

Dr. Manoj Kumar Rawat

v.

State of UP & Ors.

(Civil Appeal No. 7996 of 2026)

19 May 2026

[J.K. Maheshwari* and Atul S. Chandurkar, JJ.]

Issue for Consideration

Issue arose whether s.13(4) of the Uttar Pradesh Higher Education Services Commission Act, 1980 can be interpreted to permit fresh recommendation or change in place of posting of a waitlisted candidate, who has already been recommended for appointment elsewhere; and whether, after enforcement of the Uttar Pradesh Education Service Selection Commission Act, 2023, repealing the Old Act, the recommendation dated 13.12.2023 and consequential communications and placement order dated 12.01.2024 and 15.01.2025, issued in favour of the appellant can be sustained within the statutory scheme of the New Act.

Headnotes[†]

Uttar Pradesh Higher Education Services Commission Act, 1980 – Uttar Pradesh Education Service Selection Commission Act, 2023 – s.31 – Repeal and Savings – Effect – Appellant placed in the panel of wait listed candidates for the post of Principal in non-Government Aided Colleges – Thereafter, the Director recommended the name of the appellant for appointment as Principal of P.G College – However, on account of his family circumstances, the appellant did not take any step for joining or to take charge for PG College and requested to be appointed as Principal on the vacant posts in some other college or Meerut college – Director contended that in furtherance to the provisions of the Old Act and the recommendation, the appellant was required to join PG College and that after making such recommendation, there existed no provision for changing the place of posting under the relevant Government instructions or the applicable laws – In the meantime, the New Act came to be notified, thereby repealing the Old Act – After repeal, the Director

* Author

Dr. Manoj Kumar Rawat v. State of UP & Ors.

vide order 13.12.2023 recommended the Management to appoint the appellant as Principal of Meerut College and issue appointment order within thirty days – Respondent no.6, then Officiating Principal of Meerut College filed the writ petition on the ground that once a wait listed candidate has been issued direction for appointment at one place, the scheme of the Old Act doesn't permit any change to the same; that after commencement of the New Act, the Old Act stood repealed and the act done thereunder couldn't have been changed once the New Act was already in force – Single Judge of the High Court set aside the order dated 13.12.2023 as well as recommendation issued by the Director *inter alia* observing that the subsequent order directing the Management to appoint the appellant as Principal of Meerut College wholly without jurisdiction and cannot be sustained – Division Bench upheld the same – Interference with:

Held: Output of the findings of the Single Judge and Division Bench of the High Court correct – Since the outcome is in conformity with the provisions of the Old Act as well as the New Act, interference not warranted – Under the Old Act, the select list of the Commission shall be valid till a new list is prepared in accordance with the provisions of such Act – Management of a college/institution can issue an appointment order within a period of one month only on receiving intimation of a candidate's recommended by the Director – It is only in case a vacancy occurs due to death, resignation, or otherwise, during the period of the validity of the list, the name of a new candidate can be intimated by the Director only – By way of a non obstante clause in sub section (2) of s.31, an act done or action taken under the Old Act shall be deemed to have been done or taken under the New Act – This is not a case where the vacancy arose due to death or resignation – However, it is within the purview of "otherwise during the period of validity of the list" that the appellant claims to be entitled to appointment at an alternate place, as demanded, since the appointment order was not issued to the appellant u/s.13(3) of the Old Act – After the recommendation dated 03.08.2022, if the appellant was not willing to join due to his family circumstances and on finding vacancy at Meerut College, submitted a representation to post him at some other place with the intent to compel the authorities to bring his case within the ambit of s.13(4) of the Old Act, such action will superseding the earlier recommendation and frustrate the purpose

Supreme Court Reports

of s.13(3) of the Old Act – After commencement of the New Act, the validity of the list/panel under the Old Act will automatically lapse and the authorities are duty bound to follow the procedure u/ss.10 and 11 of the New Act to take steps for appointment on the post of Principal – Thus, the concerned authorities could not have issued the letter dated 13.12.2023 on the basis of the list prepared under the Old Act and thereafter, passed the consequential orders on 12.01.2024 and 15.01.2024, to effectively recommend and appoint the appellant on the post of Principal of Meerut College – Thus, the act done, was the recommendation dated 03.08.2022, which could not be implemented – Authorities have clearly intended that after issuance of the recommendation dated 03.08.2022, no subsequent change in the place of posting can be made in terms of the letter dated 17.08.2023 – Thereafter, on 21.08.2023, the New Act came into force – Thus, there was no occasion for the authorities to issue the order dated 13.12.2023 and, consequent recommendation dated 12.01.2024 and order dated 15.01.2024 in favour of the appellant, under the pretext of s.13(4) of the Old Act indicating that the position had otherwise fallen vacant – With the assistance of s.6 of the Uttar Pradesh General Clauses Act, the effect of repeal of the Old Act is clear insofar as it will not revive the previous list or the act done under the Old Act, which is having the effect of repeal – As regards the *locus standi* of the Officiating Principal, to challenge the order and subsequent orders which effectively grant appointment to the appellant as Principal of Meerut College, when the illegality of the authorities is writ large and the act done was completely illegal, the issue of *locus standi* may not be germane to be dealt with in the facts of the case. [Paras 15, 17, 18, 20, 22-25, 28]

