

**Neutral Citation No. - 2023:AHC-LKO:58281-DB**

**A.F.R.**

**Reserved**

**Court No. - 1**

**Case :-** SPECIAL APPEAL No. - 29 of 2022

**Appellant :-** State Of U.P. Thru. Prin. Secy. Basic Edu. Dept. And 2 Others

**Respondent :-** Uttar Pradesh Senior Basic Shikshak Sangh Thru. Its Secretary Sri Awadhesh Kumar Singh

**Counsel for Appellant :-** Mohit Jauhari

**Counsel for Respondent :-** Girish Chandra Verma

**connected with**

**(1) Case :-** SPECIAL APPEAL No. - 200 of 2022

**Appellant :-** State Of U.P. Thru. Secy. Basic Edu. Govt. Of U.P. Civil Sectr. Lko. And Ors (In Wria 9568 Of 2019)

**Respondent :-** Devi Prasad Pandey And Others

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

**Counsel for Respondent :-** Vinay Misra,Jaibind Singh Rathour

**With**

**(2) Case :-** SPECIAL APPEAL No. - 204 of 2022

**Appellant :-** State Of U.P. Thru. Secy. Basic Edu. Govt. Of U.P. Civil Sectr. Lko And Ors (In Wria 10776 Of 2019)

**Respondent :-** Narsingh Bahadur Singh And Others

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

**Counsel for Respondent :-** Vinay Misra,P.K. Singh Bisen

**With**

**(3) Case :-** SPECIAL APPEAL No. - 208 of 2022

**Appellant :-** State Of U.P. Thru. Secy. Basic Edu. Govt. Of U.P. Civil Sectr. Lko. And Ors (In Wria13396 Of 2022)

**Respondent :-** Munesar And Others

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

**Counsel for Respondent :-** Vinay Misra,Jaibind Singh Rathour

**With**

**(4) Case :-** SPECIAL APPEAL No. - 215 of 2022

**Appellant :-** State Of U.P.Thru.Secy.Basic Edu.Govt.U.P. Civil Sectt. Lko. And Ors (In Wria 9566 Of 2019)

**Respondent :-** Vishwamitra Tiwari And Others

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

**Counsel for Respondent :- Vinay Misra,Jaibind Singh Rathour**

**With**

**(5) Case :- SPECIAL APPEAL No. - 217 of 2022**

**Appellant :- State Of U.P Thru. Secy. Basic Edu. And Others (In Wria No.-3458 Of 2009)**

**Respondent :- Raghuvir Singh And Others**

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

**Counsel for Respondent :- Vinay Misra,Jaibind Singh Rathour**

**With**

**(6) Case :- SPECIAL APPEAL No. - 218 of 2022**

**Appellant :- State Of U.P.Thru.Secy. Basic Edu. Govt. U.P. Civil Sectr. Lko. And Ors (In Wria 3458 Of 2009)**

**Respondent :- Baban Chandra Singh And Others**

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

**Counsel for Respondent :- Vinay Misra,P.K. Singh Bisen**

**With**

**(7) Case :- SPECIAL APPEAL No. - 219 of 2022**

**Appellant :- State Of U.P. Thru.Secy. Basic Edu. Govt.U.P. Civil Sectr. Lko. And Ors (In Wria 9846 Of 2019)**

**Respondent :- Ram Karan And Others**

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

**Counsel for Respondent :- Vinay Misra,Jaibind Singh Rathour**

**With**

**(8) Case :- SPECIAL APPEAL No. - 220 of 2022**

**Appellant :- State Of U.P. Thru. Secy.Basic Edu.Govt.Of U.P. Civil Sectr. Lko. And Ors (In Wria 34657 Of 2018)**

**Respondent :- Indra Dev Pandey And Others**

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

**Counsel for Respondent :- Vinay Misra,Jaibind Singh Rathour**

**With**

**(9) Case :- SPECIAL APPEAL No. - 222 of 2022**

**Appellant :- State Of U.P.Thru.Secy. Basic Edu. Govt. Of U.P. Lko. And Ors (In Wria 11596 Of 2019)**

**Respondent :- Shyam Bahadur Singh And Others**

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

**Counsel for Respondent :- Vinay Misra,Jaibind Singh Rathour**

**With**

**(10) Case :-** SPECIAL APPEAL No. - 223 of 2022

**Appellant :-** State Of U.P. Thru. Secy. Basic Edu. Govt. U.P. Civil  
Secrt. Lko. And Ors (In Wria 8934 Of 2019)

**Respondent :-** Shobh Nath Yadav And Others

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

**Counsel for Respondent :-** Vinay Misra, Prashant Arora

**With**

**(11) Case :-** SPECIAL APPEAL No. - 224 of 2022

**Appellant :-** State Of U.P. Thru. Secy. Basic Edu. Govt. Of U.P. Civil  
Secrt. Lko. And Ors (In Wria 10930 Of 2019)

**Respondent :-** Ram Adhar Yadav And Others

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

**Counsel for Respondent :-** Vinay Misra, P.K. Singh Bisen

**With**

**(12) Case :-** SPECIAL APPEAL No. - 225 of 2022

**Appellant :-** State Of U.P. Thru. Secy. Basic Edu. Govt. Of U.P. And Ors  
(In Wria 35801 Of 2018)

**Respondent :-** Matafer Singh And Others

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

**Counsel for Respondent :-** Vinay Misra, P.K. Singh Bisen

**With**

**(13) Case :-** SPECIAL APPEAL No. - 226 of 2022

**Appellant :-** State Of U.P. Thru. Secy. Basic Edu. Lko. And Others  
(In Wria No.-13378 Of 2019)

**Respondent :-** Murlidhar Mishra And Others

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

**Counsel for Respondent :-** Vinay Misra, Jaibind Singh Rathour

**With**

**(14) Case :-** SPECIAL APPEAL No. - 229 of 2022

**Appellant :-** State Of U.P. Thru. Secy. Basic Edu. Govt. Of U.P. Civil  
Secrt. Lko. And Ors (In Wria 13393 Of 2019)

**Respondent :-** Shiv Mahesh Dwivedi And Others

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

**Counsel for Respondent :-** Vinay Misra, Jaibind Singh  
Rathour, Prashant Arora

**With**

**(15) Case :-** SPECIAL APPEAL No. - 230 of 2022

**Appellant :-** State Of U.P.Thru.Prin.Secy.Basic Edu.Govt. U.P. Civil Secrt. Lko. And Ors(In Wria 9936 Of 2019)

**Respondent :-** Shri Pati Singh And Others

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

**Counsel for Respondent :-** Vinay Misra,Samrendra Nath Pandey

**With**

**(16) Case :-** SPECIAL APPEAL No. - 233 of 2022

**Appellant :-** State Of U.P. Thru. Secy. Basic Edu. Lko. And Others (In Wria No.-10867 Of 2019)

**Respondent :-** Samar Bahadur Singh And Others

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

**Counsel for Respondent :-** Vinay Misra,P.K. Singh Bisen

**With**

**(17) Case :-** SPECIAL APPEAL No. - 234 of 2022

**Appellant :-** State Of U.P. Thru.Secy. Basic Edu. Civil Secrtt. Lko. And Others

**Respondent :-** Shila Ram And Others (In Wria 10481 Of 2019)

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

**Counsel for Respondent :-** Vinay Misra,Jaibind Singh Rathour

**With**

**(18) Case :-** SPECIAL APPEAL No. - 235 of 2022

**Appellant :-** State Of U.P. Thru. Secy. Basic Education Lko And Ors. (In Wria No.-10122 Of 2019)

**Respondent :-** Gherrau Ram And Others

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

**Counsel for Respondent :-** Vinay Misra,Jaibind Singh Rathour

**With**

**(19) Case :-** SPECIAL APPEAL No. - 236 of 2022

**Appellant :-** State Of U.P. Thru. Secy. Basic Edu. Govt. Of U.P. Civil Secrt. Lko. And Ors (In Wria10746 Of 2019)

**Respondent :-** Keshav Ram Tripathi And Others

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

**Counsel for Respondent :-** Vinay Misra,P.K. Singh Bisen

**With**

**(20) Case :-** SPECIAL APPEAL No. - 242 of 2022

**Appellant :-** State Of U.P. Thru.Secy.Basic Edu.Lko.And Others (In Wria 10119 Of 2019)

**Respondent :-** Ashok Kumar Mishra And Others

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

**Counsel for Respondent :-** Vinay Misra,Jaibind Singh Rathour

**With**

**(21) Case :-** SPECIAL APPEAL No. - 243 of 2022

**Appellant :-** State Of U.P. Thru. Secy. Basic Education Lko. And Others (In Wria No.-35168 Of 2018)

**Respondent :-** Krishna Murti Tripathi And Others

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

**Counsel for Respondent :-** Vinay Misra,Jaibind Singh Rathour

**With**

**(22) Case :-** SPECIAL APPEAL No. - 244 of 2022

**Appellant :-** State Of U.P. Thru. Secy. Basic Edu. Govt. Up Civil Sectt. Lko. And Ors(In Wria 36275 Of 2018)

**Respondent :-** Ram Shanker Tripathi And Others

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

