**IN THE HIGH COURT OF ALLAHABAD**

Writ Petition No. 1178 (SS) of 2011 and Writ Petition No. 1599 (S/S) of 2011

Decided On: 09.02.2012

Appellants: **Sunil Dutt & others**
**Vs.**
Respondent: **State of U. P. & others**

**AND**

Appellants: **Gajraj Singh and another**
**Vs.**
Respondent: **State of U.P. through Secretary Basic Education & others**
[Alongwith : Writ Petition No. 2165 (S/S), 969 (S/S), 1037 (S/S), 1036 (S/S), 967 (S/S), 1064 (S/S), 1146 (S/S), 1049 (S/S), 1055 (S/S), 951 (S/S), 950 (S/S), 1001 (S/S), 992 (S/S), 1133 (S/S), 1869 (S/S), 1564 (S/S), 1087 (S/S), 1079 (S/S), 1134 (S/S), 1263 (S/S), 1372 (S/S), 1440 (S/S), 1238 (S/S), 1245 (S/S), 1620 (S/S), 1514 (S/S), 881 (S/S), 1024 (S/S), 1219 (S/S), 1092 (S/S), 1091 (S/S), 1136 (S/S), 1190 (S/S), 1108 (S/S), 1101 (S/S), 1100 (S/S), 1078 (S/S), 1099 (S/S), 1077 (S/S), 1189 (S/S), 958 (S/S), 1130 (S/S), 1109 (S/S), 898 (S/S), 1864 (S/S), 2068 (S/S), 1258 (S/S), 1259 (S/S), 1527 (S/S), 2163 (S/S), 2164 (S/S), 1140 (S/S), 1121 (S/S) of 2011]

**Hon'ble Judges/Coram:**
Hon'ble Devendra Kumar Arora, J.

**JUDGMENT**

**Hon'ble Devendra Kumar Arora, J.**

1. Since facts and legal issues involved in the instant writ petitions are common, the same are being heard together and decided by a common judgment & order. The Writ Petition No. 1178 (SS) of 2011 is taken up as leading case.

2. Present writ petition has been filed for quashing of the impugned order dated 10.2.2011(Annexure No. 1), passed by opposite party no. 3, so far as it makes provision for taking over the charge of the post of Block Resource Coordinator by the Ex-officio Block Resource Coordinator i.e. Asst. Basic Education Officer of the concerned block as well as Government Order dated 02.02.2011 (Annexure No.2), so far as it makes provision for posting of District Basic Education Officer as Ex-officio Block Resource Coordinator and further directions have been sought for restraining the opposite parties from interfering in the functioning of the petitioners on the post of B.R.C. Coordinators in any manner.

3. Sri H.G.S. Parihar, Sri R.K. Chaudhary and Sri R.C. Tiwari along with other counsel for the petitioners, at the very outset, submitted that they are not challenging the policy decision of the State Government taken vide Government Order dated 02.02.2011 as the policy decision of the State Government does not speak anything about the present working incumbents, who have been appointed for the term of two years after due selection. It is further submitted that the petitioners are basically aggrieved with the Circular dated 10.02.2011, issued by the Project Director, U.P. Education for all Project Council, Lucknow (opposite party no.3) in pursuance to the policy decision of the State Government dated 02.02.2011, who on its own issued directives for replacing the petitioners and other working BRC Coordinators by posting of Assistant Basic Education Officer as Ex-officio BRC Coordinators and also directed for relieving of the BRC Coordinators even before the expiry of their term. In some of the petitions the grievance with respect to non-payment of salary assigned to the post of BRC Coordinators i.e. the pay scale equivalent to the post of Headmaster of Junior High School have also been raised, which has been provided in the Government Order dated 01.09.2001 and as well as in the advertisement dated 12.12.2009 published by the District Basic Education Officer, Bulandshahr in daily Newspaper "Amar Ujala" (Annexure-SA-1 to the supplementary affidavit dated 02.03.2011).

4. The further submission of learned counsel for the petitioners is that the 'education for all' scheme was launched by the State Government in the year 1995-96 in ten districts of the State vide Government Order dated 02.06.1995 and the same was to continue till 2000 and thereafter all the posts were to come under the Basic Education Officer. The State Government by means of Government Order dated 01.09.2001 prescribed the complete procedure for recruitment/ appointment of Block Resource Centre (BRC) Coordinators and Nyay Panchayat Resource Centre (NPRC) Coordinators. Para-1Ka of the Government Order prescribes the qualification and the pay scale for the post of BRC Coordinators and as per the same, the post of BRC is in the pay scale of Headmaster of Junior High School. The Headmaster of Primary School, or Assistant Teacher of Junior High School or NPRC Coordinators having two years experience and whose service tenure is not less than 10 years would be eligible. The rest of the paras provide with respect to advertisement in two Newspapers, constitution of Selection Committee and the method of selection, which includes written examination and interview and the appointment made under the scheme would be treated an addition to basic cadre of District Basic Education Board, as the posts have been separately created. The provisions for evaluating the performance prescribing, reporting, reviewing and accepting authority have also provided. It has been specifically provided that the selection procedure prescribed under the Government Order will apply to the present post as well as for the post which are to be created in future. The Government Order dated 01.09.2001 was modified by the Government Order dated 29.06.2002 (Annexure-5 to the writ petition) wherein teaching experience was reduced from 10 years to 8 years with further condition that no selection of teachers whose retirement will be less than 10 years would be selected and the term of appointment has also been fixed for a period of two years, thereafter fresh selection is to be made.