Judicial deprecation – Conduct of the officers of the State of Uttar Pradesh:

Held: Duty of the State and its officials while filing their counter-affidavit and arguing the case before the Court is to provide real assistance – Such assistance ought to be based on the facts, and by applying the law applicable to the case at hand – It is not expected from the authorities to support any party contrary to the law or by filing affidavit which does not disclose the facts in conformity with the law – On facts, after commencement of the New Act on 21.08.2023, it was not open to the authorities to act in terms of the list prepared under the Old Act, even after reflecting

Dr. Manoj Kumar Rawat v. State of UP & Ors.

on their intention to not grant appointment to the appellant-a wait listed candidate only four days prior to the commencement of the New Act – Thereafter, there was absolutely no occasion for the Director to get the old list revived and write in favour of the appellant on 13.12.2023 – Chief Secretary of the State of Uttar Pradesh may look into the conduct of the officers who have filed the affidavit taking such unlawful stand before the High Court and even before this Court, which is completely impermissible under the law and contrary to the finding of the High Court – Since the concerned officers not a party to this case, no inclination to issue any adverse direction, however, left it open to the State of Uttar Pradesh to look into the above observations and take the recourse in accordance with the law, if necessary. [Para 26]

Case Law Cited

Kamlesh Kumar Sharma v. Yogesh Kumar Gupta and Others (1998) **3 SCC 45**; *Anand Sharadchandra Oka v University of Mumbai and Others* [2008] **2 SCR 297** : (2008) **5 SCC 217**; *Ayaubkhan Noorkhan Pathan v. State of Maharashtra and Others* [2012] **10 SCR 994** : (2013) **4 SCC 465** – referred to.

List of Acts

Uttar Pradesh Higher Education Services Commission Act, 1980;
Uttar Pradesh Education Service Selection Commission Act, 2023;
Uttar Pradesh General Clauses Act, 1904.

List of Keywords

Fresh recommendation; Change in place of posting of wait listed candidate; Recommended for appointment elsewhere; Repealing Old Act; Statutory scheme of New Act; Repeal and Savings; Post of Principal in Post-Graduate and Under-Graduate Non-Government Aided Colleges in State of Uttar Pradesh; Recommendation of name for appointment as Principal of P.G College; Family circumstances; No provision for changing place of posting.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7996 of 2026

From the Judgment and Order dated 05.05.2025 of the High Court of Judicature at Allahabad in SA No. 117 of 2025

Supreme Court Reports

Appearances for Parties

Advs. for the Appellant(s):

Rahul Kaushik, Sr. Adv., Manish Vashishtha, Upender Thakur, Ms. Sonal Awasthi, Ms. Anchal Khanna, Ms. Deepti Pandey, Ms. Bhawna Piplani, Abhishek Kaushik.

Advs. for the Respondent(s):

Amol Chitale, Nirnimesh Dube, Ms. Shweta Singh Parihar, Mrs. Pragya Baghel, Ms. Sarthak Sharma, Samar Vijay Singh, Manish Kumar, Ms. Sabarni Som, Gaj Singh, Aman Dev Sharma, Keshav Mittal, Vikramaditya Chauhan, Nikhil Jain, Ms. Divya Jain, S.D. Singh, Ms. Shweta Sinha, Ms. Meenu Singh, Ram Kripal Singh, Siddharth Singh.

Judgment / Order of the Supreme Court

Judgment

J.K. Maheshwari, J.

1. Leave granted.
2. The instant appeal has been preferred by the appellant who found place in the panel of waitlisted candidates for the post of Principal in Post-Graduate (in short, '**PG**') and Under-Graduate (in short, '**UG**') non-Government Aided Colleges in the State of Uttar Pradesh. The appellant wishes to derive the benefit of Section 13(4) of the Uttar Pradesh Higher Education Services Commission Act, 1980 (hereinafter '**the old Act**'). The learned Single Judge of the High Court of Judicature of Allahabad (hereinafter '**High Court**') allowed the writ petition filed by the respondent no. 6 i.e., the affected person and then Officiating Principal of Meerut College, Meerut (hereinafter '**Meerut College**') *vide* order dated 17.02.2025¹ by quashing the order dated 13.12.2023 and subsequent orders dated 12.01.2024 and 15.01.2024. On challenging the order of the learned Single Judge, the Division Bench of the High Court *vide* order dated 05.05.2025² (hereinafter '**impugned judgement**') confirmed the same. Hence, the present appeal has been preferred by the appellant.

¹ in Writ-A No. 15433 of 2024.

² in Special Appeal No. 117 of 2025.

Dr. Manoj Kumar Rawat v. State of UP & Ors.

