Vipin Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: May 31, 2013

Acts Referred: Constitution of India, 1950 â€" Article 162, 30, 309

Citation: (2013) 7 ADJ 274 : (2014) 1 UPLBEC 168

Hon'ble Judges: A.P. Sahi, J

Bench: Single Bench

Advocate: Rahul Mishra and Abhishek Mishra and Neeraj, for the Appellant;

Final Decision: Allowed

Judgement

A.P. Sahi, J.
The petitioner claims appointment as a Sweeper in an Intermediate College, namely, Shri Jawahar Inter College, Bamnauli,

District Baghpat which is an institution governed by the provisions of the U.P. Intermediate Education Act, 1921 and the Regulations framed

thereunder. The power of the head of the institution, namely, the Principal/Head-Master to appoint a Class IV employee in an Intermediate

College is provided for under Chapter I Regulation 10 read with Chapter III Regulation 100 of the regulations framed under the U.P. Intermediate

Education Act, 1921.

2. The power to frame regulations vests with the Board as defined u/s 3 of the Act and the word regulations have been defined u/s 2(e) of the Act.

The State Government, however, has powers to modify, rescind or issue any orders in relation to such regulations as per Section 9(4) of the 1921

Act read with Section 2(f) thereof.

3. Thus the powers of the Board that are defined u/s 7 of the Act empowering it to frame regulations is controlled by the State Government u/s

9(4) of the 1921 Act.

4. The authority to frame regulations with regard to service conditions has been conferred u/s 16-G of the 1921 Act which provides for framing of

regulations for service conditions of the Head of the Institution, Teachers and other employees.

5. The dispute in the present writ petition is with regard to the refusal by the District Inspector of Schools to grant approval to the appointment of a

Class IV employee by the impugned order dated 21.5.2013 on the ground that firstly the institution/appointing authority has not taken any prior

permission from the District Inspector of Schools as required under Regulation 101 of Chapter III. The second ground taken is that in view of the

Government Order dated 12.1.2011, no appointment against Class IV posts can be made any further except by outsourcing and the third ground

of rejection is that there is a complete ban on making appointments under the Government Order dated 15.3.2012.

6. Learned counsel for the petitioner Sri Rahul Mishra contends that the first ground taken for refusing to grant approval that no prior permission

was taken is absolutely incorrect. The order has been passed in violation of principles of natural justice without adhering to the fact that the post for

which appointment was being made was that of a Sweeper and no such prior permission was required. Secondly the intimation for seeking

permission was sent on 13.3.2013 by the Principal of the Institution who is the appointing authority of Class IV employees. A copy of the said

application is Annexure 2 and a reminder is Annexure 3.

7. Advertisement was issued thereafter in Hindi Daily Newspaper Hindustan and Janwani that have wide circulation. An interview was fixed on

5.5.2013 and before interview a request was made to the District Inspector of Schools for sending a nominee through letter dated 26.4.2013. The

request was also made to the District Employment Officer for sending his representative on 18.4.2013. It is also stated that the Employment

Exchange had also provided a list of candidates on 20.4.2013 who were also invited to attend the interview.

8. The selections were held on 5th May, 2013 and the Selection Committee submitted its proceeding to the Principal. The Selection Committee

was comprised of all sections of the society including one Mr. Sanjay Kumar a representative of the Scheduled Caste Category. The entire papers

were forwarded to the District Inspector of Schools who has now passed the impugned order.

9. The contention of Sri Mishra is that the impugned order is without any notice or opportunity to the petitioner and therefore the same is in

violation of principles of natural justice. He submits that had the District Inspector of Schools sought any further clarification or information, the

same could have been explained, but the District Inspector of Schools has simply refused to grant approval without investigating the aforesaid

facts, and therefore the impugned order deserves to be set aside.

10. Sri Mishra relying on the decision in the case of Surendra Singh Thakur (In Jail) Vs. State of U.P. , has urged that the law relating to grant of

prior permission and prior approval has been explained therein which has not been noticed by the District Inspector of Schools and therefore he

has arrived at a wrong conclusion. The District Inspector of Schools has also not taken care of the fact that this appointment was on the post of a

Sweeper.