5. The further submission of learned counsel for the petitioners is that the complete comprehensive and exhaustive procedure for direct recruitment for a period of two years in the pay scale of Headmaster of Junior High School has been provided in the Government Order dated 01.09.2001 read with Government Order dated 29.06.2002 and in pursuance to the said Government Orders, the advertisement was issued on 12.12.2009 in daily Newspapers "Amar Ujala" mentioning the pay scale, qualification and tenure of the post. Similar advertisements were also issued in other districts by respective District Basic Education Officers. Since the petitioners were working as Headmaster, Primary School/ Assistant Teacher, Junior High School/ NPRC Coordinators and having minimum experience prescribed in the advertisement read with G.O. Dated 01.09.2001 and 29.06.2002 as such, they applied and appeared in the written examination. After qualifying the written examination, the petitioners interviewed by the Selection Committee, and finally on the recommendation of the Selection Committee they were declared successful and were issued appointment orders for a fixed term of two years on 31.03.2010 (Annexure-No.6 to the writ petition).

6. The petitioners were appointed by means of order dated 31st March, 2010 on the post of B.R.C. in the concerned blocks on temporary basis for a fixed term of two years with a condition that in case negligence of duties/bad performance, their services can be terminated. It is also submitted by learned counsel for petitioner that similar procedure for selection was also adopted in other districts and the petitioners of other connected writ petitions were also appointed by issuing similar appointment order. Since petitioners have been selected and appointed for a fixed term of two years and nothing adverse was reported against the petitioners and, as such, they are entitled to continue to work on the post of B.R.C. Coordinator for the period of two years, which has not yet expired.

7. It is also submitted that in the meantime, the State Government has issued another Government Order for restructuring the NPRC and ABRC but in the said Government Order nothing has been said regarding dis-continuance of the persons, who are working as BRC Coordinators before expiry of their term of two years. The State Project Director (Opposite Party No. 3) while issuing the consequential order dated 10.2.2011 directed for taking over charge of the post of BRC Coordinator by the Asst. Basic Shiksha Adhikari and in pursuance of the same the petitioners were directed to be relieved from the post of BRC Coordinators. The action of the Project Director of issuing orders for taking over charge was in contravention of the Government Order dated 2nd February, 2011.

8. Learned counsel for petitioners further submitted that the petitioners have been appointed on the post, equivalent to Head Master of Junior High School, having higher status and higher payscale, as such and they are entitled for the pay-scale of the said post. It is a different thing that the authorities have not paid the said scale to the petitioners.

9. Shri Parihar also submitted that in various connected writ petitions the petitioners have prayed for making payment of pay scale of Head Master of Junior High School and by not paying salary of the post in question, which has been prescribed in the Government Order dated 1.9.2001 read with 29.6.2002 as well as in respective advertisements issued by the Basic Shisha Adhikari, and by the impugned action of the State Project Director, the petitioners have been put to loss of higher status and salary, which they were entitled upto the period of two years from the date of their appointments and vested right of the petitioners has been taken away by the impugned Circular of the Project Director in a most illegal, arbitrary as well as in utter violation of principles of nature justice.

10. It is also submitted that the Hon'ble Single Judge dismissed certain writ petitions at Allahabad on the ground that admittedly no extra allowance or salary is payable to such coordinators and they are receiving the same salary which they were receiving when working as Asst. Teachers. Even after reporting back they will be receiving same salary and further neither BRC Coordinators have any legal enforceable right to work as Coordinators nor the change in policy and the scheme visits them with any civil consequences.

11. The Hon'ble Division Bench while considering the special appeal placed reliance on the fact that the BRC Coordinators were not being paid any extra remuneration and they have no vested right to say that their appointment as Coordinators/co-coordinators cannot be terminated mid-way, as well as, it has been mentioned specifically in the appointment letter that their services can be terminated at any time. Therefore, with change of policy, the appellants cannot claim any right to continue to complete their full tenure. It has also been observed by the Hon'ble Division Bench that appointment of petitioners on the post of BRC Coordinator/Co-Coordinator has been made by way of deputation, even they have gone through the selection process, but the same can be terminated at any time either by a special or general order.

12. It is vehemently submitted by learned counsel for petitioner that neither the Hon'ble Single Judge nor Hon'ble Division Bench examined the issue with respect to the higher status and salary, attached with the post of B.R.C. Coordinators in pursuance to G.O. Dated 01.09.2001 and 29.06.2002 read with the advertisement. The petitioners are entitled to receive higher salary of the post of Headmaster, Junior High School in pursuance of the Government Order dated 1.9.2001 read with 29.6.2007 and advertisement till the expiry of the term of their appointments. Further the appointment of the petitioners is a term appointment and was not on deputation in strict sense.

13. The further submission is that in the meantime, the State Government issued Government order dated 2.2.2011 (Annexure -2 to the Writ Petition ) for restructuring the Nyay Panchayat Resource Centre and Block Resource Centres, in para-2 of the said Government order, it has been provided that the NPRC have failed to give required educational support for the reason that the Head Master/ Assistant Teacher of Primary School have been appointed as NPRC Coordinators and in so many districts, these teachers have also been made Building In-charge (Bhawan Prabhari), further 8249 teachers have been posted as NPRC Coordinators and there is shortage of teachers in the schools, as such, these teachers be sent back to their schools and further, under the Government Order dated 3.2.2009 there is provision for appointment of Cluster In-charge (Sankul Prabhari) for the teachers at Nyay Panchayat level and as such, the Cluster Incharge (Sankul Prabhari) themselves may be made ex-officio NPRC coordinator, so that there may be no double system at Nyay Panchayat level.