3. In the facts of the present case, following questions fall for our consideration:
- (i) *Whether, in the facts of the case, Section 13(4) of the Old Act can be interpreted to permit fresh recommendation or change in place of posting of a waitlisted candidate, who has already been recommended for appointment elsewhere and such action is consistent with the law laid down by this Court in **Kamlesh Kumar Sharma v. Yogesh Kumar Gupta and others**³?*
 - (ii) *Whether, after enforcement of the Uttar Pradesh Education Service Selection Commission Act, 2023 (hereinafter referred as '**the New Act**'), repealing the Old Act, the recommendation dated 13.12.2023 and consequential communications and placement order dated 12.01.2024 and 15.01.2025, issued in favour of the appellant can be sustained within the statutory scheme of the New Act?*

Factual Matrix

4. An advertisement No.49 of 2019 (hereinafter '**Advertisement**') was issued by respondent no.4 – Uttar Pradesh Higher Education Service Selection Commission (hereinafter '**Commission**') inviting applications for the posts of Principal in PG and UG colleges. In furtherance, the selection proceedings were held by the Commission and final select list of 290 candidates along with 73 waitlisted candidates was published on 05.10.2021. The appellant found place at Sl.No.59 in the list of waitlisted candidates. In furtherance to the said list, one Dr. Sachidanand Sharma (Sl.No.3 in the select list) was selected and appointed as the Principal of Meerut College *vide* letter dated 23.10.2021. After joining the institution and working for on the post for approximately one year and ten months, he submitted his resignation on 28.05.2023. Accordingly, Dr. Sachidanand Sharma was relieved from the post of Principal by letter dated 09.06.2023. After his resignation, one Dr. Anjali Mittal, who was the seniormost teacher in Meerut College was appointed as the Officiating Principal. However, she superannuated on 30.06.2024 and the post of Principal again fell vacant. Thereafter, respondent no. 6 – Yudhveer Singh,

Supreme Court Reports

the next seniormost teacher in Meerut College was appointed as Officiating Principal by order dated 14.06.2024.

5. In the meantime, on 03.08.2022, the name of the appellant came to be recommended for appointment as Principal of Shri Bajrang P.G. College, Dadar Ashram Sikandarpur, Ballia (hereinafter '**PG College, Ballia**') by the Director and a communication in this regard was made to the respondent no. 3 – Secretary/Management of PG College, Ballia (hereinafter '**Management**'). In terms of this communication and in accordance with the provisions of the Old Act, the Management was directed to issue appointment order to the appellant within thirty days of the receipt of the said communication and in case of failure to receive the same, the appellant had to compulsorily approach the Director. However, on account of his family circumstances as revealed from the contents of the representation submitted on 26.06.2023 to the Director, the appellant did not take any step for joining or to take charge for PG College, Ballia and requested to be appointed as Principal on the vacant posts in some other college, which also included Meerut College.
6. The Director, in response to the said representation, submitted its comments on 17.08.2023 to the Special Secretary, Higher Education Section-2, Government of Uttar Pradesh (hereinafter '**Special Secretary**') wherein it was *inter alia* contended that in furtherance to the provisions of the Old Act and the recommendation dated 03.08.2022, compliance had already been made whereby the appellant was required to join PG College, Balia. It was further informed that after making such recommendation, there existed no provision for changing the place of posting under the relevant Government instructions or the applicable laws. In the meantime, the New Act came to be notified and was brought into force on 21.08.2023, thereby repealing the Old Act.
7. After such repeal and without any change in the circumstances, the Director *vide* subsequent order dated 13.12.2023 informed that in view of the family circumstances, marital policy and disability of some Assistant Professors, the seating arrangement of one Principal had been changed under the Advertisement and further information for taking decision in fifteen other cases of change in place of posting was being sent. It was in reference to this letter that the Joint Secretary, Government of Uttar Pradesh issued the consequential

Dr. Manoj Kumar Rawat v. State of UP & Ors.

order dated 12.01.2024 to the Director for change in place of posting of the appellant to Meerut College in exceptional circumstances and in the interest of higher education. In pursuance, the Director recommended the Management *vide* order dated 15.01.2024 to appoint the appellant as Principal of Meerut College and issue appointment order within thirty days.

8. It is after receipt of such letter, respondent no. 6, then Officiating Principal of Meerut College filed the writ petition *inter alia* contending that once a waitlisted candidate has been issued direction for appointment at one place, the scheme of the Old Act doesn't permit any change to the same. It was also contended that after commencement of the New Act, the Old Act stood repealed and the act done thereunder couldn't have been changed once the New Act was already in force. In the said writ petition, the following prayers were made: –

“(i) to issue & writ, order or direction in the nature of certiorari quashing the impugned letter/order dated 15.01.2024 (Annexure-1) passed by the respondent No 2,

(ii) to issue & writ, order or direction in the nature of mandamus commanding the respondents not to interfere in the working of the petitioner as Officiating Principal of the Meerut College, Meerut till the regular appointment is made by the Commission.

(iii) to issue any other suitable writ, order or direction which the Hon'ble Courts may deem fit and proper in the facts and circumstances of the instant case to award costs of this petition to the petitioner.”

