

## **AFR**

### **Court No. - 7**

**1-Case :-** WRIT - A No. - 6333 of 2013

**Petitioner :-** Ravindra Babu Shriwas And Ors.

**Respondent :-** State Of U.P. Thru Secy & Ors.

**Counsel for Petitioner :-** Radha Kant Ojha, Sunil Kumar Singh, Vibhu Rai

**Counsel for Respondent :-** C.S.C., J.H. Khan, Vashisth Tiwari

## **Connected With**

**2- Case :-** WRIT - A No. - 6835 of 2013

**Petitioner :-** Gaurav Tiwari And Ors.

**Respondent :-** State Of U.P. Thru Secy & Ors.

**Counsel for Petitioner :-** Siddharth Khare, Ashok Khare, Sunil Kumar Singh

**Counsel for Respondent :-** C.S.C.

**3- Case :-** WRIT - A No. - 8847 of 2013

**Petitioner :-** Ashutosh Sharma

**Respondent :-** State Of U.P. Thru Secy & Anr.

**Counsel for Petitioner :-** Akhilesh Kumar Singh

**Counsel for Respondent :-** C.S.C.

**4- Case :-** WRIT - A No. - 13246 of 2013

**Petitioner :-** Harpal Singh

**Respondent :-** State Of U.P. Thru Secy & Ors.

**Counsel for Petitioner :-** Siddharth Khare, Ashok Khare, Sunil Kumar Singh

**Counsel for Respondent :-** C.S.C.

**5- Case :-** WRIT - A No. - 46003 of 2013

**Petitioner :-** Kulveer Singh & 9 Ors.

**Respondent :-** State Of U.P. & 8 Ors.

**Counsel for Petitioner :-** Radha Kant Ojha, Ratnakar Upadhyay

**Counsel for Respondent :-** C.S.C.

**6- Case :-** WRIT - A No. - 71082 of 2013

**Petitioner :-** Ravindra Anand

**Respondent :-** State Of U.P. Thru Secy. And 9 Others

**Counsel for Petitioner :-** Navin Kumar Sharma, Neeraj Tiwari

**Counsel for Respondent :-** C.S.C.

**7- Case :-** WRIT - A No. - 20294 of 2014

**Petitioner :-** Upendra Kumar Verma And 2 Others

**Respondent :-** State Of U.P. And 5 Others

**Counsel for Petitioner :-** M.C. Chaturvedi,Rateesh Singh

**Counsel for Respondent :-** C.S.C.

**Hon'ble Surya Prakash Kesarwani,J.**

1- Heard Sri Radha Kant Ojha, learned Senior Advocate for the petitioners and Sri Akhilesh Kumar Singh, Sri Subhash Singh Yadav, Sri Navin Kumar Sharma, Sri Vibhu Rai and Sri Siddharth Khare, learned counsel for the petitioners in the connected writ petitions, Shri Mohan Ji Srivastava, learned standing counsel for the State-respondents, Sri A.K. Yadav, learned counsel for U.P. Secondary Education Service Selection Board, Allahabad, respondent no.3, and Sri Gulrej Khan holding brief of Sri J.H. Khan, learned counsel for the selected candidate-respondent no.3. No one appears on behalf of respondent Nos. 4,5,6, and 7 even in the revised call.

2- Counter Affidavit on behalf of respondent no.3 in the leading writ petition has been filed by the selected candidates. The State has also filed counter affidavit.

3- Civil Misc. Impleadment Application No.113669 of 2013 has been filed by the applicant, who is a selected candidate and is permitted to be impleaded as respondent no.3 in representative capacity and for the same reason another Impleadment Application

No.191239 of 2013 filed by the selected candidates/applicants for being impleaded as respondents in the writ petition, is also allowed. The applicants are directed to be impleaded as respondent Nos. 4,5,6 and 7 in the array of parties.

Necessary corrections be incorporated during the course of the day.

4- With the consent of the learned counsel for the parties, these writ petitions are being finally heard.

### **Facts**

5- Briefly stated the facts of the present case, are that pursuant to the advertisement issued by the respective Divisional Joint Directors of Education in the year 2012, inviting applications for appointment of assistant teachers (L.T.Grade) in different subjects, number of persons including the petitioners and respondent Nos. 3 to 7 in the leading writ petition, have applied.

6- Before the appointments could be made, the petitioners have filed these writ petitions questioning the award of quality point marks for Post Graduation Degree to such candidates, who possessed Post Graduation degree in a subject different from the subject of Graduation Degree. Degree in Graduation subject-wise have been prescribed by Uttar Pradesh, Subordinate Educational (Trained Graduates Grade) Service Rules, 1983 (hereinafter referred to as the 'Rules') to be the essential academic

qualification for appointment of assistant teachers for respective subjects.

7- On 5.3.2013, an interim order in the leading writ petition directing the respondents not proceed to issue with any letter of appointment to a candidate who has been extended the benefit of quality point marks on the basis of a post graduate degree other than the subjects at the graduate level until further orders of the Court.