14. Learned counsel further averred that the concern has been shown over the shortage of teachers due to appointment of NPRC Coordinators but surprisingly in para-3 of the said Government order it has been mentioned that at present, at the Block Resource Centre there is appointment of 01 Coordinator, 02 Assistant Coordinators and 01 Assistant Coordinator is attached with the Assistant Basic Education Officer for non teaching work and under the proposed scheme for non teaching work, the human resource is being made available, as such, at Block Resource Centre for strengthening the education system in each and every Block Resource Centre there should be arrangement of 01 Coordinator and 07 Co-Coordinators. It has further been provided that considering the necessity of education management, administration and planning alongwith educational support at Block/ Urban Resource Centre, the Assistant Basic Education Officer/ Nagar Shiksha Adhikari itself be made ex-officio BRC Coordinator.

15. Learned counsel for the petitioner also submitted that so far as the arrangement, as proposed in para-3 of the Government order, is concerned, the same is full of contradiction, as on one hand, earlier 01 ABRC Coordinator was to be attached with the Assistant Basic Education Officer and, on the other hand, by the impugned Government Order, the Assistant Basic Education Officer has been made Ex-Officio BRC Coordinator. So far as the nature of work of BRC Coordinator is concerned, the same is of peculiar nature for which special skill test/examination is conducted under the Government Order dated 1.9.2001 and further minimum teaching experience is also required whereas the Assistant Basic Education Officer is discharging the administrative work and he is also not trained to discharge the work of BRC Coordinators. As such, the purpose of Sarva Shiksha Abhiyan itself would be frustrated and goal of Sarva Shiksha Abhiyan cannot be achieved by appointing the Assistant Basic Education Officer as Ex-officio BRC Coordinator. Otherwise also, the ground of shortage of the teachers under the Government order has been shown as, that earlier at one Block Resource Centre there is only two ABRC Coordinators and as per the present Government Order there would be seven ABRC Coordinators out of which five will be selected and appointed from amongst the Asst. Teachers having 8 years' teaching experience in primary/ junior high schools and two posts of ABRC Coordinators in each Block Resource Centre, persons will be appointed by out-sourcing. So far as the requirement of 4,518 additional ABRC Coordinators is concerned, the same will be filled up by transferring the posts out of 8249 posts of teachers of NPRC and, thus, after issuance of the impugned Government Order, 4518 more teachers would be appointed as ABRC Coordinators and, thus, 65% more teachers of earlier strength would be engaged as ABRC Coordinators.

16. Learned counsel for the petitioner further submitted that in purported compliance of the Government Order dated 2.2.2011, the State Project Director, U.P., Education for all Projects has issued Circular dated 10.2.2011 (Annexure No. 1 to the Writ Petition) wherein it has been provided that against 880 Block/ Urban Resource Centre Coordinators, Asst. Basic Education Officer/Nagar Shiksha Adhikari would be posted as Ex- officio and against 9249 Nyay Panchayat/ Urban Resource Centre Coordinators, the Head Master of Junior High School situated in Nyaya Panchayat/ Up Nagar Shiksha Kendra would be posted as Ex-officio NPRC Coordinators and, thus, as per Circular dated 10.2.2011, 9249 Head Master of Junior High School would be engaged to discharge the duty of NPRC Coordinators and, thus, again 9249 Head Master of Junior High School would be deputed to discharge the work of NPRC Coordinators and, thus, total approximately 14000 teachers would be engaged to discharge the duty of ABRC/ NPRC Coordinators and, there would be shortage of more teachers to discharge teaching work.

17. Learned counsel further submitted that although in the Government Order dated 2.2.2011 there was no direction that the BRC Coordinators who have been selected and appointed and their term has yet not been expired, be replaced by posting of Assistant Basic Education Officer as Ex-officio BRC Coordinators or they should be removed from their posts before expiry of their term but by prescribing the time table for selection and posting, the State Project Director on the third page of Circular fixed the date i. e. 21.2.2011 for taking charge of BRC Coordinators and in compliance of the Circular, the District Basic Education Officer started to issue orders for taking charge from the BRC Coordinators before expiry of the term and State Project Director has issued directions for taking over charge in contravention and beyond the scope of Government Order dated 2.2.2011 and, thus, same deserves to be quashed.

18. Learned counsel for opposite party no. 4 while opposing the writ petition submitted that the similar writ petition challenging the said Government Order came up before this Court at Allahabad being W.P. No. 16615 of 2011, Subhash Chandra Rathore and another vs. State of U. P. & others which has been dismissed vide judgment & order dated 29.3.2011 (Annexure No. CA-1). In the said judgment, it has been held that a person working on deputation, whose substantive post is that of Assistant Teacher, cannot be permitted to continue on deputation for indefinite period. The primary duty of the petitioners is to teach students of the institution where they have been appointed. Change of policy by the State Government is not in violation of any statutory or constitutional provision. It is further submitted that since petitioners while working as Coordinators, are getting the same pay scale which was being paid to them while working on the post of Head Master of Primary Schools/ Asst. Teacher of Junior High Schools, no financial loss would be caused to the petitioners. Petitioners have no right to continue to work as Coordinator after change of the policy. According to new policy/ scheme for supervision of the basic schools under the block one Asst. Basic Education Officer, as ex-officio coordinators alongwith seven Asst. Coordinators have been provided just to strengthen the educational system in block and resource centres have been established for the said purpose.

