Prabodh Verma and Others

Vs

State of Uttar Pradesh and Others

Dal Chand and Others

Vs

State of Uttar Pradesh and Others,

Civil Appeals Nos. 694, 909, 911, etc. of 1980, 2931-32 of 1979 and 4 of 1981

(V. B. Eradi, D. P. Madon, V. D. Tulzapurkar JJ)

27.07.1984

JUDGMENT

MADON, J. -

1. The principal question which arises for determination in this group of appeals by special leave and writ petition is the constitutional validity of two Uttar Pradesh Ordinances, namely, (1) the Uttar Pradesh High Schools and Intermediate Colleges (Reserve Pool Teachers) Ordinance, 1978 (U.P. Ordinance 10 of 1978), and (2) its successor Ordinance - The Uttar Pradesh High Schools and Intermediate Colleges (Reserve Pool Teachers) (Second) Ordinance, 1978 (U.P. Ordinance 22 of 1978), which had been struck down by Division Bench of the Allahabad High Court by its judgment delivered on December 22, 1978, in Civil Miscellaneous Writ No. 9174 of 1978 - Uttar Pradesh Madhyamik Shikshak Sangh v. State of U.P. (1979 All LJ 178) on the ground that its provisions were violative of Articles 14 and 16(1) of the Constitution of India; the subsidiary question being whether the termination of the services of the appellants and petitioners as secondary school teachers and intermediate college lecturers following upon the said Allahabad High Court Judgment is valid and, if not, the reliefs to which they are entitled.

2. We will first set out the circumstances which led to the promulgation of the above two Ordinances and then narrate the events subsequent thereto.

3. The educational institutions in the State of Uttar Pradesh teaching upto the high school and intermediate classes fall into three categories, namely,

(1) institutions managed and conducted by the Central Government;

(2) institutions managed and conducted by the State Government and local bodies; and

(3) institutions managed and conducted by private management.

4. The service conditions of the teachers in these three categories of institutions are governed by different statutes. We are concerned in these appeals and petitions with only the teachers falling in

the third category mentioned above. These institutions are governed by the Intermediate Education Act, 1921 (U.P. Act II of 1921). Clause (b) of Section 2 of the Intermediate Education Act defines an 'institution' as meaning "a recognised Intermediate College, Higher Secondary School or High School, and includes, where the context so requires, a part of an institution". Section 3 provides for the constitution of a Board, called the Board of High School and Intermediate Education. Section 7 prescribes the powers of Board which inter alia include the power to prescribe the courses of instruction and text-books, to conduct examinations at the end of high school and intermediate courses and to recognize institutions for the purposes of such examinations. Under Section 7-A, an order of the Board giving recognition to an institution for the first time or in any new subject or Board group or for a higher class is not to have effect until it is approved by the State Government. Section 15 confers upon the Board the power to make regulations inter alia providing for the conditions of recognitions of institutions. Regulations made by the Board under Section 15 are required to be made with the previous sanction of the State Government and to be published in the Uttar Pradesh Official Gazette.

5. All the institutions falling in the third category mentioned above and with which we are concerned in these appeals and petitions are recognized under the Intermediate Education Act. Section 16-A of the Intermediate Education Act requires a Scheme of Administration to be framed for every recognized institution. The Scheme of Administration of every institution is to be subject to the approval of the Director of Education, Uttar Pradesh. A Scheme of Administration is amongst other matters to provide for the constitution of a Committee of Management vested with authority to manage and conduct the affairs of the institution. Under sub-section (6) of Section 16-A, every recognized institution is to be managed in accordance with its Scheme of Administration.

6. Section 16-E of the Intermediate Education Act prescribes the procedure for selection of teachers and heads of institutions. Under sub-section (1) of Section 16-E, the head of of institution and teachers of an institution are to be appointed by the Committee of Management in the manner provided in the said section. Under sub-section (2), every post of head of institution or teacher of an institution is, except to the extent prescribed by the Regulation for being filled by promotion, to be filled by direct recruitment after intimation of the vacancy to the Inspector which term is defined by clause (bb) of Section 2 as meaning "the District Inspector of Schools, and in relation to an institution for girls, the Regional Inspectress of Girls' Schools, as the case may be, and in each case includes an officer authorised by the State Government to perform all or any of the functions of the Inspector" under the Intermediate Education Act. After intimation of the vacancy to the Inspector, advertisement of the vacancy, containing such particulars, as may be prescribed by the Regulations, is to be published in at least two newspapers having adequate circulation in the State. Sub-section (3) prohibits any person from being appointed as head of institution or teacher in an institution unless he possesses the minimum qualifications prescribed by the Regulations. Under the proviso to that sub-section, a person who does not possess such qualifications may be appointed if he has been granted exemption by the Board having regard to his education, experience, and other attainments. Under sub-section (4), applications in pursuance of the advertisements published a aforesaid are to be made to the Inspector. Sub-sections (5) to (10) of the said Section 16-E provided as follows :

> (5)(i) After the receipt of applications under sub-section (4), the Inspector shall cause to be awarded, in respect of each such applications, quality-point marks in accordance with the procedure and principles prescribed, and shall thereafter, forward the applications to the Committee of Management.
>
> (ii) The applications shall be dealt with, the candidates shall be called for interviews,

and the meeting of the Selection Committee shall be held, in accordance with the Regulations.

(6) The Selection Committee shall prepare a list containing in order of preference the names, as far as practicable, of three candidates for each post found by it to be suitable for appointment and shall communicate its recommendations together with such list to the Committee of Management.

(7) Subject to the provisions of sub-section (8), the Committee of Management shall, on receipt of the recommendations of the Selection Committee under sub-section (6), first offer appointment to the candidate given the first preference by the Selection Committee, and on his failure to join the post, to the candidate next to him in the list prepared by the Selection Committee under this section, and on the failure of such candidate also, to the last candidate specified in such list.

(8) The Committee of Management shall, where it does not agree with the recommendations of the Selection Committee, refer the matter together with the reasons of such disagreement to the Regional Deputy Director of Education in the case of appointment to the post of Head of Institution and to the Inspector in the case of appointment to the post of teacher of an institution, and his decision shall be final.

(9) Where no candidate approved by the Selection Committee for appointment is available, a fresh selection shall be held in the manner laid down in this section.

(10) Where the State Government, in case of the appointment of Head of Institution, and the Director in the case of the appointment of teacher of an institution, is satisfied that any person has been appointed as Head of Institution or teacher, as the case may be, in contravention of the provisions of this Act, the State Government or, as the case may be, the Director may, after affording an opportunity of being heard to such person, cancel such appointment and pass such consequential order as may be necessary.

Section 16-F provides for the constitution and composition of two Selection Committees, one for the appointment of the head of an institution and the other for the appointment of a teacher in an institution.

7. The only other section which needs be referred to is Section 16-G. Section 16-G provides for the conditions of service of heads of institutions, teachers and other employees. Under sub-section (1), every person employed in a recognized institution is to be governed by such conditions of service as may be prescribed by the Regulations. Any agreement between the management and such employee insofar as it is inconsistent with the provisions of the Intermediate Education Act or the Regulations is to be void. Under sub-section (2), without prejudice to the generality of the powers conferred by sub-section (1), the Regulations may, inter alia, provide for the period of probation, the conditions of confirmation, the scales of pay and payment of salary. Under sub-section (3), no principal, headmaster or teacher can be discharged or removed or dismissed from service or reduced in rank or subject to diminution in emoluments or served with a notice of termination of service except with the prior approval in writing of the Inspector. The Inspector has the power either to approve or disapprove or reduce or enhance the punishment or approve or disapprove of the notice of termination of service proposed by the management. A right of appeal to the Regional Deputy

Director, Education is provided to any party aggrieved by an order of the Inspector.

8. In 1977 there were about 80,000 secondary teachers of recognised institutions and institutions managed by local bodies. Out of them about 60,000 teachers were members of a registered society, namely, the Uttar Pradesh Madhyamik Shikshak Sangh (hereinafter referred to as "the Sangh"), the first petitioner in the said Civil Miscellaneous Writ No. 9174 of 1978 in the Allahabad High Court and one of the respondents in the appeals and petitions before us. On August 9, 1977, the Sangh submitted a charter of twenty-seven demands to the State Government. The Government refused to accept any of the said demands. We are not concerned in these appeals and petitions with the question whether these demands or any of them were reasonable or not, nor with the question whether the refusal of the Government to accept the said demands or any of them was justified or not. As the Government did not accept the said demands, the Sangh gave a call for an indefinite strike commencing from December 2, 1977, and in response to the said call about 90 per cent. of the teachers in recognized institutions went on an indefinite strike from December 2, 1977.

9. Under the Uttar Pradesh Essential Services Maintenance Act, 1966 (U.P. Act XXX of 1966), service in certain educational institutions is an essential service. Sub-clause (ii) of clause (a) of Section 2 of that Act, as it stood at the relevant time defined "essential service" as meaning inter alia -

> any service under an educational institution recognised by the Director of Education, Uttar Pradesh, or by the Board of High School and Intermediate Education, Uttar Pradesh, or service under a University incorporated by or under an Uttar Pradesh Act.

