[2014] 13 S.C.R. 642

A STATE OF U.P. & ORS.

v.

PAWAN KUMAR DIVEDI & ORS.

(Civil Appeal No. 3989 of 2006)

B SEPTEMBER 2, 2014

[R.M. LODHA, CJI, JAGDISH SINGH KHEHAR, J. CHELAMESWAR, A. K. SIKRI AND ROHINTON FALI NARIMAN, JJ.]

C *Service Law – Salary – Uttar Pradesh Junior High Schools (Payment of Salaries of Teachers and Other Employees) Act, 1978 – ss. 2(j) and 10 – Uttar Pradesh Basic Education Act, 1972 – Three categories of recognised Junior High Schools; (one) having Classes I to VIII, i.e., Classes I* D *to V (Junior Basic School) and so also Classes VI to VIII (Senior Basic School), (two) a school as above and upgraded to High School or intermediate standard and (three) Classes VI to VIII (Senior Basic School) initially with no Junior Basic School (Classes I to V) being part of the said school – Dispute* E *in respect of third category of the schools where Classes I to V are added after obtaining recognition to the schools which are recognized and aided for imparting education in Classes VI to VIII – Entitlement of teachers of primary section Classes I to V in such schools to benefit of s.10 of the 1978 Act –* F *Whether teachers of privately managed primary schools and primary sections of privately managed high schools are eligible to receive their salaries from the State Government – Held: If a Junior Basic School (Classes I to V) is added after obtaining necessary recognition to a recognized and* G *aided Senior Basic School (Classes VI to VIII), then surely such Junior Basic School becomes integral part of one school, i.e., Basic School having Classes I to VIII – Expression "Junior High School" in the 1978 Act is intended to refer to the schools imparting basic education, i.e., education up to*

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VIII class – Merit in the argument that schools having Junior Basic Schools and the Senior Basic Schools either separately or together are under the same Board, i.e., the Board of Basic Education, as per the 1972 Act – Junior High School necessarily includes Classes I to V when they are opened in a Senior Basic School (Classes VI to VIII) after obtaining separate recognition and for which there may not be a separate order of grant-in-aid by the Government.

Dismissing the appeals, the Court

HELD:1. Recognised Junior High Schools can be of three kinds: (one) having Classes I to VIII, i.e., Classes I to V (Junior Basic School) and so also Classes VI to VIII (Senior Basic School), (two) a school as above and upgraded to High School or intermediate standard and (three) Classes VI to VIII (Senior Basic School) initially with no Junior Basic School (Classes I to V) being part of the said school. [Para 43][672-D]

2. If a Junior Basic School (Classes I to V) is added after obtaining necessary recognition to a recognized and aided Senior Basic School (Classes VI to VIII), then surely such Junior Basic School becomes integral part of one school, i.e., Basic School having Classes I to VIII. It is not appropriate to give narrow meaning to the expression "Junior High School". That Legislature used the expression Junior High School and not the Basic School as used and defined in the Uttar Pradesh Basic Education Act, 1972 is insignificant. This view is fortified by the fact that in Section 2(j) of the Uttar Pradesh Junior High Schools (Payment of Salaries of Teachers and Other Employees) Act, 1978, the expressions defined in the 1972 Act are incorporated. [Para 44][672-H; 673-A-D]

3. There is merit in the argument that the schools having the Junior Basic Schools and the Senior Basic

A **Schools either separately or together are under the same Board, i.e., the Board of Basic Education, as per the 1972 Act. It is held, as it must be, that Junior High School necessarily includes Classes I to V when they are opened in a Senior Basic School (Classes VI to VIII) after**
B **obtaining separate recognition and for which there may not be a separate order of grant-in-aid by the Government. [Para 46][674-C-E]**

Vinod Sharma and others v. Director of Education
C *(Basic) U.P. and Others* **(1998) 3 SCC 404 : 1998 (2) SCR 382 – affirmed.**

