

Court No. - 58

Case :- WRIT - A No. - 24208 of 2018

Petitioner :- C/M Sri Triveni Sanskrit Mahavidyalay

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C., Ved Byas Mishra

Connected with

Case :- WRIT - A No. - 12644 of 2018

Petitioner :- Sankat Mochan Upadhyay

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Kirtikar Pande, Sudhakar Pandey

Counsel for Respondent :- C.S.C., Ved Byas Mishra

And

Case :- WRIT - A No. - 25134 of 2018

Petitioner :- C/M Sri Bhagwat Mahavidyalaya Assi, Varanasi, And 6 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Rohit Shukla, Ashok Khare, Sr. Advocate

Counsel for Respondent :- C.S.C., Neeraj Tripathi, Ved Byas Mishra

And

Case :- WRIT - A No. - 27190 of 2018

Petitioner :- C/M Sri Pramod Sanskrit Mahavidyalay

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ram Sajiwan Prajapati, Ramesh Kumar

Counsel for Respondent :- C.S.C., Ved Byas Mishra

And

Case :- WRIT - A No. - 27300 of 2018

Petitioner :- C/M Adarsh Sri Sanskrit Shankar, Maha Viddyalaya

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ishan Deo Giri

Counsel for Respondent :- C.S.C., Ved Byas Mishra

And

Case :- WRIT - A No. - 27301 of 2018

Petitioner :- C/M Sanatan Dharm Sanskrit Mahavidhyalaya Budaun

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

Counsel for Petitioner :- Manas Bhargava, Arvind Srivastava

Counsel for Respondent :- C.S.C., Ved Byas Mishra

And

Case :- WRIT - A No. - 27419 of 2018

Petitioner :- C/M, Sri Parasuram Sanskrit Mahavidyalaya, Shahjahanpur

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Arvind Srivastava

Counsel for Respondent :- C.S.C., Ved Byas Mishra

And

Case :- WRIT - A No. - 27427 of 2018

Petitioner :- C/M, Sri Parasuram Sanskrit Mahavidyalaya, Shahjahanpur,

Respondent :- State Of U P And 4 Others

Counsel for Petitioner :- Arvind Srivastava

Counsel for Respondent :- C.S.C., Ved Byas Mishra

And

Case :- WRIT - A No. - 27487 of 2018

Petitioner :- C/M Shri Vidwatparishallodhreshwar Sanskrit Mahavidyalaya
Mahadeva, Barabanki

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Uma Nath Pandey

Counsel for Respondent :- C.S.C., Neeraj Tripathi, Ved Byas Mishra

And

Case :- WRIT - A No. - 27583 of 2018

Petitioner :- C/M, Sri Ramchari Sanskrit Postgraduate Degree College, Varanasi

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Kushmondeya Shahi

Counsel for Respondent :- C.S.C., Ved Byas Mishra

And

Case :- WRIT - A No. - 27711 of 2018

Petitioner :- C/M, Sri Narayan Naga Nirankari Adarsh Sanskrit Maha
Vidyalaya Fatehpur

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ishan Deo Giri

Counsel for Respondent :- C.S.C., Ved Byas Mishra

And

Case :- WRIT - A No. - 27722 of 2018

Petitioner :- Ram Bhadra Tiwari

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Mahesh Narain Singh, M.N. Singh

Counsel for Respondent :- C.S.C., Ved Byas Mishra

And

Case :- WRIT - A No. - 776 of 2019

Petitioner :- C/M Sri Tikamandi Sanskrit College, Varanasi, And Another

Respondent :- State Of U P And 5 Others

Counsel for Petitioner :- Alok Krishan Tripathi, Ashok Khare, Sr. Advocate

Counsel for Respondent :- C.S.C., Ved Byas Mishra

And

Case :- WRIT - A No. - 1011 of 2019

Petitioner :- C/M Adarsh Shree Munishwar Sanskrit Mahavidyalay, Pratapgarh

Respondent :- Vice-Chancellor, Sampooranad Sanskrit Vishwavidyalay, Varanasi, And Another

Counsel for Petitioner :- Sanjay Kumar Dubey

Counsel for Respondent :- C.S.C., Ved Byas Mishra

And

Case :- WRIT - A No. - 1094 of 2019

Petitioner :- C/M, Sri Kashi Gurukul Sanskrit Maha Vidyalyaya, Varanasi

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Ishan Deo Giri

Counsel for Respondent :- C.S.C., Ved Byas Mishra

And

Case :- WRIT - A No. - 1740 of 2019

Petitioner :- C/M, Adarsh Shree Saraswati Sanskrit Mahavidyalaya, Gorakhpur,

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Lakshman Tripathi, Bhupendra Pandey

Counsel for Respondent :- C.S.C., Ved Byas Mishra

And

Case :- WRIT - A No. - 2914 of 2019

Petitioner :- Sandeep Kumar Tripathi And 4 Others

Respondent :- State Of U.P. And 7 Others

Counsel for Petitioner :- Anand Mani Tripathi, Sr. Advocate

Counsel for Respondent :- C.S.C., Ved Byas Mishra

And

Case :- WRIT - A No. - 3002 of 2019

Petitioner :- C/M, Shri Janaki Raman Sanskrit Mahavidyalaya Goshaiganj Faizabad

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Vikash Chandra Tiwari

Counsel for Respondent :- C.S.C., Ved Byas Mishra

And

Case :- WRIT - A No. - 3115 of 2019

Petitioner :- C/M, Shri Syadavad Mahavidyalay, Varansi

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Aklank Kumar Jain

Counsel for Respondent :- C.S.C.,Neeraj Tripathi,Ved Byas Mishra

And

Case :- WRIT - A No. - 3194 of 2019

Petitioner :- C/M, Shree Sankeertan Bramhcharyashram Sanskrit Mahavidyalaya, Jhusi

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Bhupendra Pandey,Lakshman Tripathi

Counsel for Respondent :- C.S.C.,Neeraj Tripathi,Ved Byas Mishra

And

Case :- WRIT - A No. - 3214 of 2019

Petitioner :- C/M, Sri Paniniya Gurukul Mahavidyalaya, Siddharth Nagar,

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Bhupendra Pandey,Lakshman Tripathi

Counsel for Respondent :- C.S.C.,Neeraj Tripathi,Ved Byas Mishra

And

Case :- WRIT - A No. - 3349 of 2019

Petitioner :- C/M, Adarsh Shri Hanumat Sanskrit Mahavidyalaya Udaichandpur, Jaunpur

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Manisha Singh,Birendra Prasad Maurya

Counsel for Respondent :- C.S.C.,Neeraj Tripathi,Ved Byas Mishra

And

Case :- WRIT - A No. - 4399 of 2019

Petitioner :- Smt. Rinki Mishra @ Maya Devi

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Uma Nath Pandey

Counsel for Respondent :- C.S.C.,Neeraj Tripathi,Ved Byas Mishra

And

Case :- WRIT - A No. - 4470 of 2019

Petitioner :- C/M, Shri Chandimandir Ramswaroop Gupta, Adarsh Sanskrit Mahavidyalaya, Jaunpur, And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Bhola Nath Yadav,Ajai Kumar Mishra

Counsel for Respondent :- C.S.C.,Ved Byas Mishra

And

Case :- WRIT - A No. - 4485 of 2019

Petitioner :- C/M, Shri Panchayati Swami Brahmanand Adarsh Sanskrit Mahavidyalaya, Basti

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Uma Nath Pandey

Counsel for Respondent :- C.S.C., Ved Byas Mishra

And

Case :- WRIT - A No. - 4543 of 2019

Petitioner :- C/M, Shri Vaishnav Bhagwan Deshraj Suri Adarsh Sanskrit Mahavidyalay, Jaunpur, And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Bhola Nath Yadav, Ajai Kumar Mishra

Counsel for Respondent :- C.S.C., Ved Byas Mishra

Hon'ble Ashwani Kumar Mishra, J.

1. Petitioners in this bunch of writ petitions are aggrieved by the State action in stalling the process of appointment in all colleges affiliated to Sampurnanand Sanskrit Vishwavidyalaya (hereinafter referred to as 'Sanskrit University'), purportedly for the reason that existing procedure for appointment is proposed to be amended. The Government Order dated 10.10.2018, putting on hold the recruitment process, is thus challenged. The writ petitions in this bunch can broadly be segregated into following two categories:-

- i. Cases where recruitment is not being permitted to be initiated despite existence of vacancy in the colleges or where process has been initiated but the Vice Chancellor is either not providing subject experts for completing the recruitment process or is not granting approval to the selections made;
- ii. Cases where teachers have already been appointed after obtaining approval from the Vice Chancellor of Sanskrit University but the District Inspector of Schools is not releasing salary to them or payment of salary started in the recent past has been stopped.