Sub-section (1) of Section 3 of that Act confers upon the State Government the power, by general or special order to prohibit strikes in any essential service specified in the order if the State Government is satisfied that in the public interest it is necessary or expedient to do so. Under sub-section (2) of Section 3, such order is to be published in such manner as the State Government considers best calculated to bring the order to the notice of the persons affected by it. Under sub-section (4) of Section 3, during the period of the operation of such an order any strike by persons employed in any essential service to which the order relates is illegal, whether such strike is declared or commenced before or after the commencement of the order. Under Section 4 of that Act, any person who commences a strike which is illegal under that Act or goes or remains on or otherwise takes part in any such strike becomes liable to imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both and, under Section 7, any police officer may arrest without warrant any person who is reasonably suspected of having committed any offence punishable under that Act. By a notification dated December 24, 1977, the State Government made and published an order under Section 3(1) of that Act prohibiting strikes in service under educational institutions. Further, on December 31, 1977, the Governor of Uttar Pradesh promulgated the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) (Amendment) Ordinance, 1977 (U.P. Ordinance 25 of 1977). The said Ordinance amended Section 4 of the Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 (U.P. Act 24 of 1971). The effect of the said amendment was that the Director of Education, Uttar Pradesh, could, by general or special order, direct any teacher who went or remained on or otherwise took part in any strike which had been prohibited by an order under Section 3 of the U.P. Essential services Maintenance Act to resume duty by the day or hour specified in the order and upon the failure of the teacher to resume duty in response thereto his contract of employment with the management became

void with effect from the day or hour specified in the direction contained in such order and the concerned teacher was not to be entitled to any notice before such termination of his services, nor was any disciplinary inquiry required before taking such action, notwithstanding anything to the contrary contained in the Intermediate Education Act or the Regulations made thereunder or the conditions of service of such teacher. Further, the State Government was not to be liable for payment of salary to any such teacher beyond the day or hour specified in such direction. It was also provided that "The management or failing it the Inspector may notwithstanding anything to the contrary contained in the Intermediate Education Act, 1921, or the Regulations for the time being in force with respect to the mode of election, appointment or approval of appointment, be competent to appoint on temporary basis any persons possessing the requisite qualifications for discharging the duties of the post of any such teacher". By a notification issued on the same day the Director of Education in pursuance of Section 4 of the U.P. Act 24 of 1971 as amended by the said Ordinance directed the teachers on strike or otherwise taking part in the strike prohibited under Section 3 of the U.P. Essential Services Maintenance Act to resume duty by 11 a.m. on January 5, 1978.

10. One of the striking teachers thereupon filed a writ petition in the Allahabad High Court challenging the validity of the said U.P. Ordinance 25 of 1977 and the said notification issued under the amended Section 4 of the U.P. Act 24 of 1971. The High Court extended the joining time for the striking teachers until January 9, 1978. In spite of the order of the High Court, the teachers who had gone on strike or at least a large number of them, namely, 2257 teachers, did not resume duty. Accordingly their contracts of employment became void and in order to fill the posts, 2257 persons, including the appellants and petitioners before us, possessing the requisite qualifications for discharging the duties of the posts of such teachers were appointed on temporary basis between January 9, 1978, and January 19, 1978. Thereafter a settlement took place between the striking teachers and the Government and the services of the said 2257 teachers were terminated on or about January 20, 1978, after giving them one month's salary in lieu of notice. On February 25, 1978, in exercise of the power conferred by sub-clause (b) of clause (2) of Article 213 of the Constitution of India, the Governor of Uttar Pradesh withdrew the said U.P. Ordinance 25 of 1977.

11. On June 24, 1978, the Governor of Uttar Pradesh promulgated the Uttar Pradesh High Schools and Intermediate Colleges (Reserve Pool Teachers) Ordinance, 1978 (U.P. Ordinance 10 of 1978) (hereinafter for the sake of brevity referred to as "U.P. Ordinance 10 of 1978"). The long title of U.P. Ordinance 10 of 1978 stated that it was "An Ordinance to provide for the absorption of certain teachers in the institutions recognised under the Intermediate Education Act, 1921". Whenever one of the provisions of U.P. Ordinance 10 or 1978 refers to another provision thereof, it uses the word 'section' or 'sub-section' and not 'clause' or 'sub-clause' as one would normally expect to find, and the same is the case with its successor Ordinance, U.P. Ordinance 22 of 1978. Whether this phraseology is correct or not is a matter which we will consider later after we have seen what the provisions of U.P. Ordinance 10 of 1978 were, adopting for this purpose the same phraseology as used in that Ordinance. Section 2 of U.P. Ordinance 10 of 1978 gave an overriding effect to the provisions of that Ordinance notwithstanding anything contained in the Intermediate Education Act or any other law for the time being in force. Section 4 of U.P. Ordinance 10 of 1978 was headed "Absorption of Reserve Pool Teachers". Sub-section (1) of Section 4 provided that the Inspector (that is, the District Inspector of Schools, and in relation to a girls' Institution, the District Inspectress of Girls' Schools or the Regional Inspectress of Girls' Schools, as the case may be, including any other officer authorised by the Government to perform all or any of the functions of the Inspector) should maintain in the prescribed manner a register of "reserve pool teachers" consisting of persons who were appointed as teachers in any recognized institution situated in the district either by the management or by the Inspector under sub-section (4) of Section 4 of the U.P. High Schools and

Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971, while the said U.P. Ordinance 25 of 1977 was in force and who had actually joined their duties in pursuance of the said provision between January 9, 1978, and January 19, 1978. Sub-section (2) of Section 4 of U.P. Ordinance 10 of 1978 provided as follows :

> (2) Where any substantive vacancy in the post of a teacher in an institution recognised by the Board is to be filled by direct recruitment, such post shall at the instance of the Inspector be offered by the Management to a teacher whose name is entered in the register referred to in sub-section (1).

Other sub-sections of Section 4 provided that if any teacher who was offered appointment failed to join the post within the time allowed therefore, his name should be removed from the register of reserve pool teachers and the appointment should be offered to another reserve pool teacher of the same district and that if such other teacher also failed to join, the same process should be repeated until the list of reserve pool teachers of that district was exhausted and thereupon the appointment in the institution was to be made in accordance with the relevant provisions of the Intermediate Education Act. The Explanation to Section 4 provided as follows :

Explanation. - For the removal of doubts it is hereby declared that no teacher shall, by virtue of the provisions of this section be entitled to claim appointment to any post which he had joined in accordance with sub-section (1) or to any post carrying the same or a higher grade.

Section 5 provided that where the vacancies available for teaching in any subject of study were less than the number of reserve pool teachers available for appointment in any district or where it was otherwise necessary or expedient so to do, the Director (that is, the Director of Education, Uttar Pradesh, including any other officer authorised by him in this behalf) could direct that the name of any such teacher be excluded from the register maintained in one district and be included in the register maintained in another district and in such a case the provisions of Section 4 were mutatis mutandis to apply to such a teacher except that the requirement of service as teacher in such district was not to be necessary.

12. We will now consider whether the use of the word 'sub-section' in the extract from U.P. Ordinance 10 of 1978 reproduced above and our referring to the different provisions of that Ordinance as sections and to the numbered sub-divisions of a provision of that Ordinance as sub-sections can be said to be correct. At the first blush it would appear that such phraseology is not correct because the usual legislative drafting practice is that the words 'section' and 'sub-section' should be used while referring to a provision and the numbered sub-divisions of a provision of an Act and the words 'clause' and 'sub-clause' be used while referring to a provision and the numbered sub-divisions of a provision of an Ordinance. A closer examination, however, reveals that this does not necessarily hold good so far as Ordinances promulgated by the President and the Governor of Uttar Pradesh are concerned; and the same would be the case with Ordinances promulgated by the Governor of any other State where the relevant provisions of the State General Clauses Act are similar to those of the General Clauses Act, 1897 (Act X of 1897) or of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act I of 1904), referred to hereinafter.

13. In legislative drafting parlance the distinct and numbered divisions of an Act are referred to as sections and the sub-divisions of a section which are numbered in round brackets are referred to as sub-sections. Each section as also a part of a section of an Act is considered as a separate enactment. Ridley, J. observed in Wakefield and District Light Railways Company v. Wakefield Corporation

((1906) 2 KB 140, 145-46, affirmed in (1907) 2 KB 256),

The word 'enactment' does not mean the same thing as 'Act'. Act means the whole Act, whereas a section or part of a section may be an enactment.

In England, prior to 1850 it was the usual practice to preface each portion of an Act - what we would now call a section - with the words "And be it enacted" or "And be it further enacted". By Section 2 of Lord Brougham's Act of 1850, namely, Interpretation of Acts, 1850 (13 & 14 Vict. c. 2), this requirement was done away with and it was provided that "all Acts shall be divided into sections if there be more enactments that one, which sections shall be deemed to be substantive enactments without any introductory words". The Act of 1850 was repealed by the Interpretation Act, 1889 (52 & 53 Vict. c. 63), and the requirement of Section 2 of the 1850 Act as to division of an Act into sections was done way with but the rest of that section was re-enacted in Section 8 of the 1889 Act by providing that "Every section of an Act shall have effect as a substantive enactment without introductory words". This particular repeal was not of any significance because the portion repealed constituted a mere direction to draftsmen and parliamentary officials to divide an Act into sections (see Craies on Statute Law, Seventh Ed., p. 217). Though the Act of 1889 has now been repealed by the Interpretation Act, 1978 (1978 Eliz. 2 c. 30), Section 1 of that Act re-enacts Section 8 of the 1889 Act.

14. The Interpretation Act in force in India, so far as all Central Acts and Regulations are concerned, is the General Clauses Act, 1897 (Act X of 1897). Clause (7) of Section 3 of the General Clauses Act defines the term 'Central Act' and clause (50) of that section defines the term 'Regulation'.

15. Section 3 of the General Clauses Act is the definition clause. The definitions of various terms given therein apply to those terms not only when used in the General Clauses Act but also when used in all Central Acts and Regulations made after the commencement of the General Clauses Act, unless there is anything repugnant in the subject or context. The relevant clauses of Section 3 with which we are concerned are clauses (54) and (61) which provided as follows :

> (54) 'section' shall mean a section of the Act or Regulation in which the word occurs.
>
> (61) 'sub-section' shall mean a sub-section of the section in which the word occurs.