9. Learned Single Judge of the High Court allowed the writ petition and set aside the order dated 13.12.2023 as well as recommendation issued by the Director dated 12.01.2024 *inter alia* observing that the subsequent order dated 15.01.2024 directing the Management to appoint the appellant as Principal of Meerut College is wholly without jurisdiction and cannot be sustained. The Special Appeal preferred by the appellant before the Division Bench of the High Court came to be dismissed *vide* the impugned judgement, confirming the findings of the learned Single Judge. It was observed that power of the Director under the Old Act would continue to the extent protected by

Supreme Court Reports

Section 31(2) of the New Act, insofar as the act which was consistent to provisions of the New Act. However, once the New Act did not confer power on the Director for an act done, tracing its source of power under the Old Act, now repealed, the same couldn't have been done or saved under the New Act. Consequently, the order of the learned Single Judge was upheld.

10. Being aggrieved, the appellant has preferred the present appeal, *inter alia* contending that respondent No.6 is only the Officiating Principal of the College and has no locus to challenge the appointment of a regular Principal, who has found place in the select list in terms of the selection process contemplated under the Old Act. It is further his contention that the power of appointment in the present case can be exercised by the Director under Section 13(4) of the Old Act. Therefore, the recommendation, if any, made by the Director in favour of the appellant, which has been directed to be acted upon by the Management, cannot be said to be illegal. It is also urged that the directions issued by the learned Single Judge and the Division Bench of the High Court in allowing the writ petition of the Officiating Principal are not in conformity with law.
11. Learned counsel for respondent No. 6 submitted that the procedure for appointment of teachers, identifying the vacant posts, manner of selection, preparation of list based on recommendations of Commission for appointment to the available vacant post is prescribed under Sections 12, 13 and 14 of the Old Act. In furtherance, the appellant being a waitlisted candidate was recommended on 03.08.2022 to join as Principal of PG College, Ballia. It is in reference to his family circumstances that he submitted the representation indicating that he has not assumed charge despite the recommendation of the Director for his posting at PG College, Ballia and requested for a change in place of posting. In response to such representation, the Director *vide* letter dated 17.08.2023 made correspondence to the Special Secretary that once appointment has already been recommended, there exists no provision for change in place of posting under the provisions of the Old Act. It is urged that only after the New Act came into force on 21.08.2023, the Director passed the order on 13.12.2023 and *vide* letter dated 12.01.2024, recommended appointment of the appellant as Principal of Meerut College. It is his case that after commencement of the New Act, the earlier select list dated 15.10.2021 will lapse and the procedure

Dr. Manoj Kumar Rawat v. State of UP & Ors.

as contemplated under Sections 10 and 11 of the New Act ought to be followed for selection and appointment of teachers. Once the recommendation of the Director dated 03.08.2022 under the Old Act is not fortified and implemented; further order dated 13.12.2023, recommendation dated 12.01.2024 and order 15.01.2024 being after commencement of the New Act do not give any right to appellant to take advantage thereof. As such, the recommendation and the appointment made by the Director and the authorities under the Old Act after commencement of the New Act is completely without jurisdiction which has rightly been duly discussed by the learned Single Judge, affirmed by the Division Bench, therefore, interference is not warranted. Further, on the issue of locus, it is urged by him that once an action taken by the authorities is *ex-facie* illegal and void, the issue of locus in the facts of this case is not germane.

12. Learned counsel appearing for the State contended in specific terms that the order issued by the Director on 13.12.2023 is within his competence. In the past also, the place of posting had been changed for some candidates and similar benefit may be granted to the appellant herein. In reference to the order dated 10.03.2025 passed by the High Court, the Director was asked to file an affidavit on the issue whether the appellant was at fault for not joining PG College, Ballia or was it a case of denial of appointment to him by the Management. In compliance, and after obtaining relevant information from PG College, Ballia and examining the record, it was found that the appellant himself did not contact the Management for issuance of appointment order. An example of another candidate, namely one Dr. Ajay Kumar Singh was given, who did not take charge even on two opportunities after being appointed. It is in this context that though not done, the appointment order ought to have been issued to the appellant within the time specified, however, he tried to convey in so many words that there was no fault of the appellant. In this view and without replying to the contentions as urged on behalf of respondent No.6, the State of Uttar Pradesh tried to support the appellant.

Analysis

13. Having considered the submissions as urged by the learned counsel for the parties and in order to answer the questions framed hereinabove, it is imperative to first appreciate the intent of

Supreme Court Reports

Sections 12, 13 and 14 of the Old Act, which are reproduced for ready reference as under: —

“12. Procedure for Appointment of Teachers:

(1) Every appointment as a teacher of any college shall be made by the management in accordance with the provisions of this Act and every appointment made in contravention thereof shall be void.

(2) The management shall intimate the existing vacancies and the vacancies likely to be caused during the course of the ensuing academic year, to the Director at such time and in such manner, as may be prescribed.