2. Petitioners in both the aforesaid category are essentially aggrieved by the consequences flowing from the Government Order dated 10.10.2018. The Government Order recites that procedure for appointment of teachers in the colleges affiliated to Sanskrit University is proposed to be entrusted to an independent

Commission and therefore the Vice Chancellor of Sanskrit University shall not grant approval to the appointment of teachers in Sanskrit University. This Government Order is the subject matter of challenge in the leading Writ Petition No.24208 of 2018 as also in many of the other connected writ petitions. According to the writ petitioners the action of the State in stalling the process of recruitment in all colleges affiliated to Sanskrit University, throughout the State, is not referable to any provision in the statute and is otherwise wholly arbitrary and illegal.

3. In order to effectively deal with the grievance raised in this bunch of writ petitions it would be necessary to refer to the statutory scheme regulating appointment of teachers in the colleges affiliated to Sanskrit University. Establishment of Sanskrit University traces its origin to *The Sanskrit College* at Varanasi during the British Rule in 1791. This college continued to be the focal point for dispensation of education in Sanskrit Grammar till it got succeeded by *Varanaseya Sanskrit Vishwavidyalaya*, a University established in 1958 as an institution of higher learning in the field of Sanskrit Education. The University established in 1958 continued to function till the enactment of U.P. State Universities Act, 1973 (hereinafter referred to as 'the Act of 1973'). The Act of 1973 was made applicable upon the erstwhile Varanaseya Sanskrit Vishwavidyalaya by a notification issued on 11.12.1974, under section 1(3) of the Act of 1973 whereafter the Varanaseya Sanskrit Vishwavidyalaya was to be called as Sampurnanand Sanskrit Vishwavidyalaya. The provisions of the Act of 1973 were not made applicable in its entirety upon the Sanskrit University and the notification dated 11.12.1974 restricted applicability of the provisions of the Act of 1973 upon Sanskrit University with certain exceptions and

modifications. It would be worth noticing that territory of the Sanskrit University was not limited to the State of Uttar Pradesh, as was the case in other State Universities regulated by the Act of 1973, but its territory extended throughout the Union of India.

4. While it may not be necessary to refer to all the exceptions and modifications introduced in the Act of 1973, insofar as its applicability to the Sanskrit University is concerned, but reference to some of it would be required at this stage. Section 31 of the Act of 1973 regulated appointment of teachers in the University as also in the colleges affiliated to the Universities established and regulated by the Act of 1973. Section 31 of the Act of 1973 in its applicability to the Sanskrit University was, however, modified as under:-

Section 31	<p>(1) For sub-section (1), the following sub-section shall be substituted, namely:</p> <p>“(1) Subject to the provisions of this Act, the teachers of the University shall be appointed by the Executive Council on the recommendation of a Selection Committee in the manner hereinafter provided, and teacher of affiliated colleges shall be appointed in the manner prescribed.”</p> <p>(2) For sub-section (3), the following sub-section shall be substituted, namely:</p> <p>“(3)(a) In the case of teacher of the University other than a Professor, the Vice-Chancellor in consultation with the Dean of the Faculty, if any, and the Head of the Department concerned and an expert nominated by the Chancellor may make officiating appointment in a vacancy caused by the grant of leave to an incumbent for a period not exceeding ten months without reference to the Selection Committee, but shall not fill any other vacancy or post likely to last for more than six months without such reference.</p> <p>(b) Where before or after the commencement of this Act, any teacher of the University is appointed (after reference to a Selection Committee) to a temporary post likely to last for more than six months and such post is subsequently converted into a permanent post, the Executive Council may, without reference to the Selection Committee, appoint such teacher in a substantive capacity to that post.”</p> <p>(3) in sub-section (4) -</p> <p>(a) in clause (a), sub-clause (iv) shall be omitted;</p> <p>(b) in clauses (c) and (d) shall be omitted;</p> <p>(4) in sub-section (5) -</p>
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- (a) clause (b) shall be omitted;
- (b) in clause (c) the words letter and brackets "or clause (b)" shall be omitted.

(5) In sub-section (8), clause (b) shall be omitted.

(6) For sub-section (9), the following shall be substituted namely:

"(9) The disqualification of members of Selection Committee for appointment of teachers of the University on the ground of interest for participating in the deliberations of such Committee and other matters relating to appointment of such teachers shall be prescribed by the Statutes."

(7) Sub-section (11) shall be omitted.

Applicability of Section 31 of the Act of 1973, in its applicability to Sanskrit University, contained an entirely distinct scheme of recruitment for the teachers of its affiliated colleges.

5. Chapter XI of the U.P. State Universities Act, 1973 which contained provisions for regulation of affiliated degree colleges was deleted, in its entirety, insofar as the Sanskrit University was concerned. The effect of the modifications introduced in the Act of 1973 for the Sanskrit University vide notification dated 11.12.1974 was that the procedure for recruitment of teachers as was otherwise provided for in respect of colleges affiliated to other State Universities was made inapplicable upon the colleges affiliated to Sanskrit University. A distinct procedure, as was to be prescribed in the Statute had to be followed for the purpose. In the First Statutes framed for the Sanskrit University such distinct scheme was prescribed for recruitment of teachers in the colleges affiliated to the Sanskrit University. Part-2 of the Statutes of the Sanskrit University in reference to Sections 31 and 49 of the Act of 1973, contained Clauses 11.15 to 11.24 prescribing procedure for appointment to the post of Principal and teachers in colleges affiliated to Sanskrit University. Appointment on the post of teacher was required to be made as per the provisions contained in the Statutes against posts

approved by the State. Since the very inception the appointment of teachers in colleges affiliated to Sanskrit University were made as per the provisions contained in the First Statutes of the Sanskrit University.

6. Later on, the Act of 1973 was amended by U.P. Act No.21 of 1975 and a separate Chapter XI(a) was introduced in the Act of 1973. This chapter defined '*college*' to mean any college affiliated to or recognized by any University in accordance with the provisions of the Act of 1973, or Statutes made thereunder, and for the time being receiving maintenance grant from the State Government. '*Maintenance grant*' was defined to mean such grant-in-aid to a college as the State Government may, by general or special order, in that behalf, directs to be treated as maintenance grant appropriate to the *level of that college*. Section 60-E provided that liability in respect of payment of salary to teachers of such institutions appointed against approved posts would be upon the State Government. The scale of pay admissible to teachers of affiliated colleges covered under section 60-E has been prescribed by the State Government but the colleges affiliated to Sanskrit University are not included in it. Section 60-E of the Act of 1973, therefore, is yet to be made applicable upon colleges affiliated to Sanskrit University.

7. It is worth noticing that maintenance grant as well as payment of salary to the teachers of colleges affiliated to Sanskrit University were not regulated by Chapter XI(a) of the Act of 1973, rather, the provisions of U.P. High Schools and Intermediate Colleges (Payment of Salaries to Teachers and other Employees) Act, 1971 (hereinafter referred to as 'the Act of 1971') were made applicable upon *them* vide Amending Act, 2001, to include colleges affiliated to Sanskrit

University receiving maintenance grant within the ambit of 'Institution' defined under Section 2(b) of the Act of 1971.

8. First Statutes under the Act of 1973 were also notified in respect of teachers of colleges affiliated to Universities established or regulated under the Act of 1973 known as *U.P. State Universities First Statutes (Age of Superannuation, Scales of Pay and Qualification of Teachers) Act, 1975*. Age of superannuation of teachers for the colleges under the aforesaid Statutes of 1975 exempted every college affiliated or associated with Sanskrit University. Clause 6(a) of the Statutes, in that regard, is reproduced hereinafter:-

"6(a). Every college affiliated to or associated with any University (other than the Sampurnanand Sanskrit Vishwavidyalaya);"

9. Clause 10 of the aforesaid First Statutes of 1975 would also go to show that teachers engaged in the colleges affiliated to Sanskrit University were treated differently in the matter relating to prescription of qualification also. Clause 10 of the First Statutes of 1975 is also reproduced hereinafter:-

"[10. Qualifications for lecturers in Affiliated and associated Colleges. - (1) In the case of a college affiliated to or associated with any University other than the Sampurnanand Sanskrit Vishwavidyalaya, the following shall be the minimum qualifications for the post of Lecturer in the Faculties of Arts, Commerce, Science and Social Science, namely, -

(a) a consistently good academic record (that is to say, the overall record of all assessments throughout the academic career of a candidate) with first or high second class (that is to say, with an aggregate of more than 54 percent marks) Master's degree in the subject concerned or equivalent degree of a foreign University in such subject; and

(b) M. Phil, degree or a recognised degree beyond the Master's level or published work indicating the capacity of a candidate for independent research work.

(2) If a candidate possessing the qualification specified in sub-clause (b) of clause (1) is not available or is not considered suitable, the Management of a college may, on the recommendation of the Selection committee, appoint a candidate possessing consistently good academic record on the condition that he will have to attain the qualification referred to in that sub-clause within a period of five years from the date of his appointment :

Provided that where the teacher so appointed fails to attain such qualification within

the said period of five years, he shall not be entitled to yearly increments after such period, until he attains such qualification.]

[(3) If a candidate holds a doctorate degree in the subject concerned, the Selection Committee may relax the requirement relating to more than 54 percent marks in the Master's Degree.

