from the date of receipt of the papers under clause (4), he shall be deemed to have accorded approval to the recommendations made by the Selection Committee."

3. The writ petition i.e. Writ – A No. 404 of 2022 was after the exchange of affidavits allowed vide order dated 11.7.2022, whereby the order dated 23.11.2021 was quashed and a mandamus was issued to the District Basic Education Officer to revisit the issue pertaining to the grant of approval of the petitioner's selection. After the matter was remanded back, the Basic Education Officer once again decided the issue afresh and by an order dated 14.11.2022 once again disapproved the appointment as was made by the Committee of Management of the Institution. The petitioner again, therefore, filed Writ – A No. 19311 of 2023 challenging the order dated 14.11.2022. When that writ petition on 10.1.2024 was allowed, the instant Special Appeal has been filed by the State of U.P. and others essentially on the following two grounds:-

i. As per the Rule 10 of the Rules of 1978, the Selection Committee after

interviewing the candidates who had appeared before it had to intimate the District Basic Education Officer by means of a select list which had to contain as far as possible, in order of preference, the names of three candidates who were found to be suitable for the appointment on the vacant post.

Learned Standing Counsel who appeared for the appellants stated that the language of the Rule 10 of the Rules of 1978 was mandatory in nature and that if less than three names were sent then it would nullify the entire selection process.

ii. Learned counsel for the appellants Sri Tej Bhanu Pandey also submitted that as per the Government order dated 31.10.2019 since the entire process had undergone a change, the appointment as was made vis-a-vis the advertisement dated 23.5.2018 could not be sustained in the eyes of law.

4. Learned counsel appearing for the petitioner respondent Sri Kunal Shah, however, opposed the Special Appeal and supported the order of the learned Single Judge. He submitted that the Special Appeal was not at all maintainable as earlier the High Court had, vide order dated 11.7.2022, already held that there was no error in the procedure adopted by the respondents in the writ petition. It was held by the High Court that when only two names were available with the Selection Committee then despite their best efforts "three names" could not have been sent and, therefore, he had submitted that the respondents in the Writ Petition once when had accepted the judgment and order of the High Court dated 11.7.2022 and had not filed any Special Appeal etc. against it and had also not filed any Appeal before the Supreme Court then it was evident that the State - Appellant which was the State of U.P. had accepted the order of the learned Single Judge along with all the propositions of law as were laid down therein by it. He submits that in the judgment and order of the learned Single Judge dated 11.7.2022 it was categorically held that the provisions of Rule 10 of the Rules of 1978 were directory in nature and not mandatory and since on the date fixed for interview out of 7 candidates who had applied for selection when only two candidates had appeared including the petitioner then as per the Rule 10(1) of the Rules 1978, the Selection Committee could have forwarded the names of only two candidates who had appeared for the interview before the Selection Committee. He submits, therefore, that the concept of 'as far as possible' stood fulfilled in the said selection process with the recommendation of the names of the two candidates.

5. Learned counsel for the appellants to bolster his argument that the appellant had forfeited his right to file the appeal after it had accepted the judgement and order of the learned Single Judge dated 11.7.2022 passed in Writ – A No. 404 of 2022, relied upon a judgement of the Supreme Court in **Neelima Srivastava vs. State of U.P.** reported in **AIR 2021 SC 3884** and specifically relied upon paragraphs no. 31, 32, 33, 34, 35 and 36 and therefore the same are being reproduced here as under:

"31. The Division Bench of the High Court proceeded as if it was hearing an appeal against the judgment dated 23-1-2006 [Neelima Srivastava v. State of U.P., WP (SS) No. 7890 of 2003, order dated 23-1-2006 (All)] of the learned Single Judge which had already attained finality. The

appeal filed under the Rules of the Court was filed against the judgment dated 15-5-2014 rendered in Neelima Srivastava v. State of U.P. [Neelima Srivastava v. State of U.P., 2014 SCC OnLine All 16618] It is a well-settled principle of law that a letters patent appeal which is in continuation of a writ petition cannot be filed collaterally to set aside the judgment of the same High Court rendered in an earlier round of litigation ignoring the principles of res judicata and doctrine of finality.

32. By a majority, the decision in Naresh Shridhar Mirajkar v. State of Maharashtra [Naresh Shridhar Mirajkar v. State of Maharashtra, 1966 SCC OnLine SC 10 : AIR 1967 SC 1] has laid down the law in this regard as under : (AIR p. 11, para 38)

"38. ... When a Judge deals with matters brought before him for his adjudication, he first decides questions, of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate court."