Explanation— The expression “academic year” means the period of 12 months commencing on July 1.

(3) The Director shall notify to the Commission at such time and in such manner as may be prescribed a subject wise consolidated list of vacancies intimated to him from all colleges.

(4) The manner of selection of persons for appointment to the posts of teachers of a college shall be such, as may be determined by regulations :

Provided that the Commission shall with a view to inviting talented persons give wide publicity in the State to the vacancies notified to it under sub-section (3) :

Provided further that the candidates shall be required to indicate their order of preference for the various colleges, vacancies wherein have been advertised.

13. Recommendation of Commission:

(1) The Commission shall, as soon as possible, after the notification of vacancies to it under sub-section (3) of section 12, hold interview (with or without written examination) of the candidates and send to the Director a list recommending such number of names of candidates found most suitable in each subject as may be, so far as practicable, twenty-five per cent more than the number of vacancies in that subject such names shall be arranged in

Dr. Manoj Kumar Rawat v. State of UP & Ors.

order of merit shown in the interview, or in the examination and interview if an examination is held.

(2) The list sent by the Commission shall be valid till the receipt of a new list from the Commission.

(3) The Director shall having due regard in the prescribed manner, to the order of preference if any indicated by the candidates under the second proviso to sub- section (4) of section 12, intimate to the management the name of a candidate from the list referred to in sub-section (1), for being appointed in the vacancy intimated under sub-section (2) of section 12.

(4) Where a vacancy occurs due to death, resignation or otherwise during the period of validity of the list referred to in sub-section (2), and such vacancy has not been notified to the Commission under sub-section (3) of section 12, the Director may intimate to the management the name of a candidate from such list for appointment in such vacancy.

(5) Notwithstanding anything in the preceding provisions, where to abolition of any post of teacher in any college, services of the person substantively appointed to such post is terminated, the State Government may make suitable order for his appointment in suitable vacancy, whether notified under sub- section (3) of section 12 or not, in any other college, and thereupon the Director shall intimate to the management accordingly.

(6) The Director shall send a copy of the intimation made under sub-section (3) or sub-section (4) or sub-section (5) to the candidate concerned.

14. Duty of Management

(1) The management shall, within a period of one month from the date of receipt of intimation under sub-section (3) or sub-section (4) or sub-section (5) of section 13, issue appointment letter to the person whose name has been intimated.

(2) Where the person referred to in sub-section (1) fails to join the post within the time allowed in the appointment

Supreme Court Reports

letter or within such extended time as the management may allow in this behalf, or where such person is otherwise not available for appointment, the Director, shall on the request of the management intimate fresh name from the list sent by the Commission under sub-section (1) of section 13 in the manner prescribed."

14. On perusal of the above-referred sections, it is clear that the appointment of a teacher in any aided college shall be made by the concerned management as per the provisions of the Old Act. The existing and anticipated vacancies for the academic year are required to be notified to the Commission by the said management, after which, the Commission shall conduct interviews of candidates and send a list of recommendations to the Director. Such list must be arranged in order of merit and will remain valid till a new list is received by the Commission. The Director, in furtherance to such recommendations, shall intimate to the management the names of the candidate from the list for appointment on the vacancies so determined. In case a vacancy occurs due to death, resignation or otherwise during the period of validity of the list, and such vacancy has not been notified to the Commission earlier; the Director may intimate the management about the name of a candidate from the list for appointment on such vacancy. It is also the duty of the management to issue an order of appointment to the candidate within one month from the date of receipt of said intimation from the Director. Further, in case a person so recommended fails to join the post within the time allowed in the appointment order or within such extended time, if any, the management is also at liberty to ask the Director to intimate a fresh name from the list sent by the Commission.
15. In view of the above, the intention of the State Legislature is clear. Under the Old Act, the select list of the Commission shall be valid till a new list is prepared in accordance with the provisions of such Act. The management of a college/institution can issue an appointment order only on receiving intimation of a candidate's recommended by the Director. It is only in case a vacancy occurs due to death, resignation or otherwise, during the period of the validity of the list, The name of a new candidate can be intimated by the Director only.
16. The New Act came into force with effect from 21.08.2023. Section 10 of the New Act details the mechanism to determine vacancies,

Dr. Manoj Kumar Rawat v. State of UP & Ors.

their requisition and the process to select persons for appointment on the same. Section 11 of the New Act prescribes the procedure to prepare the panel/list of candidates who may be appointed on the vacancies. These provisions are relevant, hence reproduced as under: –

“10. Determination of Vacancies, Requisition, and Selection Procedure:

(1) For the purpose of making an appointment of a teacher or instructor by direct recruitment, the Appointing Authority or Management or Authorized Officer shall determine the number of vacancies existing or likely to fall vacant during the year of recruitment and, in the case of a post other than the post of head of the institution, also determine the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes of citizens in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 (U.P. Act no. 4 of 1994), and persons belonging to economically weaker sections in accordance with the Uttar Pradesh Public Services (Reservation for Economically Weaker Sections) Act, 2020 (U.P. Act no.10 of 2020) and other directions issued by the Government from time to time, and notify the vacancies to the Commission in such manner and through such officer or authority as may be prescribed. The Commission shall decide the eligibility and accordingly advertise the vacancies received in the manner as may be prescribed.