19. Learned counsel for opposite Party No. 3 submitted that under 'Sarva Shiksha Abhiyan' the coordinators were engaged at Block Resource Centre and Nyay Panchayat Resource Centre under the policy framed by the State Government. Now, the State Government has changed its policy for re-structuring the same in order to strengthen the basic education and has framed a new fresh policy vide Government Order dated 02.02.2011 and order dated 10.2.2011. Similar controversy challenging the same Government Order came up before this Court at Allahabad being Writ Petition No. 9393 of 2011, Harpal Singh & others vs. State of U. P. & others which has been dismissed vide judgment & order dated 17.2.2011. Another Writ Petition No. 10232 of 2010, Virendra Singh and others vs. State of U. P. & others, involving the same issue, has been dismissed vide judgment & order dated 21.2.2011. The petitioners are getting same salary which was being paid to them while working on the post of Head Master of Primary Schools or as Asst. Teacher in Junior High Schools. As such, petitioners will suffer no financial loss due to change of the policy. The petitioners have no legal enforceable right to work as Coordinator.

20. Learned counsel for opposite Party No. 1 while opposing the writ petition submitted that for the purpose of providing better quality education to the children under "Right to free and compulsory education to Children Act, 2009 (in short R.T.E. Act), a fresh scheme came into force vide G.O. Dated 02.02.2011 and in pursuance thereof the State Project Office, Sarva Shiksha Abhiyan also issued a Circular dated 10.2.2011 which is impugned in this writ petition. It is further submitted that in identical circumstances several writ petitions have been filed before this Court at Allahabad, have been dismissed and it has been held that since it is a policy decision of the State Government, the same cannot be interfered.

21. Learned counsel for the petitioners in their rejoinder submitted that the pay scale of BRC Coordinators is of Head Master of Junior High School is not disputed. In para 7 of the Counter Affidavit, they have mentioned that the petitioners are getting same pay scale and salary which they were being paid while working as Head Master of Primary School. In para 13 of the Counter Affidavit, they have taken stand that in pursuance of the Government Orders dated 01.09.2001 and 29.6.2002, the petitioners were selected purely on temporary basis and it was the policy decision taken by the State Government and in pursuance of the same, restructuring has been done. The petitioners have been sent to their original posts for teaching, which is legal and justified. In para-14 of the Counter Affidavit, it has been mentioned that there was provision of 01 Coordinator and 02 Assistant Coordinators at BRC Centre and 01 ABRC Coordinator was be attached with Assistant Basic Education Officer for non teaching purpose and at BRC Centres the Assistant Basic Education Officer and Co-Coordinators were performing the duties for educational and Administrative Supervision/Management, therefore, to getrid of the dual system/double system, the Assistant Basic Education Officer has been directed to work as Ex-officio Coordinator and at Nyay Panchayat level, the Cluster Incharge is the ex-officio Coordinator of NPRC, para 7, 13 and 14 have been replied in para 11, 20 and 21 of the Rejoinder Affidavit wherein the petitioners have reiterated that the post of BRC Coordinator is of the pay scale of Head Master of Junior High School, which is higher pay scale and non-payment of higher pay scale is arbitrary, illegal and discriminatory. The petitioners were selected for the post of BRC Coordinators after undergoing comprehensive and exhaustive selection process, as such, before the expiry of period as mentioned in the Government Order dated 29.6.2002, the petitioners cannot be dislodged and further the Government Order cannot be given retrospective affect and it cannot be applied to the existing B.R.C. Coordinators, while making new arrangement. There will be no affect on the selection and appointment made before the commencement of the government order dated 02.02.2011. Learned counsel for petitioners further submits that there is nothing in the Government Order, which provides that even the Assistant Basic Education Officer has been directed to work as ex-officio BRC Coordinators, whereas petitioners are working as BRC Coordinators after being selected and appointed on the basis of scheme existing prior to issuance of Government order dated 02.02.2011.

22. Further submission is that so far as the judgment rendered by this Court at Allahabad in Writ Petition No. 9393 of 2011 is concerned, the petitioners of said Writ Petition have not placed correctly the Government Order dated 1.9.2001, wherein it was mentioned that the post of BRC Coordinator is of the pay-scale of Head Master of Junior High School and feeding cadre is Head Master of Primary School/Assistant Teacher, Junior High School. It appears that before the Hon'ble Single Judge, it has also not been argued that the petitioners were selected after comprehensive and exhaustive selection process as prescribed under Government Order dated 1.9.2001 i.e. written examination, interview and the appointment was for a term of 02 years. The term has not yet expired and further the post of BRC Coordinator is of the pay scale of Head Master of Junior High School i.e. carrying higher pay scale of promotional post, as such, the petitioners are entitled to get higher pay scale as per the Government Order dated 01.09.2001 and Advertisement and, as such, they have indefeasible right to continue till the completion of two years.

23. Learned counsel for petitioner further submitted that before the Hon'ble Single Judge the decisions of Hon'ble Supreme Court were also not placed whereas the Hon'ble Supreme Court has held that change in the Government Order/policy will not affect earlier selection or the selection process and the statutory provision cannot be given retrospective affect unless it is specifically mentioned in the statutory provision, whereas in the Government Order dated 2.2.2011, there is no mention that the government order will be given retrospective affect and will undo the selection and appointment on the post of BRC Coordinators which has already been held before issuance of the Government Order and appointed persons are working on the posts of B.R.C. Coordinators.

24. It is also submitted that before the Hon'ble Single Judge it was not argued that in the Government Oder dated 02.02.2011 there was no direction for posting of Assistant Basic Education Officer as Exofficio BRC Coordinators, even on the post where the duly selected BRC Coordinators were working and their term has not expired.