8- On account of the aforesaid interim order, the authorities have not issued appointment letters to the selected candidates except the few candidates to whom appointment letters were issued prior to the grant of interim order.

9- It is stated by Sri Gulrej Khan that even such candidates to whom the appointment letters were issued, they were not permitted to join on account of the aforesaid interim order.

10- In paragraph-5 of the affidavit of compliance dated 19.3.2013 filed by the State-respondents, it has been indicated that few candidates have joined the post of assistant teacher prior to the date of the interim order.

### **Submissions**

11- Learned counsels for the petitioners submit that quality point marks for “post graduate degree” may be awarded only for the post graduate degree in the subject for which the

selection is being made and not in any other subject. They further submit that they are not challenging the vires of Rule 15(2) read with Appendix-'D' of the Rules and instead they are confining their submissions only to the interpretation of the provisions. Rule 15(2) read with Appendix-'D' of the Rules provides that a candidate has to be awarded quality point marks in accordance with the calculation given in the said appendix and if a candidate possesses a Post Graduation Degree for appointment on a post then for first division marks 15 quality point marks will be awarded, for second division, 10 quality point marks will be awarded and for third Division, 5 quality point marks will be awarded.

12- It is, thus, submitted that the quality point marks for Post Graduation Degree cannot be awarded under Rule 15(2) read with Appendix-'D' of the Rules to such candidates who possessed Post Graduation Degree in a subject other than the subject in the Graduation Degree on the basis of which they applied for the post of Assistant Teacher (L.T.Grade) for a particular subject.

13- Learned Standing Counsel for the State-respondents refers and adopts to the submissions of the Additional Advocate General, as recorded in the order dated 5.3.2013, that the Court can proceed to co-relate to the possession of the Post Graduation Degree to the subject post mentioned in the application based on the graduation level degree possessed by the candidates.

14- Shri Gulrej Khan, learned counsel for the private respondents/selected candidates submits that Rules do not provide for quality point marks for Post Graduation Degree in a particular subject. Therefore, providing otherwise would lead to do violence with the statutory provisions.

15- The interpretation being given by the petitioners would mean to provide such thing which has not been provided in the Rules. The essential qualification given in Rule 8 and preferential qualification in Rule 9 of the Rules do not provide for quality point marks for Post Graduation Degree in the subject in which a candidate possesses the Graduation Degree rather the quality point marks has to be awarded to all those candidates, who possesses Post Graduation degree whether in the subjects of graduation or in any other subject.

### **Discussion and Findings**

16- I have carefully considered the submissions of learned counsel for the parties and perused the record.

17- Before I proceed to examine the rival submissions of the learned counsels for the parties, it would be appropriate to notice the relevant provisions of the Rules as under:

**“U.P. Subordinate Education (Trained Graduates Grade) Service Rules 1983-**

## **Rule-8, Academic Qualification-**

**A candidate for direct recruitment to the various posts in the service must possess the following qualifications or as specified by the Government from time to time:**

Sl.No.	Post	Qualification	Preferential Qualification
1	2	3	4
1.....			
2.	(a) Assistant Master/ Assistant Mistress. Science (Mathematics/Science	(i) Bachelor's degree in Science with Mathematics, Physics and Chemistry as subjects from a University established by law in India or a degree recognised by the Government as equivalent thereto	
	(b) Assistant Master/ Assistant Mistress. Science (Biology)	(i) Bachelor's degree in Science with Zoology and Botany as subjects from a University established by law in India or a degree recognised by the Government as equivalent thereto .	
		(ii) L.T. Diploma of a Training College of Degree of Diploma in Education from a University established by law in India.	
3.	Assistant Master/ Assistant Mistress. (Language) (a) Hindi	(1) Bachelor's Degree with Hindi (main subject ) and Intermediate with Sanskrit from the Madhyamik Shiksha Parishad, U.P. of an equivalent examintion with Sanskrit	
		(2) Diploma in L.T. or B.T. or B.Ed.	
		Preference	
		(3) Sahityaratna (2 years' course) from the Hindi Sahitya Sammelan, Prayag	
1.	(a) Assistant Master/ Assistant Mistress. (General) and Chief Instructor in Education Expansion Office	(i) Bachelor's degree in respective subject from a University established by law in India or a degree recognised by the Government as equivalent thereto .	