11. The second ground of challenge is that the Government Order dated 12.1.2011 has already been quashed by the Court in the case of

Committee of Management, Lala Babu Baijal Memorial Inter College, Lodipur, Ghaziabad and Another Vs. State of U.P. and Others, , where it

has been held that the said Government Order would not apply to Class IV appointments in Intermediate Colleges.

12. Thirdly that the entire procedure as required under Rules had been followed and reference has been made to the Division Bench judgment in

the case of Rajiv Kumar and Others Vs. State of U.P. and Others, .

13. Learned counsel has further invited the attention of the Court to the decision in the case of Committee of Management and another v. The

State of U.P. and others, writ petition No. 24401 of 2013 decided on 1.5.2013.

14. In view of the decisions that have been cited hereinabove and reliance placed, the petition could have been disposed of on the strength of the

aforesaid decisions but it has become necessary to explain further reasons to support the view taken in the judgment dated 1.5.2013 in writ

petition No. 24401 of 2013.

15. I have also heard Sri A.K. Yadav, learned Standing Counsel and in view of the legal propositions that are involved, I do not find it necessary

to wait for any filing of further affidavits as the facts are not in dispute.

16. Learned Standing Counsel Sri Yadav contends that the ban dated 15.3.2012 imposed by the State Government is valid and that the State

Government is empowered to do so u/s 9(4) of the Act. He has justified the exercise of such powers in terms of the judgements that have been

referred to at the bar. He submits that the power being available the State Government is empowered to do so. There is no occasion to interfere

with the impugned order.

17. He further submits that since there was no prior permission of the District Inspector of Schools, the selection of the petitioner could not have

been proceeded with. He further submits that a special appeal has been filed against the judgment in the case of Committee of Management, Lala

Babu Baijal Memorial Inter College (supra) which is pending and therefore the said decision is not final.

18. He further submits that the judgment in the case of Rajiv Kumar (supra) as relied upon by the learned counsel for the petitioner has already

been referred to a larger bench by another division bench vide order dated 11.2.2011 in writ petition No. 55874 of 2009 Harpal Singh v. State of

U.P. and others, and other connected petitions, and as such the correctness of the said decision having been doubted, the same would have a

reflection on the procedure part of the selection of a Class IV employee as well. He submits that the procedure for such selection and appointment

has to be in consonance with the Uttar Pradesh, Group ""D"" Employees (First Amendment) Rules, 1986, which according to him have been

enforced on institutions through an executive instruction and therefore the same has to be complied with. Having not done so, the selections are

invalid.

19. He has further placed reliance on the order of reference dated 17.9.2010 to support the aforesaid submission rendered by another division

bench of this Court in writ petition No. 1199 of 2003, Jawahar Lal and another v. Deputy Director of Education (Madhyamik) Vindhyachal

Region, Mirzapur and others.

20. It is for this reason and the arguments advanced that the aforesaid aspects have to be considered in order to justify the conclusion drawn in the

judgment dated 1.5.2013 in writ petition No. 24401 of 2013. It may be relevant to point out that the said decision was in relation to a Class III

post but the reasoning adopted in the case of Committee of Management, Lala Babu Baijal Memorial Inter College and another (supra) was for a

Class IV post.

21. Before answering the arguments that have been advanced by the learned Standing Counsel, it would be appropriate to sketch the brief

background in which the entire controversy has to be reviewed.

22. A division bench of this Court was called upon to consider the application of a Government order in relation to reservation to Intermediate

College, which are autonomous institutions, privately managed and aided under the 1921 Act. It was ultimately held that the said Government

order would apply perforce of the provisions of Section 9(4) of the U.P. Intermediate Education Act, 1921. The said decision in the case of

Krishna Pal Singh v. State of U.P., 1981 UPLBEC 521.