TMA Pai Foundation v. State of Karnataka **(2002) 8 SCC 481 : 2002 (3) Suppl. SCR 587;** *J.P. Unnikrishnan v. State of AP* **(1993) I SCC**
D **645 : 1993 (1) SCR 594;** *State of HP v. HP State Recognised High Schools Managing Committee* **(1995) 4 SCC 507;** *State of UP v. Babu Ram Upadhya* **AIR 1961 SC 751 : 1961 SCR 679;**
E *Nagar Mahapalika, Kanpur v. Vibha Shukla (Smt.) and Others* **(2007) 15 SCC 161 : 2007 (7) SCR 488;** *Barras v. Aberdeen Steam Trawling and Fishing Company* **1933 All ER 52;** *Gallagher v. Church of Jesus Christ of Latter-Day Saints*
F **(2008) 4 All ER 640;** *Diamond Sugar Mills Ltd. v. the State of Uttar Pradesh* **AIR 1961 SC 652 : 1961 SCR 242;** *Sirsilk v. Textile Committee and Others* **1989 Supp 1 SCC 168 : 1988 (2) Suppl. SCR 880;** *Chairman, Indore Vikas Pradhikaran*
G *v. Pure Industrial Coke & Chemicals Ltd. and Others* **(2007) 8 SCC 705 : 2007 (6) SCR 799;** *State of U.P. v. Committee of Management, Mata Tapeshwari* **(2010) 1 SCC 639 : 2009 (15) SCR 1276 – referred to.**

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Maxwell 'On Interpretation of Statutes', **10th Edn. – referred to.** A

Case Law Reference:

1998 (2) SCR 382	**affirmed**	**Para 2**
2002 (3) Suppl. SCR 587	**referred to**	**Para 10**
1993 (1) SCR 594	**referred to**	**Para 10**
(1995) 4 SCC 507	**referred to**	**Para 10**
1961 SCR 679	**referred to**	**Para 11**
2007 (7) SCR 488	**referred to**	**Para 11**
1933 All ER 52	**referred to**	**Para 12**
(2008) 4 All ER 640	**referred to**	**Para 12**
1961 SCR 242	**referred to**	**Para 12**
1988 (2) Suppl. SCR 880	**referred to**	**Para 12**
2007 (6) SCR 799	**referred to**	**Para 12**
2009 (15) SCR 1276	**referred to**	**Para 17**

B C D E

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3989 of 2006.

From the Judgment and Order dated 19.07.2004 passed by the Hon'ble High Court of Judicature at Allahabad in Special Appeal No. 30 of 2000. F

WITH

Civil Appeal Nos. 3990, 3991, 3992, 3993, 3994 of 2006 & 6111 of 2008.

G

P.P Rao, Sunil Gupta, Sr Advs., M.R. Shamshad, Shashank Singh, U. Umar, Vikrant Yadav, Rohit, Advs. for the Appellants.

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A M.P. Raju, P. George Giri, James P. Thomas, K.K. Mishra, Raghvendra Shukla, Gaurav Jain, Abha Jain, N.K. Jain, Vivek Vishnoi, Mukesh Verma, Pawan Kumar Shukla, Yash Pal Dhingra, E.C. Vidya Sagar, Shankar Divate, R.D. Upadhyay, Purnima Bhat, Priya Puri, Advs. for the Respondents.

B The Judgment of the Court was delivered by

R. M. LODHA, CJI. 1. The common question for consideration in this group of seven appeals is whether teachers of privately managed primary schools and primary C sections of privately managed high schools are eligible to receive their salaries from the State Government?

2. These appeals were first listed before the two-Judge Bench. While noticing the provisions of Uttar Pradesh High D Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 (for short 'the 1971 Act'), Uttar Pradesh Basic Education Act, 1972 (for short 'the 1972 Act'), Uttar Pradesh Recognised Basic Schools (Recruitment and Conditions of Service of Teachers and Other E Conditions) Rules, 1975 (for short 'the 1975 Rules'), Uttar Pradesh Junior High Schools (Payment of Salaries of Teachers and Other Employees) Act, 1978 (for short 'the 1978 Act'), Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) F Rules, 1978 (for short 'the 1978 Rules'), the two-Judge Bench felt that a three-Judge Bench decision of this Court in *Vinod Sharma*[1] required reconsideration.