		(ii) L.T. Diploma of a Training College of Degree or Diploma in Education from a University established by law in India.	
	(b) Assistant Master/ Assistant Mistress. General (History Geography, Civics, Economics)	(i) Bachelor's degree with at least any two of the subjects out of History, Geography, Political Science and Economics from a University established by law in India.	
		(ii) L.T. Diploma of a Training College or a Degree or Diploma in Education from a University established by law in India.	
	(c) Assistant Master/ Assistant Mistress. (General English)	(i) Bachelor's degree with English as one of the subject from a University established by law in India or a degree recognised by the Government as equivalent thereto.	
		(ii) L.T. Diploma of a Training College or a Degree or Diploma in Education from a University established by law in India.	
	(b) Sanskrit	Bachelor's Degree with Sanskrit and L.T. Diploma of a Training College or Degree or Diploma in Education from a recognised University.	
		Or	
		Acharya or Shastri Degree from Government Sanskrit College, Varanasi and L.T. B.T. Or B.Ed.	
		Or	
		Shastri Degree (with English) from Government Sanskrit College, Varanasi and Refresher Course Training	
	(c) Urdu	Bachelor's Degree from a recognised University by the Government as equivalent thereto with Urdu and L.T. Diploma of a	



		Training College or Degree or Diploma in Education from a recognised University	
	(d) Persian	Bachelor's Degree with Persian and L.T. Diploma of a Training College or Degree or Diploma in Education from a recognised University	
		Or	
		Kamil (from Allahabad or Lucknow ) and Refresher Course Training.	
	(e) Arabic	Bachelor's Degree with Arabic as a subject and L.T. Diploma of a Training College or Degree or Diploma in Education from a recognised University.	
		Or	
		Fazil (Allahabad or Lucknow and Refresher Course Training	
4.	Career Master	1. Bachelor's Degree with 50 percent marks and B.T. or B.Ed. or L.T. from a recognised University.	1. Graduates in Agriculture to be given preference
		2. Three years teaching experience or Diploma in guidance with not less than one year's teaching experience.	2. Career master's Training or enough rural background so as to understand the problems of rural children and occupational and industries in rural areas.
5.	Assistant Master/Assistant	1. Intermediate examination of the Board of High School and Intermediate Education	

	Mistress (Arts.)	Uttar Pradesh any equivalent examination with Art. Masters Training Certificate (formerly known as Drawing teacher certificate) of Government School of Arts and Crafts. Lucknow or a certificate recognised as equivalent thereto.	
		2. Bachelor of Arts Degree from a recognised University or a degree recognised as equivalent thereto with a certificate awarded by the Government Drawing and Handicrafts Centre. Allahabad (since abolished) or a certificate recognised as equivalent thereto.	
		Or	
		3. Intermediate Examination with Technical Drawing with one of the following examination--	
		(a) Fine Arts Diploma of the Government School of Arts and Crafts, Lucknow.	
		Or	
		(b) Bachelor's degree in Arts with Drawing and Painting from a recognised University or a degree recognised by the Government as equivalent thereto.	
		(c) Fine Art Diploma of Kala Bhawan, Shantiniketan.	
		Or	
		(d) Final Drawing Teachership Examination	

		Calcutta	
		Or	
		(e) Teacher Senior Certificate Examination School of Arts, Lahore.	
6.	Assistant Master/ Assistant Mistress	Bachelor's degree from a recognised University or a degree recognised by the Government as equivalent	
	Physical Education	Degree recognised by the Government as equivalent thereto and Diploma in Physical Education.	
7.	Assistant Master/ Assistant Mistress (Music )	<ol style="list-style-type: none"> <li>1. Bachelor's Degree from a recognised University or a degree by the Government as equivalent thereto.</li> <li>2. Knowledge of vocal and instrumental Music and Senior Diploma in Music from Allahabad University or Sangeet Visharad from Bhatkhande Sangeet Mahavidyalaya or Sangeet Prabhakar Samiti, Allahabad.</li> </ol>	
8.	Assistant Master/ Assistant Mistress (Spinning and Weaving)	Constructive or Basic L.T. With specialization in Spinning and Weaving or Intermediate with 3 years training in Textile Institute, Kanpur.]	
9.	Assistant Master/ Assistant Mistress (Ceramics)	Post- Graduate Degree in Ceramics from recognised University or a degree recognised by the Government as equivalent thereto and L.T. Diploma of	

		a Training College or B.T. B.Ed. From a recognised University.	
		Or	
		Post- graduate and Bachelor's Degree with Ceramics from a recognised University or a Degree recognised by the Government as equivalent thereto. Also specialization in Ceramics in L.T. (Constructive) Training. Candidates having teaching experience in Training College/Intermediate College/Normal Schools are to be given preference).	
10.	Assistant Master/ Assistant Mistress (Plastic Craft)	Post- graduate Degree from a recognised University or a Degree recognised by the Government as equivalent thereto with Diploma in L.T. (Constructive) Specialization in Plastic Craft.	
		(Candidatures having teaching experience in Training College/Intermediate College/Normal Schools are to be given preference).	
11.	Assistant Master/ Assistant Mistress (Metal Craft)	Post- graduate Degree or a Degree recognised by the Government as equivalent thereto with Diploma in L.T. (Constructive) Specialization in Metal Craft.	
12.	Assistant Master/ Assistant Mistress (Wood Craft)	Post- graduate Degree from a recognised University or a Degree recognised by the	