(4) In the case of any college affiliated to the University, the minimum qualifications for the post of a Lecturer in the Faculty of Law shall be a degree in Master of Laws.]”

10. The teachers appointed in colleges affiliated to Sanskrit University, therefore, continued to be appointed and regulated by the provisions contained in the First Statutes of the Sanskrit University and payment of salary was released to them under the Act of 1971. Though the Act of 1973 was made applicable upon colleges affiliated to Sanskrit University, as per the notification dated 11.12.1974, but the scheme of appointment for the teachers appointed to colleges affiliated to Sanskrit University was clearly distinct viz-a-viz teachers of colleges affiliated to other Universities. The scale of pay admissible to the teachers of the colleges affiliated to Sanskrit University was at par with the teachers appointed in secondary schools. The District Inspector of Schools who disbursed salary to the teachers appointed in secondary schools was also the competent authority to sanction and release salary to the teachers of colleges affiliated to Sanskrit University. This system continued without any serious challenge.

11. The appointment procedure contained in section 31 of the Act of 1973 for the teachers appointed in colleges of other Universities was substituted with the advent of U.P. Higher Education Service Commission Act, 1980. The appointment procedure in respect of teachers appointed in colleges affiliated to Sanskrit University, nevertheless, continued to be governed by the First Statutes of the Sanskrit University. Provisions of the Act of 1980 were, therefore, not made applicable upon the Sanskrit University or the colleges

affiliated to it.

12. However in 1992 a writ petition no.38291 of 1992 came to be filed before this Court by one Swami Nath Mishra challenging the appointment of Principal in a college affiliated to Sanskrit University on the ground that the jurisdiction to appoint Principal in a college affiliated to Sanskrit University was with the U.P. Higher Education Service Commission, Allahabad (hereinafter referred to as 'the Commission'). This writ petition was ultimately allowed by a Division Bench of this Court vide its judgment reported in 1996 (1) AWC 21. The Division Bench upon examining the provisions of the Act of 1973 as well as U.P. Higher Education Service Commission Act, 1980 held that power of appointment of Principal/teachers in colleges affiliated to Sanskrit University vested with the Commission, a statutory body created under section 3 of the U.P. Higher Education Service Commission Act, 1980. Paragraph 15 to 19 of the Division Bench judgment is reproduced hereinafter:-

“15. To justify the selection and appointment of the Respondent No. 6 and approval thereof by the Vice-Chancellor of the University, learned Counsel appearing for the Respondents placed reliance upon the provisions of the various statutes contained in Part II of Chapter XI of the Statutes relating to qualifications and appointment of teachers in the affiliated colleges. In the opinion of the court, the provisions relied upon the learned Counsel are of no avail in view of the mandatory provision of Section 30 of the Act which stipulates that the provisions of the Act shall have effect notwithstanding to the contrary contained in the State Universities Act or Statutes or Ordinances made there under and the fact that the Statutes relied upon have been made under the State Universities Act.

16. Selection and appointment of the Respondent No. 6 on the post of Principal of the Institution having not been made in accordance with the provisions of Sections 12, 13 and 14 of the Act and having been made in contravention thereof is, therefore, held void, as provided in Sub-section (1) of Section 12 of the Act.

17. The impugned approval of the Vice-Chancellor communicated through the communication dated 18th September, 1992 to the manager of the Institution is of no consequence and cannot validate the selection and appointment of the Respondent No. 6 on the post of Principal of the college. The approval as

contained in the communication dated 18th September, 1992, under the circumstances, deserves to be quashed.

18. Further, selection and appointment of the Respondent No. 6 being void, the post of the Principal of the Institution shall be deemed to be vacant in the eye of law; and in view of the provisions contained in Statute 12.22 occurring in Part-IV of Chapter XII of the Statute the senior most teacher of the college, who, indisputably, is the Petitioner, shall be obliged and entitled to act as Principal.

19. In view of the foregoing discussions, the petition succeeds and is allowed. The selection and approval of the Respondent No. 6 on the post of Principal of the college as contained in communication dated 18th September, 1992, a copy whereof is Annexure T to the petition, is quashed. The Respondents are directed to allow the petitioner to act as Principal of the Institution until a duly selected Principal assumes the office.”

13. A perusal of the aforesaid judgment in Swami Nath Mishra (supra) would go to show that the notification dated 11.12.1974 was not placed before the Court. The applicability of section 31 of the Act of 1973 relating to selection and appointment of teachers in colleges affiliated to Sanskrit University, distinctly, as per the provisions contained in the First Statutes of the Sanskrit University was not placed. Distinction in qualification as well as scale of pay for the teachers of colleges affiliated to Sanskrit University was also not highlighted. This Division Bench judgment has, however, attained finality with the dismissal of Special Leave Petition filed against it before the Supreme Court on 27.3.1996. Although the judgment in the case of Swami Nath Mishra (supra) has attained finality but till date not a single appointment has been made by the Commission of a teacher in a college affiliated to Sanskrit University. This dichotomy is yet to be appreciated in correct perspective by the State and appears to be the cause behind the present stalemate.

14. The after effect of the judgment in Swami Nath Mishra (supra) was issuance of a Government Order dated 20.12.2001, which required the Sanskrit University to amend its statute so as to ensure that recruitment in the colleges affiliated to it are made by the

Commission. This apparently was done with an intent to comply with the law laid down by this Court in Swami Nath Mishra (supra). The Executive Council of the Sanskrit University in its meeting held on 27.3.2003, accordingly, proposed to amend the First Statutes of the Sanskrit University itself. Part 2 of the First Statutes of the Sanskrit University which regulated the appointment of teachers was proposed to be exhaustively amended. Clause 11.14 and 11.15 of the First Statutes of Sanskrit University was proposed to be amended in the following manner:-

“11.14 सम्बद्ध महाविद्यालयों के अध्यापकों (जिसमें प्राचार्य भी सम्मिलित हैं) की अर्हताएँ वही होंगी जो विश्वविद्यालय अनुदान आयोग द्वारा समय-समय पर निर्धारित की जाय।

11.15 प्रबन्ध तन्त्र सम्बद्ध महाविद्यालयों के प्राचार्य और अध्यापकों को सरकार द्वारा अनुमोदित पदों पर पूर्णकालिक आधार पर वि० अ० आ० द्वारा स्वीकृत वेतनमान में उत्तर-प्रदेश उच्च शिक्षा सेवा आयोग द्वारा चयनित अभ्यर्थी को एतद् पश्चात् व्यवस्थित रीति से नियुक्त करेगा। परन्तु वि० अ० आ० द्वारा स्वीकृत पद एवं वेतन मान अनुमन्य होने तक विश्वविद्यालय परिनियमावली में निर्धारित पूर्वव्यवस्था लागू रहेगी।”

15. The Executive Council of the Sanskrit University deliberated upon the issue in its meeting held on 27.3.2003, and resolved as under:-

“निर्णय –

सर्वसम्मति से परिषद द्वारा यह निर्णय लिया गया कि समिति द्वारा प्रस्तुत परिनियम सशोधन की धाराओं में 10.05 के अंश “ग” एवं “घ” उ० प्र० के संदर्भ में विलुप्त माने जायेंगे परन्तु उत्तराखण्ड के संदर्भ वहाँ के शासन द्वारा निर्धारित व्यवस्था लागू होगी के स्थान पर मात्र उ० प्र० के संदर्भ में अंश ग एवं घ विलुप्त माने जायेंगे, अंकित किया जाय।

धारा 11.14 में निम्न अंश जोड़ दिया जाय चूँकि ऐसी व्यवस्था उ० प्र० उच्च शिक्षा सेवा आयोग में नहीं है अतः परिनियम की व्यवस्था तब तक लागू रहेगी जब तक उ० प्र० उच्च शिक्षा आयोग एवं शासन द्वारा नियुक्ति की प्रक्रिया प्रारम्भ नहीं होती अर्थात् तब तक परिनियम की पूर्व व्यवस्था ही लागू रहेगी।”

16. Clauses 11.16 to 11.30 of the First Statutes of Sanskrit University were proposed to be deleted with a clear stipulation that till posts and pay scale are amended the erstwhile provisions of the

First Statutes of the Sanskrit University relating to appointment of teachers, as it stood prior to 27.3.2003, would continue to remain applicable.