33. In Rupa Ashok Hurra v. Ashok Hurra [Rupa Ashok Hurra v. Ashok Hurra, (1999) 2 SCC 103] , while dealing with an identical issue this Court held that reconsideration of the judgment of this Court which has attained finality is not normally permissible. The decision upon a question of law rendered by this Court was conclusive and would bind the Court in subsequent cases. The Court cannot sit in appeal against its own judgment.

34. In Union of India v. S.P. Sharma [Union of India v. S.P. Sharma, (2014) 6 SCC 351] , a three-Judge Bench of this Court has held as under : (SCC p. 389, para 76)

"76. A decision rendered by a competent court cannot be challenged in collateral proceedings for the reason that if it is permitted to do so there would be 'confusion and chaos and the finality of proceedings would cease to have any meaning'."

35. Thus, it is very well-settled that it is not permissible for the parties to reopen the concluded judgments of the court as the same may not only tantamount to an abuse of the process of the court but would have far-reaching adverse effect on the administration of justice.

36. It is undisputed that in compliance of the judgment of the learned Single Judge dated 15-5-2014 [Neelima Srivastava v. State of U.P., 2014 SCC OnLine All 16618] vide order dated 31-10-2015 the respondents regularised the services of the appellant subject to the outcome of the proceedings in the LPA and the appellant now stands superannuated having attained the age of superannuation after about 33 years of continuous service."

6. Additionally, learned counsel for the respondents submitted that the words "as far as possible" as had been used in Rule 10 of the Rules, 1978, definitely could not specifically mandate the Selection Committee to abandon the Selection if on

the date fixed for interview only two candidates had appeared when 7 candidates had been intimated to appear before the selection committee.

7. Learned counsel for the petitioner-respondents states that the words "as far as possible" would mean that the Selection Committee had to stick to the principle of sending of three names unless it was impossible to send the names of three candidates. In the instant case, learned counsel submitted that since out of 7 persons who had been called for the interview only two had appeared to face the interview then it was impossible for the Selection Committee to send the names of three or more persons. Learned counsel for the petitioner-respondents relied upon a judgement of this Court in **Smt. Rani vs. Deputy Director of Consolidation reported in 1959 RD 102 : AIR 1959 ALL 525** to support this proposition of law. The relevant portion of that judgement is being reproduced here as under:-

*" It is true that each one of the sections contains the qualifying words "as far as possible". **This phrase really means that the principles are to be observed unless it is not possible to follow them in the particular circumstances of a case**. This qualification was absolutely necessary in view of the fact that the process of compulsory consolidation is a very difficult and complicated one in the peculiar conditions prevailing in this State. Fragmentation of holdings has, through a process of centuries, reached such a stage that there is no straight road back towards consolidation. What can be done in one village may not be possible in another. Therefore, in view of the fact that consolidation is a pressing necessity, it was necessary to add these qualifying words. "*

8. Learned counsel for the petitioner-respondent also elaborated on the concept of "lex non cogit ad impossibilia" meaning that the law does not compel a man to do what he cannot possibly perform and also relied upon the maxim "impossibillium nulla obligatio est" (the law does not expect a party to do the impossible). He still further relied upon the maxim "Nemo Tenetur ad Impossibilia" meaning that no one is bound to do an impossibility. By bringing to the notice of the Court the three maxims, learned counsel for the petitioner-respondent essentially submitted that the three maxims were such which meant that the Selection Committee when had called for 7 candidates for interview and when only two appeared then it was absolutely impossible to have sent more than two names.

9. In this regard, learned counsel for the petitioner also relied upon a judgement of the Supreme Court in **State of Madhya Pradesh vs. Narmada Bachao Andolan and another** reported in **AIR 2011 SC 1989**. From this judgment of the Supreme Court, learned counsel for the petitioner relied upon heavily on paragraphs no. 36, 38 and 39. The same are being reproduced here as under:

"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 Iyarkkai Padukappu Maiyam v. Union of India

[(2009) 7 SCC 561] and State of Kerala v. Peoples Union for Civil Liberties [(2009) 8 SCC 46] .)