3. The relevant portion of the reference order dated 08.09.2006[δ] reads as follows:

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"In the present appeals, submissions which were similar to those raised in the writ petitions filed by Vinod Sharma[1]

[1] Vinod Sharma and others v. Director of Education (Basic) U.P. and others; [(1998) 3 SCC 404]

[δ] reported in (2006) 7 SCC 745

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and others before the High Court and in the special leave petition in this Court have been repeated and reiterated. What has been highlighted is the fact that having regard to the various government orders, it would be quite evident that the State Government had never intended to bring the primary sections of the different junior basic schools, junior high schools and intermediate colleges within the scope of the Payment of Salary Act, 1978 and that a deliberate and conscientious decision was, therefore, made in treating the "junior basic schools" differently from "junior high schools". It is the latter category of schools that were brought within the scope of the Payment of Salary Act, 1978.

While noticing the fact that "junior basic schools" and "junior high schools" were treated differently, the High Court and, thereafter, this Court appear to have been swayed by the fact that certain schools provided education from Classes I to X as one single unit, although, the same were divided into different sections, such as, the primary section, the junior high school section, which were combined together to form the junior basic section from Classes I to VIII, and the high school section comprising Classes IX and X. In fact, in one of these appeals where a recognised Sanskrit institution is involved, the said institution is imparting education both for the primary section, the high school section, the intermediate section and the BA section. The Mahavidyalaya is thus imparting education from Class I up to graduate level in a recognised institution affiliated to the Sampurnanand Sanskrit University, Varanasi. It has been contended by Dr. Padia on behalf of the institution that the said institution is one unit having different sections and the teachers of the institution are teachers not of the different sections but of the institution itself and as a result no

A discrimination could be made amongst them. This was precisely one of the arguments advanced in *Vinod Sharma*[1] which was accepted by this Court.

B However, it appears to us that both the High Court and this Court appear to have lost sight of the fact that education at the primary level has been separated from the junior high school level and separately entrusted under the different enactments to a Board known as the Uttar Pradesh Board of Basic Education constituted under C Section 3 of the Uttar Pradesh Basic Education Act, 1972 and the same Board was entrusted with the authority to exercise control over "junior basic schools" referred to in the 1975 Rules as institutions imparting education up to the Vth class.

D In our view, the legislature appears to have made a conscientious distinction between "junior basic schools" and "junior high schools" and treated them as two separate components comprising "junior basic education" in the State of Uttar Pradesh. Accordingly, in E keeping with the earlier government orders, the Payment of Salary Act, 1978 did not include primary sections and/ or separate primary schools within the ambit of the 1978 Act.

F Of course, it has been conceded on behalf of the State Government that an exemption was made in respect of 393 schools which had been continuing to function from prior to 1973 and the teachers had been paid their salaries continuously by the State Government. In the case G of the said schools, the State Government took a decision to continue to pay the salaries of the teachers of the primary section of such schools.

Apart from the above, it has also been submitted by Mr H Dinesh Dwivedi, learned Senior Counsel appearing for

the State of Uttar Pradesh that payment of salaries of teachers of recognised primary institutions must be commensurate with the State's financial condition and capacity to make such payment.

Having regard to the contentions of the respective parties, the issue decided in *Vinod Sharma*[1] that teachers of the primary sections of recognised junior basic schools, junior high schools and high schools were entitled to payment of their salaries under the Payment of Salary Act, 1978, merits reconsideration."

4. On 10.10.2007, these appeals were listed before the three-Judge Bench. The Bench noted that *Vinod Sharma*[1] case was decided by a three-Judge Bench and, therefore, these appeals are required to be considered by a larger Bench. The order of 10.10.2007 is as under :

"These appeals have been placed before us on reference order dated 8/9/2006 passed by Hon'ble two Judges Bench.