17. Approval of the Chancellor required in terms of section 50(6) of the Act of 1973 to the Executive Council's resolution dated 27.3.2003 was not accorded immediately and the resolution of the Executive Council remained pending consideration before the Chancellor. No appointment of any teacher consequently could be made from 2003 onwards in any of the colleges affiliated to the Sanskrit University. A Writ Petition No.18229 of 1999 also came to be filed by Sanskrit Shikshit and Gair Sanskrit Shikshit Berojgar Samiti vs. Sampurnanand Sanskrit University and others raising a grievance that after the Act of 1980 was introduced, no appointment could have been made in any college affiliated to Sanskrit University except on the recommendation of the Commission, and therefore, all appointments of teachers made after 1980 in the colleges affiliated to Sanskrit University be set aside and the post of teachers be filled upon recommendation made by the Commission. This petition was disposed of on 1.5.2006 requiring the Principal Secretary of the Department of Higher Education to examine the issue raised in the writ petition. The State Government took note of the respective stand of the parties and ultimately rejected the representation vide following order passed on 12.9.2007:-

“सभी पक्षों को सुनने एवं अभिलेखों के परीक्षण के उपरान्त यह निष्कर्ष निकलता है कि सम्पूर्णानन्द संस्कृत विश्वविद्यालय से सम्बद्ध संस्कृत विद्यालयों/महाविद्यालयों के प्राचार्य/अध्यापकों का चयन राज्य विश्वविद्यालय, अधिनियम, 1973 एवं सम्पूर्णानन्द संस्कृत विश्वविद्यालय की परिनियमावली के अन्तर्गत किया जाता है, क्योंकि सम्बद्ध विद्यालयों में प्रथमा (कक्षा-8) से आचार्य पर्यन्त (एम0ए0 के समकक्ष) कक्षाओं का संचालन किया जाता है। संस्कृत विद्यालयों में कार्यरत अध्यापक प्रथमा से आचार्य तक अध्यापन का कार्य करते हैं। इन्हे माध्यमिक अध्यापकों के समान वेतनमान अनुमन्य है। सम्पूर्णानन्द संस्कृत विश्वविद्यालय अन्य राज्य विश्वविद्यालयों से पूर्णतया भिन्न

है इसका कार्यक्षेत्र सम्पूर्ण भारत है। अन्य राज्य विश्वविद्यालयों से सम्बद्ध महाविद्यालयों में यू0जी0सी0 के मानक एवं वेतनमान लागू है, जबकि सम्पूर्णानन्द संस्कृत विश्वविद्यालय से सम्बद्ध विद्यालय/महाविद्यालय में यू0जी0सी0 के मानक एवं वेतनमान अभी लागू नहीं है। इस सम्बन्ध में यह भी विचारणीय है कि विश्वविद्यालय अधिनियम, 1973 की धारा-5(2) के अन्तर्गत सम्पूर्णानन्द संस्कृत विश्वविद्यालय, वाराणसी का क्षेत्राधिकार वाराणसी के आस-पास अथवा उत्तर प्रदेश में न होकर सम्पूर्ण भारत व विदेश में भी है। राज्य विश्वविद्यालय अधिनियम की धारा-5(2) निम्नवत् है।

धारा - 5(2)

The Sampurnanand Sanskrit Vishwavidyalaya may affiliate institutions situated in any part of the territory of India recognize teachers of and admit to its examinations candidates from such territory or abroad;

Provided that the Vishwavidyalaya outside Uttar Pradesh, or

- (a) affiliate institution outside Uttar Pradesh, or
- (b) recognize any teacher employed in an institution situated outside Uttar Pradesh and maintained any Government.

सम्पूर्णानन्द संस्कृत विश्वविद्यालय के सम्बद्ध महाविद्यालयों की प्रायस्थिति अन्य राज्य विश्वविद्यालयों से भिन्न है, यह इस तथ्य से प्रमाणित होता है कि सम्पूर्णानन्द संस्कृत विश्वविद्यालय की परिनियमावली के परिनियम 11.15 तथा 11.24 में सम्बद्ध महाविद्यालयों के प्राचार्य व प्राध्यापकों की नियुक्ति एवं चयन की प्रक्रिया निम्नवत् है -

11.15 प्रबन्धतन्त्र सम्बद्ध महाविद्यालयों के प्राचार्य और अध्यापकों को सरकार द्वारा अनुमोदित पदों पर, पूर्णकालिक आधार पर और सम्बद्ध राज्य सरकार या संघ-क्षेत्र या सीनीय निकाय या प्राधिकारी द्वारा अनुमोदित वेतनमान में चयन - समिति की सिफारिस पर एतत्पश्चात् उपबन्धित रीति से नियुक्त करेगा।

11.24 किसी सम्बद्ध महाविद्यालय के प्राचार्य या अध्यापकों की समस्त नियुक्तियाँ प्रबन्धतन्त्र द्वारा कुलपति के लिखित अनुमोदन के पश्चात् ही की जायेंगी। कुलपति नियुक्ति से सम्बन्धित आवेदन-पत्रों और अन्य पत्रादि मंगा सकता है और यदि उसकी राय में इस प्रकार नियुक्त अभ्यर्थी नियुक्ति के लिए उपयुक्त नहीं है, तो वह उस मामले पर पुनः विचार करने और रिपोर्ट देने के लिए उसे प्रबन्धतन्त्र को वापस कर देगा। कुलपति और प्रबन्धतन्त्र के बीच मतैक्य न होने की स्थिति में वह मामला कार्य परिषद को निर्दिष्ट किया जायेगा और उसका विनिश्चय अन्तिम होगा।

उक्त तथ्यों से स्पष्ट है कि सम्पूर्णानन्द संस्कृत विश्वविद्यालय से सम्बद्ध महाविद्यालयों में प्राचार्य तथा अध्यापकों का चयन सम्पूर्णानन्द संस्कृत विश्वविद्यालय परिनियमावली में उल्लिखित, व्यवस्था के अनुसार होता है। अतः ऐसी स्थिति में याचीगणों के प्रत्यावेदन दिनांक 14-12-1998 एवं 18-01-1999 में की गयी याचना को अस्वीकृत करते हुए, प्रत्यावेदन निस्तारित किया जाता है। ”

18. The Act of 1980 was also amended vide amending Act No.30 of 2004, and the definition of term 'appointment' contained in

Section 2(a) of the Act of 1980 was restricted to a post described under Section 60-E of the Act of 1973, excepting minority colleges and the colleges exclusively maintained by the State Government. Amended section 2(a) of the Act of 1980 is reproduced:-

“2(a) *Appointment* in relation to a teacher means the appointment of a person to a sanctioned post described under Section 60-E of the Uttar Pradesh State Universities Act, 1973, excluding the appointment in a grant-in-aid college established and administered by a minority referred to in clause (1) of Article 30 of the Constitution or a college exclusively maintained by the State Government.”

19. It has already been noted that the teaching posts in colleges affiliated to Sanskrit University were not covered/included under section 60-E of the Act of 1973. The effect of amendment introduced in the Act of 1980, vide U.P. Act No.30 of 2004, was thus that appointment of teachers in colleges affiliated to Sanskrit University stood excluded from the purview of the Commission.

20. The Vice Chancellor of the Sanskrit University appears to have sent repeated letters to the State Government for clarifying the issue and to issue necessary directions so that appointments on the post of teachers in colleges affiliated to Sanskrit University could resume. However, the matter remained pending without any appropriate decision taken in the matter at the level of the State Government.

21. Ultimately, the Governor approved the resolution of the Executive Council dated 27.3.2003, exercising his jurisdiction under section 50(6) of the Act of 1973 vide order dated 28.12.2011. Clause 3 and 4 of the order passed by the Governor is relevant for the present purposes and is reproduced hereinafter:

3— परिनियम— 11.15 अध्यापकों का चयन व नियुक्ति

इस शर्त के साथ स्वीकार किया जाता है कि “11.15—उत्तर प्रदेश उच्चतर शिक्षा सेवा आयोग अधिनियम, 1980 एवं उसके अधीन बनाये गये नियमों एवं विनियमों आदि के उपबन्धों के अधीन (उत्तर प्रदेश स्थित समबद्ध महाविद्यालयों की स्थिति में) रहते हुए, समबद्ध महाविद्यालय का प्रबन्ध—तंत्र महाविद्य

ालय का प्राचार्य और अध्यापकों को राज्य सरकार द्वारा अनुमोदित पदों पर पूर्ण कालिक आधार पर और सम्बन्धित राज्य सरकार या संघ क्षेत्र या स्थानीय निकाय या स्थानीय प्राधिकारी द्वारा अनुमोदित वेतनमान में उपबन्धित रीति से नियुक्त करेगा।” परन्तु पदों की स्वीकृति एवं वेतनमान अनुमन्य होने तक परिनियमावली में विहित व्यवस्था लागू रहेगी।

उ० प्र० उच्चतर शिक्षा सेवा आयोग अधिनियम, 1980 एवं उसके बनाये गये नियमों/विनियमों में चयन एवं नियुक्ति से संबंधित प्रक्रिया एवं रीति विहित की गयी है। अन्य राज्यों की स्थिति में पूर्व व्यवस्था यथावत् बनी रहेगी।

4. परिनियम—11.16 से 11.30 को विलोपित किया जाना

स्वीकार किया जाता है।

The First Statutes of the Sanskrit University, as amended above, continues to exist as on date.

22. The appointment of teachers by the Commission was restricted to the posts of teachers sanctioned under section 60-E of the Act of 1973 only. Post of teachers in the colleges affiliated to Sanskrit University were not created under section 60-E of the Act of 1973, and creation of post as well as payment of salary to them continued to be governed by the Act of 1971. It is for this reason that no appointment of teacher in any college affiliated to Sanskrit University was made by the Commission notwithstanding the Division Bench judgment of this Court in the case of Swami Nath Mishra (supra). This distinction, however, appears to have been completely overlooked.