25. On 5.7.2011, an application for re-hearing of the case was filed by learned counsel for the opposite party no. 3, supported with an affidavit, mentioning therein that this Court at Allahabad dismissed the writ petitions involving the same issue against which special appeals were filed including Special Appeal No. 37 of 2011, Harpal Singh and others vs. State of U. P. & others and other connected matters. Those special appeals have also been dismissed by a Division Bench of this Court vide judgment & order dated 27.5.2011(Annexure No. 1). The said application was allowed and the matter was re-heard. Learned counsel for petitioners submitted that the judgment of Hon'ble Single Judge as well as of Division Bench in Special Appeal No. 371 of 2011, Harpal Singh and others vs. State of U.P. & others and other connected appeals have not examined the provisions of Government Order dated 1.9.2001 read with 29.6.2002 and the advertisement as well as the aspect that by getting the appointment of BRC Coordinator, the status of the petitioners as well as pay scale have been enhanced to that of Head Master, Junior High School and the term has been curtailed without affording any opportunity in violation of principles of natural justice, causing civil consequences and, as such, the same are per incuriam. In support of his submission, learned counsel for petitioner has placed reliance on paras-128, 129 and 130 of a case reported in: (2011) 1 SCC 694, Siddharam Satlingappa Mhetre vs. State of Maharashtra & others.

26. It is further submitted that as per the Government Order dated 20.7.2001, the pay scale of Head Master of Primary School/ Asst. Teacher of Junior High School was Rs. 5500-9000 whereas pay scale of Head Master of Junior High School was Rs. 6500-10,500. Vide Government Order dated 07.9.2009 the pay-scales were revised and the pay-scale of Head Master, Primary School/Assistant Teacher, Junior High School (Grade III) is Rs. 7450--225- 11,500 and Pay Band -2 is Rs. 9300-34,800 and the Pay Grade is Rs. 4600/- whereas the pay scale of Head Master of Junior High School (Grade III) is Rs. 7500-250-12000, Pay Band -2 is Rs. 9300-34,800 and Grade Pay is Rs. 4800/- and, thus, the pay-scale of Head Master of Junior High School is higher than the pay-scale of Head Master of Primary School/ Assistant Teacher of Junior High School. These Government Orders have been filed along with Supplementary Affidavit dated 10.3.2011.

27. On careful examination, this Court finds that in Writ Petition No. 10232 of 2011, Virendra Singh and others vs. State of U.P. & others the Hon'ble Single Judge while examining the issue observed that "it is admitted to the petitioners that no allowance or salary is payable to such coordinators or Co-coordinators and the petitioners were receiving the same salary which they were receiving when working as Assistant Teachers or Coordinators and even now after reporting back, they will be receiving the same salary. Apparently, neither the petitioners have any legal enforceable right to work as Coordinators or co-coordinators nor the change in policy and the scheme visits the petitioners with any civil consequences. Apart from that, the Courts sitting under Article 226 of the Constitution of India are very loath to interfere in such policy decision of the Government which is taken on consideration of myriads of inputs. Simply because the petitioners may loose their clout and according to them the scheme may not be a better one than the earlier one, cannot invite the Court to interfere in such matters. Generally, a writ of certiorari is issued to quash an order of action visiting the petitioners with some civil consequences or the exercise of power is wholly arbitrary. The challenge here does not meet any of the two requirements."

28. Further, the Hon'ble Division Bench in Special Appeal No. 371 of 2011, Harpal Singh & others vs. State of U.P. & others and three other connected special appeals framed four following points for consideration:

(I) Under what circumstances this Court can interfere in policy decisions taken by the State Government.

(II) Whether the change in policy by issuance of Government Order dated 2nd February, 2011 is arbitrary and unreasonable.

(III) Whether the appellants have any vested right to continue as Coordinator/Co-Coordinator after the Government dated 2nd February, 2011 is given effect to.

(IV) Whether the learned Single Judge was bound to follow the interim order passed in a similar matter by another Single Judge of the Lucknow Bench of this Court.

29. As far as the finding of Hon'ble Division Bench with respect to issue no. 1 is concerned, there is no dispute that a Court can interfere in a policy decision of the Parliament / State Legislatures/ Governments if any of the following conditions exist:

(I) If the policy fails to satisfy the test of reasonableness, if would be unconstitutional.

(II) The change in policy must be made fairly and should not give impression that it was so done arbitrarily on any ulterior intention.

(III)The policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc.

(IV) If the policy is found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions.

(V) It is dehors the provisions of the Act or legislations.

(VI) If the delegatee has acted beyond its power of delegation.

30. So far as points no. 2 & 3 are concerned, while deciding the same, the division bench treated the appellants of Special Appeal on deputation as they were holding lien on their original post and also observed that they were not being paid any extra remuneration except what they were getting as teachers and further the appellants have no vested rights to say that their appointment as Coordinators/Cocoordinators cannot be terminated midway and on account of change of policy, the appellants cannot claim any right to continue to complete their full tenure. Even if the appointment has been made by facing selection process as there was a specific condition in the appointment letter that their appointment can be cancelled at any time.