(2) The procedure of selection of candidates for direct recruitment to the posts of teachers or instructors shall be such as may be prescribed.

(3) Regarding appointment in religious and linguistic minority educational institutions for maintaining quality of education, process of selection shall be completed by compulsorily inviting educationist of that particular religion and language (having knowledge of theology and culture) as experts.

Supreme Court Reports

11. *Panel/List of Candidates*

(1) The Commission shall, as soon as may be, after a vacancy is notified under sub-section (1) of section 10, conduct, wherever necessary, examinations or interviews or conduct the examination and interview of the candidates and prepare a panel/list of those found most suitable for appointment.

(2) The panel referred to in sub-section (1) shall be forwarded to the prescribed officer or Authorized Officer referred to in sub-section (1) of section 10 in such manner as may be prescribed.

(3) After the receipt of the panel under sub-section (2), the prescribed officer or Authorized Officer shall, in the prescribed manner, intimate the Appointing Authority of the names of the selected candidates in respect of the vacancies notified under sub-section (1) of section 10.

(4) The Appointing Authority shall, within a period of thirty days from the date of receipt of such information, issue appointment letters to such selected candidates and facilitate the selected candidate to join the duties in the prescribed manner.

(5) Where such selected candidate fails to join the post of a teacher or instructor in such institution within the time allowed in the appointment letter or within such extended time as the Appointing Authority may allow in this behalf, or where such candidate is otherwise not available for appointment, the Authorized Officer shall, on the request of Management, intimate in the prescribed manner, fresh name or names from the panel/list forwarded by the Commission under sub-section (2). Such time limit shall be up to a maximum of one year after the date of issuing of the appointment letter.”

17. A comparison of the two acts makes it clear that despite the New Act being more exhaustive, it doesn't prescribe a power to the Director akin to Section 13(4) of the Old Act. As per Section 31 of the New Act, it is clear that the Old Act has been repealed on commencement of the New Act. Section 31 is also relevant, hence, reproduced thus: –

Dr. Manoj Kumar Rawat v. State of UP & Ors.***“31. Repeal and Savings:***

(1) The Uttar Pradesh Higher Education Services Commission Act, 1980, the Uttar Pradesh Secondary Education Service Selection Board Act, 1982 and the Uttar Pradesh Education Service Selection Commission Act, 2019 are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Acts referred to in sub-section (1) shall be deemed to have been done or taken under this Act, as if the provisions of this Act were in force at all material times.

(3) Save as otherwise provided in this Act, the repeal of the Acts referred to in sub-section (1) shall not have an adverse effect on the general application of section 6 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act no. 1 of 1904) in relation to the enforcement of provisions.”

After going through this section, it is clear that by way of a non-obstante clause in subsection (2) of Section 31, an act done or action taken under the Old Act shall be deemed to have been done or taken under the New Act. Therefore, it is now required to be looked on facts, as to what act was done by the State of Uttar Pradesh under the Old Act, prior to commencement of the New Act, and whether such an act will be deemed to have been done or taken under the New Act for the purpose of ascertaining the claim of the appellant as espoused in this appeal.

18. In this context, and to answer the said ancillary issue, the facts of the case are required to be recapitulated. The list of the candidates was published on 05.10.2021, wherein the appellant found place at Sl. No.59 of the waitlisted candidates. On 03.08.2022, the Director recommended the name of the appellant to the Management of PG College, Balia for his appointment in the said college. The scheme of the Old Act contemplates that on receipt of such recommendation; the Management is bound to issue appointment order to the recommended person within thirty days. Thus, the Management ought to appoint the recommended candidate within a period of one month and in case, the said candidate fails to join within the time specified in the appointment order, the Director, on request

Supreme Court Reports

of the Management, shall intimate a fresh name from the list. It is surprising that despite having knowledge of the recommendation dated 03.08.2022 and not receiving appointment order from the Management of PG College, Balia, the appellant sat silent and did not take any action for implementation of the provisions contemplated under Section 13(3) of the Old Act while the Management was waiting that the recommended candidate shall contact them to show his intention to work on the post.

19. However, in contradistinction, the appellant did not contact the Management of PG College, Ballia and after about ten and a half months of his initial recommendation, i.e., on 26.06.2023 of his initial recommendation, submitted a representation, *inter alia* contending as under: –

*“It is to be requested that ‘I have been selected for the post of Principal of a non-government aided college of the state at the level of Higher Education Service Commission. **My seat arrangement was made for Principal, Shri Bajrang PG College, Dadar Ashram, Sikanderpur, Ballia by the letter no. Degree Economic-1 (Commission)/332-340/2022-23 dated 03.08.2022 of the Director of Education (Uttar Pradesh), Uttar Pradesh Degree Economic-1 (Commission) Prayagraj. Due to family circumstances, I have not taken charge in the said college.** My candidature for the post of Principal has not been cancelled. It has come to my notice that at present the posts of Principals are vacant in the following colleges”*

From the contents of the representation, it is crystal clear that it is the appellant himself who did not join and take charge of PG College, Balia and asked for appointment on the post of Principal in some other college; indicating some available vacancies in his representation. In the light of the said representation, it is now required to be seen whether the case of the appellant falls within the parameters of “*vacancy occurred due to death, resignation or otherwise during the period of validity of the list*” as contemplated under Section 13(4) of the Old Act.