		Government as equivalent thereto. Diploma in L.T. (Constructive) and Specialization in Wood Craft or L.T./B.T., B.Ed. And Diploma holder from Government Wood Working Institute, Allahabad/Bareilly. (Candidates having teaching experience in Training College/Intermediate College/Normal Schools are to be given preference).	
13.	Lecturer (Craft )	Post- graduate Degree from a recognised University or a Degree recognised by the Government as equivalent thereto with Diploma in L.T. or B.T./ B.Ed.	
		(Candidates having teaching experience in Training College/Intermediate College/Normal Schools are to be given preference).	
14.	Assistant Master (Agriculture/Horticultured)	Bachelor's Degree in Agriculture/Horticulture from a recognised University or a Degree recognised by the Government as an equivalent thereto and L.T. Diploma of a Training College or a degree or Diploma in Education from a recognised university.	
15.	Assistant Mistress (Home Science)	1. A Degree of a university in Home Art o Home Science or Euthenics.	
		2. Diploma in L.T. Or B.T. Or Bed.	

		Or	
		3. Years Diploma Course of the Lady Ervin College, New Delhi with Intermediate Examination or Senior Cambridge Examination.	
		4. Working Knowledge in Hindi).	
16.	Craft Teacher/Mistress (Work experience)	L.T. (Basic) or L.T. (Constructive) with specialization in allied craft.	
17.	Assistant Agriculture Teacher	B.Sc. (Ag.).	
18.	Craft teacher/Mistress (Re-orientation)	L.T. (Basic) or L.T. (Constructive) with specialization in allied craft.	
19.	Extension teacher	B.Sc.(Ag.)	
20.	Craft Technician	B.A., L.T. (Constructive with Specialization in craft	Additional qualification in craft

**Rule-9- Preferential qualification-** A candidate who has-

- (i) Served in the Territorial Army for a minimum period of two years, or
- (ii) Obtained a 'B' certificate of National Cadet Corps shall, other things being equal, be given preference in the matter of direct recruitment.

**Rule-15. Procedure for Direct Recruitment -(1)(a)**

The Regional Deputy Director of Education concerned shall in respect of the vacancies of both branches ( Men's and Women's Branch) to be filled by direct recruitment, **advertise the vacancies subject-wise** along with the number of vacancies to be reserved for the candidates belong with to the Schedule Castes, Scheduled Tribes and other categories of persons in at least two leading newspapers one having wide circulation in the region and the other in the State, and invite applications for direct recruitment in the proforma given in

Appendix-'C'. **Such advertisement shall, inter-alia, mentioned the pay and allowances relating to the posts, minimum academic qualifications for appointment thereto and such other information as may be considered necessary.**

(b) The application referred to in clause (a) shall be sent, by registered post, to the Regional Deputy Director of Education within three weeks from the date of Publication of advertisement in the newspaper, so as to reach the office of the Regional Deputy Director of Education on or before the last date of receipt of application mentioned in the advertisement.

(c) The application referred to in clause (a) shall be accompanied by--

(i) A fee of fifteen rupees in the form of Crossed Postal Order payable to the concerned Regional Deputy Director of Education ;

Provided that such fee shall in the case of candidates belonging to the Scheduled Castes and Scheduled Tribes be five rupees;

(ii) A self addressed envelope; and

(iii) Other documents as may be required.

(d) No application not sent in accordance with clause (b) or (c) shall be taken into consideration.

(2) The Regional Deputy Director of Education shall scrutinize the applications and shall cause the **lists of candidate to be prepared on the basis of quality points specified in Appendix-'D'**. The Regional Deputy Director of Education shall place the lists along with the applications before the Selection Committee.

(3) There shall be a Selection Committee for selection of candidates for appointment by direct recruitment comprising :

(i) Appointing Authority;

(ii) The Regional Deputy Director of Education or the Regional Inspectors of Girls Schools who is not appointing authority.

(iii) Regional Assistant Director of Education (Basic).

The appointing authority shall be the Chairman.

(4) The Selection Committee shall, after considering the **cases of candidates on the basis of lists referred to in sub-rule (2), prepare subject wise lists of selected candidates for appointment in L.T. Grade in order of merit as disclosed by the quality points compiled under sub-rule (2)**. If two or more candidates obtain equal quality points, the name of the candidate who is older in age shall be placed higher in list. The number of names in the list shall be larger (but not larger by more than twenty-five percent) than the number of vacancies advertised under sub-rule(1)".