**Counsel for Respondent :-** Vinay Misra,Prashant Arora

**With**

**(23) Case :-** SPECIAL APPEAL No. - 245 of 2022

**Appellant :-** State Of U.P.Thru. Secy. Basic Edu. Govt. Of U.P. Civil Sectr. Lko. And Ors (In Wria 9739 Of 2019)

**Respondent :-** Ram Prasad And Others

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

**Counsel for Respondent :-** Vinay Misra,Prashant Arora

**With**

**(24) Case :-** SPECIAL APPEAL No. - 246 of 2022

**Appellant :-** State Of U.P.Thru.Secy.Basic Edu.Govt. Of U.P. Civil Sectr. Lko. And Ors (In Wria 35134 Of 2018)

**Respondent :-** Mohd. Shamim And Others

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

**Counsel for Respondent :-** Vinay Misra,Jaibind Singh Rathour

**With**

**(25) Case :-** SPECIAL APPEAL No. - 247 of 2022

**Appellant :-** State Of U.P. Thru. Secy. Basic Edu. Govt. Of Up Civil Sectr. Lko. And Ors (In Wria 10519 Of 2019)

**Respondent :-** Nag Raj Yadav And Others

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

**Counsel for Respondent :-** Neeraj Chaurasiya,Hari Prakash Yadav

**With**

**(26) Case :-** SPECIAL APPEAL No. - 248 of 2022

**Appellant :-** State Of U.P. Thru. Secy. Basic Education Govt. Of U.P. And Ors (In Wria 9737 Of 2019)

**Respondent :-** Raj Narain Tripathi And Others

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

**Counsel for Respondent :-** Vinay Misra,Prashant Arora

**With**

**(27) Case :-** SPECIAL APPEAL No. - 250 of 2022

**Appellant :-** State Of U.P.Thru.Secy.Basic Edu. Govt.U.P. Civil Sectt. Lko. And Ors (In Wria 10812 Of 2019)

**Respondent :-** Chandrika Prasad Nai And Others

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

**Counsel for Respondent :-** Vinay Misra,P.K. Singh Bisen

**With**

**(28) Case :-** SPECIAL APPEAL No. - 261 of 2022

**Appellant :-** State Of U.P. Thru Secy. Basic Education Govt Up Civil Sectt Lko And 2 Others

**Respondent :-** Ram Babu Tripathi And 4 Others

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

**Counsel for Respondent :-** Vinay Misra,Prashant Arora

**With**

**(29) Case :-** SPECIAL APPEAL No. - 262 of 2022

**Appellant :-** State Of U.P. Thru. Secrty. Basic Edu. Gov Of Up And 2 Others

**Respondent :-** Bajrang Prasad Tripathi And 4 Others

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

**Counsel for Respondent :-** Vinay Misra,Prashant Arora

**With**

**(30) Case :-** SPECIAL APPEAL No. - 264 of 2022

**Appellant :-** State Of U.P. Thru. Secy. Basic Edu. Govt. Up Civil Sectt. Lko. And Another

**Respondent :-** Smt. Leela Devi And 2 Others

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

**Counsel for Respondent :-** Krishna Madhav Shukla,Neeraj Chaurasiya

**With**

**(31) Case :-** SPECIAL APPEAL No. - 267 of 2022

**Appellant :-** State Of U.P. Thru. Secy. Basic Edu. Govt. Up Civil Sectt. Lko. And 2 Others

**Respondent :-** Kailash Chandra And 2 Others

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

**Counsel for Respondent :-** Vinay Misra,Shobhit Mohan Shukla

**With**

**(32) Case :-** SPECIAL APPEAL No. - 274 of 2022

**Appellant :-** State Of U.P.Thru.Secretary Basic Edu.Govt. U.P.Civil Secretariat Lko And Ors(In Wria 4874 Of 2009)

**Respondent :-** C/M Ramesh Junior High School Janwamau, Pratapgarh Thru. Manger Sri Vijay Kumar Pandey And Others

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

**Counsel for Respondent :-** Vinay Misra,P.K. Singh Bisen

**With**

**(33) Case :-** SPECIAL APPEAL No. - 275 of 2022

**Appellant :-** State Of U.P.Thru.Secretary Basic Edu.Govt.U.P.Civil Secretariat Lko.And Anr(In Wria 5470 Of 2013)

**Respondent :-** Smt. Tarawati And Others

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

**Counsel for Respondent :-** Krishna Madhav Shukla,Neeraj Chaurasiya

**With**

**(34) Case :-** SPECIAL APPEAL No. - 276 of 2022

**Appellant :-** State Of U.P. Thru.Prin.Secy.Basic Edu.And 2 Others

**Respondent :-** Chhailbihari And 2 Others

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

**Counsel for Respondent :-** Vinay Misra

**With**

**(35) Case :-** SPECIAL APPEAL No. - 281 of 2022

**Appellant :-** State Of Up Thru. Secy. Basic Edu. Civil Sectt. Lko And 2 Others

**Respondent :-** Ramanand Pandey And 5 Others

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

**Counsel for Respondent :-** Vinay Misra,Jaibind Singh Rathour,Prashant Arora

**With**

**(36) Case :-** SPECIAL APPEAL No. - 283 of 2022  
**Appellant :-** State Of Up Thru. Secy. Basic Edu. Govt. Of Up Civil  
Secrtd. Lko And 2 Others  
**Respondent :-** Kandarp Narain Shukla And 4 Others  
**Counsel for Appellant :-** C.S.C.  
**Counsel for Respondent :-** Vinay Misra, Prashant Arora

**With**

**(37) Case :-** SPECIAL APPEAL No. - 284 of 2022  
**Appellant :-** State Of U.P. Thru. Secy. Basic Edu. And 2 Others  
**Respondent :-** Krishna Lal Pandey And 6 Others  
**Counsel for Appellant :-** C.S.C.  
**Counsel for Respondent :-** Vinay Misra, P.K. Singh Bisen

**With**

**(38) Case :-** SPECIAL APPEAL No. - 285 of 2022  
**Appellant :-** State Of Up Thru. Secy. Basic Edu. Govt. Of Up Civil  
Secrtd. Lko And 2 Others  
**Respondent :-** C/M Sitaram Laghu Madhyamik Vidyalaya Distt.  
Pratapgarh Thru. Manager Shiv Prasad Pandey And Anr.  
**Counsel for Appellant :-** C.S.C.  
**Counsel for Respondent :-** Vinay Misra, P.K. Singh Bisen

**With**

**(39) Case :-** SPECIAL APPEAL No. - 287 of 2022  
**Appellant :-** State Of U.P. Thru. Secy. Basic Edu. Lko. And Others  
**Respondent :-** Jageshwar Prasad Vishvakarma And Others  
**Counsel for Appellant :-** C.S.C.  
**Counsel for Respondent :-** Vinay Misra, P.K. Singh Bisen

**With**

**(40) Case :-** SPECIAL APPEAL No. - 288 of 2022  
**Appellant :-** State Of U.P. Thru. Secy. Basic Edu. Lko And Ors.  
**Respondent :-** C/M Gauri Shankar, Laghu Madhyamik Vidyalaya,  
Thru. Manager Ram Lakhan Tripathi And 2 Others  
**Counsel for Appellant :-** C.S.C.  
**Counsel for Respondent :-** Girish Chandra Verma, P.K. Singh Bisen

**With**

**(41) Case :-** SPECIAL APPEAL No. - 290 of 2022  
**Appellant :-** State Of U.P. Thru. Secy. Basic Edu. Lko. And Another  
**Respondent :-** Neelam Tripathi, Head Mistress, Bhogai Ram Dubey  
Jr. High School, Pratapgarh And Ors.



**Counsel for Appellant :- C.S.C.**  
**Counsel for Respondent :- P.K. Singh Bisen**

**With**

**(42) Case :- SPECIAL APPEAL No. - 292 of 2022**  
**Appellant :- State Of Up Thru. Secy. Basic Edu. Govt. Of Up Civil**  
**Secr. Lko And 2 Others**  
**Respondent :- Chet Narain Singh And 4 Others**  
**Counsel for Appellant :- C.S.C.**  
**Counsel for Respondent :- Vinay Misra, Jaibind Singh Rathour**

**With**

**(43) Case :- SPECIAL APPEAL No. - 293 of 2022**  
**Appellant :- State Of U.P. Thru. Secy. Basic Edu. Govt. Of U.P. Civil**  
**Secr. Lko And Ors (In Wria 6307 Of 2018)**  
**Respondent :- Mangala Prasad Mishra And Others**  
**Counsel for Appellant :- C.S.C.**  
**Counsel for Respondent :- Vinay Misra, Jaibind Singh Rathour**

**With**

**(44) Case :- SPECIAL APPEAL No. - 319 of 2022**  
**Appellant :- State Of U.P. Thru. Secy. Basic Education Lko. And**  
**Others (In Wria No.-2110 Of 2020) )**  
**Respondent :- Virendra Singh And Others**  
**Counsel for Appellant :- C.S.C.**  
**Counsel for Respondent :- Pt. S. Chandra, Ajay Kumar**

**With**

**(45) Case :- SPECIAL APPEAL No. - 322 of 2022**  
**Appellant :- State Of U.P. Thru. Secy. Basic Edu. Govt. U.P. Civil**  
**Secr. Lko. And Ors (In Wria 8353 Of 2019)**  
**Respondent :- Ramakant Dwivedi And Others**  
**Counsel for Appellant :- C.S.C.**  
**Counsel for Respondent :- Vinay Misra, P.K. Singh Bisen**