The object of these clauses is to shorten the language of Acts and Regulations otherwise whenever a section of an Act or Regulation refer to another section of that Act or Regulation, the title of that Act or Regulation would have to be stated after such reference in order to make it clear that it was another section of the same Act Regulation which was being referred to.

16. There is a difference between an Act and an Ordinance. An Act is a legislation which after having been passed by Parliament or other competent legislative body has received the assent of the constitutional head while an Ordinance is a legislation made by the constitutional head himself, generally without the consent of Parliament or other concerned legislative body. In England, there is no question of such an Ordinance being promulgated because the Monarch has now no legislative power. Coke in The Institutes of the Laws of England, Part IV at page 24, however, made a distinction between an Act of Parliament and an Ordinance in Parliament. He said :

> There is no Act of Parliament but must have the consent of the Lords, the Commons, and the royal assent of the King, and as it appeareth by records and our books

> whatsoever passeth in Parliament by this threefold consent, hath the force of an Act of Parliament.

The difference between an Act of Parliament, and an Ordinance in Parliament, is, for that the Ordinance wanted the threefold consent, and is ordained by one or two of them.

Thus, the enactments which were passed during the period between the outbreak of the Civil War England in 1642 and the Restoration (of King Charles II) in 1660 were all passed without the consent of the Crown and are known as Ordinances.

17. In India, all laws made prior to the enactment of Statute 3 and 4 Wm. IV c. 85 of 1833 were called Regulations. The Statute of 1833 superseded the existing powers of the Councils of Madras and Bombay to make laws and merely authorised them to submit to the Governor-General-in-Council drafts or projects of any law which they might think expedient and the Governor-General-in-Council was, after consideration, to communicate his decision thereon to the local government which had proposed them. All laws made in pursuance of the Statute of 1833 were known as 'Acts' (see State of Maharashtra v. Kusum Charudutt Bharma Upadhye ((1981) 83 Bom LR 75, 95(SB)). The term 'Regulation' has now a different meaning under clause (50) of the General Clauses Act.

18. Under the Constitution of India, Ordinances are promulgated by the President in exercise of his legislative power under Article 123 when both Houses of Parliament are not in session or by the Governor of a State in exercise of his legislative power under Article 213 when the Legislative Assembly of the State is not in session or where there is a Legislative Council in a State, when both Houses of the Legislature are not in session. Prior to the Constitution the Governor-General had under the Indian Councils Act 1861 (24 & 25 Vict. c. 67), the Government of India Act, 1915 (5 & 6 Geo. V c. 61) and the Government of India, 1935 (26 Geo. V & 1 Edw. VII c. 2), the power to promulgate Ordinances. The Governor of a Province also possessed similar power under Section 88 of the Government of India Act, 1935. Section 30 of the General Clauses Act provides that the expression 'Central Act' wherever it occurs in that Act, except in Section 5 (which deals with coming into operation of enactments), and the word 'Act' in certain clauses of Section 3, including clause (54), and in Section 25 shall be deemed to include an Ordinance made and promulgated by the Governor-General under Section 23 of the Indian Councils Act, 1861, or under Section 72 of the Government of India Act, 1915, or under Section 42 of the Government of India Act, 1935, and an Ordinance promulgated by the President under Article 123 of the Constitution.

19. There would have been no purpose in Section 30 of the General Clause Act providing that the word 'Act' in clause (54) of Section 3 of the General Clauses Act shall be deemed to include an Ordinance unless one of the provisions of an Ordinance can refer to another provision of the same Ordinance as a 'section'; and if one of the provisions of an Ordinance can refer to another provision of it as a 'section', it would naturally follow that a part of such provision can be referred to as 'sub-section. Thus, Section 30 of the General Clauses Act read with clause (54) of Section 3 thereof would show that it would not be wrong phraseology, though it may sound inelegant, to refer to a provision of an Ordinance as 'section' and to a sub-division of such provision, numbered in round brackets, as 'sub-section'.

20. Almost all States, including Uttar Pradesh, have their own General Clauses Acts which apply for the purpose of interpretation of their own Acts. The Act in force in the State of Uttar Pradesh is the Uttar Pradesh General Clauses Act, 1904 (U. P. Act I of 1904). Section 4 of that Act is the definition clause and applies to all Uttar Pradesh Acts unless there is anything repugnant in the

subject or context. The expression "Uttar Pradesh Act" is defined in clause (46) of Section 4. Clauses (40) and (43) of Section 4 define the terms 'section' and 'sub-section' in language identical with that used in clauses (54) and (61) of the General Clauses Act, 1897. Section 30 of the U.P. General Clause Act, inter alia, provisions of that Act shall apply in relation to an Ordinance promulgated by the Governor under Section 88 of the Government of India Act, 1935, as they apply in relation to Uttar Pradesh Acts made by the Provincial Legislature and in relation to an Ordinance promulgated by the Governor under Article 213 of the Constitution as they apply in relation to Uttar Pradesh Acts made by the State Legislature.

21. What has been said above with respect to Section 30 of the General Clauses Act, 1897, read with clause (54) of Section 3 thereof would apply with equal force to Section 30 of the U.P. General Clauses Act, 1904, read with clauses (40) and (43) of Section 4 thereof. The use of the word 'sub-section' in the extract from U.P. Ordinance 10 of 1978 cannot, therefore, be said to be incorrect.

22. To proceed with the narration of facts both before as well as after the promulgation of U.P. Ordinance 10 of 1978 several vacancies occurred in the post of teachers in recognized institutions which were to be filled by direct recruitment and accordingly advertisements were given advertising these posts. Consequent upon these advertisements several applications were received. The applicants were called for interview by the Selection Committee. Meanwhile, the Deputy Secretary, Education, Government of U.P. issued a D.O. letter dated July 1, 1978, to the Director of Education, and in his turn the Additional Director of Education issued a letter dated July 4, 1978, to all the District Inspectors of Schools and the Regional Inspectresses of Girls' S chools, to make appointments in pursuance of Ordinance 10 of 1978. Pursuant to these directions, the selections of the applicants were postponed and some of the vacancies were filled by appointing, on probation for one year, teachers from the reserve pool as provided by Ordinance 10 of 1978. Thereupon some of the applicants who were not in the reserve pool filed writ petitions in the Allahabad High Court challenging the validity of Ordinance 10 of 1978 and the said two letters dated July 1, 1978, and July 4, 1978. By interim orders passed in the said writ petitions the High Court stayed the further operation of U.P. Ordinance 10 of 1978.

23. The Bill to repeal and re-enact U.P. Ordinance 10 of 1978 was passed by the U.P. Legislative Assembly but though the Bill was placed before the U.P. Legislative Council it could not be put up for discussion and thus could not be made into an Act. Under Article 213(2)(a) of the Constitution, U.P. Ordinance 10 of 1978 would have, therefore, ceased to operate on or about October 17, 1978. When the said writ petitions reached hearing they were dismissed on the ground that they had become infructuous as U.P. Ordinance 10 of 1978 had lapsed.

24. Meanwhile, on October 7, 1978, the Governor of Uttar Pradesh promulgated the Uttar Pradesh High Schools and Intermediate Colleges (Reserve Pool Teachers) (Second) Ordinance, 1978 (U.P. Ordinance 22 of 1978) (hereinafter referred to as "U.P Ordinance 22 of 1978"). U.P. Ordinance 22 of 1978 repealed U.P. Ordinance 10 of 1978 and was given retrospective effect on and from June 24, 1978 (the date of U.P. Ordinance 10 of 1978), and it was also provided that notwithstanding the repeal of U.P. Ordinance 10 of 1978, anything done or any action taken under that Ordinance should be deemed to have been done or taken under U.P. Ordinance 22 of 1978 as if that Ordinance were in force at all material times. The provisions of U.P. Ordinance 22 of 1978 were in pari materia with those of U.P. Ordinance 10 of 1978. The only additional provisions in U.P. Ordinance 22 of 1978 were that this Ordinance made it lawful for the State Government to prohibit by notification published in the Official Gazette the selection or appointment of any teacher in a recognized institution until the list of reserve pool teacher of that district was exhausted and it further provided

that where the management failed to offer any post to a teacher in the reserve pool in accordance with the provisions of the Ordinance within the time specified by the Inspector, the Inspector could himself issue the letter of appointment to such teacher and the teacher concerned was entitled to get his salary from the date he joined the post in pursuance of such letter of appointment and if he could not join the post due to any act or omission on the part of the management, such teacher could submit his joining report to the Inspector and he would thereupon be entitled to get his salary from the date he submitted the said report.