## **PART VI- APPOINTMENT, PROBATION, CONFIRMATION AND SENIORITY**

### **Rule-18. Appointment--**

- (1) Subject to the provisions of Sub-rule (2) the appointing authority shall make appointment by taking the names of candidates in the order in which they stand in the lists proposed under Rule 15,16 or 17 as the case may be.
- (2)Where, in any year of recruitment, appointments dare to be made both by Rule 17.
- (3)If more than one order of appointment are issued in respect of any one selection direct recruitment and by promotion, regular appointments shall not be made unless selections are made from both the sources and a combined list is prepare in accordance with a combined order shall also be issued, mentioning the names of the persons in order of seniority as determined in the selection or, as the case may be, as it stood in the cadre from which they are promoted. If the appointment are made both by direct recruitment and by promotion, names shall be arranged in accordance with the list prepared under Rule 17.
- (4)The appointing authority may made appointments in temporary or officiating capacity also from the list referred to in sub-rule (1). If no candidate borne on these lists is available, he may make appointments in such vacancy from amongst the list of selected candidates for adhoc appointment received from the Director of Education. Uttar Pradesh, Such appointments shall not



last for a period exceeding one year or beyond the next selection under these rules whichever be earlier, and where the post is within the purview of the Commission, the provisions of Regulation 5(a) of the U.P. Public Service Commission (Limitation of Function) Regulations, 1954 shall apply”.

### **Appendix-'D'**

#### **Quality points for Selection by direct recruitment**

<u>Name of Examination</u>	<u>Quality Points</u>
1. High School	The percentage of marks -10
2. Intermediate	The percentage of marks x 2 -10
3. Graduate Degree	The percentage of marks x 4 -10
<b>B. Others</b>	
4. <b>Training</b>	<b>Ist Division      II Division      III Division</b>
(a) Theory	12                      6                      3
(b) Practical	12                      6                      3
5. Post-Graduate Degree	15                      10                      5

18- The Basic question involved in this writ petition relates to interpretation of the provisions of Rule 15(2) read with Appendix-'D' of the Rules with regard to award of quality point marks for a Post Graduation Degree. The golden rule of construction of a Statute is that when the words are plain and unambiguous effect must be given to it. Effort should be made to give effect to each and every word used by the legislature. It is tried that in interpreting a statute the Court must, if words are clear, plain, unambiguous and reasonably susceptible to only one meaning, give to the words that meaning, irrespective of

the consequences. Those words must be expounded in their natural and ordinary sense. When the language is plain and unambiguous and admits of only one meaning, no question of construction of statute arises for the Act speaks for itself. In case of ambiguity the interpretative function of the Court comes into play to discover the true legislative intent. In considering whether there is ambiguity, the Court must look at the statute as a whole and consider the appropriateness of the meaning in a particular context avoiding absurdity and inconsistencies or unreasonableness.

19- In a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. The real intention of the legislation must be gathered from the language used and from the Scheme of the Statute. If there exists some ambiguity in the language or the Statute or the same is capable of two interpretations, it is trite that the interpretation which serves the object and purport of the Act, must be given effect to. In such a case the doctrine of purposive construction should be adopted. The Court while, interpreting the provision of a Statute, although, is not entitled to rewrite the Statute itself, is not debarred from '*Ironing out the crease.*'

20- The above mentioned principles of interpretation have been explained by Hon'ble Supreme Court in **Nathi Devi v. Radha Devi Gupta (2005) 2 SCC 271 (Para 13 to 18)**, **State of U.P. v. Dr. Vijay Anand Maharaj, AIR 1963 SC 946**, **Rananjaya Singh v. Baijnath Singh,**

**AIR 1954 SC 749, Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907, Nyadar Singh v. Union of India, AIR 1988 SC 1979, J.K. Cotton Spg. and Wvg. Mills Co. Ltd. v. State of U.P., AIR 1961 SC 1170, Ghanshyam Das v. CST, AIR 1964 SC 766, Nasiruddin v. Sita Ram Agarwal, (2003)2 SCC 577, Swedish Match AB v. Securities & Exchange Board of India, (2004) 11 SCC 641, High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat, (2003)4 SCC 712, Prakash Kumar @ Prakash Bhutto v. State of Gujarat, (2005)2 SCC 409 (para 30) and Offshore Hoardings Pvt. Ltd. v. Bangalore Development Authority and others, 2011 (3) SCC 139 (para 85).**

21- "Contextual reading" is a well known proposition of interpretation of Statute. The clause of a Statute should be construed with reference to the context vis-a-vis the other provisions so as to make a consistent enactment of the whole statute relating to the subject matter. The rule of '*Ex-viscribus-Actus*' should be resorted to in a situation of this nature. The Court must ascertain the intention of the legislature by directing its attention not merely to the clause to be construed but to the entire Statute, it must compare the clause with other part of the law, and the setting in which the clause to be interpreted occurs. A statute must be construed as a workable instrument. "*Ut-res-magis-valet-quam-pereat*" is a well known principle of law and on this principle the provision of a statute must be construed as to make it effective and operative. The Courts will

reject that construction which will defeat the plain intention of the legislature even though, there may be some inexactitude in the language used. Reducing the legislation to futility shall be avoided and in a case where the intention of the legislature cannot be given effect to, the Court should accept the bolder construction for the purposes of bringing about an effective result. The general rule of construction which is called ***Ex-viscribus-Actus***' is applicable to all statutes alike and is so firmly established that it is also styled as 'Elementary Rule'. The only recognised exception to this rule is that it cannot be called in aid to alter the meaning of what is itself clear and explicit.