23. The next dispute that came before this Court was in relation to another temporary ban imposed by the State Government through a telex

message for appointment of teachers in such schools that were governed by the 1921 Act. In view of the impending legislation that was introduced

for taking away the power of selection and appointment from the management of institutions, and placing it into the hands of a regular selecting

body, namely, the Secondary Education Service Selection Board, the ban was introduced. It may be mentioned that the said provisions came into

force through the U.P. Secondary Education Service Selection Boards Act, 1982 immediately thereafter. Since the bill was pending clearance

therefore in order to forestall any designs of the management to hurriedly fill up vacant posts, a temporary ban was imposed which came to be

challenged before this Court on the ground that the State Government had no power to impose ban on appointments in relation to teachers as it

was a necessary function under the 1921 Act. The challenge was that no Government order could issue to forestall the process of selection and

appointment as that would amount to injuncting the provisions of law itself from operation. This Court after having traced the power to Section

9(4) came to the conclusion that such a power is available and that it was only for a temporary interregnum period keeping in view the legislation

that was about to be introduced. Accordingly, this Court upheld the imposition of a temporary ban in relation to appointment of teachers and

justified the exercise of such powers u/s 9(4) of the 1921 Act in the case of Dr. Ramji Dwivedi v. State of U.P., 1982 UPLBEC 137.

24. This Court again was faced with a similar situation when certain transitional provisions were sought to be introduced and in the case of Km.

Prabhawati Dixxt v. U.P. Madhyamik Shiksha Sewa Ayog, Allahabad, (1992) 1 UPLBEC 582, it was held that such a ban was not applicable but

the aforesaid view was reversed by a larger bench in the case of Durgesh Kumari v. State of U.P., 1995 (3) UPLBEC 1387, where again it was

held that it was a temporary ban only during the transitional period and as such the power could be exercised u/s 9(4) of the Act.

25. The aforesaid three decisions therefore are an indicator in respect of the powers of the State Government to regulate in matters relating to

services of employees of Intermediate College governed by the 1921 Act.

26. In the background aforesaid comes the decision in the case of Rajiv Kumar (supra) where also the power of the State Government u/s 9(4) of

the Act was sought to be relied upon by the issuance of a Government order dated 11.5.2001 whereby in matters relating to Class IV employees

of Intermediate College, the State Government had taken a stand that the Uttar Pradesh, Group ""D"" Employees (First Amendment) Rules, 1986

had been adopted. The said division bench judgment in the case of Rajiv Kumar (supra) held that the said communication dated 11.5.2001 was

not a Government order and the State Government also filed an affidavit therein through the Secretary, Secondary Education admitting that it was

not a Government order u/s 9(4) of the 1921 Act and that it had no sanction of the Governor. Consequently, the view taken by the division bench

in two cases, namely, Principal, Adarsh Inter College, Umari Bijnor v. State of U.P. and others, 2010 (1) ADJ 403, 2010 (1) ESC 563, as upheld

by the division bench in a special appeal decided on 3.12.2009, and the division bench answering a reference in the case of Jawahar Lal and

others v. Deputy Director of Education and others, 2010 (10) ADJ 313, was not followed for reasons detailed therein. The judgment in the case

of Rajiv Kumar (supra) is in detail tracing the entire history of the claim of the status of the communication dated 11.5.2001 and ultimately holding

that it was not a Government order so as to apply 1986 Rules, that relates to Government servants only. It would not govern the selection of Class

IV employees of Intermediate Colleges as explained in the judgment of Smt. Shikha and others v. State of U.P. and others, 2008 (4) ADJ 573,

that was approved.

27. This dispute travelled further in the case of Harpal Singh v. State, which has now been referred to a larger bench in view of the decision in the

case of Jawahar Lal (supra). The bench faced with the judgment in the case of Rajiv Kumar (supra) which had distinguished the judgment in the

case of Jawahar Lal (supra) has made a reference to a larger bench vide order dated 11.2.2011 and the same has now been nominated by

Hon''ble the Chief Justice to be resolved by a full bench of three Hon''ble Judges vide order dated 7.3.2011. The said reference has not been

answered as yet and consequently the decision in the case of Rajiv Kumar (supra) still holds the field.

28. In the aforesaid background it has to be seen as to whether a ban can be imposed flatly in relation to appointments of Class IV employees in

Intermediate Colleges.