31. This Court after examining the record of the writ petitions and on due consideration comes to the conclusion that the State Government by means of Government Order dated 01.9.2001 prescribed the qualification and pay scale for appointment on the post of BRC Coordinator. The said Government Order further provides that the post of BRC Coordinator would be of pay-scale of Head Master of Junior High School and the Head Master of Primary School/ Assistant Teacher of Junior High School or NPRC Coordinators having 02 years experience, as such, total ten years' experience would be eligible. The Government Order further provides that the post of BRC Co-Coordinator (ABRC) would be of the payscale of Head Master, Primary School and Assistant Teacher, Primary School having 04 years teaching experience in the Board's School would be eligible. The Government Order also provides a complete procedure for selection by inviting applications in two daily newspapers from the candidates having the aforesaid qualification and the candidates were required to appear in written examination and after qualifying the same they were required to appear before Interview. The District Basic Shiksha Adhikari in the capacity of Appointing Authority was required to appoint the candidates on the post of BRC Coordinator on the basis of the recommendations of the Selection Committee. Subsequently, the State Government vide Government Order dated 29.6.2002 reduced the teaching experience from 10 to 8years. It also provides that term of appointment would be of two years.

32. The concerned Basic Shiksha Adhikaries in their respective districts issued advertisements in pursuance of the Government Order dated 29.6.2002 prescribing qualification, salary and the tenure of the post and after due selection petitioners were issued appointment letters for a fixed term of two years with a condition that due to negligence in duties or bad performance their services can be terminated as well as their services can also be terminated at any time without any prior intimation.

33. The Hon'ble Supreme Court in the case of Dr. L. P. Agarwal vs. Union of India and others, reported in: (1992) 3 SCC 526 while examining the issue of term appointment observed that the tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure unless curtailed on justifiable grounds. The relevant paras 16 & 17 read as under:

16. We have given our thoughtful consideration to the reasoning and the conclusions reached by the High Court. We are not inclined to agree with the same. Under the Recruitment Rules the post of Director of the AIIMS is a tenure post. The said rules further provide the method of direct recruitment for filling the post. These service-conditions make the post of Director a tenure post and as such the question of superannuating or prematurely retiring the incumbent of the said post does not arise. The age of 62 years provided under Proviso to Regulation 30(2) of the Regulations only shows that no employee of the AIIMS can be given extension beyond that age. This has obviously been done for maintaining efficiency in the Institute-Services. We do not agree that simply because the appointment order of the appellant mentions that "he is appointed for a period of five years or till he attains the age of 62 years", the appointment ceases to be to a tenure-post. Even an outsider (not an existing employee of the AIIMS) can be selected and appointed to the post of Director. Can such person be retired prematurely curtailing his tenure of five years? Obviously not. The appointment of the appellant was on a Five Years Tenure but it could be curtailed in the event of his attaining the age of 62 years before completing the said tenure. The High Court failed to appreciate the simple alphabet of the service jurisprudence. The High Court's reasoning is against the clear and unambiguous language of the Recruitment Rules. The said rules provide "Tenure for five years inclusive of one year probation" and the post is to be filled "by direct recruitment". Tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his appointment to the said office begins when he joins and it comes to an end on the completion of the tenure unless curtailed on justifiable grounds. Such a person does not superannuate, he only goes out of the office on completion of his tenure. The question of prematurely retiring him does not arise. The appointment order gave a clear tenure to the appellant. The High Court fell into error in reading "the concept of superannuation" in the said order. Concept of superannuation which is well understood in the service jurisprudence is alien to tenure appointments which have a fixed life span. The appellant could not therefore have been prematurely retired and that too without being put on any notice whatsoever. Under what circumstances can an appointment for a tenure be cut short is not a matter which requires our immediate consideration in this case because the order impugned before the High Court concerned itself only with premature retirement and the High Court also dealt with that aspect of the matter only. This Court's judgment in Dr. Bool Chand, v. Chancellor, Kurukshetra University,   : (1968) 1. S.C.R. 434, relied upon by the High Court is not on the point involved in this case. In that case, the tenure of Dr. Bool Chand was curtailed as he was found unfit to continue as Vice-Chancellor having regard to his antecedents which were not disclosed by him at the time of his appointment as Vice-Chancellor. Similarly the judgment in Dr. D.C.Saxena v. State of Haryana,  : (1987) 3S.C.R. 346 has no relevance to the facts of this case.

17. We, therefore, allow the appeal with costs, set aside the judgment of the High Court, allow the writ petition of the appellant and quash the resolution of the Institute-Body dated November 24, 1980 and the consequent order retiring the appellant. Since the appellant has already attained the age of 62 years, there is no question of reinstating him in the office of the Director of the AIIMS. He shall, however, be entitled to his salary less the non-practising allowance, for the period from December 1, 1981 to January 21, 1984. Respondents 1 and 2 are directed to pay the arrears of the salary to the appellant within three months from today. The appellant shall also be entitled to 12% interest on the said arrears. We quantify the costs as Rs. 10,000.

Subsequently, the Hon'ble Supreme Court in the case of P. Venugopal vs. Union of India, reported in   : (2008) 5 SCC 1 has relied upon the case of Dr. L.P. Agarwal (supra) and pleased to hold that curtailment of the term can only be made for justifiable reasons and compliance with principles of natural justice. The relevant para 36 reads as under:

36. From the aforesaid discussion, the principle of law stipulated by this Court is that curtailment of the term of five years can only be made for justifiable reasons and compliance with principles of natural justice for premature termination of the term of a Director of AIIMS squarely applied also to the case of the writ petitioner as well and will also apply to any future Director of AIIMS. Thus, there was never any permissibility for any artificial and impermissible classification between the writ petitioner on the one hand and any future Director of AIIMS on the other when it relates to the premature termination of the term of office of the Director. Such an impermissible over classification through a one-man legislation clearly falls foul of Article 14 of the Constitution being an apparent case of "naked discrimination" in our democratic civilised society governed by the rule of law and renders the impugned proviso as void ab initio and unconstitutional.