**With**

**(46) Case :- SPECIAL APPEAL No. - 323 of 2022**  
**Appellant :- State Of U.P. Thru. Secy. Basic Education, Govt. U.P.**  
**Civil Secr. Lko. And Ors (In Wria 1679 Of 2015)**  
**Respondent :- Madhuri Singh And Others**  
**Counsel for Appellant :- C.S.C.**  
**Counsel for Respondent :- Vinay Misra, P.K. Singh Bisen**

**With**

**(47) Case :-** SPECIAL APPEAL No. - 324 of 2022

**Appellant :-** State Of U.P. Thru. Prin. Secy. Basic Edu. Govt. Up  
Civil Sectt. Lko. And 2 Others

**Respondent :-** Shailja Pal And 3 Others

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

**Counsel for Respondent :-** Mohd. Ateeq Khan,Ajay Kumar

**With**

**(48) Case :-** SPECIAL APPEAL No. - 325 of 2022

**Appellant :-** State Of U.P.Thru. Secy. Basic Education Govt.U.P.  
Civil Sectr. Lko. And Ors (In Wria 1194 Of 2015)

**Respondent :-** Deo Narain Tripathi And Others

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

**Counsel for Respondent :-** Girish Chandra Verma,P.K. Singh Bisen

**With**

**(49) Case :-** SPECIAL APPEAL No. - 326 of 2022

**Appellant :-** State Of U.P Thru. Addl. Chief Secy. Basic Education  
And 2 Others

**Respondent :-** Deshraj Singh And Others

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

**Counsel for Respondent :-** Girish Chandra Verma,Shobhit Mohan  
Shukla

**With**

**(50) Case :-** SPECIAL APPEAL No. - 327 of 2022

**Appellant :-** State Of U.P.Thru.Prin.Secy.Basic Edu.Lko.And Others

**Respondent :-** Kameshwar Prasad Dwivedi And Others

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

**Counsel for Respondent :-** Ram Kumar Maurya,Ajay  
Kumar,Prasiddha Narayan Singh

**With**

**(51) Case :-** SPECIAL APPEAL No. - 328 of 2022

**Appellant :-** State Of U.P. Thru.Prin.Secy.Basic Edu. And 2 Others

**Respondent :-** Ram Kumar Pathak And 9 Others

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

**Counsel for Respondent :-** Girish Chandra Verma,Vindhya Washini  
Kumar

**With**

**(52) Case :-** SPECIAL APPEAL No. - 341 of 2022

**Appellant :-** State Of U.P.Thru.Prin.Secy.Basic Edu. Govt. Of U.P.Civil Secrtlko. And Ors (In Wria 3458 Of 2009)

**Respondent :-** Rameshwar Mishra And Others

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

**Counsel for Respondent :-** Vinay Misra,Jaibind Singh Rathour,Prashant Arora

**With**

**(53) Case :-** SPECIAL APPEAL No. - 342 of 2022

**Appellant :-** State Of U.P.Thru.Prin.Secy. Basic Edu.Govt. Of U.P. Civil Secrt. Lko. And Ors(In Wria 4777 Of2021)

**Respondent :-** Smt. Ishrat Jahan And Others

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

**Counsel for Respondent :-** Umesh Kumar Srivastava,Ghaus Beg

**With**

**(54) Case :-** SPECIAL APPEAL No. - 343 of 2022

**Appellant :-** State Of U.P. Thru. Its Prin. Secy. Basic Edu. Lko. And 4 Others

**Respondent :-** Siya Ram Yadav And 3 Others

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

**Counsel for Respondent :-** Dr. V.K. Singh,Jaibind Singh Rathour,Prashant Arora

**With**

**(55) Case :-** SPECIAL APPEAL No. - 344 of 2022

**Appellant :-** State Of U.P Thru. Secy. Basic Edu. Lko And 3 Others

**Respondent :-** Ravindra Singh Kushwaha And 8 Others

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

**Counsel for Respondent :-** Girish Chandra Verma,Ajay Kumar

**With**

**(56) Case :-** SPECIAL APPEAL No. - 361 of 2022

**Appellant :-** State Of U.P Thru. Prin. Secy. Education Deptt. And 3 Others

**Respondent :-** Anant Raj Misra And 92 Others

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

**Counsel for Respondent :-** Jaibind Singh Rathour,Lalta Prasad Misra

**With**

**(57) Case :-** SPECIAL APPEAL No. - 363 of 2022

**Appellant :-** State Of U.P. Thru.Addl. Chief Secy. Basic Education

Lko And Ors.

**Respondent :-** Janardan Rai And Ors.

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

**Counsel for Respondent :-** Vinay Misra,Ajay Kumar

**With**

**(58) Case :-** SPECIAL APPEAL No. - 364 of 2022

**Appellant :-** State Of U.P.Thru.Addl.Chief Secy.Basic Edu.Govt.U.P.Civil Sectr.Lko.And Ors(In Wria 24860 Of 2018)

**Respondent :-** Ram Saran And Others

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

**Counsel for Respondent :-** Girish Chandra Verma,Shobhit Mohan Shukla

**With**

**(59) Case :-** SPECIAL APPEAL No. - 369 of 2022

**Appellant :-** State Of U.P. Thru.Secy. Basic Edu. Govt. Of U.P. Civil Sectr. Lko. And Ors (In Wria 24124 Of 2018)

**Respondent :-** Rishikesh Pandey And Others

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

**Counsel for Respondent :-** Vinay Misra,Ajay Kumar

**With**

**(60) Case :-** SPECIAL APPEAL DEFECTIVE No. - 74 of 2022

**Appellant :-** State Of U.P. Thru. Prin. Secy. P.W.D. Govt. U.P. Civil Sectr. Lko. And Ors (In Wria 7375 Of 2011)

**Respondent :-** Smt. Chandra Kali

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

**Counsel for Respondent :-** Pradeep Kumar Shukla

**With**

**(61) Case :-** SPECIAL APPEAL DEFECTIVE No. - 98 of 2022

**Appellant :-** State Of U.P.Thru.Secy.Basic Edu.Govt. Of U.P. Civil Sectr. Lko. And Anr(In Wria 3615 Of 2009)

**Respondent :-** Pawan Kumar Singh , Head Master , Buddha Gyan Bharti Junior High School, Pratapgarh And Others

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

**Counsel for Respondent :-** P.K. Singh Bisen

**With**

**(62) Case :-** SPECIAL APPEAL DEFECTIVE No. - 104 of 2022

**Appellant :-** State Of U.P. Thru. Prin. Secy. Basic Education Lko And 2 Others

**Respondent :-** Shesh Chandra Gupta And 2 Others

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

**Counsel for Respondent :-** Girish Chandra Verma, Ajay Kumar

**Hon'ble Attau Rahman Masoodi, J.**

**Hon'ble Om Prakash Shukla, J.**

**[Per Om Prakash Shukla, J.]**

- (1) Heard Sri Sanjeev Singh, learned Standing Counsel appearing for the appellants-State authorities and Dr. L. P. Misra along with Sri G.C. Verma, Sri J.B.S. Rathour, Sri Vinay Misra, Sri P. K. Singh Bisen, Sri Prashant Arora, Sri Samrendra Nath Pandey, Sri Hari Prakash Yadav, Sri Neerav Chaurasiya, Sri Krishna Madhav Shukla, Sri Ajay Kumar, Pt. S. Chandra, Sri Mohd. Ateeq Khan, Sri Shobhit Mohan Shukla, Sri Prasiddha Narayan Singh, Sri Ram Kumar Maurya, Sri Vindhya Washini Kumar, Sri Ghaus Beg, Sri Umesh Kumar Srivastava and Sri Pradeep Kumar Shukla, learned Counsel appearing for the respondents at length.
- (2) In Special Appeal Defective No. 98 of 2022, the office has reported a delay of 38 days.
- (3) Having heard learned Standing Counsel appearing for the appellants and the learned Counsel for appearing for the respondents and having gone through the averments made in the application seeking condonation of delay, we find that the delay has sufficiently been explained. Accordingly, the prayer for condonation of delay is allowed and the delay in filing the special appeal is condoned.
- (4) The aforesaid Special Appeals have been filed under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 assailing the judgment and order dated 16.06.2021, as corrected vide order dated 07.07.2021 passed by the learned Single Judge in a bunch

of writ petitions, leading Writ Petition No. 3458 (SS) of 2009, *U.P. Senior Basic Shiksha Sangh v. State of U.P. and others*, whereby the writ petitions filed by the petitioners/respondents have been allowed with certain directions. The operative portion of the impugned judgment and order reads as under:-

*“The respondents are directed to treat the petitioners of the connected writ petitions and members of association of leading writ petition to be covered under Old Pension Scheme and to pay pension to the retired teaching and non teaching staff accordingly. It is further directed to permit the managements to deposit manager's contribution with simple interest excluding the deducted amount from each of the petitioner within a period of two months from the date of production of a certified copy of this order and to reckon the service rendered by the petitioners in the institutions from the date of their approval to the appointment made on their respective posts and to pay pension under OPS within a further period of two months from the date of production of a certified copy of this order. In case the service required for reckoning the qualifying service for the payment of pension is insufficient, the service rendered prior to taking into consideration on grant in aid list shall be counted for the purpose after deposit of managers contribution and accordingly the pension shall be released in their favour.”*

### **BRIEF HISTORY**

(5) Before entering into the real question involved in the bunch of these intra-Court appeals, it would be apt to narrate the chequered history of the dispute as under:-

(a) One set of litigation traces its origin at High Court, Lucknow, whereas, the other having been instituted on the same issue at High Court of Judicature at Allahabad has also some bearing for the purpose of deciding the present bunch of Special

Appeals and a brief discussion in this regard would be inevitable.