23. After the approval was granted by the Governor to the amendment in First Statutes of Sanskrit University on 28.12.2011, the state of uncertainty continued in respect of appointment of teachers in colleges affiliated to Sanskrit University. Clause 11.16 to 11.30 of the First Statutes of the Sanskrit University, which prescribed the procedure of appointment of teachers, hitherto, got deleted but the required approval of posts in the prescribed scale of pay admissible to teachers of degree colleges was not accorded by

the State Government. The appointment process, therefore, which was on hold since 2003, continued.

24. It was at this stage that a grievance relating to appointment on the post of Principal in a college affiliated to Sanskrit University was brought before this Court in Writ Petition No.16368 of 2013. The Division Bench was confronted with a grievance raised by the petitioner institution that the post of Principal was lying vacant since the year 2007 without any proceedings being undertaken for appointment. The District Inspector of Schools declined approval for an appointment to be made on the post of Principal in the petitioner institution on the ground that he has not received any instructions in the matter. A short counter affidavit was filed by the respondents stating that power of approval for appointment on the post of Principal in Sanskrit Degree College vests in the Madhyamik Shiksha Parishad as well as D.I.O.S. The Court called upon the Secretary (Secondary Education) to explain as to under which authority and provision in law the D.I.O.S. has been authorized to make appointment of Principal in a Sanskrit College. It appears that faced with the observations of the Court a Committee under the Chairmanship of the then Chief Secretary of the State of Uttar Pradesh was constituted to look into the matter. This Committee examined the issue and ultimately came to a conclusion that so long as requisite action is not taken for amending the pay scale and creation of posts for the teachers in colleges affiliated to Sanskrit University by bringing them at par with teachers of colleges affiliated to other Universities established under the Act of 1973, the appointment process under the First Statutes of the Sanskrit University would continue to hold good and appointments of teachers would be made as per it. The decision taken in the meeting

chaired by the then Chief Secretary thereafter was brought before this Court and the Writ Petition No.16368 of 2013 was disposed of by issuing following directions on 3.7.2013:-

"To cut the matter short, since the State Government has filed supplementary affidavit of the Joint Secretary of Dr. Ramanand Prasad, Higher Education, Government of U.P. Lucknow stating therein that in the High Power Committee Meeting held on 20.5.2013 presided over by the Chief Secretary, it has been resolved that appointment of Principal of the College in question has to be made by the College in accordance with the relevant statute of the University, we are inclined to dispose of this writ petition in terms of the Resolution of the Committee of the State Government taken on 20.5.2013. The relevant paragraph 5 of which is quoted below:

"5. बैठक में उच्च शिक्षा विभाग द्वारा यह भी अवगत कराया गया कि विश्वविद्यालय की परिनियमावली के अनुसार विश्वविद्यालय नियंत्रित होते हैं। सम्पूर्णानन्द संस्कृत विश्वविद्यालय की परिनियमावली 20 दिसम्बर, 1978 तक संशोधित है जिसके भाग-2 के प्रस्तर 11.15 से 11.24 तक महाविद्यालय के अध्यापकों की नियुक्ति के संबंध में प्रावधान है। सम्पूर्णानन्द संस्कृत विश्वविद्यालय, वाराणसी की परिनियमावली में श्री राज्यपाल/कुलाधिपति के विशेष्ठ कार्याधिकारी (विधि) के पत्र दिनांक 28.12.2011 द्वारा संस्कृत शिक्षा के उन्नयन एवं विकास एवं संस्कृत शिक्षा की समस्याओं के निराकरण हेतु परिनियमावली में संशोधन किया गया है। जिसमें विश्वविद्यालय की परिनियमावली के भाग-2 के अन्तर्गत परिनियम 11.15 अध्यापकों का चयन व नियुक्ति के संबंध में सशर्त यह प्रावधान किया गया है कि पदों की स्वीकृति एवं वेतनमान अनुमन्य होने तक परिनियमावली में निहित व्यवस्था लागू रहेगी। इस प्रकार प्राचार्य के पद पर नियुक्ति/चयन की कार्यवाही विश्वविद्यालय की परिनियमावली में किये गये उपबन्धों के अनुसार की जानी हैं इस संबंध में यह अपेक्षा की गयी कि प्रकरण के संबंध में उच्च शिक्षा विभाग द्वारा अग्रतर कार्यवाही सुनिश्चित की जायें।"

It is being stated that in terms of the said Resolution an advertisement has also been issued in the newspapers inviting applications for filling up the post of Principal of the College. The proceedings for such appointment has thus being initiated. Accordingly, we dispose of this writ petition with a direction that the appointment of the Principal of the College shall be made as expeditiously as possible and in accordance with the Resolution dated 20.5.2013 of the High Power Committee presided over by the Chief Secretary Government of U.P., which has been quoted hereinabove."

A consequential order was also passed by the Registrar of the Sanskrit University to facilitate issuance of appointment in terms of the directions issued by this Court, by relying upon the minutes of the meeting dated 20.5.2013. It is thereafter that appointments began on the post of Principal and teachers in the colleges affiliated to the Sanskrit University.

25. It would be worth noticing at this stage that a Writ Petition No.7570 of 1992 was also filed before the Lucknow Bench of this Court with the grievance that teachers of colleges affiliated to Sanskrit University are being discriminated, inasmuch as pay scale admissible to teachers of other colleges were much higher, as per

UGC Regulations, but equal treatment was being denied to the teachers of colleges affiliated to Sanskrit University. This Court took cognizance of the grievance raised and directed the State Government to look into the matter. The State Government examined the issue and rejected such claim of the petitioners vide Government Order dated 11.7.2015. Paragraph 6 & 7 of the aforesaid Government Order is relevant and is reproduced hereinafter:-

“6. मा० उच्च न्यायालय के आदेश दिनांक 29-10-2014 एवं 29-5-2015 के आलोक में कुल सचिव सम्पूर्णानन्द संस्कृत विश्वविद्यालय वाराणसी द्वारा उपलब्ध करायी गई आख्या का परीक्षण किया गया। यू०जी०सी० वेतनमान वर्तमान में उन्हीं शिक्षकों को अनुमन्य होता है जो यू०जी०सी० वेतनमान में सृजित पदों के सापेक्ष विधिवत चयनित/नियुक्त गये हों।

7. उपयुक्त याची शिक्षकों द्वारा धारित पद यू०जी०सी० वेतनमान में सृजित नहीं है और न ही इनका चयन/नियुक्ति यू०जी०सी० वेतनमान में सृजित पदों के सापेक्ष की गयी है। अतः प्रश्नगत महाविद्यालयों के याची शिक्षकों को यू०जी०सी० वेतनमान अनुमन्य किया जाना नियमानुसार सम्भव नहीं है। याचिका के प्रत्यावेदन बलहीन एवं निरस्तकर निस्तारित किए जाने योग्य है।”

26. The issue relating to payment of salary as per UGC Regulations to teachers of colleges affiliated to Sanskrit University was brought before this Court in Writ Petition No.25200 of 2009 also, which has been decided finally by this Court vide judgment dated 21.8.2017. This Court has taken note of the distinctive aspects relating to teachers of colleges affiliated to Sanskrit University viz-a-viz colleges affiliated to other Universities and has proceeded to reject the claim of parity in the matter of payment of salary to the teachers of the colleges affiliated to Sanskrit University viz-a-viz other degree colleges. Para 15 and 27 of the aforesaid judgment dated 21.8.2017 is reproduced hereinafter:-

“15. It is thus, evident that S.S.U and Colleges affiliated to S.S.U in some respect are placed with other Universities and Colleges affiliated to them governed by U.P. Act,

1973 but since beginning, there has been a substantial difference in various respects, maintained therein. In view of the above existing distinction in the matter of process of recruitment, qualifications and other conditions of service, in our view it will not be appropriate to apply principle of "equal pay for equal work" and exclusion of Teachers of Colleges affiliated to S.S.U. from Teachers of Colleges affiliated to other Universities governed by U.P. Act, 1973 cannot be said to be per se arbitrary and discriminatory or violative of Articles of 14 and 16 of the Constitution.

27. If we examine the present case in the light of above exposition of law, we find that qualifications, procedure for selection and appointment of Principal and Teachers of S.S.U. and affiliated colleges and the governing bodies like U.G.C. etc. are different than that applicable to other Universities and Colleges affiliated to them, governed by U.P. Act, 1973, hence we are of the view that petitioner's claim for "equal pay for equal work" cannot be accepted and has to be rejected."

27. A Government Order dated 19.3.2010 has also been issued by the State Government prescribing the scale of pay for the teachers of colleges affiliated to Sanskrit University. Their scale of pay has been determined at par with teachers of secondary schools by applying the provisions of the Act of 1971. This apparently was done as payment of salary to teachers of colleges affiliated to Sanskrit University was being released under the Payment of Salaries Act of 1971 and the pay scale determined for the teachers of the secondary institution was made applicable to them also.