29. At the very outset a distinction with regard to the status of such service has to be explained, namely, that every institution privately managed

and aided institution under the 1921 Act is a separate entity and has its own autonomous status to the extent of the regulations by which it is

governed. The appointing authority of a Class IV employee is the Principal of the Institution. Thus every institution has a different appointing

authority may be with the same designation and powers. This is not a centralised service and except in the case of compassionate appointment,

where the District Inspector of Schools has been given the authority to appoint any such claimant in any institution of the district, the appointment of

a class IV employee has to be made by the Principal.

30. There are many institutions where there are very few Class IV employees and Peons. The present is a case relating to the appointment of a

Sweeper which is a necessity for the institution. Apart from this, it would be appropriate to mention the norms prescribed by the State Government

itself defining the strength of Class IV employees in an institution. This Government order dated 24.10.1977 entails the number of Class IV posts

for different purposes for example a Library, a Laboratory, a Daftari, a Sweeper, a Gardener, a Helper if the institution has a section in agricultural

and the like. The functions of such Class IV employees are therefore clearly indicated by virtue of their designation as contained in the aforesaid

Government order. The process of education of the children of Secondary Schools therefore has to progress not only through the teachers who

are to be appointed but also the ministerial and menial staff of the institution. A school therefore cannot do without the minimum of the Class IV

employees as per norms of the State Government itself. For example, if there is no Sweeper, one can will imagine the filth, dirt and unhealthy

conditions including that of a toilet of a Secondary School that ordinarily has a strength of not less than five hundred students.

31. The State Government has imposed a ban on all appointments by the following Government order dated 15.3.2012:

32. It appears that the State Government realized the implications thereafter and immediately issued another Government order on 23th May,

2012 exempting the appointments of teachers in all Higher Secondary Schools which is quoted herein under:

33. It is thus clear that the State Government in relation to teachers has taken a clear stand and has withdrawn the Government Order declaring it

to be inapplicable in respect of such appointments. This must have been done in view of the paramount nature of the job of teachers as a ban on

appointment of teachers would put the entire educational system in jeopardy. The State rightly did so as to impart education is its sovereign

function. The U.P. Intermediate Education Act, 1921 has been framed by the State Legislature and falls within the concurrent list of Entry 25 (List

3) in the 7th Schedule to the Constitution of India. Thus the importance of service regulations of teachers and other employees of educational

institutions stands on a different pedestal then Government servants whose rules and regulations are governed by the provisions of Article 309 of

the Constitution of India.

34. The ban which has been imposed therefore appears to be in relation to service matters throughout the State which has in its background Article

309 of the Constitution of India. However, the said Government order dated 15.3.2012 does not specify its applicability in terms of Section 9(4)

of the 1921 Act. The question is, can such a Government order be read as a ban to be employed flatly in the institutions thereby forestalling of

appointments of Class IV employees. As stated hereinabove, it is not only the role of teachers which is important, but it is equally important to

have some permanent Class III and Class IV employees in an educational institution. It is for this reason that the norms provided for in the

Government order of 1977 deserves reference.

35. A perusal thereof would indicate that at the High School Level a provision for 10 Class IV employees has been made coupled with the

additional Class HI employees, and in addition thereto 7 Class IV employees are provided for at the Intermediate level subject to the number of

students and the courses of study that are being pursued. The number has to be adjusted accordingly keeping in view the requirement of the

institution.

36. The norms therefore fixed have to be observed for the purpose of running an institution. The idea of placing a ban that too even a complete ban

in respect of Intermediate Colleges therefore does not appear to be reflected in the Government order dated 15.3.2012.

37. The decisions relating to temporary ban imposed for appointment of teachers in the case of Dr. Ramji Dwivedi v. State of U.P., 1982

UPLBEC 137 and the decision in the case of Durgesh Kumari (supra) therefore has to be read in that context where the State Government found

justification for placing only a temporary ban keeping in view the new legislation that was to be introduced. Here there is no such occasion or any

reason given in the Government order dated 15.3.2012. No other legislation or any such provision has been pointed out that may be contemplated

so as to justify such a ban.