(b) The writ petitions filed at Lucknow were instituted ranging from the year 2009 to 2021. Likewise, the writ petitions instituted before this Court at Allahabad were also filed from the year 2009 onwards.

(c) It is relevant to clarify at the very outset that the institutions brought under grant-in-aid prior to 01.04.2005 having a limited grievance as regards the deposit of managerial contribution stood distinguished for the reason that their case was protected under the New Pension Scheme (NPS) in its well-defined terms, therefore, the issue of depositing the managerial contribution was set at rest and has been complied with leaving no scope for any further adjudication and is not the subject matter of adjudication in the present bunch of Special Appeals.

(d) The present bunch of Special Appeals, in fact, relates to the institutions comprising of the teaching and non-teaching staff appointed therein which were taken on grant-in-aid after the enforcement of New Pension Scheme (NPS) w.e.f. 01.04.2005. The controversy might not have arisen if these 1,000 educational institutions had not been brought under grant-in-aid as on 01.12.2006, wherein these teachers working in the said institutions started agitating their grievance in the representative capacity through U.P. Senior Basic Shiksha Sangh and individually too for protection of the benefits under the Old Pension Scheme (OPS) on various grounds.

(e) The classification spelt out in the Government Order dated 08.04.2009 became the cause which the aggrieved

persons took up jointly and severally before this Court through writ proceedings both at Allahabad and Lucknow. A writ petition in representative capacity was also filed by U.P. Senior Basic Shiksha Sangh at Lucknow.

(f) For drawing a clear picture of litigation, it would be relevant to refer to six writ petitions which were instituted at Allahabad and came to be decided by a common judgment rendered on 26.09.2012. The relevant details with respect to the aforesaid six writ petitions are described in the chart below:-

**ALLAHABAD**

Sl. No.	Particulars of writ petition	Description of Institution as on 01.04.2005	Date of Judgment	Result
1	Writ-A No. 45217 of 2012, Budhiram v. State of U.P. and others	Unaided	26.09.12	Dismissed
2	Writ-A No. 45229 of 2012, Yogendra Nath Mishra v. State of U.P. and others	Unaided	26.09.12	Dismissed
3	Writ-A No. 47000 of 2010, Ram Niranjana Mishra and another	Unaided	26.09.12	Dismissed
4	Writ-A No. 55778 of 2010, Ram Yagya Shukla v. State of U.P. and others	Unaided	26.09.12	Dismissed
5	Writ- A No. 47649 of 2012, Khyali Ram v. State of U.P. and others	Aided	26.09.12	Allowed
6	Writ-A No. 44742 of 2012, Bhagwan Das Maurya v. State of U.P. and others	Aided	26.09.12	Allowed



(g) The aforesaid six writ petitions were decided treating the case of **Budhiram** as the leading writ petition. It is also evident from the chart above that out of these writ petitions, two writ petitions which were allowed related to the institutions that were already under grant-in-aid prior to 01.04.2005 and with respect to the same, the controversy has already been settled. Insofar as the four writ petitions which were dismissed are concerned, one of the petitioners, namely, Ram Yagya Shukla instituted a Special Appeal No.1843 of 2012 whereby the common judgment and order dated 26.09.2012 was assailed and the same was dismissed by a Division Bench of this Court at Allahabad on 29.10.2012.

(h) The aforesaid judgment rendered on **29.10.2012** being relevant for our purpose is reproduced hereunder:-

*Heard learned counsel for the parties and perused the order under appeal whereby the bunch of writ petitions have been dismissed by a common order.*

*Learned writ Court has come to the conclusion that since the institution of the petitioners have been included in grant-in-aid list after 01.04.2005 when the new pension scheme had been introduced, the claim of the petitioners would be governed under the new pension scheme.*

*Learned counsel for the appellant has submitted that a more favourable treatment has been granted to the employees of secondary educational institutions in the matter of grant of benefit of old pension scheme. Our attention was drawn to the averments made in paragraph Nos. 19 and 20 of the writ petition which run as follows :-*

*"19. That the petitioner is attaching the departmental order dated 13.04.2007*

*and 30.03.2007 relating to Secondary Education which provides counting of services rendered in unaided institution and for deposit of CPF/GPF with interest for getting the pensionary benefits as Annexure No. 11 to this writ petition.*

*20. That the last two lines of the order dated 08.04.2009 it denies pensionary benefits to all the employees of the Institution which came into grant in-aid-list after 01.04.2005 is illegal arbitrary and violative of Article 14 of the Constitution of India, hence liable to be quashed."*

*On considering the aforesaid submission and the averments extracted above, we are unable to agree with the submission that the respondents have made any hostile discrimination against the appellant. It is apparent from the pleadings and materials on record that the benefits of old pension scheme have been denied to all the employees of the institutions which came into grant-in-aid list after 01.04.2005.*

*We do not find any good reason to take a different view than that of the writ Court.*

*The appeal is devoid of merit and is accordingly dismissed."*

(i) The common judgment rendered on 26.09.2012 was also challenged in Special Appeal Defective No. 388 of 2013, *Budhiram v. State of U.P. and others* at Allahabad which was allowed in terms of the order passed on 19.08.2017 which for ready reference is reproduced below:

**"Civil Misc. Delay Condonation Application No. 111552 of 2013**

*Cause shown for the delay in filing of the Special Appeal is to the satisfaction of the Court.*

*Delay is condoned.*

*This application is allowed.*

**Order on memo of Appeal**

*The issue raised by means of the present Special Appeal stands decided under the Division Bench judgment of this Court dated 22 September 2016 passed in Special Appeal Defective No. 560 of 2016 connected with Special Appeal Defective No. 561 of 2016 filed by the State of U.P.*

*In view of the said judgment, this Appeal is also disposed of for the same reason and with same directions. The impugned order dated 26.02.2012 is hereby set aside.*

*Let the writ petition be listed afresh before the learned Single Judge for decision in the light of the observations made in the judgment dated 22 September 2016.*

*This Special Appeal is allowed.”*

(j) The aforesaid order was passed keeping in view the Division Bench judgment of the High Court at Allahabad passed on 22.09.2016 in two intra-Court Appeals filed by the State i.e., Special Appeal Defective No. 560 of 2016 decided alongwith Special Appeal Defective No. 561 of 2016. According to the judgment dated 22.09.2016 of which reference was made in the above order, the Special Appeal No. 388 of 2013 filed by Budhiram which ought to have been dismissed, **yielded a fortuitous result.**

(k) It is relevant to note that the Division Bench judgment passed at Allahabad on 22.09.2016 in the two intra-Court appeals filed by the State, significantly took note of two other judgments viz the Division Bench decision in U.P. Senior Basic

Shiksha Sangh Sindhi Vidyalaya as well as Budhiram (Single Judge) both of which had set the controversy at rest.

(l) The Division Bench judgment dated 22.09.2016 somehow could not mention the Division Bench judgment dated 29.10.2012 whereby the Single Judge judgment in the leading case of **Budhiram** was upheld with the dismissal of Special Appeal No. 1843 of 2012 filed by similarly situated person as compared to Budhiram viz. Ram Yagya Shukla.

(6) Now coming to the **pending litigation at Lucknow**, it is to be noticed that the writ petition filed in representative capacity by U. P. Senior Basic Shiksha Sangh, i.e., Writ Petition No. 3458 (SS) of 2009 in the meantime was also dismissed by the High Court at Lucknow on 04.01.2013. The judgment so rendered by the learned Single Judge at Lucknow did not derive its strength from the dismissal of four similar Writ Petitions at Allahabad vide judgment dated 26.09.2012 or the dismissal of Special Appeal on 29.10.2012 arising therefrom filed by a similarly situated person (*Ram Yagya Shukla*), i.e., Special Appeal No. 1843 of 2012. The principle applied by the Writ Court at Lucknow, however, stood in line with the aforesaid judgments rendered at Allahabad.

(7) The U.P. Senior Basic Siksha Sangh feeling aggrieved against the Writ Court judgment dated 04.01.2013 chose to institute Special Appeal No. 123 of 2013 before this Court at Lucknow and the same was dismissed on merit by a detailed judgment passed on 04.12.2015. This judgment rendered in the case of U.P. Senior Basic Shiksha Sangh on 04.12.2015 was the one which was relied upon by the Division Bench at Allahabad while allowing the two **State** intra-Court Appeals vide judgment dated 22.09.2016.