Having noticed the judgment rendered by three Judges Bench in Vinod Sharma & Ors. Vs. Director of Education(Basic) U.P. & Ors. (1998) 3 SCC 404, the learned Judges were of the view that the judgment rendered in Vinod Sharma (supra) needs reconsideration by a larger Bench and directed to place the matter before Hon'ble the Chief Justice for appropriate orders.

We have seen the orders of Hon'ble CJI passed on the basis of a note dated 14/9/2006 of A.R. (Listing). In the said note it is stated that the matters are placed before Hon'ble CJI for listing it before an appropriate Bench of three Hon'ble Judges.

Since Vinod Sharma case (supra) has been decided by three Judge Bench, these appeals require to be

reconsidered by a larger Bench. Place the matter before Hon'ble the Chief Justice of India for appropriate orders for placing these appeals before a larger Bench for re-consideration of the issue involved."

5. This is how these appeals have come up for consideration before this Bench.

6. The appeal in *Vinod Sharma*[1] reached this Court from the judgment and order of the Allahabad High Court whereby the High Court issued direction to the Director of Education (Basic) U.P. and other functionaries of the state to pay salary to the appellants under the 1978 Act. The essential facts in *Vinod Sharma*[1] case as noted by this Court in the judgment are: 58 Gorkha Training Centre, Junior High School, Dehradun Cantt. was established in the year 1952 for providing education to the children of ex-servicemen, serving military personnel and officers as well as civilians. The institution got recognition from the U.P. Government with effect from 09.04.1959. The appellants, Vinod Sharma and others, were appointed as Assistant Teachers being duly qualified. On 09.04.1970, the District Inspector of Schools (Dehradun) gave permission to the management to run Classes I to VIII. The Director of Education did not bring these teachers under the 1978 Act. The Assistant Teachers, Vinod Sharma and others, filed a writ petition before the High Court seeking direction for payment of salary to them under the 1978 Act. The state functionaries, on the other hand, relied on Rule 10 of the 1975 Rules, which provides that a recognised school shall undertake to pay, with effect from 01.07.1975, to every teacher and employee the same scale of pay, dearness allowance and additional dearness allowance as are paid to the teachers and employees of the Board possessing similar qualifications. The High Court allowed the writ petition on 29.08.1991 and directed the state functionaries to bring the writ petitioners under the provisions of the 1978 Act and pay their salaries accordingly under it.

The State of U.P. filed special leave petition against the judgment and order of the High Court, which was dismissed by this Court on 10.05.1993. Review petition was also dismissed by this Court on 17.09.1993. Here ended the first round of litigation. As there was no prayer for payment of arrears of salary, no specific order was passed by the High Court or this Court and the State of U.P. also did not pay arrears of salary with effect from 01.07.1975. The aggrieved Assistant Teachers, after making several representations, filed another writ petition for specific direction for payment of arrears of salary since 01.07.1975. That matter was disposed of by the High Court with a direction to pay salaries of the writ petitioners with effect from 29.08.1991. It was this order which came to be challenged in this Court. The three-Judge Bench considered the provisions of the 1975 Rules, particularly the definitions of "Junior Basic School" and "Recognised School". Having regard to the arguments advanced on behalf of the state that the 1978 Act was not applicable to the primary sections, i.e., Junior Basic Schools and applied only to the Junior High Schools, the Bench referred to the earlier decision of the High Court dated 29.08.1991 which took note of the fact that although the writ petitioners were teaching in the primary classes, they were working in an institution which was a Junior High School and they were all teachers of the Junior High School which ran classes from I to VIII, which were being taught in the school, that constituted one unit and were not separate units. The relevant portion of the judgment in *Vinod Sharma*[1] case reads as follows:

> "However, the aforesaid Junior High School Payment of Salaries Act, 1978 came into force with effect from 1-5-1979 by virtue of the notification issued under Section 1(3). This Act was brought in to remove frequent complaints that salary of teachers and non-teaching employees of aided non-government Junior High Schools

A are not disbursed in time, resulting in hardships to its employees. The aforesaid judgment dated 29-8-1991 refers to this Act. For the respondent State of U.P. the contention is that this is not applicable to the primary sections, namely, from Class I to Class V but only to
B Classes VI to VII. The High Court finally directed the respondents to bring the appellants under the said Act, meaning thereby under the 1978 Act, and pay the salary according to the provisions of the said Act. The operative portion of the said order is also quoted hereunder:
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"The respondents are directed by a mandamus *to bring the petitioners under the provisions of Payment of Salary Act* and pay their salary according to the provisions of the said Act."

D It is not that the appellants are not entitled to the payment of any salary. They are, but prior to bringing them under the said Act this obligation is only on the recognised school under the aforesaid Rule 10 of the 1975 Rules. But by the said High Court judgment the respondents
E were bound to bring them under the Payment of Salary Act and pay their salaries accordingly. This cannot be denied by the State. But in spite of this, nothing was done in this regard.

F Coming to the State's objection, the submission is that they are only entitled for payment of salary under the said Act since 11-2-1993, as on that date the Government issued such orders. This objection has no force and cannot be permitted to be raised in the present case. As
G aforesaid, inter se, between the appellants and the respondents including the State the matter has become final by the aforesaid High Court judgment dated 29-8-1991. Against the aforesaid judgment, admittedly, SLP of the State was rejected; even review petition was
H rejected. This apart, even otherwise the State has not

come in appeal against the impugned judgment dated 7-10-1996, hence it cannot challenge the same in this appeal.

Returning to the impugned order, we find, in spite of several representations, that the respondents did not respond in spite of the earlier direction, hence it was ordered to pay them under the Payment of Salary Act at least since the earlier High Court judgment and order dated 29-8-1991.

The appellants were not satisfied by the impugned order, as they claimed their salaries since 1975 when the aforesaid 1975 Rule came into effect. The contention is the spirit of the earlier High Court order was to pay from that date. This was as Junior High School teachers were getting since then, hence primary section teachers cannot be denied this right being in the same school. In other words, to pay from the same date as was paid to the Junior High School teachers. We find force in this submission. When grievance of the appellants was accepted in the first writ petition to bring them in parity with the Junior High School teachers, the payment from 1991 cannot be construed to be correct on the facts of this case. But considering the claim of the appellants, they could in no case be entitled to be paid prior to the Payment of Salary Act, 1978. Hence the appellants' claim since 1975 cannot be accepted.

Considering the direction issued by the High Court, in its first judgment, where clear direction is to pay these appellants under the Payment of Salary Act as in the same institution another set of teachers (Junior High School) are being paid under it and the institution being one unit, the same cannot be denied to the teachers in the primary sections. In other words, to pay them also under the same Act from the date Junior High School

A teachers were paid in this institution. As we have held above even if the argument for the State may have any merit in law, it cannot be sustained, as it has become final inter se between the parties. It is also brought to our notice that one of such teachers Km Harsh Uniyal, similar
B to the appellants, though did not join in the first writ petition but on the basis of decision of that case (1991), filed a Writ Petition No. 11644 of 1993 which was allowed by the High Court on 8-12-1993 with a direction to pay the salary since the Payment of Salary Act was made
C applicable to that institution. We were informed accordingly that payment was made to her by the respondents."

7. The correctness of the above view in *Vinod Sharma*[1]
D case requires examination by us. This necessarily involves consideration of the aspect whether the separation of education at the primary level from the Junior High School level and constitution of Uttar Pradesh Board of Basic Education under the 1972 Act and the entrustment of the Board with the authority
E to exercise control over Junior Basic Schools, referred to in the 1975 Rules as institution imparting education upto V class, render the view taken by this Court in *Vinod Sharma*[1] bad in law.