22-The above noted principles of law find support from the judgment of Hon'ble Supreme Court in **Balram Kumawat v. Union of India, (2003)7 SCC 628 (para 20 to 30), State of West Bengal v. Union of India, AIR 1963 SC 1241, R.S. Raghunath v. State of Karnataka, (1992)1 SCC 235, Tinsukia Electric Supply Co. Ltd. v. State of Assam, AIR 1989 (3) SCC 709, Supdt. and Rememberancer of Legal Affairs to Govt. of W.B. Abani Maity, (1979)4 SCC 85, State of Karnataka v. Saveem Kumar Shetty, (2002) 3 SCC 426, Newspaper Ltd. v. State Industrial Tribunal, U.P., AIR 1957 SC 532 and Philips India Ltd. v. Labour Court 1985(3) SCC 103.**

23- In the case of **Aphali Pharmaceutical Ltd. v. State of Maharashtra, (1989)4 SCC 378,** Hon'ble Supreme Court held that the schedule

appended to the Statute is part of the Statute. However, in case of a conflict between the body of the Act and the schedule, the former prevails. In the case of **U.P. Bhudan Yagna Samiti, U.P. v. Brij Kishore and others, (1988 ) 4 SCC 274**, the question of interpretation of Section 14 of the U.P. Bhudan Yagna Act came up for consideration before Hon'ble Supreme Court. The question was that when Section 14 uses the words "**landless persons**", it would mean all persons who have no land or it would mean only the landless farmers (Bhumihin Kisan). Hon'ble Supreme Court considered the object and Scheme of the Act and applying the principle of interpretation enunciated in a Shloka (verse) held that the words "**Landless Persons**" shall mean 'Bhumihin Kisan'. Consequently it concluded that grant of land to businessmen residing in Kanpur, under Section 14 of the U.P. Bhudan Yagna Act, was rightly quashed by the Additional Collector. While doing so, Hon'ble Supreme Court observed in paragraph 12 to 16 as under :

“12. In this country we have a heritage of rich literature, it is interesting to note that literature of interpretation also is very well known. The principles of interpretation have been enunciated in various shlokas which have been known for hundreds of years. One such shloka (verse) which describes these principles with great precision is :

**“Upkramop Sanharo Abhyaso Uppurwatta Falam Arthwadoppatti Ch Lingam Tatparya Nirnaye.”**

13. **This in short means that when you have to draw the conclusion from a writing you have to read it from beginning till end.** As without doing it, it is difficult to understand the purpose, if there is any repetition or emphasis its meaning must be understood. If there is any curiosity or a curious problem tackled it should be noticed and the result thereof must be understood. If there is any new innovation (uppurwatt) or something new it should be taken note of. Then one must notice the result of such innovation. Then it is necessary to find what the authority intends to convey and in what context.

14. **This principle of interpretation was not enunciated only for interpretation of law but it was enunciated for interpreting any piece of literature and it meant that when you have to give meaning to anything in writing then you must understand the real meaning.** You can only understand the real meaning by understanding the reference, context, the circumstances in which it was stated and the problems or the situation which were intended to be met by what was said and it is only when you take into consideration all this background, circumstances and the problems which have to be tackled that you could really understand the real meaning of the words. This exactly is the principle which deserves to be considered.

15- When we are dealing with the phrase 'landless persons' these words are from English language and therefore I am reminded of what Lord Denning said about it. Lord Denning in '***The Discipline of Law***' at page 12 observed as under :

“Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may raise, and, even if it were, it is not possible to provide for them in

terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, **when a defect appears a judge cannot simply fold his hands and, blame the draftsmen. He must set to work on the constructive task of finding the intention of Parliament.**”

16. And it is clear that when one has to look to the intention of the legislature, one has to look to the circumstances under which the law was enacted. The preamble of the law, the mischief which was intended to be remedied by the enactment of the statute and in this context, Lord Denning, in the same book at page 10, observed as under :

“At one time the judges used to limit themselves to the bare reading of the statute itself-- to go simply by the words, giving them their grammatical meaning, and that was all. That view was prevalent in the 19<sup>th</sup> century and still has some supporters today. But it is wrong in principle. **The meaning for which we should seek is the meaning of the statute as it appears to those who have to obey it**—and to those who have to advise them what to do about it; in short, to lawyers like yourselves. Now the statute does not come to such folk as if they were eccentrics cut off from all that is happening around them. The statute comes to them as men of affairs--who have their own feeling for the meaning of the words and know the reason why the Act was passed—just as if it had been fully set out in a preamble. So it has been held very rightly that you can inquire into the mischief which gave rise to the statute-- to see what was the evil which was sought to remedy”.