25. In pursuance of U.P. Ordinance 22 of 1978, directions were issued by the Secretary, Education Department, Government of U.P., by a telex message dated October 18, 1978, and in pursuance thereof by the Additional Director of Education, U.P., by telex message dated October 19, 1978, to fill the vacancies by making appointments from the reserve pool in accordance with the provisions of U.P. Ordinance 22 of 1978. Thereafter some more teachers from the reserve pool were appointed to the posts which had fallen vacant and which were to be filled by direct recruitment. Thereupon the Sangh along with some of the applicants for the vacant posts who had filed writ petitions in the High Court challenging the validity of U.P. Ordinance 10 of 1978 filed in the Allahabad High Court the said Civil Miscellaneous Writ No. 9174 of 1978 challenging the validity of U.P. Ordinance 22 of 1978 and the said telex messages. By an interim order made in the said writ petition the further operation of U.P. Ordinance 22 of 1978 was stayed by the High Court. The Allahabad High Court by its judgment dated December 22, 1978 (Uttar Pradesh Madhyamik Shikshak Sangh v. State of U.P. (1979 All LJ 178)), referred to above, held that U.P. Ordinance 22 of 1978 violated the provisions of Articles 14 and 16(1) of the Constitution and accordingly declared the Ordinance to be void and quashed the said telex messages. Normally, one would have expected the State to apply the High Court for a certificate to enable it to file an appeal in this Court or to apply to this Court for special leave to appeal, particularly in view of the fact that a State Ordinance had been struck down by the High Court as being unconstitutional and as a result of that judgment 2257 teachers who had been put in the reserve pool had been deprived, some of their livelihood an others of their chance of livelihood. Instead, the State Government accepted the High Court judgment and by the order dated May 21, 1979, directed that the services of the reserve pool teachers could not be continued as the High Court had declared U.P. Ordinance 22 of 1978 to be unconstitutional and further ordered that no fresh appointment should be made form the reserve pool and no special weightage should be given to teachers in the reserve pool in the matter of future appointments. The Additional Director of Education acting in pursuance of the said order of the State Government issued letters dated May 29, 1979, to all Inspectors directing them that the services of the teachers appointed from the reserve pool could not be continued further in view of the said decision of the High Court and that the posts should be filled afresh by the process of direct recruitment. The Inspectors in their turn communicated to the Committees of Management of all recognized institutions the above orders and directed the Committee of Management of each recognized institution to terminate the services of reserve pool teachers employed in its institution. Thereupon letters were issued by the Committees of Management to the teachers appointed from the reserve pool referring to said orders and intimating to them that their services would continue only upto the end of the academic session, that is, upto May 30, 1979, and thereafter would stand terminated. Several teachers from the reserve pool whose services were so terminated filed writ petitions in the Allahabad High Court contending that the termination of their services was illegal inasmuch as in respect of those who were appointed under U.P. Ordinance 22 of 1978, they were not parties to the Sangh's petition and, therefore, the judgment in that case was not binding upon them and that in the case of those who were appointed under U.P. Ordinance 10 of 1978, that Ordinance had not been declared void by the High Court. They also contended that the termination of their services was illegal inasmuch as the procedure

prescribed by Section 16-G(3) of the Intermediate Education Act had not been followed. In most of these writ petitions interim orders were passed by the High Court staying the operation of the orders of termination of the petitioners' services. In one of these writ petitions, the High Court held that U.P. Ordinance 22 of 1978 provided that anything done or any action taken under U.P. Ordinance 10 of 1978 was to be deemed to have been done or taken under U.P. Ordinance 22 of 1978 as if thatOrdinance were in force at all material times, those petitioners who were appointed under U.P. Ordinance 10 of 1978 must be deemed to have been appoonted u__nder U.P. Ordinance 22 of 1978 and as U.P. Ordinance 22 of 1978 had been declared by the High Court to be unconstitutional, the appointments of the petitioners were bad ab initio. The High ourt further held that as the appointments of the petitioners were bad ab initio, Section 16-G(3) of the Intermediate Education Act was not attracted. The High Court accordingly dismissed that writ petition. The other writ petitions filed by teachers whose services had been terminated were dismissed following this judgment.

26. The appeals by special leave before us have been filed by the reserve pool teachers who were petitioners before the Allahabad High Court in those writ petitions. The petitioners in the writ petitions before us are some of the reserve pool teachers whose services were terminated as a result of the judgment of the High Court in the Sangh case and who have directly approached this Court as also some of the reserve pool teachers who could not be appointed in the vacancies which had occurred because of the interim orders passed by the High Court in writ petitions challenging the validity of either U.P. Ordinance 10 of 1978 or U.P. Ordinance 22 of 1978. In these appeals and writ petitions interim orders staying the operation of termination orders have been passed by this Court.

27. The judgment under appeal merely followed the decision of the High Court in the Sangh case. If U.P Ordinance 22 of 1978 were void, it must necessarily follow that U.P. Ordinance 10 of 1978 was also void as the provisions of both these Ordinances were in pari materia and in such event all appointments made under either of these two Ordinances were ab initio bad in law. Sub-section (3) of Section 16-G of the Intermediate Education Act would have no application to such a case. That sub-section would apply where a principal, headmaster or teacher who has been validly appointed has been discharged, removed or dismissed from service or reduced in rank or whose emoluments have been diminished or who has been served with a notice of termination of service. The provision which would really apply would be sub-section (10) of Section 16-E of the Intermediate Education Act under which were the Director of Education is satisfied that any person has been appointed as teacher in contravention of the provisions of that Act, he may after affording an opportunity of being heard to such person, cancel such appointment and pass such consequential order as may be necessary. Undoubtedly, if the judgment of the High Court in the Sangh case (1979 All LJ 178) were correct, the appointments of the appellants and petitioners were in contravention of the provisions of the Intermediate Education Act and their appointments were, therefore, liable to be cancelled. No opportunity of being heard had admittedly been afforded to any of them but in view of the High Court's judgment in the Sangh case (1979 All LJ 178) affording such opportunity would have been a mere formality and of no use.

28. The real question before us, therefore, is the correctness of the decision of the High Court in the Sangh case (1979 All LJ 178). Before we address ourselves to this question, we would like to point out that the writ petition filed by the Sangh suffered from two serious, though not incurable, defects. The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of Uttar Pradesh and its concerned officers. Those who were vitally concerned, namely, the reserve pool teachers, where not made parties - not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be

joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at Least by some of them being brfore it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.

29. The second defect was in one of the main reliefs asked for. The first two prayers in the said petition were the substantive prayers and were as follows :

> (i) To issue writ, order or direction in the nature of certiorari calling for the records of the case and quashing the U.P. Ordinance 22 of 1978 and the telex dated October 18, 1978 of Education Secretary, U.P., Lucknow and telex dated October 19, 1978 of the Additional Director of Education, Uttar Pradesh, Allahabad.
>
> (ii) To issue a writ of mandamus, order or direction in the nature of mandamus directing the respondents not to implement the Ordinance 22 of 1978 or to make any appointment on the basis of Ordinance 22 of 1978.

While there can be no fault found with the second prayer, it is some-what astonishing to find a prayer asking for "a writ in the nature of certiorari calling for the records of the case and quashing the U.P. Ordinance 22 of 1978". The claiming of such a relief shows a lack of understanding of the true nature of the writ of certiorari.

30. This is not the first occasion on which we have found a similar prayer when the relief claimed was on the basis that a particular legislative measure was unconstitutional and void. It will not, therefore, be out of place if for the sake of future draftsmen of writ petitions, we were to draw attention to the true nature of the writ of certiorari.

31. A writ of certiorari can never be issued to call for the record or papers and proceedings of an Act or Ordinance and for quashing such Act or Ordinance. The writ of certiorari and the writs of habeas corpus, mandamus, prohibition and quo warranto were known in English common law as "prerogative writs". "Prerogative writs" are to be distinguished from "writs of right" also known as "writs of course". Writs issued as part of the public administration of justice are called "writs of right" or "writs of course" because the Crown is bound by Magna Carta of 1215 to issue them, as for instance, a writ to commence an action at common law. Prerogative writs are (or rather, were) so called because they are issued by virtue of the Crown's prerogative, not as a matter of right but only on some probable cause being shown to the satisfaction of the court why the extraordinary power of the Crown should be invoked to render assistance to the party. The common law regards the Sovereign as the source of fountain of justice, and certain ancient remedial processes of an extraordinary nature, known as prerogative writs, have from the earliest times issued from the Court of King's Bench in which the Sovereign was always present in contemplation of law. (See Jowitt's Dictionary of Law, vol. 2, p. 1885, and Halsbury's Laws of England, fourth Edition, vol. 11, para 1451, f. n. 3).

32. We are concerned here with the writ of certiorari. "Certiorari" is a late Latin word being the

passive from the word "Certiorari" meaning 'inform' and occurred in the original Latin words of the writ which translated read "we, being desirous for certain reasons, that the said record should by you be certified to us". Certiorari was essentially a royal demand for information; the king, wishing to be certified of some matter, orders that the necessary information be provided for him. We find in De Smith's Judicial Review of Administrative Action, fourth Edition, page 587, some interesting instances where writs of certiorari were so issued. Thus, these writs were addressed to the escheator or the sheriff to make inquisitions; the earliest being for the year 1260. Similarly, when Parliament granted Edward II one foot-soldier for every township, the writ addressed to the sheriffs to send in returns of their township to the Exchequer was a writ of certiorari. Very soon after its first appearance this writ was used to remove to the King's Court at Westminster the proceeding of inferior court of record; for instance, in 1271 the proceedings in an assize of darrein presentment were transferred to Westminster because of their dilatoriness. This power was also assumed by the Court of Chancery and in the Tudor and early Stuart periods a writ of certiorari was frequently issued to bring the proceedings of inferior courts of common law before the Chancellor. Later, however, the Chancery confined its supervisory functions to inferior courts of equity. In A New Abridgment of the Law, seventh edition, volume II at pages 9 and 10, Matthew Bacon has described a writ of certiorari in these words :

> A certiorari is an original writ issuing out of Chancery, or the King's Bench, directed in the Kings name, to the judges or officers of inferior courts, commanding them to return the records of a cause pending before them, to the end the party may have the more sure and speedy justice before him, or such other justices as he shall assign to determine the cause.

33. By the time of King Charles II, however, applications for certiorari as also for habeas corpus and prohibition came to be made usually in the Court of King's Bench.