- (8) It is interesting to note that the two State intra-Court Appeals which were allowed on 22.09.2016 arose out of the two anomalous orders passed by the Writ Court on 18.04.2014 which were in conflict with the judgment of **Budhiram** decided on 26.09.2012 whereby the four writ petitions of similarly situated persons were dismissed. The Division Bench while allowing the State Appeals on 22.09.2016 held the **Budhiram** judgment to be a good law and rightly so. The reason being that the **Budhiram** judgment was already upheld by the Division Bench on 29.10.2012 as a result of dismissal of Special Appeal No. 1843 of 2012 and secondly, the Special Appeal No. 123 of 2013 filed by U. P. Senior Basic Shiksha Sangh relating to the same issue was also dismissed on 04.12.2015.
- (9) It is a travesty of justice that Special Appeal Defective No. 388 of 2013, which was liable to be dismissed, fortuitously re-opened a closed controversy by order dated 19.08.2017 quoted above. The discrepancy becomes more evident when the order passed on 19.08.2017 is seen to have been driven in the light of the judgment dated 22.09.2016 according to which the appeal which ought to have been dismissed stood allowed under some illusion. The result of Special Appeals on the same issue both at Lucknow and Allahabad can be summarized in the chart below:-

Sl. No.	Particulars of Special Appeal	Place of Institution	Date of impugned judgment	Result/ Date of judgment
(1)	Special Appeal No. 1843 of 2012, Ram Yagya Shukla v. State of U.P. and others	Allahabad	26.09.12 ( <i>Budhiram judgment</i> )	<b>Dismissed/</b> 29.10.12
(2)	Special Appeal No.	Lucknow	04.01.13	Dismissed/

	123 of 2013, U.P. Senior Basic Shiksha Sangh v. State of U.P. and others			04.12.15
(3)	Special Appeal Defective No. 560 of 2016, <b>State of U.P. and others</b> v. Mahaveer Singh Yadav <b>alongwith</b> Special Appeal Defective No. 561 of 2016, <b>State of U.P. and others</b> v. Mahesh Prasad Srivastava	Allahabad	18.04.14	Allowed/ 22.09.16
(4)	Special Appeal Defective No. 388 of 2013, Budhiram v. State of U.P. and others	Allahabad	26.09.12 ( <i>Budhiram judgment</i> )	<b>Allowed/ 19.08.17 (Fortuitously)</b>
(5)	Review Application No. 1502 of 2016 in Special Appeal No. 123 of 2013, U.P. Senior Basic Shiksha Sangh v. State of U.P. and others	Lucknow	04.12.15	<b>Allowed/ 07.11.19 (As a result of order dated 19.08.17)</b>

- (10) It is an unfortunate situation that whatever was settled by two Division Bench judgments dismissing Special Appeal No. 1843 of 2012 on **29.10.2012** (Ram Yagya Shukla vs. State of U.P.) and Special Appeal No. 123 of 2013 filed by the U.P. Senior Basic Shiksha Sangh on **04.12.2015** which guided to allow the two State intra-Court Appeals viz., Special Appeal Defective No. 560 of 2016 alongwith Special Appeal Defective No. 561 of 2016 by relying upon the above decisions on **22.09.2016**, yet the real effect of law, **was miserably misunderstood** by the Division Benches while remitting Special Appeal Defective No. 388 of 2013 on 19.08.2017 and based thereon, allowing the

Review Application No. 1502 of 2016 thereafter on 07.11.2019. A fortuitous situation sometimes cannot be ruled out in judicial process and **the mistake is acknowledged.**

- (11) The re-opening of a closed issue, in the aforesaid manner, both at Lucknow and Allahabad in complete oblivion of at least two Division Bench judgments rendered on 29.10.2012 and 22.09.2016 in the respective Special Appeals was erroneous particularly when both the abovementioned judgments had become final and were not assailed at all by the affected teachers similarly situated.
- (12) On an empirical analysis of the judgment rendered in Review Application No. 1502 of 2016 at Lucknow or the order dated 19.08.2017 rendered in Special Appeal No. 388 of 2013 at Allahabad, it is quite clear that the applicability of New Pension Scheme (NPS) enforced by the State Government vide Government Order dated 28.03.2005 though adjudicated upon finally was fortuitously re-opened in respect of the unaided institutions brought under grant-in-aid subsequent to the cut-off date, i.e., 01.04.2005. The New Pension Scheme (NPS) which was framed by the State Government and made applicable w.e.f. 01.04.2005 vide Government Order dated 28.03.2005, for ready reference, reads as under:-

*“The State Government, in consideration of its long term fiscal interest and following broadly the pattern adopted by the Central Government, has approved the following proposal of introducing a new defined contribution pension system in place of the existing defined benefit pension scheme, for new entrants to the service of the State Government and of all State controlled autonomous institutions and State - aided private educational institutions where the existing pension scheme is patterned on the scheme for Government*

*employees and is funded by the consolidated fund of the State Government:-*

*(i) From 1<sup>st</sup> of April, 2005, the new defined contribution pension system would mandatorily apply to all new recruits to the service of the State Government and of all State controlled autonomous/State aided private educational institutions referred to above. However, employees covered by the existing pension scheme whose service would be of less than ten years on 1<sup>st</sup> April, 2005 may also voluntarily opt for the new pension system in place of the existing pension scheme.*

*(ii) Under the new defined contribution pension system, the employee would make a monthly contribution equal to 10 percent of the salary and dearness allowance. A matching employer's contribution would be made by the State Government or by the concerned autonomous institution/ private educational institution. However, the State Government would provide grant to the concerned autonomous institution private educational institution for making employer's contribution until the institutions is at a position to make the contribution itself. The contribution and investment returns would be deposited in an account to be known as pension tier I account. No withdrawals would be allowed from this account during the service period. The existing provisions of defined benefit pension and **GPF** would not be available to the new recruits covered by the new defined contribution pension system.*

*(iii) Since new recruits would not be able to subscribe to GPF, they may also have a voluntary tier II account, in addition to the pension tier I account. However, employer would not make contribution to tier II account. The assets in Tier II account would be invested/managed through exactly the same procedure as for pension tier I account. However, the employee would be free to withdraw part of all the 'second tier' of his money anytime.*

*(iv) Employee can normally exit tier I of the pension system at the time of retirement. At exit the employee would be mandatorily required to invest*



*40 percent of pension wealth to purchase an annuity from a recognized insurance company so as to provide for pension for the lifetime of the employee and his dependent parents and his spouse at the time of retirement. The remaining pension wealth would, however, be received by the employee as a lump sum which he would be free to utilise in any manner. In case of employee exiting the pension tier I before retirement, the mandatory annuitisation would be 80 percent of the pension wealth.*

*(v) There would be several pension fund managers who would offer mainly three categories of investment options. The pension fund managers and the record keeper would jointly give out easily understood information about past performance so that the employee is able to make informed choices of the investment options.*

*2. The effective date for operationalization of the new pension system shall be 1<sup>st</sup> of April, 2005.”*

- (13) It is this New Pension Scheme (NPS) application whereof has become a subject matter of dispute. The scope of its applicability is a bone of contention by the teaching and non-teaching staff working in about 1,000 educational institutions that came to be brought within the wings of grant-in-aid w.e.f. 01.12.2006 or thereafter.
- (14) **The real dispute revolves round the interpretation made by the State Government vide Government Order dated 08.04.2009 whereby all such educational institutions which came under grant-in-aid subsequent to 01.04.2005 were clarified to be covered under the New Pension Scheme (NPS).**

### **LEGAL PROVISIONS**

- (15) Briefly stated, the case of the appellants/respondents is that in 1958, Education Code was issued and on 17.12.1965, the State

Government issued a Government Order by which Uttar Pradesh State Aided-educational Institution Employees' Contributory Provident Fund-Insurance-Pension Rules, 1964 [here-in-after referred to as '**1964 Rules**'] were framed. Thereafter, on 19.08.1972, Uttar Pradesh Basic Education Act, 1972 [briefly, it is stated as '**1972 Act**'] has come into force. Later on, in the year 1975, the State Government promulgated Uttar Pradesh Recognized Basic Schools (Recruitment and Conditions of Service of Teachers and Other Conditions) Rules, 1975 [in short, it is referred to as '**1975 Rules**'] in exercise of powers conferred under Section 19 (1) of the 1972 Act.

- (16) On 10.03.1978, the State Government issued a Government Order wherein it was provided that the teachers of the aided Junior High Schools who are governed by the Triple Benefit Scheme of 1964 and who had either retired after 01.03.1977 or due to retire after 01.03.1977 may be given the pension at the rate applicable to the employees of the State Government on fulfillment of two primary conditions – one is that these teachers with effect from 01.03.1977 would be governed by General Provident Fund, instead of Contributory Provident Fund and accordingly, GPF amount would be deducted w.e.f. 01.03.1977 and the managerial contribution accrued upto 28.02.1977 shall be deposited with the Government alongwith interest there upon and the next condition is that in case of death of any teacher, the family of such Teacher would neither be entitled for death-cum-gratuity nor family pension. The Government Order has further envisaged that the Triple Benefit Scheme dated 17.12.1965 and Appendix VIII of the Education Code 1958 would stand amended to the above extent.
- (17) On 13.03.1978, the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Condition of Service

of Teachers) Rules, 1978 [shortly, they are stated as '**1978 Rules**'] have been promulgated. Simultaneously, in the same year 1978, the State Government notified Uttar Pradesh Junior High Schools (Payment of Salaries of Teachers and Other Employees) Act, 1978 [in brevity, it is stated as '**1978 Act**'].