38. Such an absolute prohibitory ban therefore becomes inconsistent with the mandate of the 1921 Act that contemplates institutions running

continuously to impart education. The forbidding by way of a proclamation, amounts forfeiture of the powers that are conferred for a specific

purpose under the Act. The ban therefore works against the provisions under the 1921 Act and the Regulations framed thereunder. This sort of

prevention or a bar on a permanent basis is therefore not comprehended and would be inconsistent with the object and purpose of the Act. It

cannot be presumed that the Government order stands adopted by way of reference which in the case of teachers has already been clarified and

lifted as noted hereinabove. This compulsion, which is driving institutions to a wall, is placing the institution in a helpless situation where it is unable

to resist the said ban and is being driven to do something which otherwise is a necessity for the institution.

39. In the opinion of the Court, had the State Government applied its mind to these aspects it was quite possible that it could have issued a

clarification as has been done in the case of teachers vide Government order dated 23.5.2012. It is for this additional reason that I find myself in

complete agreement with the view expressed by the learned Single Judge in Committee of Management, Lala Babu Baijal Memorial Inter College

(supra) which reasoning is also applies in respect of this direct ban said to have been imposed by the State Government.

40. It can be said that the State Government by way of a policy decision has proceeded to do so. A question is that can a policy be adopted to

stop the discharge of statutory duties as well which is the obligation of the State under the discharge of its sovereign functions. Education being

undoubtedly a sovereign function, the running of educational institutions without any impediment and with reasonable regulations is the obligation of

the State. There cannot be a closure of institutions or shutting down of such colleges that are imparting secondary education. The State

Government cannot sweep all employees with the same broom as all grains do not have the same weight. The manner of ban cannot be such as if it

is a declaration of a lay off in an industrial unit. It is like a ""sovereign firman"" for which no reasons are discernible in the Government order dated

15.3.2012. The Court may not enter upon the reasonableness of such subordinate legislation but at the same time if the same appears to be not in

consonance with a legislated act, the same cannot be supported in law. No amendments have been brought about either in the Act or the

Regulations as per the procedure provided for. The question is can such an executive instruction in the shape of a Government order be traced

back to the provisions of Section 9(4) of the Act.

41. In the background as indicated hereinabove there does not appear to be any application of mind by the State Government and which fact

becomes more obvious when the State Government itself in respect of teachers immediately withdrew the said ban. The same logic applies to the

other employees as well and it is for this reason that the Court in the case of Committee of Management v. State of U.P., writ petition No. 24401

of 2013 held that the ban would not apply in relation to Class III appointments in an Intermediate College governed by the 1921 Act.

42. For the reasons aforesaid and the fact that the service conditions of Class IV employees are not governed under any rule framed under Article

309 of the Constitution of India, the ban would not apply in the instant case as well.

43. There is however one further clarification which is required to be given as the learned Standing Counsel has heavily relied on the ratio of the

reference answered in the case of Jawahar Lal and another (supra) vide order dated 17.9.2010 and the view expressed in the referring order

dated 11.2.2011 in writ petition No. 55874 of 2009 Hans Raj v. State by the same division bench.

44. As noted above the case of Rajiv Kumar has dealt with the background in which it did not find any intention lawfully expressed for applying the

Uttar Pradesh, Group ""D"" Employees (First Amendment) Rules, 1986 applicable to the procedure of selection of Class IV employees of an

educational institution governed by the 1921 Act.

45. The division bench in the case of Jawahar Lal (supra) while answering the reference had termed the Government order dated 11.5.2001 to be

applicable as being a subordinate legislation adopted by necessary reference. Legislation by reference has to be understood in the light of the

language employed in the provision. The Government order dated 15.3.2012 flatly announces the ban of all appointments throughout the State.

The State Government has the preserved residuary power in relation to privately managed institutions u/s 9(4) of the 1921 Act. This power is

therefore no doubt akin to the powers that are exercised under Article 162 of the Constitution of India but in the instant case where the statute

prescribes a power then the Government order must emanate under that power. This is necessary because the ingredients for the exercise of such

power have to be present in order to justify the exercise of such power. The statute with regard to which such power can be adopted by way of

reference has to be at least pari materia with the provisions from where the reference is sought to be adopted.