20. After discussion of the facts in details, it is clear that this is not a case where the vacancy arose due to death or resignation. However,

Dr. Manoj Kumar Rawat v. State of UP & Ors.

it is within the purview of “*otherwise during the period of validity of the list*” that the appellant claims to be entitled to appointment at an alternate place, as demanded, since the appointment order was not issued to the appellant under Section 13(3) of the Old Act. In the facts as narrated, it is clear that the Director initially recommended the name of the appellant for appointment to PG College, Balia, but he has failed to join there. The appellant has also not raised any demand with the Management of P.G. College, Balia for issuing the order of appointment; but has continued to wait till vacancies as stated in his representation have occurred, including the vacancy of the post of Principal in Meerut College. We are clear in our mind that the said action will not fall within the purview of “*otherwise during the period of validity of the list.*” In case such interpretation is permitted, the intention of the State Legislature as contemplated under Section 13(3) of the Old Act will not sustain. Therefore, after the recommendation dated 03.08.2022, if the appellant was not willing to join due to his family circumstances and on finding vacancy at Meerut College, submitted a representation to post him at some other place with the intent to compel the authorities to bring his case within the ambit of Section 13(4) of the Old Act, such action will supersede the earlier recommendation and frustrate the purpose of Section 13(3) of the Old Act.

21. At this stage, it also imperative to refer to the judgement of this Court in ***Kamlesh Kumar Sharma (Supra)*** wherein this Court had the occasion to deal with the interpretation of the word ‘otherwise’ in Section 13(4) of the Old Act. In the said judgement, it was held that if a wider interpretation is given, it would run contrary to the very object of the Old Act and permit filling of vacancy which was never advertised and a person, who did not apply, would inadvertently be absorbed on such vacancy. The relevant portion of the judgement is reproduced as thus: –

“13. We find, after giving our careful consideration that in case the appellant’s argument is accepted by giving wider interpretation to the word “otherwise”, it would thwart the very object of the Act. In other words it would permit the filling of the vacancy occurring which was never advertised and a person in the select list panel, even though not applying for any vacancy, would be absorbed. Hence it would be limiting the sphere of selection in contradiction

Supreme Court Reports

to the object of the provision to draw larger applicants by advertising every vacancy to be filled in. We have no hesitation to say that any appointment to be made on a vacancy occurring in the succeeding year in question for which there is no advertisement under the provisions of sub-section (4) of Section 12, the person on the panel list of preceding academic year in question, cannot be absorbed or be appointed. The word "otherwise" has to be read as ejusdem generis, that is to say, in group similar to death, resignation, long leave vacancy, invalidation, person not joining after being duly selected. In other words, it would be a case of unforeseen vacancies which could not be conceived under Section 12(2). Section 12(2) conceives of a vacancy which is existing on the date the vacancy is to be advertised and which is likely to be caused in future but constricted for a period ending in the ensuing academic year in question. The words "likely to be caused" under Section 12(2) are followed by the words "during the course of the ensuing academic year" that is any person likely to retire by the end of the academic year in question. In other words, such vacancies could be foreseen and not unforeseen. While vacancies under Section 13(4) are unforeseen vacancies which fall under the group, death and/or resignation. Hence the word "otherwise" cannot be given the wide and liberal interpretation which would exclude a large number of expected applicants who could be waiting to apply for the vacancies occurring in the succeeding year in question."

22. In view of the above, it is observed that under the scheme of Old Act, the act done was issuance of recommendation dated 03.08.2022 by the Director. Simultaneously, in response to the appellant's representation dated 26.06.2023, the Director vide letter dated 17.08.2023 to the Special Secretary has unequivocally made it clear that after issuance of the previous recommendation on 03.08.2022 under the government instructions and applicable law, no arrangement for changing the place of posting can be made. In such a scenario, prior to the commencement of the New Act on 21.08.2023, the act done by the authorities was issuing the recommendation dated 03.08.2022, which remained valid and no further action was

Dr. Manoj Kumar Rawat v. State of UP & Ors.

recommended *vide* letter dated 17.08.2023. Therefore, in furtherance to the repeal and saving clause under Section 31(2) of the New Act, the act done will be treated only to the extent indicated above.