- (18) On 13.06.1984, the State Government issued Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees) Rules, 1984 [for short, it is referred to as '**1984 Rules**'].
- (19) During the period 1989-1998, several basic schools were established in the State of U.P. On 23.05.1998, the State Government issued a Government Order whereby it has been provided that the period which has been spent by the teaching staff and non-teaching staff in a Junior High School prior to the date on which the said Junior High School was granted grant-in-aid shall be reckoned for the purpose of determining qualifying service for pension provided that up-to-date amount of Managerial Contribution Contributory Provident Fund alongwith interest in respect of the said employee in the G.P.F. Account is deposited by 31.03.1998. Thereafter, vide Government Orders dated 17.02.1999 and 26.07.2001, time limit for depositing the Managerial Contribution accruing under Triple Benefit Scheme with interest has been extended upto 30.06.1999 and 31.03.2002 respectively.
- (20) Thereafter, the State Government issued a Government Order dated 05.02.2017 permitting the institutions which were taken on grant-in-aid prior to 01.04.2005 to deposit the Managerial Contribution with interest latest by 30.06.2017 in respect of duly selected teaching and non-teaching staff of their respective

schools for the purpose of counting the service rendered by them when the schools were not on grant-in-aid.

- (21) The issue in the present intra-Court Appeals relates to the educational institutions brought under grant-in-aid subsequent to 01.04.2005.

**DISCUSSION IN THE CONTEXT OF SUBMISSIONS MADE**

- (22) This Court may note that the educational institutions in which the members of U.P. Senior Basic Shiksha Sangh are working have not been impleaded as a party. Moreover, all such institutions are stated to have been brought under grant-in-aid subsequent to the date of enforcement of New Pension Scheme (NPS) on 01.04.2005. The institutions brought under grant-in-aid subsequent to the cut-off date are now regulated under the New Pension Scheme (NPS) by an order of the State issued on 28.03.2005 clarified by Government Order dated 08.04.2009.
- (23) It was the clarificatory order alone which was impugned by the U.P. Senior Basic Shiksha Sangh and other petitioners whose writ petitions having been allowed by a common judgment passed by the learned Single Judge on 16.06.2021 has given rise to the present bunch of intra-Court appeals filed by the State of U.P.
- (24) Sri Sanjeev Singh, learned Standing Counsel for the State has argued that notwithstanding the fact that Special Appeal No. 388 of 2013 and Review Application No. 1502 of 2016 were allowed, nevertheless, the binding effect of the two judgments dated 29.10.2012 and 22.09.2016 deciding the respective Special Appeals in favour of the State could not be brushed aside by the learned Single Judge for it being binding precedents on the issue and a contrary view expressed by the

learned Single Judge is erroneous and was impermissible under law.

- (25) The next submission made by learned Counsel for the State is to the effect that in none of the writ petitions, the aggrieved parties have questioned the legality of New Pension Scheme (NPS) enforced w.e.f. 01.04.2005, therefore, it was not open to the learned Single Judge to read down the New Pension Scheme (NPS) contrary to the clarification made by the State Government vide Government Order dated 08.04.2009 on the premise of Rule 19 of 1978 Rules which has ceased to operate w.e.f. 01.04.2005 by a retrospective amendment in the said Rule remaining unchallenged.
- (26) The learned Counsel for the State has also argued that the language of Rules 3 and 4 of 1964 Rules in unequivocal terms says that the Old Pension Scheme (OPS) would be applicable only to the institutions already under grant-in-aid, therefore, once the Old Pension Scheme (OPS) came to an end on 01.04.2005, the resultant protection cannot be extended to those institutions which were brought under grant-in-aid subsequent to the cut-off date. It has also been argued by learned Counsel for the State that the new entrants with respect to educational institutions have to be given a purposive interpretation and not the one as the learned Single Judge has opined in the impugned judgment.
- (27) Learned Counsel for the State has further argued that the argument of discrimination advanced by the aggrieved persons in the light of a cut-off date has no basis once it is admitted that the institutions came under grant-in-aid subsequent to the date of enforcement of New Pension Scheme (NPS), therefore, any challenge to the clarificatory order issued on 08.04.2009 would

not leave the scheme open for a different interpretation particularly when the argument of discrimination was repelled under two binding precedents already rendered.

- (28) *Per contra*, learned Counsel for the private respondents have subtly restricted their argument by highlighting that the limited controversy which was delved into by the learned Writ Court is evident from paragraphs 24 to 30 of the **impugned judgment** and the same for ready reference are extracted hereunder:

*“24) Direction was issued by this Court to the State Government for giving information in regard to recommendation made by respondent No.2 for extension of date. Thereafter, the impugned order dated 08.04.2009 has been passed.*

*25) Assailing the impugned order, submission of learned Senior Counsel for the petitioners is that the impugned order is neither policy decision nor government order; therefore, the rider imposed in regard to applicability of NPS upon the petitioners is arbitrary and contrary to applicable rules.*

*26) Their next submission is that vide impugned order the Special Secretary of State Government has tried to modify the NPS implemented upon the employees who entered in service on or after 01.04.2005. In case of petitioners, in bunch of matters, none of the petitioner has entered in service on or after 01.04.2005. Thus, his submission is that the impugned order is contrary to NPS and cannot be modified by an executive order passed by the respondents.*

*27) Their further submission is that the impugned order overlooked Rule 19 of Rules of 1978. Rule 19 does not carve out the distinction between aided and unaided institutions. The Special Secretary has also failed to appreciate the fact that the service rendered by the teachers and non teaching staff while the institution was not on grant in aid list has been made basis for taking the institution on the list of grant in aid.*

28) *The State Government issued government orders according to government order issued in year 1978 as per scheme of 1965 and decisions were taken for depositing the managerial fund in regard to adding the service of teachers and non teaching staff rendered by them before providing grant in aid for payment of pensionary benefits.*

29) *His further submission is that the Special Secretary was having no authority to add his own view by passing the impugned order in the notification dated 28.03.2005, whereby NPS was enforced.*

30) *In support of his submissions, he relied upon certain judgments, which are as under:*

i) *U.P. Senior Basic Shikshak Sangh Sindhi Vidyalaya Vs. State of U.P. and others; Special Appeal No.123 of 2013.*

ii) *Shailendra Daina and others Vs. S.P. Dubey and others; 2007 (5) SCC 535.*

iii) *N. Suresh Nathan and another Vs. Union of India and others; 1992 Supp. (1) Scc 584.*

iv) *Rajinder Singh (Dr.) Vs. State of Punjab and others; 2001 (2) UPLBEC 1502.*

v) *Shyam Sadan Singh (Dr.) Vs. Chancellor, Deen Dayal Upadhyay University of Gorakhpur and others; 2002 (1) UPLBEC 152.*

vi) *Girdhari Lal Shankwar Vs. State of U.P. and others; 2014 (1) UPLBEC 657.*

vii) *Narinder S. Chadha and others Vs. Municipal Corporation of Greater Mumbai and others; 2015 (33) LCD 1743.”*

(29) It is in the light of aforesaid submissions and decisions referred to by the Writ Court that learned counsel for the respondents have defended the impugned judgment passed by the learned Single Judge.

**ANALYSIS**

- (30) Having heard learned counsel for the parties at length; the first question that crops up is whether there lies any distinction between the institutions operating under grant-in-aid and those which are un-aided as far as the applicability of pension scheme is concerned. For this purpose, the Court would refer to Rules 3 and 4 of Uttar Pradesh State Aided-educational Institution Employees' Contributory Provident Fund-Insurance-Pension Rules, 1964 which are quoted below:

“3. These rules shall apply to permanent employees serving in State aided educational institutions of the following categories run either by a Local Body or by a private Management and recognized by a competent authority as such for purposes of payment of grant-in-aid:

- (1) Primary Schools;
- (2) Junior High Schools;
- (3) Higher Secondary Schools;
- (4) Degree Colleges;
- (5) Training Colleges.”

“4. (a) These rules are intended to the employees of the State aided educational institutions, three types of service benefits, viz., Contributory Provident Fund, Insurance and Pension (Triple Benefit Scheme). The quantum of the benefits and the conditions by which they are governed are described in the succeeding Chapters.

(b) An employee already in permanent service on the date of enforcement of these rules shall be given an option to elect these new rules or to continue to be governed by the existing rules applicable to him.

(c) No employees shall be allowed option to choose only a part of the Scheme except as otherwise specifically provided for in these rules.



(d) Option once exercised shall be final.”

- (31) From a plain reading of the aforesaid Rules, it is clear that for the purposes of Old Pension Scheme (OPS) a clear distinction is drawn under the Rules itself that the same shall apply to the educational institutions operating under grant-in-aid.
- (32) The Writ Court while appreciating the arguments advanced has essentially ruled in favour of the petitioners (respondents herein) on two basic grounds. Firstly that the clarification of the New Pension Scheme (NPS) by Government Order dated 08.04.2009 is **discriminatory** and secondly that **there does not lie any distinction between the aided and unaided institutions for the purposes of regulating the condition of pension.**
- (33) Taking up the question of distinction between the two categories of institutions first, it is to be noted that vide Government Order dated 17.12.1965, Triple Benefit Scheme, i.e., (I) Contributory Provident Fund, (ii) compulsory Life Insurance and (iii) Pension including Family Pension was introduced but this was made applicable with effect from 01.10.1964 only to Government aided institutions. Rules 3 and 4 of Chapter I of the Rules provide that the said Rules shall apply to permanent employees serving in State aided educational institutions viz. (1) Primary Schools; (2) Junior High Schools; (3) Higher Secondary Schools; (4) Degree Colleges and (5) Training Colleges run either by a Local Body or by a Private Management and recognised by a competent authority. Rule 4 of the aforesaid Rules specifically provides that these rules are intended to ensure to the employees of the State aided educational institutions, three types of service benefits viz Contributory Provident Fund, Insurance and

Pension (Triple Benefit Scheme) the quantum of the benefits and the conditions by which they are governed are described in the succeeding Chapters.