**It is now well settled that in order to interpret a law one must understand the background and the purpose for which the law was enacted. And in this**

context as indicated earlier if one has bothered to understand the common phrase used in the Bhoodan Movement as 'Bhoomihin Kissan' which has been translated into English to mean 'landless persons' there would have been no difficulty but apart from it even as contended by learned counsel that it was clearly indicated by Section 15 that the allotment could only be made in accordance with the scheme of Bhoodan Yagna. In order to understand the scheme of Bhoodan and the movement of Shri Vinoba Bhave, it would be worthwhile to quote from '**Vinoba And His Mission**' by Suresh Ram printed with an introduction by Shri Jaya Prakash Narain and foreword by Dr. S.Radhakrishnan. In this work, statement of annual Sarvodaya Conference at Sevapuri has been quoted as under :

“The fundamental principle of the Bhoodan Yagna movement is that all children of the soil have a equal right over the Mother Earth, in the same way as those born of a mother have over her. It is, therefore, essential that the entire land of the country should be equitably redistributed anew, providing roughly at least five acres of dry land or one acre of wet land to every family. The Sarvodaya Samaj, by appealing to the good sense of the people, should prepare their minds for this equitable distribution and acquire within the next two years at least 25 lakhs of acre of land from about five lakhs of our villages on the rough basis of five acres per village. This land will be distributed to those landless labourers who are verse in agriculture, want to take to it, and have no other means of subsistence.”

(Emphasis added )

This would clearly indicate the purpose of the scheme of Bhoodan Yagna and it is clear that Section 15 provided that all allotments in accordance with Section 14 could only be done under the scheme of the Bhoodan Yagna.

(Emphasis supplied by me )

**INTERPRETATION OF RULE 15(2) READ WITH APPENDIX- 'D'  
OF THE RULES**



24- Keeping in mind the above noted principles of interpretation, I proceed to examine clause (5) of Appendix-'D' of The Uttar Pradesh Subordinate Education (Trained Graduates Grade) Service Rules 1983. Rules 1983 has been enacted to regulate recruitment and conditions of Service of persons appointed to the Uttar Pradesh Subordinate Educational (Trained Graduates Grade) Service. Rule 5 provides for recruitment of various categories of posts in the service to be made two the sources namely, (i) by direct recruitment and (ii) by promotion through selection amongst substantively appointed teachers of the Uttar Pradesh Educational (Trained Under-Graduate) service. The list of posts appended to Rule 5 clearly shows that recruitment shall be made for the Assistant Master/Assistant Mistress for particular subjects. Rule-6 provides that reservation for candidates belonging to Schedule Castes, Scheduled Tribes and other categories shall be in accordance with the orders of the Government in force at the time of the recruitment. Rule-8 deals with academic qualification. It provides that a candidate for direct recruitment to the various posts in the service must possess the qualifications as specified in the table appended to it or as may be specified by the Government from time to time. The table appended to Rule 8 quoted above, shows that the posts of Assistant Master/Assistant Mistress are subject wise. Minimum qualification for each such post subject wise has been provided in the said table. For example as per aforesaid table under Rule-8, for

the post of Assistant Master/Assistant Mistress (Mathematics-Science), the minimum academic qualification is the Bachelor's degree in Science with Mathematics, Physics and Chemistry as subjects from a University established by law in India or a degree recognised by the Government as equivalent thereto. Thus, posts of Assistant Master/Assistant Mistress for a subject is directly co-related with the minimum educational qualification of candidates in that subject.

25- Rule-14 provides for determination of vacancies- by the Regional Deputy Director of Education of the concerned region.

26- Rule-15 provides for procedure for direct recruitment. Sub-rule (1) specifically provides that the vacancy shall be advertised subject wise and such advertisement shall, inter-alia, mention the pay and allowances relating to the posts, minimum academic qualifications for appointment thereto and such other information as may be considered necessary. Sub-rule (2) provides that the Regional Deputy Director of Education shall scrutinize the applications and shall cause the lists of candidate to be prepared on the basis of quality points specified in Appendix-D and shall place the lists along with the applications before the Selection Committee. Sub-rule (4) provides that the Selection Committee shall, after considering the cases of candidates on the basis of lists referred to in sub-rule (2), prepare subject wise lists of selected candidates for appointment in L.T. Grade in order of merit as disclosed by the

quality points compiled under sub-rule (2). Appendix-'D' under rule 15(2) of the Rules provides for quality points for selection by direct recruitment. The mechanism of quality point mark has been provided to determine merit of candidates of related subject wise vacancies.

27- Rule-18 provides that the appointing authority shall make appointment by taking names of candidates in order in which they stand in the list proposed under Rule-15,16 and 17, as the case may be.