34. The different functions of the prerogative writs of prohibition, certiorari and mandamus have been thus described in Halsbury's Laws of England, fourth edition, volume I, in para 80 :

> Historically, prohibition was a writ whereby the royal courts of common law prohibited other courts from entertaining matters falling within the jurisdiction of the common law courts; certiorari was issued to bring the record of an inferior court into the King's Bench for review or to remove indictments for trial in that Court; mandamus was directed to inferior courts and tribunals, and to public officers and bodies, to order the performance of a public duty. All three were called prerogative writs. ... During the seventeenth century certiorari evolved as a general remedy to quash the proceedings of inferior tribunals and was used largely to supervise justice of the peace in the performance of their criminal and administrative functions under various statutes. In 1700 [in R. v. Glamorganshire (Inhabitants) ((1700) 1 Ld Raym 580 : 12 Mod Rep 403). and Groenvelt v. Burnell ((1700) 1 Ld Raym 454 : 1 Com 76 : Holt, KB 184)] it was held that the Court of King's Bench would examine the proceedings of all jurisdictions erected by Act of Parliament, and that, if under pretence of such an Act they proceeded to arrogate jurisdiction to themselves greater than the Act warranted, the Court would send a certiorari to them to have their proceedings returned to the Court, so that the Court might restrain them from exceeding that jurisdiction. If bodies exercising such jurisdiction did not perform their duty, the King's Bench would grant a mandamus. Prohibition would issue if anything remained to prohibit. The ambit of certiorari and prohibition was not

> limited to the supervision of functions the would ordinarily be regarded as strictly judicial, and in the nineteenth century the writs came to be used to control the exercise of certain administrative functions by local and central government authorities which did not necessarily act under judicial forms.

35. By the Administration of Justice (Miscellaneous Provisions) Act, 1938 (1 & 2 Geo. 6 c. 63) a more expeditious procedure was introduced under which instead of writs, orders of mandamus, prohibition and certiorari are to be issued and the writ of quo warranto was abolished and in its place an injunction is to issue against the usurper to the office in question restraining him from acting in that office and, if the case so requires, declaring that office to be vacant. These were, however, procedural changes only. By Order 53 of the Rules of the Supreme Court, 1965, substituted for the old Order 53 by Rules of the Supreme Court (Amendment No. 3), 1977 (S. I. 1977 No. 1955), far-reaching changes, not merely in the form but in the substance of procedural law, were introduced whereby reliefs by way of mandamus, prohibition, certiorari, declaration and injunction have been joined together under the general head of 'judicial review' for which an application can be made for any or all of these reliefs in the alternative or in addition to other reliefs arising out of the same matter and the court is also conferred the power to award damages. An application, however, cannot be made without leave of the court and unless the court "considers that the applicant has a sufficient interest in the matter to which the application relates". The expression 'sufficient interest' has enabled the court in England to enlarge the rule of locus stands by giving to that expression a liberal interpretation.

36. In India, prior to the Constitution, the power to issue prerogative writs was vested only in three High Courts, that is, the High Courts established by Letters Patent issued by Queen Victoria under authority given by the Indian High Courts Act, 1861 (24 & 25 Vict. c. 104) for the establishment of the High Courts of Judicature at Fort William in Bengal and at Madras and at Bombay for these three Presidencies, namely, the High Courts of Calcutta, Madras and Bombay. Hence this Act is generally called the Charter Act and the High Courts established thereunder the Chartered High Courts. These High Courts were the successors so far as their original jurisdictions were concerned of the Supreme Courts which were established in these three Presidency-towns and inherited from those courts the powers of the Court of King's Bench which included the power to issue prerogative writs. Apart from these three High Courts, none of the other High Courts in India possessed this power. The position was changed when the Constitution of India came into force. Article 225 continues the jurisdiction of existing High Courts. Article 226, however, confers upon every High Court the power to issue to any person or authority, including in proper cases, any Government, within the territories in relation to which it exercises jurisdiction, "directions, orders or writs, including writ in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of the rights conferred by Part III or for any other purpose". It may be mentioned that under Article 32 of the Constitution, the same power as has been conferred upon the Courts is conferred upon this Court without any restriction as to territorial jurisdiction but, unlike the High Court, restricted only to the enforcement of any of the rights conferred by Part III of the Constitution, namely, the Fundamental Rights. Referring to Article 226, this Court in Dwarkanath, Hindu Undivided Family v. I.T.O.((1965) 3 SCR 536, 540-41 : AIR 1966 SC 81 : 57 ITR 349) said :

> This article is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue

> writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government into a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels.

37. The fact that the High Courts and a fortiori this Court have power to mould the reliefs to meet the requirements of each case does not mean that the draftsman of a writ petition should not apply his mind to the proper relief which should be asked for and throw the entire burden of it upon the Court. An advocate owes a duty to his client as well as to the court - a duty to his client to give of his best to the case which he has undertaken to conduct for his client and a duty to assist the court to the utmost of his skill and ability in the proper and satisfactory administration of justice. In our system of administration of justice the courts have a right to receive assistance from the Bar and it is the duty of the advocate who drafts a writ petition or any other pleading to ask for appropriate reliefs. The true nature of a writ of certiorari has been pointed out by this Court in several decisions. We need refer to only one of them, namely, Unit Narain Singh Malpaharia v. Additional Member, Board of Revenue, Bihar (1963 Supp 1 SCR 676, 682 : AIR 1963 SC 786 : (1964) 1 SCJ 151). In that case Subba Rao, J., as he then was, speaking for the Court, said :

> Certiorari lies to remove for the purpose of quashing the proceedings of inferior courts of record or other persons or bodies exercising judicial or quasi-judicial functions. It is not necessary for the purpose of this appeal to notice the distinction between a writ of certiorari and a writ in the nature of certiorari : in either case the High Court directs an inferior tribunal or authority to transmit to itself the record of proceedings pending therein for scrutiny and, if necessary, for quashing the same.

38. A writ in the nature in the nature of certiorari is thus a wholly inappropriate relief to ask for when the constitutional validity of a legislative measure is challenged and it is surprising to find that in spite of repeated pronouncements of this Court as to the true nature of this writ it should have been asked for in the Sangh's petition. As pointed out in Dwarkanath case ((1965) 3 SCR 536, 540-41 : AIR 1966 SC 81 : 57 ITR 349), under Article 226 the High Courts have the power to issue directions, orders and writs, including prerogative writs. This power includes the giving of declarations as also consequential reliefs including relief by way of injunction. The proper relief for the petitioners in the Sangh's petition to have asked was a declaration that U.P. Ordinance 22 of 1978 was unconstitutional and void and, if a consequential relief was thought necessary, a writ of mandamus or writ in the nature of mandamus or a direction, order or injunction restraining the State and its officers from enforcing or giving effect to the provision of that Ordinance. The High Court granted the proper relief by declaring that Ordinance to be void but it should have, before proceeding to hear the writ petition, insisted that the petitioners should set their house in order by amending the petition and praying for proper reliefs. The High Court was too indulgent in this

matter. After all, it was not a petition from a prisoner languishing in jail or from a bonded labourer or a party in person or by a public-spirited citizen seeking to bring a gross injustice to the notice of the court. Here, the High Court had before it as the main petitioner a union which had taken collective action to enforce its demands and had defied the Government by flouting its orders and an Ordinance promulgated by the Governor, namely, U.P. Ordinance 25 of 1977, and had by reason of its collective might ultimately made the Government come to terms with it. The petitioners were represented by well-known counsel, one of them practicing in this Court. It is true that neither this Court nor any High Court should dismiss a writ petition on a mere technicality or just because a proper relief is not asked for; but from this it does not follow that it should condone every kind of laxity. We would not have dwelt upon this aspect of the case but for the fact that we find that laxity in drafting all types of pleading is becoming the rule and a well-drafted pleading, an exception. An ill-drafted pleading is an offspring of the union of carelessness with imprecise thinking and its brothers are slipshod preparation of the case and rambling and irrelevant arguments leading to waste of time which the courts can ill afford by reason of their overcrowded dockets.

39. We will now adumbrate the arguments advanced before us at the Bar at the hearing of these appeals and petitions. On behalf of the petitioners and appellants it was submitted that the Sangh case (1979 All LJ 178) was wrongly decided by the Allahabad High Court inasmuch as the provisions of U.P. Ordinance 22 of 1978 were not violative of either Article 14 or 16(1) of the Constitution. It was further submitted that the reserve pool teachers, all of whom possessed the requisite qualifications, formed a separate and distinct class by reasons of the service they had rendered to the State in general and to the educational system in Uttar Pradesh in particular in difficult circumstances and, therefore, they were more suited to be apponinted to the posts which had fallen vacant in recognised institutions and which were to be filled by direct recruitment than those who had not rendered such service. On behalf of the Sangh, which was the only contesting respondent before us, the same arguments which had found favour with the High Court were advanced before us. In the Sangh Case (1979 All LJ 178) the High Court had held that there was no justification for the reserve pool teachers not going through the procedure of filling vacancies prescribed by Section 16-E of the Intermediate Education Act and that mere service rendered by them during the period of the strike in the recognized institutions did not set them part as a separate class. The High Court further held that if the vacancies which had occurred were filled only by appointing teachers from the reserve pool, these teachers would block the chances of promotion of other teachers in the Licentiate Teachers' Grade who were already working in such institutions. The arguments based on the reasoning of the High Court advanced before us on behalf of the Sangh were interlarded with vehement and vociferous professions of the concern felt by the Sangh for the maintenance of a proper educational system in the recognized institutions in Uttar Pradesh. After the major part of the arguments was concluded, at the suggestion of learned counsel appearing for all parties, further hearing of these matters was adjourned to enable the State to fine out a workable solution. When the matter next reached hearing the State expressed its inability to suggest any solution. This was not surprising because in view of the judgment of the High Court in the Sangh case the State obviously could do nothing in the matter. What was, however, surprising was that at this hearing the Sangh made a complete volte-face and withdrew its opposition to the appeals and petitions. On inquiry made from learned counsel for the Sangh, we learnt that in the intervening period all the reserve pool teachers (or at least most of them) had joined the Sangh and become its members. It was somewhat disconcerting to find that the concern professed by the Sangh for a proper educational system in the State of Uttar Pradesh was motivated purely by a consideration of its membership and that once these reserve pool teachers joined the Sangh and swelled its membership and augmented its funds by paying their subscriptions they straightway became in the

eyes of the Sangh suitable to be appointed in accordance with the provisions of U.P. Ordinance 22 of 1978. The Court cannot, however, decide constitutional question either by consent of parties or on concession made at the Bar or because there is no contesting respondent before it. We must, therefore, proceed to determine the matter on its merits irrespective of the attitude of the Sangh bearing in mind both reasoning upon which the High Court proceeded and the arguments advanced by the Sangh up to the time of its volte-face.