28. Sri Kushmondeya Shahi appearing for the petitioner in the leading writ petition submits that in light of the aforesaid facts it is abundantly clear that teachers of colleges affiliated to Sanskrit University continued to be governed in the matter of their appointment, qualification and payment of salary in a distinct manner, from what was otherwise the case in respect of teachers in colleges affiliated to other Universities established under the Act of 1973. Neither the teachers of colleges affiliated to Sanskrit University were being recruited by the Commission, nor they were paid salary in the pay scale fixed as per UGC Regulations to teachers of other colleges. The qualification of teachers appointed in colleges affiliated to Sanskrit University was also not in accordance with the

UGC Regulations. The recruitment of teachers in the colleges affiliated to Sanskrit University continued to be as per the erstwhile provisions of the First Statutes of Sampurnanand Sanskrit Vishwavidyalaya, as it stood prior to its amendment dated 28.12.2011. This existing position with regard to appointment of teachers in colleges affiliated to Sanskrit University is now being stalled by the State Government vide its Government Order dated 10.10.2018, which is impugned in the writ petition. It is recorded in the Government Order that State is contemplating to change the recruitment procedure for appointing teachers in colleges affiliated to Sanskrit University and the task is proposed to be entrusted to an independent Commission, therefore, no further action be taken for appointment of teachers in such colleges and the Vice Chancellor of Sanskrit University shall not approve any appointment made under the First Statutes of the Sanskrit University.

29. Petitioners contend that the decision of the State Government has virtually stalled all appointments in colleges affiliated to Sanskrit University throughout the State and even the appointments which have already been made under the First Statutes, in the recent past, are also not being released salary by the Inspector concerned.

30. Having taken cognizance of the petitioners' grievance in the present petition this Court passed an order on 5.12.2018 directing the Additional Chief Secretary of the Department of Higher Education to file his personal affidavit clarifying the stand of the State in respect of the impasse. The Additional Chief Secretary filed his affidavit stating that the earlier decision taken on 20.5.2013 in the meeting chaired by the then Chief Secretary was confined to the

particular institution only and would have no applicability upon other institutions. This stand was not appreciated as such a stand would have been open to challenge on the ground of selective discrimination. This Court, therefore, proceeded to issue a direction to the Chief Secretary on 7.1.2019 to examine the matter as the stand taken by the then Chief Secretary was being doubted by the Additional Chief Secretary of the concern department of the State in his affidavit.

31. On the next date when the matter was taken up a prayer was made to adjourn the cases as the Chief Secretary was seized of the matter. The matter was accordingly adjourned on 21.1.2019 by six weeks to enable the Chief Secretary to examine the issue. The matter was again adjourned on 27.2.2019 and thereafter on 12.3.2019. The Chief Secretary has ultimately filed an affidavit stating that the Government is proposing to amend the statutory provisions relating to appointment of teachers in colleges affiliated to Sanskrit University and to entrust the task of recruitment of teachers to the Commission constituted under the Act of 1980. Till such time as it is done, an arrangement is proposed to be made to engage retired teachers for dispensing teaching in the colleges affiliated to Sanskrit University. The Court is further apprised that since parliamentary elections have been notified, therefore, appropriate permission from the Election Commission has been sought in the matter, which is awaited. It is in that background that the matter was adjourned by passing the following orders on 27.3.2019:-

"1. Detailed orders in the matter have been passed on previous occasion in the present bunch of petitions. The order dated 7.1.2019, however, needs specific reference and therefore is extracted hereinafter:-

"Following orders were passed on 5th December, 2018:-

"1. Pursuant to the order passed on 27.11.2018, learned counsel for the petitioner has filed a supplementary affidavit. This affidavit refers to a meeting held under the Chairmanship of Chief Secretary on 20.5.2013, whereby a decision was taken to allow recruitment to be made as per the statutes of the University. An order of the Chief Secretary has also been brought on record, pursuant to the minutes approved by the Chief Secretary. It appears that taking note of such facts, the Division Bench of this Court in Writ Petition No.16368 of 2013 has proceeded to pass the following orders:-

"To cut the matter short, since the State Government has filed supplementary affidavit of the Joint Secretary of Dr. Ramanand Prasad, Higher Education, Government of U.P. Lucknow stating therein that in the High Power Committee Meeting held on 20.5.2013 presided over by the Chief Secretary, it has been resolved that appointment of Principal of the College in question has to be made by the College in accordance with the relevant statute of the University, we are inclined to dispose of this writ petition in terms of the Resolution of the Committee of the State Government taken on 20.5.2013. The relevant paragraph 5 of which is quoted below:

"5. बैठक में उच्च शिक्षा विभाग द्वारा यह भी अवगत कराया गया कि विश्वविद्यालय की परिनियमावली के अनुसार विश्वविद्यालय नियंत्रित होते हैं। सम्पूर्णानन्द संस्कृत विश्वविद्यालय की परिनियमावली 20 दिसम्बर, 1978 तक संशोधित है जिसके भाग-2 के प्रस्तर 11.15 से 11.24 तक महाविद्यालय के अध्यापकों की नियुक्ति के संबंध में प्रावधान है। सम्पूर्णानन्द संस्कृत विश्वविद्यालय, वाराणसी की परिनियमावली में श्री राज्यपाल/कुलाधिपति के विशेष कार्यधिकारी (विधि) के पत्र दिनांक 28.12.2011 द्वारा संस्कृत शिक्षा के उन्नयन एवं विकास एवं संस्कृत शिक्षकों की समस्याओं के निराकरण हेतु परिनियमावली में संशोधन किया गया है। जिसमें विश्वविद्यालय की परिनियमावली के भाग-2 के अन्तर्गत परिनियम 11.15 अध्यापकों का चयन व नियुक्ति के संबंध में सशर्त यह प्रावधान किया गया है कि पदों की स्वीकृति एवं वेतनमान अनुमन्य होने तक परिनियमावली में निहित व्यवस्था लागू रहेगी। इस प्रकार प्राचार्य के पद पर नियुक्ति/चयन की कार्यवाही विश्वविद्यालय की परिनियमावली में किये गये उपबन्धों के अनुसार की जानी हैं इस संबंध में यह अपेक्षा की गयी कि प्रकरण के संबंध में उच्च शिक्षा विभाग द्वारा अग्रतर कार्यवाही सुनिश्चित की जायें।"

It is being stated that in terms of the said Resolution an advertisement has also been issued in the newspapers inviting applications for filling up the post of Principal of the College. The proceedings for such appointment has thus being initiated. Accordingly, we dispose of this writ petition with a direction that the appointment of the Principal of the College shall be made as expeditiously as possible and in accordance with the Resolution dated 20.5.2013 of the High Power Committee presided over by the Chief Secretary Government of U.P., which has been quoted hereinabove.

No order as to cost."

2. Learned counsel for the petitioner submits that the Special Secretary has, in his written instructions, misrepresented facts, inasmuch as the minutes of the meeting, as also the orders passed by this Court, have not been referred to therein.

3. Prima facie, this Court finds substance in the contention advanced on behalf of the petitioner.

4. Let this matter appear in the additional cause list on 19.12.2018.

5. The Additional Chief Secretary of the department of Higher Education shall file his personal affidavit clarifying the matter. It shall also be disclosed as to why adverse inference be not drawn against the officers of the State for not placing correct facts before the Court."

Pursuant to the aforesaid orders passed, the Additional Chief Secretary of the State, has filed an affidavit, wherein it is stated that the decision taken in paragraph 5 of the Minutes, dated 20th May, 2013, under the Chairmanship of Chief Secretary of the State of Uttar Pradesh, is limited in reference to Sri Daivi Sampad Brahmacharya Sanskrit College, Mumukshu Ashram, Shahajahanpur, and that the policy determined by the State Government, vide Government Order dated 20th December, 2001, has not been withdrawn. Paragraph 7 in its entirety is reproduced:-

"7. That the order dated 17.5.2013 of the Hon'ble Court passed in writ petition no.

16368 of 2013 Committee of Management Sri Daivi Sampad Brahmcharya Sanskrit College, Mumukshu Ashram, Shahajahanpur Vs. State of U.P. and others and thereafter the decision taken vide para 5 of the minutes of meeting dated 20.5.2013 under the chairmanship of chief secretary Uttar Pradesh is limited in reference to Sri Daivi Sampad Brahmcharya Sanskrit College, Mumukshu Ashram, Shahajahanpur and others of the Hon'ble Court passed in the other writ petitions. That the policy determined by the State Government vide G.O. dated 20.12.2001 has not been withdrawn, nor has the amendment in the statute of the university in reference to the aforesaid G.O. made vide letter dated 28.12.2011 of the Chancellor office been revoked."