28- A conjoint reading of Rule 5 (source of recruitment), Rule 8 (Academic qualification), Rule 14 (Determination of Vacancies), Rule 15 (Procedure for direct recruitment), Rule 18 (Appointments) and Appendix-'D' under Rule 15(2) leave no manner of doubt that the vacancies for the post of Assistant Master/Assistant Mistress are determined subject wise for the recruitment on subject-wise posts. The minimum qualification under Rule 8 of the Rules, has been provided for different posts of Assistant Master/Assistant Mistress subject-wise. The vacancies of Assistant Master/Assistant Mistress for each subject are determined for recruitment as per Rule 15 subject-wise for which separate minimum academic qualification has been specifically provided in the table under Rule-8. **The award of quality point marks as per Appendix-'D' is the mechanism to determine merit of each candidate for each class of Assistant Master/Assistant Mistress subject wise.**

29- The dispute in these writ petitions is only with regard to Clause-5 of Appendix-'D' in so far as it provides for quality point marks for Post Graduate Degree without reference to the subject which leads to ambiguity and needs to be interpreted. **This clause cannot be read in isolation. Clause (5) of Appendix-D being part of the Rules has to be read in the context of Rule 5,8 and 15 so as to achieve the very object and purpose of the rules, namely, recruitment of Assistant Master/Assistant Mistress subject wise on merit so as to select best from amongst the available candidates in order of merit against each subject wise vacancies to provide quality education to students. A candidate possessing the minimum academic qualification of graduation in a subject under Rule 8 of the Rules for the subject vacancy and Post Graduate Degree in a subject appearing in his minimum academic qualification shall be more meritorious/better having higher qualification/excellence the subject as compared to a candidate who possesses merely the minimum academic qualification for the subject vacancy. Therefore, the former shall be entitled for quality point marks under Clause-5 of Appendix-'D'. If a candidate possesses Post Graduation Degree in a subject different from the subject vacancy for which he has applied, cannot be awarded quality point marks under Clause-5 of Appendix-'D' merely on account of possessing a Post Graduation Degree,**

inasmuch as, such a Post-Graduate Degree in a different subject shall not add to his merit/excellence for the subject vacancy.

30- Thus, there appears to be no substance in the submission of private respondents /selected candidates, inasmuch as if their submissions as noted in para-4 above, is accepted then it would lead an unreasonable result. The result would be that a candidate not having higher qualification or excellence/ merit in the particular subject in respect of which vacancy has been advertised, would get higher quality point marks merely on account of possessing a Post Graduation degree in an entirely different subject having no co-relation to the subject for which he is seeking appointment. Correctness of the aforesaid submission of the private respondents may be tested from another angle. For example, if there are two candidates namely, 'A' and 'B' having minimum academic qualification of graduation degree in Science with Mathematics, Physics and Chemistry, applied for the post of Assistant Master (Science/Mathematics). Candidate-'A' has master degree in second division in "Mathematics". Candidate-'B' has master degree in first division in "Hindi". Therefore, if contention of the private- respondents, is accepted then 'B' shall get 15 quality points for his post graduation degree without having higher knowledge/better quality in Mathematics, while 'A' despite having higher knowledge/ better quality in Mathematics shall get lesser quality points for his post graduation degree in Mathematics. Thus, the interpretation of Clause

(5) of Appendix-'D' as advanced by the private respondents shall give absurd result. Hence, this interpretation can not be accepted.

31- Therefore, it would be just, reasonable and consistent with the Scheme of the Rules to interpret Rule 15(2) of the Rules read with Appendix-'D' that to award quality point marks for Post Graduation, the Post Graduation Degree should be in a subject specified in the minimum academic qualification under Rule 8 for that post of Assistant Master/Assistant Mistress for which the vacancy has been created and advertised and for which candidates have applied on the basis of their possessing the minimum academic qualification i.e. the graduation degree. For example, for the post of assistant teacher (History, Geography and Economics), a candidate should possess the minimum academic qualification being graduation degree in the subject. Quality point marks for Post Graduation Degree, may be awarded to him only if he possesses the Post Graduation degree in a subject appearing in his graduation degree. Thus, quality point marks for the post graduation degree may be awarded to a candidate for a higher qualification or excellence in the subject relatable to the subject of graduation degree on the basis of which he has applied on the ground that he possesses the minimum basic educational qualification for the post. The private respondents having applied for the respective posts on the basis of having the graduation degree in the subject vacancy, cannot be placed on a higher/better footing for

having post graduate degree in an entirely different subject. To do so would mean to place such a candidate higher in merit without having better knowledge or merit or excellence in the subject for which vacancy has been advertised and he has applied for recruitment.

32- In view of the above discussions, all the writ petitions are allowed. All the concerned Joint Director of Education/competent authorities are directed to award quality point marks for post graduation degree in the light of the law clarified above and to finalise the selection accordingly, expeditiously, preferably within three months from today.

**Order Date :- 6.12.2017**

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