40. Article 14 of the Constitution forbids the State to deny to any person equality before the law or the equal protection of the laws within the territory of India. While Article 14 applies to all person within the territory of India, Article 16 applies only to citizens of India. Clause (1) of Article 16 guarantees equality for all citizens in matter relating to employment or appointment to any office under the State. Thus, Article 16 is a instance of the application of the general rule of equality laid down in Article 14, with special reference to the opportunity for appointment and employment under the Government (see Banarsi Das v. state of Uttar Pradesh (1956 SCR 357, 361 : AIR 1956 SC 520 : 1956 SCJ 529). Today the Government is the largest employer in the country and employment of appointment to an office under it is a valuable right possessed by citizens. Article 14, however, does not forbid classification. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the territory of India irrespective of differences of circumstances. It only means that all persons similarly circumstances should be treated alike and there should be no discrimination between one person and another if an regards the subject-matter of the legislation, their position is substantially the same. By the process of classification, the State has the power to determine who should be regarded as a class for the purposes of legislation and in relation to a law enacted on a particular subject. The classification to be valid, however, must not be arbitrary but must be rational. It must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in other who are left out but those qualities or characteristics must have a reasonable nexus or relation to the object of the legislation. In order to pass the test, two conditions have to be fulfilled, namely, : (1) that the classification must be founded on an intelligible differential which distinguishes those that are grouped together from others, and (2) the differential must have a rational nexus or relation to the object sought to be achieved by the legislation (see. In re The Special Courts Bill, 1978 ((1979) 2 SCR 476, 535 : (1979) 1 SCC 380, 425 : AIR 1979 SC 478)).

41. If Ordinance 22 of 1978 satisfies these two conditions it cannot be said to infringe the provisions of Article 14 nor would it then be violative of Article 16(1) for it is only when citizens are similarly circumstances that they can claim equality of opportunity in matters relating to employment or to any office under the State. To afford equal opportunity in these matters to those not similarly circumstanced would be to treat unequals as equal and would violate Article 14.

42. The first question which, therefore, arises is "Whether there is any intelligible differentia which distinguishes teachers put in the reserve pool by Ordinance 22 of 1978 from other applicants fro posts of teachers in recognized institutions ? "The reserve pool teachers were those who had come forward at a time when the teachers employed or a large majority of such teachers, in the recognized institutions, had gone on an indefinite strike and had continued the strike even after it had been declared illegal. Had the strike continued almost all the recognized institutions in the State would have had to close down putting the students to great hardship and suffering and causing a break in their education. It was in these difficult and trying times that the reserve pool teachers came forward to man the recognized institutions. Presumably, it was this that brought about a settlement of the strike. It must be borne in mind that the reserve pool teachers joined the recognized institutions during the period of the stir in circumstances in which they exposed themselves to great hostility

from the striking teachers. They, therefore, did so running a certain amount of risk for there is always a possibility of a strike turning violent. Yet another hazard they faced was that, were some of the reserve pool teachers to apply later for the posts of teachers in a recognized institution which had fallen vacant and were to be selected under Section 16-E of the Intermediate Education Act, they would have had to work together with those teachers who had gone on strike and had been taken back and they ould then have to face their hostility. The assumption made by the High Court that the appointment of reserve pool teachers to the vacancies which had occurred blocked the chances of promotion of those working in the Licentiate Teachers Grade was factually not correct. Sub-section (2) of Section 4 of U.P. Ordinance 10 of 1978 as also of U.P. Ordinance 22 of 1978 expressly provided that the reserve pool teachers were to be appointed only to those vacancies in recognized institutions which were to be filled by direct recruitment. There was thus no question of vacancy to be filled by promotion being filled by any teacher in the reserve pool or of such reserve pool teachers blocking the chances of promotion of other teachers working in the Licentiate Teachers' Grade in recognized institutions. The reserve pool teachers were originally appointed during the period of the strike under U.P. Ordinance 25 of 1977 and it should be borne in mind that this Ordinance expressly required appointment of persons possessing requisite qualifications. All the reserve pool teachers thus possessed the requisite qualifications and and this fact is not disputed before us. In the course of its judgment the High Court has also proceeded upon the basis that educational institutions in the State of Utter Pradesh did not constitute an essential service but had been declared so by the notification dated December 24, 1977, issued under the U.P. Essential Services Maintenance Act, 1966. This assumption was also not correct. As pointed out earlier, sub-clause (ii) of clause (a) of Section 2 of the U.P. Essential Services Maintenance Act, 1966, made service under an educational institution recognized inter alia by the Board of High School and Intermediate Education, Uttar Pradesh,. an essential service. The said notification dated December 24, 1977, issued under Section 3(1) of that act was to prohibit strikes in service under educational institutions. An important factor in considering whether the reserve pool teachers could constitute a separate class having an intelligible differential distinguishing them form other applicants for the posts of teachers in recognized institutions is that usually every year the number of vacancies which occur in recognized institutions is more than the number of reserve pool teachers. Admittedly, the vacancies which were sought to be filled by U.P. Ordinance 10 of 1978 and thereafter by U.P. Ordinance 22 of 1978 were more than the number of reserve pool teachers. These vacancies had occurred within a few months of the strike being settled. Almost all who applied for these posts and were not in the reserve pool must have been qualified to be appointed to posts in recognized institutions during the pendency of the strike. None of these applicants, however, came forward to join a recognized institution during that period as the reserve pool teachers did. The other applicants for the reserve pool teachers and it would be in a different class from the reserve pool teachers and it would be wrong to equate these two classes together as forming just one class.

43. The second question is "Whether this differentia which distinguishes reserve pool teachers from other applicants for the posts of teachers in recognized institutions has a rational relation to the object sought to be achieved by U.P. Ordinances 10 and 22 of 1978 ? "These Ordinances cannot be read in isolation. They must be read in the context of the Intermediate Education Act. As the Presumable to that Act shows, it was enacted because it was felt expedient to establish a Board to take the place of the Allahabad University inter alia in regulating and supervising the system of High School and Intermediate Education in the United Provinces, as the state of Uttar Pradesh was called at the tie of the passing of that Act. The object of that Act as shown by its Preamble and different provisions is to ensure that educational institutions managed and conducted by private management are staffed and run properly. To provide therefore that those who had already shown

their concern for the maintenance and continuity of the educational system in the State should receive a preferential treatment in recruitment over those who had not shown such concern cannot be said to be foreign to the object of the legislation. If the State were not to appreciate in a concrete form the services of those who came to its aid in an emergency, the result would be that in a future crisis nobody would be willing to come forward to render similar assistance to the State. If, when faced with difficulties in maintaining a service, and particularly an essential service, the State want to overcome those difficulties and to ensure that a similar situation does not arise in the future, it is open to the State to do so by motivating people to come forward and render aid to the State by making then feel that if they do so, they would receive a reward. Such motivation would be brought about by rewarding those who have rendered such service in the past. Giving a preferential right in recruitment would be both a reward for past services of this kind and an incentive to other tp come forward and render similar assistance to the State in the future. It cannot, therefore, be said that the action of the State in giving a reward which would at the same time be an incentive to others has no rational basis with the objective sought to be achieved by the concerned legislation. In fact the employment of such persons by giving them preference in recruitment would be conductive to the maintenance and smooth functioning of an essential service in the future. As the long title and heading of Section 4 of U.P. Ordinance 10 of 1978 as also of U.P. Ordinance 22 of 1978 show, its object was to absorb in recognized institutions those teachers who had come to the assistance of the State during the period of the indefinite strike called by the Sangh. It was thus a reward to those teachers for the services rendered by them and an incentive to others to render similar service in the future. The broad objective of the Intermediate Education Act is to have a proper system of High School and Intermediate Education in the State of Uttar Pradesh and any action taken by the State to keep this system functioning would be in furtherance of this objective and would have a rational nexus with the objective of the Intermediate Education Act. Ordinances 10 and 22 of 1978 would thus fall in the category of such action taken by the State and would, therefore, be in furtherance of the objective sought to be achieved by the Intermediate Education Act.

44. The reserve pool teachers thus formed a separate and distinct class fro other applicants for the posts of teachers in recognized institutions. The differential which distinguished the class of reserve pool teachers from the class of other applicants for the posts of teacher in recognized institutions is the services rendered by the reserve pool teachers to the State and its educational system in a time of crisis and this differential bears a reasonable and rational nexus or relation to the object sought to be achieved by Ordinances 10 and 22 of 1978 read with the Intermediate Education Act, namely, to keep the system of High School and Intermediate Education in the State functioning smoothly without interruption so that the students may not suffer a determent. Those two classes of persons, namely, the class of reserve pool teacher and the class of other applicants for the posts of teacher in the recognized institutions, are not similarly circumstances and, therefore, there cannot be any question of giving these tow classes of persons quality of opportunity in matters relating to employment guaranteed by Article 16(1) of the Constitution. Thus, neither Article 14 no Article 16 (1) of the Constitution was violated by the provisions of either U.P. Ordinance 10 of 1978 or U.P. Ordinance 22 of 1978.