- (34) In view of above, it is abundantly clear that the Uttar Pradesh State Aided Educational Institutions Employees Contributory Provident Fund, Insurance Pension Rules, 1964 are not applicable or attracted where the educational institutions are not under grant-in-aid.
- (35) To clarify further, it is necessary to point out that when a new scheme is introduced, a demarcation line has to be drawn between the employees, who are wholly covered under the existing scheme and those who are not. While doing so, the State Government has not violated the spirit of Articles 14 and 16 of the Constitution of India either in the matter of fixing the cut-off date or classifying the educational institutions. The State Government while issuing the clarificatory order dated 08.04.2009 had in mind this broad classification which does not offend the rule of equality in any manner. The broad principles as to the classification were culled out by the Apex Court in the case of *Confederation of Ex-servicemen associations and others Vs. Union of India and others reported in [(2006) 8 SCC 399]* in para – 30 of the judgment and the same is quoted below:

"30. In our judgment, therefore, it is clear that every classification to be legal, valid and permissible, must fulfil the twin test, namely,

(i) the classification must be founded on an intelligible differentia which must distinguish persons or things that are grouped together from others leaving out or left out; and

(ii) such a differentia must have rational nexus

to the object sought to be achieved by the statute or legislation in question."

- (36) Learned Standing Counsel appearing for the State has argued that the State Government at the relevant point of time had three categories of persons under consideration viz. (a) Government Servants (b) the employees working on pensionable service in autonomous bodies and (c) the educational institutions receiving grant-in-aid and governed under the Pension Rules, 1964. Therefore, the submission put forth by the learned counsel for the respondents was strongly opposed when the respondent-petitioner argued that New Pension Scheme (NPS) was enforced irrespective of the distinction between two categories of institutions.
- (37) Learned Counsel for the State would contend that the classification made was founded on an intelligible differentia in the light of aforementioned decision which the learned Counsel for the respondents would refute by pointing out that in view of all other requisites for recruitment being equal, such a classification is discriminatory.
- (38) It is to be clarified that pension is one of the conditions of service regulated under the Rules. The conditions of recruitment would not bring the two categories of institutions at par unless the element of grant-in-aid is found to exist as on the cut-off date which is decisively relevant for the classification. The hostile discrimination argued on the ground of appointment being made prior to 01.04.2005 in the unaided educational institutions under the same Service Rules may have a relevance for the purpose of fixation of salary of which the benefit was extended but the conditions of Old Pension having ceased to exist after 01.04.2005 onwards, the same would not revive automatically as a matter of right on the ground of the

institutions coming under grant-in-aid subsequent to the cut-off date. The condition of pension is open to be regulated independently and for the purposes of classification, the existing scheme must apply on the specified cut-off date.

- (39) This Court having considered the rival arguments does not find that the case at hand is a case of hostile discrimination. The Writ Court, in our humble view, got swayed away by the arguments advanced by the respondents contrary to the mandate of law.
- (40) Admittedly, the schools in which the petitioners (respondents herein) have been teaching or working were not under grant-in-aid when the New Pension Scheme (NPS) was introduced, therefore, they were not entitled to the benefit of Old Pension Scheme (OPS) as they came under grant-in-aid on 1.12.2006 much after the enforcement of the new scheme, i.e., 01.04.2005. The new scheme was made applicable to the staff of schools which came under grant-in-aid on or after 1.4.2005. The petitioners (respondents herein) are covered within that cut off date.
- (41) Since the institutions were not on grant-in-aid list at the time of implementation of Scheme, the Government Orders dated 10.3.1978, 23.5.1998, 17.2.1999, 26.7.2001 and 8.3.2002 were not applicable in their case. The date on which the institutions in which the members of the respondent-association were serving came under grant-in-aid only on 1.12.2006, therefore, it is the new scheme which shall be applicable upon them. By the Government Order dated 08.04.2009, it was only clarified that only New Pension Scheme (NPS) shall be applicable to the employees of the schools which came under grant-in-aid after 1.4.2005. The association has not been able to show or indicate

any reason as to how the subsequent Government Order dated 8.4.2009 is discriminatory, arbitrary or without jurisdiction. In any case, a clarification order does not expand or alter the scope of the original provisions.

- (42) The distinction between the institutions receiving grant-in-aid and un-aided is embedded in the Pension Rules itself, therefore, the submissions of the learned Standing Counsel that there ought to be some demarcating line regarding the classification of institutions, which are covered by the new contributory pension scheme and the persons, who were getting the benefit of the earlier rules governing their service conditions is well conceived. The classification as pointed out cannot be said to be discriminatory. So far as the case of the teachers' association is concerned they are entitled only to the benefit of New Pension Scheme (NPS) because on the date of its implementation though they were not the new entrants or recruits to the service but because on the said date, when the new scheme came to be implemented, the schools itself were not under grant-in-aid in which they were serving. The distinction so made cannot be faulted with for implementation of the New Pension Scheme (NPS). Government Order dated 8.4.2009 is very clear on the point that only new scheme shall be applicable to the employees of the schools that came under grant-in-aid on or after the enforcement of the new Contributory Pension Scheme. Therefore, the relief for including the employees, who had put in ten years service prior to cut-off date as prayed for by the Association on the ground of discrimination or arbitrariness has no legal basis to stand on any ground whatsoever. The classification made, in the considered opinion of this Court, cannot be said to be discriminatory or arbitrary.

- (43) The Government Order dated 28.3.2005 makes it clear that the Old Pension Scheme (OPS) was replaced by the New Pension Scheme and by the subsequent Government Order it was made clear that the employees of schools which came under grant in aid shall be governed by the new scheme only. This clarification cannot be said to discriminatory or arbitrary.
- (44) In *Buddhiram Vs. State of U.P. and others, [2013 (1) ADJ 254]*, this issue has been directly dealt with in paragraph Nos. 28 to 36, which deserve to be reiterated hereunder:-

"28. Now coming to the second category of cases wherein the staff of institution, who have been appointed in the institution prior to 01.04.2005, when it was unaided but after institution has been included in the grant-in-aid w.e.f. 01.04.2005, qua them State Government has taken policy decision that those institutions who have been included in the grant-in-aid list after 01.04.2005 they shall be governed by new pension rules. Once State Government has proceeded to take policy decision that teaching and nonteaching staff in the institution in question would be governed by new pension policy after being included in the grant-in-aid list of the State Government, can grievance be raised by the petitioners on the said score that same is arbitrary or unreasonable. Uttar Pradesh State Aided Educational Institutions Employees Contributory Provident Fund, Insurance Pension Rule, 1964 are not applicable or attracted when the institution in question is not on in the grant-in-aid and the provision of Uttar Pradesh State Aided Educational Institutions Employees Contributory Provident Fund, Insurance Pension Rule, 1964 would be applicable qua the institution from the date when it has been taken into grant-in-aid list of the State Government, as such said rules become applicable in the institution concerned only when it is included in the grant-in-aid list. Admittedly after

01.04.2005, once said group of institution has been included in the grant-in-aid list of the State Government w.e.f. 01.12.2006 and a new pension scheme has been there, then petitioners cannot claim as a matter of right that they should be covered by old pension Rules.

29. This much has been accepted that at the point of time when institution in question has been included in the grant-in-aid list entire benefit of earlier service of unaided stage has been clubbed and benefit of the earlier service rendered has been extended qua grant of pay scale, increment and other benefits etc.

30. The services rendered at unaided stage has not at all been waste, and due care has been taken to extended the benefits admissible in the lieu of the same. Question is can said service be also included as part of the qualifying service specially when appointment in question has been made prior to 01.04.2005 and admittedly institution in question has been brought into the grant-in-aid list of the State Government w.e.f. 01.12.2006.

31. This Court in the case of ***Chandra Bhushan Bajpai Vs. Joint Director of Education, Kanpur Mandal, Kanpur and others (Civil Misc. Writ Petition No. 32132 of 2001 decided on 21.08.2008) reported in 2008(3) UPLBEC 2333*** has taken the view that qualifying service period for pension is to be considered on the parameter as is required under the Rules of 1964. In the said case petitioner was claiming counting of period of service rendered by him in the unaided, Non-Government Junior High School and said claim of the petitioner has not been accepted and service rendered at unaided stage has not at all been counted. Paragraphs 6, 7, 8 and 9 of the said judgment being relevant is extracted below:

For the purpose of qualifying service U.P. Contributory Provident Fund Insurance Pension Rules are applicable wherein Rule 19(a) and (b) reads as under:

"19 (a) Service will not count for pension unless the employee holds a substantive post on a permanent establishment.

(b) Continuous temporary or officiating service followed without interruption by confirmation in the same or another post shall also count as qualifying service. (See also C.S.R. Para 422)."