Perusal of the record would go to show that amendment in the statutes of Sampurnanand Sanskrit Vishwavidyalaya was approved by the Governor on 28th December, 2011, in which a modified selection process was introduced in Clause 11.15 of the Statute. However, till sanction of posts and grant of pay-scale, the earlier provision contained in the statutes of the University, was to continue. It is not in issue that neither posts have been sanctioned nor pay-scale, as per UGC Regulation, etc. have been provided to teachers of colleges, affiliated to Sampurnanand Sanskrit Vishwavidyalaya and, therefore, the appointment process has not been taken over by the Higher Education Service Commission so far. In view of the letter of the Office of Governor dated 28.12.2011, the previous provision with regard to recruitment as per statutes, un-amended, has to continue. The decision of the Chief Secretary in the meeting is also to similar effect.

It is difficult for the Court to appreciate as to how the policy decision taken in a meeting by the Chief Secretary could be restricted to only one institution and would not be construed as a policy decision laying down the procedure for appointment to colleges affiliated to the Sampurnanand Sanskrit Vishwavidyalaya. It is otherwise apparent that on account of lack of clarity in that regard or doubts repeatedly generated by the State, even after the decision is taken by the Chief Secretary has resulted in a complete breakdown of recruitment in such colleges, which clearly would be running counter to cause of sanskrit education in the State of Uttar Pradesh.

Since the previous decision of the Chief Secretary is now been doubted by the Additional Chief Secretary on a construction which apparently does not inspire confidence and is otherwise inconsistent with the statutory scheme, it would be appropriate to call upon the Chief Secretary of the State of U.P. examine the stand of the State and to clarify the position by filing his personal affidavit by the next date fixed.

Put up in the additional cause list once again on 21.1.2019."

2. The matter was adjourned thereafter on 21.1.2019 and 27.2.2019 and lastly on 12.3.2019 on the request of Chief Secretary as the officer concerned was reported to be ceased of the matter. An affidavit has been filed today as per which certain amendments in the Act and the Statutes are proposed for which approval has been obtained from the Election Commission. So far as any amendment in the Act or Statutes is concerned, the same is always within the prerogative of the State to be undertaken in accordance with law. The observations and query of the Court, however, appear to have been completely misunderstood by the respondents. This Court on previous occasion had taken note of the stand already taken by the Chief Secretary in its meeting on 22.5.2013, as per which the appointments were allowed to be made as per the provisions which stood earlier and it was only because of an affidavit of the Additional Chief Secretary restricting applicability of such decision to one case that the Court has called upon the Chief Secretary to examine the issue. The affidavit filed today completely fails to answer this aspect.

3. The Court is otherwise not impressed by the arguments of learned Additional Chief Standing Counsel that the policy decision taken in the meeting of the Chief Secretary was confined to one institution alone. In case such a stand is accepted it would amount to a selective treatment being granted to one institution while ignoring claim

of others. Petitioner has otherwise brought on record materials to show that based upon the decision of the Chief Secretary the Governor has otherwise extended similar benefit to other institutions also vide order dated 31.8.2014. Prima facie, therefore, there would be no reason to sustain such a stand. So long as an amendment is not introduced in the Act and the Statute the provisions as it stood then would have to be given effect to, inasmuch as large number of sanskrit institutions would otherwise be made to suffer in the absence of teaching staff.

4. At this stage, Sri R. P. Dubey, learned Additional Chief Standing Counsel submits that the matter be adjourned by 48 hours in order to enable him to obtain further instructions in view of the fact that some meeting is otherwise proposed to be held today.

5. As prayed, put up this matter in the additional cause list on 29.3.2019.”

32. Sri R.P. Dubey, learned Additional Chief Standing Counsel appearing for the State and its authorities has obtained further instructions from the State Government on 28.3.2019, which has been produced before the Court. The stand of respondents is that no recruitment is to be allowed in the present scenario in law, and that petitioners are not entitled to any relief.

33. Petitioners have filed rejoinder affidavit reiterating their stand that the action of the State authorities in stopping appointment of teachers in Sanskrit University is wholly arbitrary and unreasonable.

34. I have heard learned counsel for the parties and have perused the materials brought on record.

35. The statutory scheme regulating appointment of teachers in colleges affiliated to Sanskrit University has already been noticed above. It is abundantly clear that so far as teachers of colleges affiliated to Sanskrit University are concerned, their appointment was being regulated by the provisions contained in the First Statutes of the Sampurnanand Sanskrit Viswavidyalaya. The appointment procedure otherwise contemplated under Section 31 of the Act of 1973 in respect of teachers of colleges affiliated to other State Universities were not made applicable in respect of the teachers of the colleges affiliated to the Sanskrit University. While modifying

the provisions of the Act of 1973 in its applicability to the Sanskrit University the State Government excluded Section 31(1) of the Act of 1973 and the recruitment of teachers was provided to be regulated as per the First Statutes of the Sanskrit University. Relevant portion of the notification dated 11.12.1974 whereby Section 31(1) of the Act of 1973 was made applicable upon the Sanskrit University has already been extracted above. The procedure for appointment of teachers prescribed for teachers in other Universities (except Sanskrit University) in the Act of 1973 was substituted by the procedure prescribed in the Act of 1980. Since appointment procedure under Section 31(1) of the Act of 1973 was not made applicable upon the Sanskrit University, therefore, the provisions of the Act of 1980 were also not enforced upon the Sanskrit University. The qualification, pay structure and appointment procedure in respect of teachers to be appointed in colleges affiliated to Sanskrit University remained separate and distinct from the appointment procedure prescribed for teachers appointed in colleges affiliated to other Universities.

36. This position remained intact notwithstanding the judgment of this Court in Swami Nath Mishra (*supra*). The distinguishing feature in respect of appointment of teachers in colleges affiliated to Sanskrit University, as narrated above, apparently were never placed before the Division Bench in Swami Nath Mishra (*supra*). The State Government specifically rejected claim raised in Writ Petition No.18229 of 1999 for invalidating the appointments made in colleges affiliated to Sanskrit University on the ground that such appointments were not backed by any recommendation made by the U.P. Higher Education Service Commission, Allahabad vide its order dated 12.9.2007. Such a stand has been reiterated by the State vide

Government Order dated 11.7.2015. Both these orders have already been extracted above. This Court in Writ Petition No.25200 of 2009 has acknowledged such facts in Para 15 & 27 of the judgment, which have already been extracted above.

37. It was for this reason that when the U.P. Higher Education Service Commission Act, 1980 got enacted and replaced the erstwhile process of recruitment specified under section 31 of the Act of 1973, the teachers of colleges affiliated to Sanskrit University continued to be appointed under the First Statutes of the Sanskrit University and not by the Commission constituted under the Act of 1980. The provisions of the Act of 1973, insofar as it related to qualification of teachers as well as payment of salary to them were also not made applicable upon the teachers of colleges affiliated to Sanskrit University. The teachers of colleges affiliated to Sanskrit University continued to receive salary equivalent to the salary admissible to teachers of secondary schools by virtue of the provisions of Act of 1971. Post of teachers in colleges affiliated to Sanskrit University were otherwise not brought within the purview of section 60-E of the Act of 1973 and therefore the appointment of teachers as per the procedure prescribed in the Act of 1980 did not include teachers of Sanskrit University or the colleges affiliated to it. The decision taken by the Executive Council for amending its Statute, as has been approved by the Chancellor on 28.12.2011 under section 50(6) of the Act of 1973 also required the State Government to fix the pay scale of teachers of colleges affiliated to Sanskrit University by creating posts for them as per Section 60-E of the Act of 1973. This is yet to be done by the State Government. Neither the qualification of teachers of colleges affiliated to Sanskrit University has been amended so as to bring it at par with the UGC

Regulations, nor the provisions of UGC Regulations have been made applicable upon such teachers. The scale of pay to teachers of colleges affiliated to Sanskrit University continues to be at par with secondary institutions and have not been fixed at par with the salary of teachers of colleges affiliated to other Universities. Unless the State Government corrects this anomaly and enforces the provisions of UGC Regulations by upgrading the scale of pay at par with UGC Regulations and equating the qualification as per it, it would be difficult for the State to treat teachers of colleges affiliated to Sanskrit University in the matter relating to their recruitment at par with teachers of colleges affiliated to other Universities. So long as it is not done, an appropriate arrangement would have to be made to allow recruitment of teachers in colleges affiliated to Sanskrit University, so as to ensure that these colleges are not forced to shut due to lack of teachers and payment of salary to its teachers.

38. The First Statutes of the Sanskrit University, as amended on 28.12.2011, also clearly provides that so long as necessary structural changes are not made by the State by creating posts etc., as detailed above, the appointment of teachers would continue to be made as per the erstwhile scheme of recruitment contained in Clauses 11.15 to 11.24 of the First Statutes of Sanskrit University. This contemplation in the Statutes continues to exist without any further amendment or change introduced in it.

39. It was in this context that a grievance was raised before this Court in Writ Petition No.16368 of 2013 (Committee of Management Sri Daivi Sampad Brahmcharya Sanskrit College, Mumukshu Ashram Shahjahanpur Vs. State of U.P. and others) highlighting the fact that no appointments were being made on the

post of teacher in a college affiliated to the Sanskrit University from 2003 onwards. The matter was examined by a Committee chaired by the Chief Secretary of the State of U.P., wherein it is clearly resolved on 20.5.2013 that till posts are created and pay scales are approved the appointment procedure laid down in the First Statutes of Sanskrit University, hitherto, would continue. It is admitted on record that not only the institution in Writ Petition No.16368 of 2013 but in large number of other institutions also appointments have been made as per Statute 11.15 to 11.24 of the First Statutes of the Sanskrit University.