45. In our opinion, the High Court was in error in holding that U.P. Ordinance 22 of 1978 was void on the ground that its provisions infringed Articles 14 and 16(1) of the Constitution. If U.P. Ordinance 22 of 12978 was not void, equally U.P. Ordinance 10 of 1978 was not void on this ground. Those teachers from the reserve pool who had been appointed in pursuance of either of these two Ordinances were thus validly appointed and their services could not have been terminated on the ground that their appointments were contrary to law. The aforesaid order dated May 21, 1979, of the Government of Uttar Pradesh and the aforesaid order of the Additional Director of

Education, Utter Pradesh, dated May 29, 1979, of the Government of Utter Pradesh and the aforesaid order of the Additional Director of Education. Uttar Pradesh, dated May 29, 1979, addressed to all the District Inspectors of Schools in Uttar Pradesh, directing that the service of those reserve pool teachers who had been appointed could not be continued and that no weightage should be given to the reserve pool teachers in making future appointments were, therefore, bad in law. Consequently, the termination of the services of those reserve pool teachers who had already been appointed was also bad in law. The Sangh case (1979 All LJ 178) was wrongly decide by the High Court and required to be overruled. The judgments under appeal must, therefore, be reserved and the appeals and writ petitions before us allowed.

46. The question which remains to be considered is the relief to which the reserve pool teachers are entitled. No difficulty arises in the case of those reserve pool teaches who were already appointed prior to the judgment of the High Court in the Sangh case (1979 All LJ 178) and whose services were thereafter terminated and who have continued to be in service by reason of the stay orders passed by the High Court or this Court. They are entitled to continue in service. They are entitled to continue in service. They were, however, appointed on probation for a period of one year and in the ordinary course they would have been confirmed long back. No such confirmation has, however, taken place by reason of the judgment of the High Court in the Sangh case (1979 All LJ 178). We have held that the Sangh case (1979 All LJ 178) was wrongly decided. These reserve pool teachers have, therefore suffered by reasons of a wrong judgment given by the High Court and they are entitled to have the wrong done to the rectified. It has not been alleged that any of the was or is unfit to be confirmed. In our opinion, each of them should, therefore, be deemed to be confirmed in the post to which he or she was appointed from the date on which he or she would have completed his or her period of probation in the normal and usual course.

47. Different considerations, however arise with respect to those reserve pool teachers who were not appointed to the posts which had fallen vacant. By the interim order made in the writ petitions filed to challenge the vires of U.P. Ordinance 10 of 1978, the operation of that Ordinance was stayed but it was directed that such stay would not affect appointments already made. A similar interim order was passed in the Sangh's petition. No appointment of any reserve pool teacher was, therefore, made during the pendency of the said interim orders or after the decision of the High Court in the Sangh case (1979 All LJ 178). On behalf of these reserve pool teachers it was submitted that U.P. Ordinance 10 of 1978 was repealed by U.P. Ordinance 22 of 1978 and that such repeal did not affect rights which had already accrued to them and had become vested in them under U.P. Ordinance 10 of 1978. It was further submitted that in any event if this Court holds U.P. Ordinance 22 of 1978 to be valid those reserve pool teachers who had not been appointed had also acquired a vested right to be so appointed under that Ordinance. It was stated that after the decision in the Sangh case (1979 All LJ 178) the Governor of Utter Pradesh had withdrawn U.P. Ordinance 22 of 1978 under sub-clause (b) of clause (2) of Article 213 of the Constitution and that assuming that this Ordinance was not so withdrawn, it had ceased to operate at the expiration of the period specified in sub-clause (a) of clause (2) of Article 213 and that in either event the effect was the same as if that Ordinance had been repealed. In this connection reliance was placed upon Sections 6 and 30 of the U.P. General Clauses Act, 1904. We have already seen that under Section 30 the provisions of U.P. General Clause Act apply to Ordinances promulgated by the Governor of Utter Pradesh under Article 213 of the Constitution. Section 6 deals with the effect of repeal of an enactment and it provides that where any Act repeals any enactment, then, unless a different intention appears, the repeal shall not inter alia affect and right acquired under the enactment so repealed. On the basis of these sections it was submitted that the effect of the Governor withdrawing an Ordinance under Article 213(2)(b) of the Constitution and the effect of an Ordinance ceasing to operate under Article 213(2)(a) of the

Constitution are the same as the effect of the repeal of an Act and Section 6 of the U.P. General Clause Act, therefore, applies in both these cases.

48. The record is not clear whether U.P. Ordinance 22 of 1978 was in fact withdrawn by the Governor under Article 213(2)(b) of the Constitution nor has any notification to that effect been brought to our notice. It is, however, unnecessary to consider the above submissions as, in our opinion, it is immaterial whether U.P. Ordinance 22 of 1978 was withdrawn by the Governor or had ceased to operate because, according to us, what is involved here is a far more vital and important principle. Undoubtedly, a teacher in the reserve pool had a right under U.P. Ordinance 10 of 1978 as also under U.P. Ordinance 22 of 1978 to be appointed to a substantive vacancy occurring in the post of a teacher in a recognized institution which was to be filed by direct recruitment. The Explanation to Section 4 of both the Ordinances is not relevant for this purpose for all that was provided by it was that no teacher in the reserve pool was entitled to claim an appointment to a post carrying the same or a higher grade. What this Explanation meant was that no reserve pool teacher could claim that he should be appointed to the identical post which he had held during the period of the strike or to such post either in the same recognized institution or in any other recognized institution whether it carried the same grade or a higher grade. What is required to be noted is that the right which these teacher had under Ordinance 10 of 1978 continued under U.P. Ordinance 22 of 1978 because that Ordinance came into force with retrospective effect from June 24, 1978 that is, the date on which U.P. Ordinance 10 of 1978 was promulgated and by Section 8 of U.P. Ordinance 22 of 1978 which repealed U.P. Ordinance 10 of 1978 it was expressly provided that anything done or any action taken under U.P. Ordinance 10 of 1978 should be deemed to have been done or taken under U.P. Ordinance 22 of 1978 as if U.P. Ordinance 22 of 1978 were in force at all material times. The register of reserve pool teachers maintained under U.P. ordinance 10 of 1978 must, therefore, be deemed to be a register of reserve pool teachers to be maintain under U.P. Ordinance 22 of 1978. As appears from the judgment of the High Court in the Sangh case (1979 ALl LJ 178) as against 2257 reserve pool teachers there ware at that time 2740 substantive vacancies in recognized institution. These vacancies were required to be filled by direct recruitment. This fact is not disputed before us. But for the orders of the High Court, all reserve pool teachers would, therefore, have been appointed in accordance with the provisions of either U.P. Ordinance 10 of 1978 or U.P. Ordinance 22 of 1978. They could not be so appointed by reasons of the interim orders passed by the Allahabad High Court and the judgment of that High Court in the Sangh case (1979 All LJ 178). Where a court has passed an interim order which has resulted in an injustice, it is bound at the time of he passing of the final order, if it taken a different view at that time, to undo that injustice as far as it lies within its power. Similarly, where an injustice has been done by the final order of a court, the superior court, if it taken a different view, must, as far as lies within its power seek to undo that injustice. Great prejudice has been suffered and injustice done to those reserve pool teacher who had not been appointed to substantive vacancies which had occurred in the posts requiring to be filled by direct recruitment. Since we have held that the Sangh case (1979 All LJ 178) was wrongly decided, it is our duty to undo this injustice. There are, however certain difficulties in directing these teachers to be appointed rom the dates on which they would have been respectively appointed but for the orders of the High Court because those vacancies have already been filled and in all likelihood those so appointed have been confirmed in their costs and ought not to be now thrown our therefrom for no fault of theirs. In view of these fact we feel that it would be in consonance with justice and equality and fair to all parties concerned if the remaining teachers in the reserve pool are appointed in accordance with the provisions of U.P. Ordinance 22 of 1978 to substantive vacancies in the posts of teachers in recognized institutions which are required to be filled by direct recruitment as and when each such vacancy occurs.

49. What we have said above will apply equally to those reserve pool teachers whose services were terminated and who had not filed any writ petition or who had filed a writ petition but had not succeeded in obtaining a stay order as also to those reserve pool teachers who had not been appointed in view of the interim order passed by the High Court and thereafter by reason of the judgment of the High Court in the Sangh case (1979 All LJ 178) and who have not filed any writ petition.

50. To summarize our conclusions :

(1) A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties.

(2) The Allahabad High Court ought not to have proceeded to hear and dispose of Civil Miscellaneous Writ No. 9174 of 1978 - Uttar Pradesh Madhyamik Shikshak Sangh v. State of Uttar Pradesh (1979 All LJ 178) - without insisting upon the reserve pool teachers being made respondents to that writ petition or at least some of them being made respondents thereto in a representative capacity as the number of the reserve pool teachers was tool large and, had the petitioners refused to do so, to dismiss that writ petition for non-joinder of necessary parties.

(3) A writ of certiorari or a writ in the nature of certiorari cannot be issued for declaring an Act or an Ordinance as unconstitutional or void. A writ of certiorari or a writ in the nature of certiorari can only be issued by the Supreme Court under Article 32 of the Constitution and a High Court under Article 226 of the Constitution to direct inferior courts, tribunals or authorities to transmit to the court the record of proceedings pending therein for scrutiny and, if necessary, for quashing the same.