46. In Chapter IV of External Aids to Construction of The Principles of Statutory Interpretation by Justice G.P. Singh, this aspect has been dealt

with in Synopsis 4(a) of the 12th Edition 2010 Publication of the said authority. It has been stated that it is not necessary that the statute may be

identical but it should be in pari materia. The appointment of a Class IV employee in an Intermediate College and that of Group ""D"" Employees in

a Government service may appear to be similar but the statutory provisions that govern their appointments cannot be said to be exactly pari

materia with each other. The appointment in a Government department is as a Government servant whereas the appointment in an Intermediate

College is in one single unit of a college which is isolated and autonomous in nature. The status of employment of a Class IV employee in an

educational institution has therefore to be looked into from that point of view.

47. The second aspect is that legislation by reference has to be inferred if the objects and reasons are such so as to justify the imposition of any

rules by way of reference from another statute. In the instant case there is absolutely no specific intention indicated for aided institutions, inasmuch

as, the Government order flatly places a ban and then proceeds to withdraw it in relation to the teachers of Secondary Institutions on 23.5.2012.

The presence of clear intention therefore is clearly absent as the State Government in its own opinion did not find any justification for any such ban

for the post of a teacher in an institution.

48. The question therefore is, can the institution be envisaged without a Class III or a Class IV employee. The imposition of a complete prohibition

for the past more than a year brings about this situation. This in my opinion does not appear to be a justified contemplation for imposing such a ban

for not appointing Class IV employees in Intermediate Colleges. The colleges have neither been derecognised nor the sanctioned posts have been

either abolished or withdrawn. The ban is not a temporary ban as the language does not indicate so. In such a situation there is no justification for

applying such absolute ban and in the opinion of the Court the ban dated 15.3.2012 cannot operate in relation to either Class IV or Class III

appointment in an Intermediate College or an institution governed by the 1921 Act. It also deserves to be noted that there are many recognized but

unaided institutions. No financial implications are involved. Can it be said that no appointment can be made in such institutions where the finances

are to be borne by the institution itself. The right answer would be in the negative as no prejudice is caused to the Government nor any burden is

created. The Government therefore has to take care while exercising such powers to spell out its intentions expressly as it is necessary even while

carving out exceptions. The State Government also has not taken care to visualise that there are many educational institutions which are minority

institutions protected under Article 30 of the Constitution of India. Such institutions have the right to administer their own institutions and to make

appointments accordingly. The State Government cannot be presumed to have proceeded to ban all such appointments flatly.

49. Since this is a case of Class IV appointment, the issue of Uttar Pradesh, Group ""D"" Employees (First Amendment) Rules, 1986 that has been

referred to by the division bench in the case of Harpal Singh (supra) also requires a consideration. As observed in the referring order of the division

bench dated 11.2.2011 even if the Government order dated 11.5.2001 that was sought to be enforced, was not an Government order, yet the

decision of the Government has been treated to be an executive instruction and therefore the point of reference has been raised that it should be

treated to be filling in the gaps.

50. In the opinion of the Court, an adoption by way of reference cannot be thrust upon like boarding a running a train. It cannot be thrown into

somebody"s lap and has to be introduced through a manner as prescribed under law. An executive instruction issued by a Director cannot be

enforced as the Director has no authority to frame any regulation. It is only the Board or the State Government which can frame a regulation. The

Director is only the Chairman of the Board as defined under the 1921 Act. He therefore by himself cannot enforce a regulation.

51. The State Government till date has not brought about any Government order u/s 9(4) to enforce any such procedure. As a matter of fact the

proposal of the Director dated 7.8.2001, as has been referred in Rajiv Kumar''s case, has not been enforced by the State Government till date by

issuance of any appropriate Government order.

52. In such a situation even a gap cannot be filled up unless it can be justified under any provisions of the Act. It cannot be done only by way of a

promulgation by the Director and there is no Government order as existing today that may introduce such an adoption by way of reference.

53. What is legislation by reference has been explained in the authority of Justice G.P. Singh referred to hereinabove and two decisions of the

Apex Court in the case of Maharashtra State Road Transport Corporation Vs. State of Maharashtra and Others, (Paras 8 to 13 and the decision

in the case of Bharat Co-Operative Bank (Mumbai) Ltd. Vs. Co-Operative Bank Employees Union, . The full bench decision in the case of Afzal

Ahmad v. State, 2004 (3) ESC 1937. also exhaustively deals with this principle. The said decisions also go on explain the distinction between

legislation by reference and legislation by incorporation.