40. The lack of clarity in following of procedure for appointment of teachers in colleges affiliated to Sanskrit University has caused substantial harm to imparting of Sanskrit Education in the State of U.P., inasmuch as from 2003 to 2013 no appointment was allowed to be made in any of these colleges. The Registrar of Sanskrit University in his affidavit filed before this Court has informed that after the appointment procedure was clarified in the meeting chaired by the Chief Secretary on 20.5.2013 and orders were passed by this Court in Writ Petition No.16368 of 2013 a total number of 68 Principals and 416 teachers have been approved by the Vice Chancellor of Sanskrit University till 10.10.2018. Many of these approved teachers are before this Court with the grievance that salary is not being paid to them or those who were receiving salary from the State Exchequer have been denied salary on the basis of Government Order dated 10.10.2018. Sri Ved Byas Mishra appearing for the Sanskrit University states that after issuance of Government Order dated 10.10.2018 the Vice Chancellor has not approved any appointment nor has appointed any subject experts etc. for appointment to be made on the post of teacher in the

colleges affiliated to Sanskrit University.

41. It is worth noticing that Sanskrit University is the only University in the country which is specializing in imparting of Sanskrit Grammar/Education and it is rather unfortunate that for lack of clarity on part of State Authorities these institutions have been made to suffer for long. The matter is still not being given due consideration which it richly deserves.

42. Sanskrit is perceived as the mother to almost all languages across the globe and Sanskrit Grammar is considered superior to the Grammars of all other languages. It is also called 'Devbhasha'. Even Western Philologists consider Sanskrit Alphabet to be most methodical and scientific with its elements classified first into vowels and consonants and then within each section, according to the manner in which the sound is produced. The Great Sanskrit Scholar Franz Bopp has stated that at one time Sanskrit was the language spoken all over the world. It is in view of its use and historical importance that this classical language merits recognition as heritage language and efforts must be made to promote it. Sanskrit is also the repository of the Ancient Indian Wisdom and Knowledge acquired over Centuries. Recognizing its importance the Sanskrit College was established as far back as in 1791 during the British Rule. The Sanskrit University is the successor of the Sanskrit College and it would be painful to note that even after 72 years of independence the appointment of teachers in Sanskrit Colleges is facing utter neglect at the policy level.

43. The Government Order dated 10.10.2018 merely directs the appointment process in colleges affiliated to Sanskrit University to be stalled in anticipation of change in the appointment procedure.

The First Statutes of the Sanskrit University which provides even after its amendment on 28.12.2011 that the process of recruitment would continue, as per the unamended Statute, so long as provisions are not made for sanction of post and grant of pay scale etc. continues to exist in the First Statutes of the Sanskrit University. The Government Order dated 10.10.2018 is clearly inconsistent with the Statutes of the Sanskrit University. In hierarchy of laws the Statutes of Sanskrit University would stand on a higher pedestal than a Government Order and in the event of a conflict the Statutes would prevail over the Government Order. The Government Order is otherwise not shown to have been issued under any specific provision of the Act of 1973 or the Statutes framed thereunder. The decision of the State contained in the meeting chaired by the Chief Secretary of the State dated 20.5.2013 and the directions issued by this Court in Writ Petition No.16368 of 2013 continues to exist. The stand of the State that the decision of the State contained in the minutes of meeting dated 20.5.2013 was confined to only one case also cannot have the approval of this Court as such a stand would result in selective treatment being offered to one institution without any distinguishing feature. The stand of the State for treating the decision taken in the meeting dated 20.5.2013 to be confined to the petitioner of that case alone is found to be violating Article 14 of the Constitution of India and cannot, therefore, sustain the test of judicial scrutiny.

44. The exercise of power by the State, impugned in this petition, is required to be examined from a different aspect also. The Government Order dated 10.10.2018 states that the task of recruitment of teachers in the colleges is contemplated to be entrusted to an independent Commission. The only Commission

existing for recruitment of teachers in the colleges affiliated to Universities established and regulated by the Act of 1973 is the U.P. Higher Education Service Commission. Attempt to include colleges affiliated to Sanskrit University within the purview of the U.P. Higher Education Service Commission started way back in the year 2001 with issuance of Government Order dated 20.12.2001. It was pursuant to this Government Order that Executive Council of the Sanskrit University proposed amendment in the First Statutes of Sanskrit University on 27.3.2003 which came to be approved by the Chancellor on 28.12.2011. A period of nearly 18 years have gone by since initiation of steps to bring colleges affiliated to Sanskrit University within the purview of U.P. Higher Education Service Commission. Essential steps that were required to be undertaken in terms of the Executive Council decision dated 27.3.2003 are yet to be taken. State had sufficient time to take steps for the purpose but no steps have been taken in that regard nor any such endeavour made has been brought on record before this Court. Appointments of teachers in colleges affiliated to Sanskrit University remained in suspended animation for almost 10 years i.e. 2003 to 2013 without any tangible act on part of the State. There is still no clarity as to how the State proposes to deal with the issue. Merely saying that amendments are proposed so as to entrust the task of recruitment to independent Commission would not suffice. The further stand taken by the State that in the interregnum period retired teachers would be engaged to meet the requirement of teachers is found to be yet another decision based on adhocism without any clarity on the course to be adopted for prescribing a substituted appointment procedure. In the backdrop that for almost a decade no appointment of teacher was made in any college affiliated to Sanskrit University

due to lack of clarity it would be wholly unjust and arbitrary to allow the State to enforce yet another regime of policy paralysis so as to adversely affect the prospects of Sanskrit Education in the State of Uttar Pradesh.

45. It is otherwise always open for the State to introduce a new mechanism of recruitment for teachers in colleges affiliated to Sanskrit University and as soon as such mechanism comes into existence, in accordance with law, the appointment procedure can be substituted and would be regulated accordingly. However, so long as a new procedure is not introduced, it would not be appropriate to allow the State to enforce a scheme of adhocism and thereby stall all appointments of teaching staff in the colleges affiliated to Sanskrit University. The exercise of power in stalling the appointment process, in view of the deliberations and discussions above, would have to be termed as wholly arbitrary and unsustainable in law.

46. So long as the amended procedure is not introduced for appointment of teachers in colleges affiliated to Sanskrit University, the applicable provision of the First Statutes of Sanskrit University would continue to regulate the appointment of teachers in the colleges affiliated to Sanskrit University. Even otherwise sufficient regulatory measures exist in law for the purposes. The appointment of teacher in a college affiliated to Sanskrit University can only be made against the post sanctioned in accordance with law and after obtaining approval from the District Inspector of Schools concerned in accordance with the Act of 1971. The Statutes of Sanskrit University prescribes the procedure for such appointment under Clauses 11.15 to 11.24. After the approval is granted to such

appointment by the Vice Chancellor of Sanskrit University the Inspector is required to pass orders for release of salary to such teachers. The scale of pay for such teachers is already prescribed vide Government Order dated 19.3.2010. The appointment of teachers in colleges affiliated to Sanskrit University, therefore, must continue to be made as per the existing statutory framework till a different appointment procedure is introduced in law.

47. In the facts and circumstances, noticed above, the writ petitions succeed and are allowed. The Government Order dated 10.10.2018 stands quashed. A direction in the nature of Mandamus is issued to the State Government to allow recruitment of teachers in colleges affiliated to Sanskrit University as per the provisions of the First Statutes of the Sanskrit University in terms of the Executive Council decision dated 27.3.2003, as approved by Chancellor on 28.12.2011 and clarified in the minutes of the meeting chaired by the Chief Secretary of the State of Uttar Pradesh dated 20.5.2013. Teachers appointed in the colleges affiliated to Sanskrit University, after obtaining permission from the concerned District Inspector of Schools and approval of the Vice Chancellor shall be entitled to payment of salary as per the grade of pay prescribed in the Government Order dated 19th March, 2010. The Vice Chancellor of the Sanskrit University shall provide subject experts to the colleges and facilitate holding of recruitment as per Clause 11.15 to 11.24 of the First Statutes of Sanskrit University and also consider and grant approval to appointments made as per it. Appointment of teachers in colleges affiliated to Sanskrit University which are approved by the Vice Chancellor of Sanskrit University shall be granted financial approval by the Inspector in terms of the Act of 1971. Requisite orders in terms of the above direction would be issued at the

competent level within a period of six weeks from the date of presentation of certified copy of this order. Necessary action in terms of the aforesaid directions would not be deferred merely on account of on-going Parliamentary Elections in view of the law laid down by this Court in Pratima Bhardwaj Vs. State of U.P. & Others, reported in 2012 (5) ADJ 639.

48. Parties to bear their own costs.

Order Date :- 30.3.2019

Ashok Kr./Anil

(Ashwani Kumar Mishra, J.)