F 8. Mr. P.P. Rao, learned senior counsel for the State of U.P. submits that the 1978 Act does not apply to private unaided schools and teachers of primary section of the Junior Basic School are not entitled to the benefit of the said Act. The management is liable to pay salaries of teachers both
G according to the 1975 Rules and the 1978 Act. There is no provision for payment of salaries to the teachers in Junior Basic Schools by the State Government. With regard to respondent No.10, Riyaz Junior High School (Classes VI to VIII), learned senior counsel submits that the unaided primary section
H (Classes I to V) after obtaining separate recognition on

28.02.1980, though referred to as "primary section", in terms of definition in Rule 2(b) of the 1975 Rules, is a Junior Basic School. Rule 4 requires the management to provide adequate financial resources for it and Rule 10 requires the management to give an undertaking to pay the salaries and allowances at the same scale prescribed for both teachers. In terms of the 1975 Rules, the fact that the Junior Basic School is run by the management of the Junior High School in the same premises makes no difference. Learned senior counsel submits that in the first round in *Vinod Sharma*[1], the High Court in its order dated 29.08.1991, without adverting to any statutory provision, held that all the classes taught in the institution are one unit and the teachers work under one management and one Head Master and, therefore, teachers of the primary classes cannot be deprived of the benefit of the 1978 Act. He submits that such a finding could not have been given in the absence of a challenge to the 1975 Rules or the 1978 Act on the ground of discrimination. The order of the High Court became final *inter partes* after the special leave petition and the review petition filed by the state were dismissed. It was for this reason that in the second round of *Vinod Sharma*[1] case, the three-Judge Bench of this Court declined to go into the merits of the earlier order of the High Court and considered only from which date the teachers would be entitled to salaries under the 1978 Act.

9. Mr. P. P. Rao, learned senior counsel submits that in the reference order, the two-Judge Bench has rightly differed with the view taken by the High Court in the first round in *Vinod Sharma*[1] case and observed that the High Court did not appreciate that education at primary level has been separated from the Junior High School level and separately entrusted under the different enactments to a Board constituted under Section 3 of the 1972 Act and the same Board exercised control over Junior Basic Schools and it was a conscious distinction made by the Legislature between the two sets of

A schools and treat them as two separate components. He submits that the state which has enacted the laws has always been of the same view. He argues that assuming that two interpretations are possible to the statutory provisions, one taken by the High Court in the first round of *Vinod Sharma*[1] B case and the other taken by a Bench of this Court in the order of reference, which is the same as that of the Rule maker, it would be appropriate to allow the Rule maker to continue to implement the Acts and the Rules as per their understanding from the inception.

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10. Mr. P. P. Rao referred to *TMA Pai Foundation*[2], particularly paragraph 61 (Page 546 thereof), wherein this Court observed that the solution to the problem of the inability of the states to establish institutions at the same level of D excellence as private schools would lie in the states not using their scanty resources to prop up institutions that are able to otherwise maintain themselves out of the fees charged, but in improving the facilities and infrastructure of state-run schools and in subsidizing the fees payable by the students there. Rules E 4 and 10 of the 1975 Rules are consistent with this view. With reference to *Unnikrishnan*[3], learned senior counsel would submit that the resources of the state are meant to be utilized for the benefit of the children who are deprived of access to education or cannot afford it. Distinguishing *HP State* F *Recognised Higher Schools Managing Committee*[4], learned senior counsel submitted that the judgment in this case was not applicable as it considered a different question whether teachers of aided recognised private schools are entitled to government pay scales. Learned senior counsel submits that G Article 21A of the Constitution and the Right of Children to Free and Compulsory Education Act, 2009, which came into force

[2] TMA Pai Foundation v. State of Karnataka; [(2002) 8 SCC 481]

[3] J.P. Unnikrishnan v. State of AP; [(1993) I SCC 645]

[4] State of HP v. HP State Recognised High Schools Managing Committee; H [(1995) 4 SCC 507]

w.e.f. 01.04.2010, are not relevant for the present case which relates to an earlier period.