*"**As far as possible"***

***38.** The aforesaid phrase provides for flexibility, clothing the authority concerned with powers to meet special situations where the normal process of resolution cannot flow smoothly. The aforesaid phrase can be interpreted as not being prohibitory in nature. The said words rather connote a discretion vested in the prescribed authority. It is thus discretion and not compulsion. There is no hard-and-fast rule in this regard as these words give a discretion to the authority concerned. Once the authority exercises its discretion, the court should not interfere with the said discretion/decision unless it is found to be palpably arbitrary. (Vide Iridium India Telecom Ltd. v. Motorola Inc. [(2005) 2 SCC 145 : AIR 2005 SC 514] and High Court of Judicature for Rajasthan v. Veena Verma [(2009) 14 SCC 734 : (2010) 1 SCC (L&S) 452 : AIR 2009 SC 2938] .) Thus, it is evident that this phrase simply means that the principles are to be observed unless it is not possible to follow the same in the particular circumstances of a case.*

"Doctrine of impossibility"

***39.** The court has to consider and understand the scope of application of the doctrines of lex non cogit ad impossibilia (the law does not compel a man to do what he cannot possibly perform); impossibilium nulla obligatio est (the law does not expect a party to do the impossible); and impotentia excusat legem in the qualified sense that there is a necessary or invincible disability to perform the mandatory part of the law or to forbear the prohibitory. These maxims are akin to the maxim of Roman law nemo tenetur ad impossibilia (no one is bound to do an impossibility) which is derived from common sense and natural equity and has been adopted and applied in law from time immemorial. Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. (Vide Chandra Kishore Jha v. Mahavir Prasad [(1999) 8 SCC 266 : AIR 1999 SC 3558], Hira Tikkoo v. UT, Chandigarh [(2004) 6 SCC 765 : AIR 2004 SC 3649] and HUDA v. Dr. Babeswar Kanhar [(2005) 1 SCC 191 : AIR 2005 SC 1491"].*

10. So far as the second argument of the appellants that there was a Government Order dated 31.10.2019 which had absolutely changed the method of appointment, learned counsel for the petitioner states that while the Writ - A No. 404 of 2022 was being argued, the State had given up that ground. The relevant paragraph stating so is being reproduced here as under:-

"*Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, it is evident that the respondents have given up the ground that the selection process was not in accordance with government order dated 31st October, 2019. Moreover it is settled proposition of law that any administrative of government order issue would be applicable only prospectively until and unless specifically made retrospective. In the present case since the advertisement was issued on 23rd*

May, 2018, the respondents have rightly given up the aforesaid proposition."

11. Learned counsel for the petitioner-respondent states that even if that argument had not been given up, definitely the advertisement was made on 23.5.2018 and it was much before the date "31.10.2019" that the selection process was initiated. He also submitted that an administrative government order could only be prospectively applied unless it was specifically made retrospective. In this case, learned counsel for the petitioner-respondent submitted that the Government Order was issued much after the advertisement and, therefore, under no circumstance was the Government Order applicable in the instant case.

12. Having heard the learned counsel for the appellants and the learned counsel for the respondent-petitioners, we are definitely of the view that when the advertisement was published on 23.5.2018 then the Government Order issued on 31.10.2019 could not have any effect on the appointment process. What is more, we find that the State had when the Writ A No. 404 of 2022 was being argued surrendered this argument of theirs. So far as the question with regard to there being three names in the list which had to be sent by the Selection Committee as per the Rule 10 of the Rules of 1978 was there, suffice it to say that on the relevant date of interview, out of 7 candidates who had been called only two had appeared and, therefore, nobody under any law could have compelled the Selection Committee to do an impossible thing and that was to include a 3rd name. The maxim "lex non cogit ad impossibilia" and "Nemo Tenetur ad Impossibilia" applied on all fours in the instant case. Also, we are of the view that when the proposition of law as had been laid down in the judgment and order dated11.7.2022 in Writ – A No. 404 of 2022 had not been assailed in any court of law then that proposition could not be challenged in this Special Appeal. We, therefore, categorically hold that the instant special appeal was not maintainable at all.

13. We also hold that it was impossible for the Committee of Management to have sent the names of more than 3 candidates as only one candidate had turned up for the interview. That being the case, we are definitely of the view that there is no merit in the special appeal and it is accordingly dismissed. No interference is warranted in the order dated 10.1.2022 and it is accordingly upheld.

(2025) 3 ILRA 293
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 12.03.2025

BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE KSHITIJ SHAILENDRA, J.

Special Appeal No. 996 of 2024

Registrar Mahatma Jyotibha Phule Rohilkhand University, Bareilly & Anr. ...Appellants

Versus

Firoz Ahmad & Ors. ...Respondents

Counsel for the Appellants:
Shambhavi Tiwari for Rohit Pandey

Counsel for the Respondents:
Vijeta Singh, Alok Shukla, C.S.C.

Civil Law – Allahabad High Court Rules, 1952 – Chapter VIII - Rule 5 - U.P. St. University Act, 1973 - Chapter IV - Sections 13(1)(e), 16(4) & 51- Mahatma