From perusal of Government Order dated 29.6.2002 as well as appointment letters of the petitioners, it is nowhere found that the candidates were required to be appointed on deputation basis or were appointed on deputation.

34. The Hon'ble Supreme Court in the case of Union of India and another vs. Shardindi,   : (2007) 6 SCC 276 again on the issue "tenure appointment" pleased to observe that strictly speaking that it is not a deputation post and because the incumbent has been selected under the Act and he has not come on deputation as such though loosely, it can be said to be on deputation in the sense that since the incumbent holds his lien. The relevant para 26 reads as under:

26. Learned Addl. Solicitor General next submitted that the appointment of the respondent was purely on deputation basis and since the deputation period has been terminated and the appointing authority has full right to terminate his deputation. Therefore, the respondent can be sent back to his parent department i.e. the State of Uttar Pradesh. We regret to say that this appointment of the respondent cannot be said to be purely an appointment on deputation basis. Strictly speaking, it is not a deputation post because the incumbent has been selected under the Act and he has not come on deputation as such though loosely it can be said to be on deputation in the sense that since the incumbent holds his lien in the State of Uttar Pradesh and the State of Uttar Pradesh has permitted him to join the post for a fixed period of four years or till he attains the age of superannuation i.e. sixty years. Since the respondent holds a lien in the State of U.P. therefore, to some extent he can be said to be on deputation but it is not in the sense of deputation as in the case of an all India Service person who is sent on deputation to the Central Government or to other organization. It is an independent selection under the statute and the State of U.P. has permitted the respondent to join his assignment as he holds a lien and after completion of the period of four years he will come back to the State till he attains the age of superannuation. If the incumbent was to retire within the period of four years perhaps it would not have been necessary to have moved the State of U.P. for its permission to join this assignment. Even after expiry of four years the respondent is left with some period of service. Therefore, formal permission was sought from the State of U.P. to permit the incumbent to join the post for a fixed term. Therefore, it is the permission by the State of U.P. to join the post and in case the incumbent comes back he can join the service under the State of U.P.. Therefore, it is almost like a permission and not in strict terms of deputation but loosely it can be termed as deputation. This is not the situation when the period of deputation can be cut short and the incumbent can be sent back to his parent department i.e. the State of U.P. unlike the officers of an all India service. This appointment is for a fixed tenure after due selection under the Act. Therefore, this kind of deputation stands on an entirely different category.........

35. The Hon'ble Supreme Court in the case of State of Bihar and others vs. Mithilesh Kumar, reported in (2010) 4 UPLBC 2669 pleased to observe that change in the norms of recruitment could be applied prospectively and could not affect those who had been selected for being recommended for appointment after following the norms as were in place at the time when the selection process was commenced. The relevant paras 14, 15 and 16 are being reproduced as under:

14. We have carefully considered the submissions made on behalf of the parties and we are not impressed with the stand taken by the Petitioner-State of Bihar, that the Bihar Public Service Commission ought not to have recommended the name of the Respondent for appointment after the Assistant Director, Social Welfare, had requested the Commission not to recommend any further names in view of the decision taken by the State to have disabled persons trained through professionally established NGOs/institutions in place of Instructors/ Assistant Instructors for which advertisements had already been issued by the Commission. Both the learned Single Judge as also the Division Bench rightly held that the change in the norms of recruitment could be applied prospectively and could not affect those who had been selected for being recommended for appointment after following the norms as were in place at the time when the selection process was commenced. The Respondent had been selected for recommendation to be appointed as Assistant Instructor in accordance with the existing norms. Before he could be appointed or even considered for appointment, the norms of recruitment were altered to the prejudice of the Respondent.

15. The decisions which have been cited on behalf of the Respondent have clearly explained the law with regard to the applicability of the Rules which are amended and/ or altered during the selection process. They all say in one voice that the norms or Rules as existing on the date when the process of selection begins will control such selection and any alteration to such norms would not affect the continuing process, unless specifically the same were given retrospective effect. As far as the decision in Uma Devi's case (supra) is concerned, we share the sentiments as set out in paragraph 35 of the judgment but we are only considering a situation where amendments are introduced to a recruitment process after the same has begun. The question of allowing sympathy to affect our judgment does not, therefore, arise in this case. Our focus is not on any individual, but on a legal principle which has been settled by this Court in various decisions, as referred to herein before. There is no reason for us to have any disagreement with the decision of this Court in All India Railway Recruitment Board case (supra) regarding the right to appointment even of selected candidates, but this is not a case of the Respondent having acquired any indefeasible right which has to be cancelled on account of certain exigencies. On the other hand, this is a case where although selected for the purpose of appointment by the B.P.S.C., Patna, the case of the Respondent was not even considered as there was a change in policy regarding recruitment in the meantime.

16. While a person may not acquire an indefeasible right to appointment merely on the basis of selection, in the instant case, the fact situation is different since the claim of the Respondent to be appointed had been negated by a change in policy after the selection process had begun.