7. The benefit of the aforesaid Rule would have been attracted to the case in hand provided the petitioner would have worked in a institution which was provided grant in aid. Rule 3 of the aforesaid Rules clearly provides that it is applicable to permanent employees serving in State aided education institutions. Rule 3 reads as under:

"3. These rules shall apply to permanent employees serving in State aided educational institutions of the following categories run either by a Local Body or by a Private management and recognised by a competent authority as such for purposes of payment of grant-in-aid.

- (1) Primary Schools;
- (2) Junior High Schools;
- (3) Higher Secondary Schools;
- (4) Degree Colleges;
- (5) Training Colleges."

8. It is clear case of the respondents that the institution in question was brought in grant-in-aid list in March 1961 though the petitioner served therein prior thereto. Therefore, U.P. Contributory Provident-Insurance-Pension Rules which came into force on 1.10.1964 are not applicable at all. Learned counsel for the petitioner could not place any other provision to substantiate his claim that the said service can be counted. Pension is not a bounty but as a matter of fact, a right, yet the mode and manner of its payment is governed strictly by



relevant Rules. Unless the Rules provide, no person can claim a particular service in a particular employment for counting as qualifying service. The Apex Court, in D.S. Nakara Vs. Union of India 1983 (1) SCC 305 while holding pension as a right, observed as follows:

"pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion." (Para 20)

9. Learned counsel for the petitioner could not place before the Court any provision under which the services rendered in a recognised but un-aided Non-Government Junior High School could have been counted."

32. This Court in the case of ***Kunwar Bahadur Sinha Vs. Director of Education. U.P. Lucknow and others (Civil Misc. Writ Petition No. 13741 of 1990 decided on 05.05.1995) reported in 1995 (2) UPLBEC 1264*** has proceeded to mention that Rule 19(b) of Rules 1964 has not at all been considered whereas sub-Rule (b) of Rule 19, provides that continuous temporary or officiating service followed without interruption by confirmation in the same or another post shall also count as qualifying service. In the said case it has been mentioned that Regional Deputy Director of Education it seems has not noticed clause (b) of Rule 19 of the Rules and has premised the impugned order solely on Clause (a) of Rule which provides that service will not count for pension unless employee holds a substantive post on a permanent establishment. In said case at no point of time issue was raised in respect of institution being grant-in-aid list.

33. New pension scheme has been effectuated w.e.f. 01.04.2005 and it has been mentioned therein that it would be applicable to those set up incumbent who had been appointed after 01.04.2005 and it is true that appointment of petitioners had been made prior

to 01.04.2005 but the institution in question has been brought in the grant-in-aid list after 01.04.2005 and benefit of past service when the institution in question was unaided has been extended and the State Government has taken policy decision that new pension scheme shall be applicable qua institutions included in grant-in-aid list w.e.f. 01.04.2005. Pension is a right and the payment of it does not depend on the discretion of the government but is governed by Rules, and once new pension scheme has been enforced w.e.f. 01.04.2005, and conscious decision has been taken to include teaching and non-teaching staff under the new pension scheme, wherein institution has been brought on grant-in-aid list after 01.04.2005, under the new pension scheme, cannot be faulted, as benefit has to be allowed keeping in view the financial resources of the Government, and coupled with this, the teaching and non-teaching staff of institution included in the grant-in-aid after 01.04.2005, form a different class, as prior to said date the provisions of U.P. Contribution Provident-Insurance Pension Rules 1964 was not at all applicable or attracted, and from the date i.e when the provisions of the said Rule have become available i.e after 01.04.2005, new pension scheme has been introduced, in view of this said policy decision cannot be faulted, as same is neither arbitrary nor irrational and there is rational basis for framing such a policy.

34. Apex Court in the case of ***Commander HQ Vs. Capt. Biplavendra Chand reported in JT 1997 SC 371*** has taken the view that pension is payable to them who fall within the ambit of Rules. Similar view has been taken in the case of ***T.N. Electricity Board Vs. Veeraswamy reported in 1999 (2) ESC (SC) 1036 (SC)***.

35. Apex Court, in the case of ***Sudhir Kumar Kansal Vs. Allahabad Bank 2011 (2) ESC 243*** has, in the matter of grant of pension, either under the old rule or the new rule, proceeded to mention that in society governed by rule of law sympathies cannot override the Rules and Regulations, and in the said case view has been taken accordingly that appellant was not eligible to claim any benefit under Old Pension Scheme.

36. Inevitable conclusion is that once institution in question has been included in grant-in-aid list after 01.04.2005 and thereafter new pension scheme has been introduced and it has been stated that the claim of petitioners would be governed under the new scheme then said category of incumbents as matter of right cannot claim to be governed under old scheme, and their claim of pension will fall within the ambit of Rules as has been introduced w.e.f. 01.04.2005."

- (45) The aforesaid judgment in the case of **Budhiram** (supra) that was relied upon by the learned single Judge in another case and the writ petition was disposed of on the same terms, came to be challenged in Special Appeal No.734 of 2014 in which appeal was also dismissed on 10.8.2015 upholding the ratio in the case of **Budhiram** (supra). The strength of three Division Bench judgments viz. 29.10.2012, 10.08.2015 and 22.09.2016 was not weighed at all by the learned Single Judge in the decision making process of the impugned judgment. It appears, the learned Single Judge might have been driven by some mistaken impression in overlooking the said judgments of the Division Bench and concluded that the respondents were entitled for the Old Pension Scheme (OPS), although at the relevant time, when the Old Pension Scheme (OPS) was replaced by the New Pension Scheme, these institutions were not in the grant-in-aid list. This Court finds it relevant to quote a passage from the judgment of Apex Court in **Sudhir Kumar Consul vs. Allahabad Bank [(2011) 3 SCC 486]**, which *inter alia* states:

"We have sympathies for the appellant but, in a society governed by Rule of law, sympathies cannot override the Rules and Regulations. We may recall the observations made by this Court while considering the issue of compassionate appointment in public service. In *Life Insurance Corporation of India v. Asha Ramachandra*

Ambekar and Anr. (1994) 2 SCC 718, wherein the Court observed:

*"The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration.... Yielding to instinct will tend to ignore the cold logic of law. It should be remembered that "law is the embodiment of all wisdom". Justice according to law is a principle as old as the hills. The Courts are to administer law as they find it, however, inconvenient it may be."*

- (46) We may also point out that the Rules, 1964 clearly specify in Rules 3 and 4 that the said Rules shall apply to State aided educational institutions. They did not apply to unaided institutions.

It is for this reason that the new scheme which has been introduced under the policy dated 28.3.2005 w.e.f. 1.4.2005 also recites that it will apply to State aided Educational Institutions which clearly means that those institutions, which were brought under the grant-in-aid list thereafter, would only be entitled to the benefit under the new scheme and not of the benefits of the earlier scheme. Thus, if the Rules, 1964 provide for extending of benefits to only State aided Institutions, then a mandamus cannot be issued to modify the same to apply it to unaided institutions by reading down the difference.

- (47) This Court has no doubt that the classification made is rational and the same does not suffer from any constitutional or legal infirmity on the facts mentioned above. There is no challenge or relief prayed that the 1964 Rules are irrational being applied only to aided institutions and there is equally no challenge to

the retrospective amendment in Rule 19 of the relevant Service Rules, 1978.

- (48) The judgment passed in *Budhiram (supra)* was upheld in Special Appeal No. 1843 of 2013 (Ram Yagya Shukla) holding that the Court is unable to agree with the submission that the respondents have made any hostile discrimination against the appellant. It is apparent from the pleadings and materials on record that the benefits of old pension scheme ceased to apply to all the employees of the educational institutions which came into grant-in-aid list after 01.04.2005. Thus the notification issued on 28.03.2005 introducing New Pension Scheme (NPS) effective from 01.04.2005 applies to all the educational institutions brought under grant-in-aid subsequent to the cut-off date.
- (49) In view of what has been recorded above, this Court is of the considered view that after issuance of notification dated 28.03.2005, all such institutions which came under grant-in-aid after 01.04.2005 shall be regulated under the New Pension Scheme (NPS).
- (50) Thus, the reasoning given in the impugned order that since the respondents were appointed prior to 01.04.2005, although the grant-in-aid was provided to their institutions after promulgation of the New Pension Scheme (NPS), are entitled for Old Pension Scheme (OPS) is not tenable in the eyes of law and is contrary to the very spirit of New Pension Scheme (NPS).
- (51) For the reasons stated above, all the Special Appeals, except Special Appeal Defective No. 74 of 2022 are **allowed** and the impugned judgment and order dated 16.06.2021, as corrected

vide order dated 07.07.2021 in the bunch of writ petitions, leading Writ Petition No. 3458 (SS) of 2009, *U.P. Senior Basic Shiksha Sangh v. State of U.P. and others*, passed by the learned Single Judge is **set aside**, so far as it relates to the educational institutions coming under grant-in-aid after 01.04.2005.

- (52) Since Special Appeal Defective No. 74 of 2022 pertains to Dying-in-Harness matter, **list it before the appropriate Court in the next cause list.**

**(Om Prakash Shukla, J.) (Attai Rahman Masoodi, J.)**

**Order Date :- 30.08.2023**  
Lakshman/-