54. The 1986 Rules having not been adopted lawfully it cannot be imposed upon the institutions. Apart from this, there are practical aspects as

well. The selection for the post of a Peon in an Intermediate College is not required to be witnessed by all officers of the district administration as in

the case of Group ''''D'''' Employees Service Rules. This is not an employment in a pool and is a selective appointment in an individual institution. To

burden such appointments with more and more rigorous procedures may be necessary to maintain transparency, but the practical aspect has also

to be looked into. It is for this reason that the Director of Education had made a suggestion of bringing about amendment in Regulation 108 in his

communication dated 7.8.2001. It is not understood as to why the State Government did not apply its mind to that aspect and has not done it till

date. In such a situation it will not be appropriate for this Court to enforce the 1986 Rules flatly without there being a promulgation in this regard or

any Government order that may be traceable within the powers of the State Government u/s 9(4) of the Act.

55. There is another dimension to the aforesaid issue, namely, even assuming that the power to issue a Government order can be traced to Section

9(4) of the 1921 Act as involved in the present case then the first issue is with regard to the exercise of such power and if there is no specific action

taken u/s 9(4) of the Act, then can it be inferred generally. In order to draw this inference of adoption by necessary reference, one has to go by the

intention of the legislature. As demonstrated in the case of Rajiv Kumar (supra), there was no express intention for enforcing the 1986 Group ''''D

Rules, as admitted by the State Government in the said case by clearly stating that the Government order dated 11.5.2001 involved therein was

not an order u/s 9(4) and did not have the sanction of the Governor. In the instant case, it is clear that the State Government, as if realizing the

shortcomings in the Government order dated 15.3.2012, exempted the appointment of teachers of Secondary Schools. Section 9(4) of the 1921

Act is an extended arm of Article 162 of the Constitution of India but cannot be utilized for the purpose of framing rules for Government servants

under Article 309. Conversely any Rule or Regulation framed or a Government order issued for the purpose of Article 309 cannot ipso facto apply

to the employees of schools governed by the 1921 Act. Thus the intention to exercise such a power in relation to the institutions in question cannot

be necessarily gathered unless a specific intention can be culled out. The issuance of a general direction bringing about a change in policy also has

to be seen from the angle that a successor Government upon fresh elections cannot ordinarily alter policies which are supposed to be continued in

public interest. The State Government therefore realized that such a ban would adversely affect the education of children studying in such

institutions and consequently itself issued a Government order in May, 2012 exempting the applicability of the ban on the appointment of teachers.

This therefore indicates that the State Government was not treating the appointment of teachers in institutions to be at pari materia with other

appointments under the State Government. The aforesaid conclusions therefore undoubtedly lead to the inference that if there is no intention

discernible the same cannot be inferred by necessary implication. The Government order dated 15.3.2012 also therefore cannot be adopted or

applied by necessary implication in relation to the appointment of Class III and Class IV employees in institutions governed by the 1921 Act.

56. Thus there is nothing to indicate that the State Government had even made any effort to adopt the said rules in accordance with law and to say

that stands adopted by the necessary reference may not be correct. However, that is a matter to be resolved by the larger bench in the case of

Harpal Singh (supra) but so far as the present situation is concerned the judgment in the case of Rajiv Kumar is binding. Accordingly, for the

reasons aforesaid as well, the argument raised by the learned Standing Counsel to the applicability of the Uttar Pradesh, Group ""D"" Employees

(First Amendment) Rules, 1986 is unacceptable.

57. The District Inspector of Schools has passed the impugned order which on a plain reading of it is in violation of principles of natural justice as

well. Consequently, for the conclusions drawn hereinabove the impugned order dated 21.5.2013 cannot be said sustained and is hereby quashed.

The writ petition is allowed. The District Inspector of Schools is directed to pass a fresh order in the light of the observations made hereinabove

within a period of two months from the date of production of a certified copy of this order before him.