36. Similarly, the Hon'ble Supreme Court while examining the issue of amendment in service rules or Government Orders, pleased to hold in the case of N.T. Devinkatti and others vs. Karnataka Publisher Vice Commission and others reported in   : (1990) 3 SCC 157 that Service Rules or Government Order normally operates prospectively unless indicated to the contrary by express language or by necessary implication. The relevant paras 11, 12 and 13 read as under:

11. There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing Rules or Government Orders, and if it further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing Rules and Government Orders. Candidates who apply, and undergo written or viva-voce test acquire vested right for being considered for selections in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystalises on the date of publication of advertisement, however he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication, if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the Rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant Rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right of selection, but if he is eligible and is otherwise qualified in accordance with the relevant Rules and the terms contained in the advertisement, he does acquire a vested right for being considered for selection in accordance with the Rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of Rules during the pendency of selection unless the amended Rules are retrospective in nature.

12. In B.N. Nagarajan v. State of Mysore, the dispute related to the validity of appointment of Assistant Engineers. The Public Service Commission invited applications by issuing Notifications for appointment to the post of Assistant Engineers in October 1958, May 1959 and April 1960. The Commission made selection,interviewed the candidates and sent the select list to the Government in October/November 1960. But before the appointment could be made the Mysore Public Works, Engineering Department Services (Recruitment) Rules 1960 came into force which prescribed different provisions than those prescribed in the earlier notifications in pursuance whereof the Public Service Commission had made the selections. The validity of the appointment made by the Government on the basis of the selection made by the Commission was challenged. The High Court quashed the selection and appointments made in pursuance thereof. On appeal before this Court, validity of the appointment were assailed on the ground that since the appointments had been made after the amendment of the Rules, the appointments should have been made in accordance with the amended Rules. A Constitution Bench of this Court rejected the contention holding that since the whole procedure of issuing advertisement, holding interviews and recommending the names having been followed in accordance with the then existing Rules prior to the enforcement of the amended Rules, the appointments made on the basis of the recommendation made by the Public Service Commission could not be rendered invalid.

13. In Y.V. Rangaiah v. J. Sreenivasa Rao similar Question arose relating to recruitment by promotion. The question was whether promotion should be made in accordance with the Rules, in force on the date the vacancies occurred or in accordance with the amended Rules. The Court observed as under: (SCC p. 289, para 9)

"The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State wise basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.

37. The same view was taken in P. Ganeshwar Rao v. State of Andhra Pradesh (1988) Supp. SCC 740 and A.A. Calton v. Director of Education & Ors.,   : (1983) 3 SCC 33 wherein it has been held by the Hon'ble Apex Court that it is a well accepted principle of construction that a statutory rule or Government Order is prospective in nature unless it is expressly or by necessary implication made to have retrospective effect. Where proceedings are initiated for selection by issuing advertisement, the selection should normally be regulated by the then existing rules and Government Orders and any amendment of the rules or the Government Order pending the selection should not affect the validity of the selection made by the selecting authority or the Public Service Commission unless the amended rules or the amended Government orders issued in exercise of its statutory power either by express provision or by necessary intendment indicate that amended Rules shall be applicable to the pending selections. See P. Mahendra & Ors. v. State of Karnataka & Ors.

38. The Hon'ble Supreme Court while examining the principle of per incurium in the case of State of U.P. vs. Synthetics & Chemicals Ltd. Reported in   : (1991) 4 SCC 139 pleased to observe in para-41 as under:-

41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind". (Salmond on Jurisprudence 12th Edn., p. 153). In Lancaster Motor Company (London) Ltd. Vs. Bremith Ltd. the Court did not feel bound by earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi V. Gurnam Kaur. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The Courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B. Shama Rao V. Union Territory of Pondicherry it was observed, 'it is trite to say that a decision is binding not because of its conclusion but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.

39. For the aforesaid reasons, this Court with deep respect is unable to subscribe to the view taken by the Hon'ble Single Judge as well as Hon'ble Division Bench and hold that the same cannot be considered as binding precedent.

40. In view of the aforesaid facts and circumstances of the case, this Court comes to the conclusion that fixed term appointment of the petitioners have been curtailed in utter violation of principles of natural justice, which resulted in deprivation of higher status and salary of the post of Head Master, Junior High School, further this Court also found that there is difference of pay scales of Head Master of Junior High Schools, and Head Master of Primary Schools/Asst. Teacher of Junior High Schools and petitioners are entitled to get the pay scale of the post in question i.e. BRC Coordinator for the term of their appointment (which is in the pay-scale of Head Master of Junior High School), as per the Government Order dated 01.09.2001 read with Government Order dated 29.06.2002 and the advertisements. The aforesaid issues have neither been raised by either of the parties nor considered by the Hon'ble Single Judge as well as by the Hon'ble Division Bench.

41. Writ Petition is therefore, allowed. A writ of certiorari is issued thereby for quashing of the impugned order dated 10.2.2011 (Annexure No. 1), so far as it makes provision for taking over charge of the post of Ex-officio Block Resource Coordinator.

42. A writ of mandamus is also issued to the opposite parties to pay salary of the post of Head Master of Junior High School to the petitioners as per G.O. Dated 01.09.2001 read with Government Order dated 29.06.2002 as well as advertisement dated 12.12.2009 for the term of appointment of the petitioners unless their appointments have been cancelled otherwise in terms of their appointment letters.

43. It is further directed that if the petitioners have already been relieved in pursuance to the Circular/ Order dated 10.2.2011, issued by the State Project Director, U. P. Education for all Project Council, Lucknow (Opposite Party No. 3) and have been compelled to join in their respective institutions, they will be entitled to get salary of the post of B.R.C. Coordinator which is in the pay-scale of Head Master of Junior High School, till the term of their appointments, after deducting the salary which they have received in the meantime as Head Master of Primary Schools/ Assistant Teachers of Junior High Schools.

44. No order as to costs.