(4) Where it is a petitioner's contention that an Act or Ordinance is unconstitutional or void, the proper relief for the petitioner to ask is a declaration to that effect and if it is necessary, or thought necessary to ask for a consequential relief, to ask for a writ of mandamus or a writ in the nature of mandamus or a direction, order or injunction restraining the concerned State and its officers from enforcing or giving effect to the provisions of that Act or Ordinance.

(5) Though a High Court ought not to dismiss a writ petition on a mere technicality or because a proper relief has not been asked for, it should not, therefore, condone every kind of laxity, particularly where the petitioner is represented by an advocate.

(6) The Allahabad High Court, therefore, ought not to have proceeded to hear and dispose of the said Civil Miscellaneous Writ No. 9174 of 1978 without insisting upon the petitioners amending the said writ petition and praying for proper reliefs.

(7) By reason for the provisions of Section 30 of the General Clause Act, 1897, read with clauses (54) and (61) of Section 3 thereof, it would not be wrong phraseology, though it may sound inelegant, to refer to a provision of an Ordinance promulgated

by the President under Article 123 of the Constitution or prior to the coming into force of the Constitution of India, by the Governor-General under the Indian Councils Act, 1861, or the Government of India, Act, 1915, or the Government of India Act, 1935, as "section" and to a sub-division of a section, numbered in round brackets, as "sub-section".

(8) Similarly, by reason of the provisions of Section 30 of the Uttar Pradesh General Clauses Act, 1904, read with clause (40) and (43) of Section 4 thereof, it would not be wrong phraseology, though it may sound inelegant, to refer to a provision of an Ordinance promulgated by the Governor of Uttar Pradesh under Article 213 of the Constitution or prior to the coming into force of the Constitution of India, by the Governor of the United provinces under the Government of India Act, 1935, as "section and to a sub-division of a section, numbered in round brackets, as "sub-section".

(9) Neither the Uttar Pradesh High Schools and Intermediate Colleges (Reserve Pool Teachers) Ordinance, 1978 (U.P. Ordinance 10 of 1978), nor the Uttar Pradesh High Schools and Intermediate Colleges (Reserve Pool Teachers) (Second) Ordinance, 1978, (U.P. Ordinance 22 of 1978), infringed Article 14 of Article 16(1) of the Constitution or was unconstitutional or void.

(10) The reserve pool teachers formed a separate and distinct class from other applicants for the posts of teachers in recognized institutions.

(11) The differentia which distinguished the class of reserve pool teachers from the class of other applicants for the posts of teachers in recognized institutions was the service rendered by the reserve pool teachers to the State and its educational system in a time of crisis.

(12) The above differentia bore a reasonable and rational nexus or relation to the object sought to be achieved by U.P. ordinance 10 and 22 of 1978 read with Intermediate Education Act, 1921, namely, to keep the system of High School and Intermediate Education in the State of Uttar Pradesh functioning smoothly without interruption so that the students may not suffer a detriment.

(13) The preferential treatment in the matter of requirement to the posts of teachers in the recognized institutions was, therefore, not discriminatory and did not offend Article 14 of the Constitution.

(14) As the above two classes were not similarly circumstanced, there could be no question of these classes of persons being entitled to equality of opportunity in matters relating to employment guaranteed by Article 16(1) of the Constitution and the preferential treatment given to the reserve pool teachers was, therefore, not violative of Article 16(1) of the Constitution.

(15) The case of Uttar Pradesh Madhyamik Shikshak Sangh v. State of U.P. (1979 All LJ 178) was wrongly decided by the Allahabad High Court and requires to be overruled.

(16) The termination of the services of the reserve pool teachers following upon the

judgment of the Allahabad High Court was contrary to law and the order dated May 21, 1979, of the Government of Uttar Pradesh and the order dated May 29, 1979 of the Additional Director of Education, Uttar Pradesh, were also bad in law.

(17) Each of the reserve pool teaches had a right under U.P. Ordinance 10 of 1978 as also under U.P. Ordinance 22 of 1978 to be appointed to a substantive vacancy occurring in the post of a teacher in a recognized institution which was to be filled by direct recruitment.

(18) Each of the reserve pool teaches who had already been appointed and was continuing in service by reason of the stay orders passed either by the Allahabad High Court or by this Court is entitled to continue in service and to be confirmed in the post to which he or she was appointed with effect from the date on which he or she would have been confirmed in the normal and usual course.

(19) Those reserve pool teaches who were not appointed as provided by U.P. Ordinance 10 of 1978 or U.P. Ordinance 22 of 1978 were not so appointed because of the interim orders passed by the Allahabad High Court and the judgment of the High Court in the Sangh case (1979 All LJ 178). In view of the fact that this Court has held that the Sangh case (1979 All LJ 178) was wrongly decided by the High Court, the injustice done to these reserve pool teachers requires to be undone.

(20) In view of the fact that the vacancies to which these reserve pool teachers would have been appointed have already been filled and in all likelihood those so appointed have been confirmed in their posts, to appointed these reserve pool teachers with effect from any retrospective date would be to throw out the present incumbents from their jobs for no fault of theirs. It will, therefore, be in consonance with justice and equity and fair to all parties concerned if the remaining reserve pool teachers are appointed in accordances with the provisions of U.P. Ordinance 22 of 1978 to substantive vacancies occurring in the posts of teachers in the recognized institutions which are to be filled by direct recruitment as and when each such vacancy occurs.

(21) This will equally apply to those reserve pool teachers whose services were terminated and who had not filed any writ petition or who had filed a writ petition but had not succeeded in obtaining a stay order, as also to those reserve pool teaches who had not been appointed in view of the interim orders passed by the High Court and thereafter by reason of the judgment of the High Court in the Sangh case (1979 All LJ 178) and who have not filed and writ petition.

51. For the reasons mentioned above, we allow these appeals reserve the judgment appealed against and set aside the orders under appeal, and allow these writ petitions and make the rule issued in each of the absolute. We overrule the judgment of the Allahabad High court in the case of Uttar Pradesh Madhyamik Shikshak Sangh v. State of U.P. (1979 All LJ 178) and in these appeals and writ petitions we pass further orders as follows :

(1) We declare the order of termination of the services of reserve pool teachers to be contrary to law and we quash and set aside the said orders as also the orders dated May 21, 1979, of the Government of Uttar Pradesh and the order dated May 29, 1979, of the Additional Director of Education, Uttar Pradesh, and all other orders, if

any, to the same effect.

(2) We direct that each of the reserve pool teachers who had already been appointed and was continuing in service by reason of the stay orders given either by the Allahabad High Court or by this Court is entitled to continue in service and is entitled to be confirmed in the post to which he or she was pointed with effect from the date on which he or she would have been confirmed in the normal and usual course.

(3) We further direct that the remaining teachers in the reserve pool be appointed in accordance with the provisions of the Uttar Pradesh High Schools and Intermediate Colleges (Reverse Pool Teachers) (Second) Ordinance, 1978 (U.P. Ordinance 22 of 1978), to substantive vacancies in the posts of teachers in recognised in constitutions which are required to be filled by direct recruitment as and when each such vacancy occurs.

(4) This direction will apply to those reserve pool teachers whose services were terminated and who not filed any writ petition or who had filed a writ petition but had not succeeded in obtains a stay order, and to those reserve pool teaches who had not been appointed in view of the interim order passed by the High Court and thereafter by reasons of the judgment of the High Court in the Sangh case (1979 All LJ 178) and who have not filed any writ petition.

52. Before we part with these appeals and writ petitions we would like to mention that in some of these writ petitions the only relief claimed is in general and vague terms. We reproduced that prayer, retaining its errors of grammar and syntax. That prayer is an follows :

> It is, therefore, prayed that this Hon'ble Court be pleased to issue such writ, order or directions for the enforcement of the fundamental rights of the petitioner as are deemed fit and reasonable by this Hon'ble Court; and to grant such other relief to the petitioner as is deemed fit and reasonable for the redress of their grievance.

In the light of what we have said above about the defective prayer in the writ petition filed by the Sangh in the Allahabad High Court, we ought to insist upon these petitioners setting their house in order by amending the prayer clause and asking for proper reliefs. These petition are drafted by advocates. It is true that these petitioners are poor and in must not have been possible for them to pay substantial fees to their advocates but that cannot be a reason for an advocate who undertakes a client's case not to give of his best to his client. An advocate should not measure the qualify of work he will put into a case by the quantum of fees he receives. Our insisting upon these petitions being so amended would, however, involve delay and as some of these petitioners are reserve pool teacher who were not appointed by reason of the interim orders passed by the Allahabad High Court and the judgment of that High Court in the Sangh case (1979 All LJ 178), it would result in further hardship to them by delaying their employment. We have, therefore, not insisted upon these writ petitions being so amended but passed in these writ petitions also the order set out above.

53. So far as the costs of these appeals and writ petitions are concerned, it would not be fair to make the State pay such costs because that would be to penalize the State for respecting the judgment of the High Court by not filing an appeal against it. It would equally be not fair to penalize the Committee of Management of recognized institution because they only acted under the directions of

the State Government to terminate the service of reserve pool teaches. The party which ought properly to pay the costs of these appeals and writ petitions is the Uttar Pradesh Madhyamik Shikshak Sangh. In view, however, of the fact that during the course of hearing of these appeals and writ petitions, the reserve pool teachers or a large majority of them including the appellants and petitioners have become members of this Sangh to direct the Sangh to pay the costs would to be create bad pool between the Sangh and some of its members. A fair order of costs would, therefore, be that so far as the appeals are concerned the parties should bear and pay their own costs throughout and that so far as the writ petitions are concerned the parties should bear and pay their own costs thereof; and we order accordingly.

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