23. It is even more surprising that after the letter dated 17.08.2023 and commencement of the New Act, the Joint Secretary, Government of Uttar Pradesh, on his own accord, issued order dated 12.01.2024 recommending the name of the appellant for being posted as Principal of Meerut College. In our view, after commencement of the New Act, the validity of the list/panel under the Old Act will automatically lapse and the authorities are duty bound to follow the procedure under Sections 10 and 11 of the New Act to take steps for appointment on the post of Principal. Thus, the concerned authorities could not have issued the letter dated 13.12.2023 on the basis of the list prepared under the Old Act and thereafter, passed the consequential orders on 12.01.2024 and 15.01.2024, to effectively recommend and appoint the appellant on the post of Principal of Meerut College.
24. At this stage and in to understand the real intent of Section 31 of the New Act, it is necessary to refer Section 6 of the Uttar Pradesh General Clauses Act, 1904 dealing with the 'Effect of repeal', whereby it is clear that in case any Uttar Pradesh Act repeals any enactment hitherto or hereafter, then unless a different intention appears, the repeal shall not revive anything not in force or existing at the time at which the repeal takes effect. Further, it shall not affect anything duly done, suffered or incurred under any enactment so repealed. Therefore, the act done, as also indicated above, was the recommendation dated 03.08.2022, which could not be implemented. The authorities have clearly intended that after issuance of the recommendation dated 03.08.2022, no subsequent change in the place of posting can be made in terms of the letter dated 17.08.2023. Thereafter, on 21.08.2023, the New Act came into force. Thus, there was no occasion for the authorities to issue the order dated 13.12.2023 and, consequent recommendation dated 12.01.2024 and order dated 15.01.2024 in favour of the appellant, under the pretext of Section 13(4) of the Old Act indicating that the position had otherwise fallen vacant. Therefore, with the assistance of Section 6 of the Uttar Pradesh General Clauses Act 1904, the effect of repeal of the Old Act is clear insofar as it will not revive the previous list or the act done under the Old Act, which is having the effect of repeal.

Supreme Court Reports

25. In consequence of the discussion made hereinabove, the inescapable conclusion is that the output of the findings of the learned Single Judge and Division Bench of the High Court is correct, though the reasoning may not be as elaborative as indicated above. Since the outcome is in conformity with the provisions of the Old Act as well as the New Act, interference in this appeal is not warranted.
26. Before parting with the judgment, it is our duty to observe the conduct of the officers of the State of Uttar Pradesh and the contentions raised by them to vociferously support the stand of the appellant. As analysed above, it is clear that after commencement of the New Act on 21.08.2023, it was not open to the authorities to act in terms of the list prepared under the Old Act, even after reflecting on their intention to not grant appointment to the appellant i.e., a waitlisted candidate only four days prior to the commencement of the New Act. Thereafter, there was absolutely no occasion for the Director to get the old list revived and write in favour of the appellant on 13.12.2023. It is suffice to say that the Chief Secretary of the State of Uttar Pradesh may look into the conduct of the officers who have filed the affidavit taking such unlawful stand before the High Court and even before this Court, which is completely impermissible under the law and contrary to the finding of the High Court. It is necessary to observe that the duty of the State and its officials while filing their counter-affidavit and arguing the case before the Court is to provide real assistance. Such assistance ought to be based on the facts, and by applying the law applicable to the case at hand. It is not expected from the authorities to support any party contrary to the law or by filing affidavit which does not disclose the facts in conformity with the law. Since the concerned officers are not a party to this case, therefore, we are not inclined to issue any adverse direction, however, we leave it open to the State of Uttar Pradesh to look into the above observations and take the recourse in accordance with the law, if necessary.
27. Now, we revert to the arguments regarding *locus standi* of the Officiating Principal i.e., respondent No.6, to challenge the order dated 13.12.2023, and subsequent orders dated 12.01.2024 and 15.01.2024 which effectively grant appointment to the appellant as Principal of Meerut College. In this regard and relying on the judgement of this Court in **Kamlesh Kumar Sharma (Supra)**, it is suffice that while interpreting Sections 12, 13 and 14 of the Old Act, this Court found

Dr. Manoj Kumar Rawat v. State of UP & Ors.

that the Officiating Principals have locus to challenge the same. In contradistinction, the learned counsel for the appellant made reference to the judgment in the case of **Anand Sharadchandra Oka v. University of Mumbai and Others**⁴ and **Ayaubkhan Noorkhan Pathan v. State of Maharashtra and Others**⁵. In our view and in the light of the discussion made hereinabove, when the illegality of the authorities is writ large and the act done was completely illegal, the issue of *locus standi* may not be germane to be dealt with in the facts of this case. Therefore, we leave the said issue open for decision in an appropriate case.

28. In consequence and in our considered opinion, the arguments advanced by the learned counsel for the appellant are completely contrary to the spirit of both, the Old Act as well as New Act. The conclusion drawn by the learned Single Judge and Division Bench of the High Court is correct, with additional reasonings discussed hereinabove. Accordingly, the appeal filed by the appellant stands dismissed in the facts. Parties are directed to bear their own costs.
29. Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal dismissed.

†Headnotes prepared by: Nidhi Jain

4 (2008) 5 SCC 217.

5 (2013) 4 SCC 465.