11. Mr. Sunil Gupta, learned senior counsel appearing for the appellants submits that meaning of the expression "Junior High School" occurring in the 1978 Act has to be determined with reference to the 1978 Rules that were framed under the 1972 Act since neither the 1978 Act nor the 1972 Act defines "Junior High School". He heavily relies on the principle of interpretation of statutes that Rules made under a statute must be treated for all purposes of construction and obligation exactly as if they were in the Act, and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction and obligation (Maxwell 'On Interpretation of Statutes', 10th Edn.). Learned senior counsel submits that this principle of interpretation is accepted by this Court in *Babu Ram*[5] and *Vibha*[6]. He submits that taking Section 4(2)(b) of the 1972 Act and the 1978 Rules as guiding factors, the expression "Junior High School" would carry, as per Section 2 (j) of the 1978 Act, the meaning "Classes VI to VIII" and exclude Classes I to V.

12. Alternatively, Mr. Sunil Gupta argues that one of the legal principles well-recognized is that when an expression in a later statute is ambiguous, its meaning can be ascertained from its use and / or meaning in a prior statute or statutory instrument dealing with the same subject matter. In this regard, he relies upon two English decisions, *Barras*[7] and *Gallagher*[8]

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[5] State of UP v. Babu Ram Upadhya; [AIR 1961 SC 751]

[6] Nagar Mahapalika, Kanpur v. Vibha Shukla (Smt.) and Others; [(2007) 15 SCC 161]

[7] Barras v. Aberdeen Steam Trawling and Fishing Company; [1933 All ER 52]

[8] Gallagher v. Church of Jesus Christ of Latter-Day Saints; [(2008) 4 All ER 640]

[9] Diamond Sugar Mills Ltd. v. the State of Uttar Pradesh; [AIR 1961 SC 652]

A and three decisions of this Court in *Diamond Sugar*[9], *Sirsilk*[10] and *Pure*[11]. He would, thus, submit that the use and meaning of the expression "Junior High School" must be traced with reference to Section 4(2)(b) of the 1972 Act and Rule 2(e) of the 1978 Rules.

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13. Learned senior counsel submits that despite the wider expression "Basic School" embracing Classes I to VIII being available, at least from 1972, the Legislature chose not to use the said expression in the 1978 Act. Rather, in contrast C therewith, the Legislature chose the expression "Junior High School" in the 1978 Act. The intention of the Legislature, learned senior counsel submits, is to apply the 1978 Act to the narrower category, namely, Classes VI to VIII only and not to Classes I to V of the basic schools.

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14. Learned senior counsel also submits that totally different arrangements have been made for the two sets of teachers, (1) teachers of Classes VI to VIII and (2) teachers of Classes I to V in the statutory provisions, namely, the 1975 Rules, on the one hand, and the 1978 Rules/ 1978 Act, on the E other hand.

15. Dr. M.P. Raju, learned counsel for respondent Nos. 1 to 9, in response to the arguments of the learned senior ounsel for the appellants, argues that the term "Junior Basic School" F means and includes Classes I to VIII wherever Classes I to V are part of the said school. He submits that there is an obligation on the state to provide aid to Classes I to VIII and exclusion of junior basic school section of the same Junior High School from aid is discriminatory and impermissible G classification.

16. Learned counsel referred to *Vinod Sharma*[1], wherein it was held: "*the petitioners may be teaching the primary*

[10] Sirsilk v. Textile Committee and Others; [1989 Supp 1 SCC 168]

[11] Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals H Ltd. and Others; [(2007) 8 SCC 705]

classes but they were working in the institution which is junior high school and they are teachers of the junior high school which runs classes from I to VIII. All the classes which are being taught in the school constitute one unit and they are not separate units." Relying upon Articles 21, 41, 45, 46 and, after 01.04.2010, Articles 21A and 51A(k) of the Constitution, learned counsel submits that the state has an obligation to provide grant-in-aid to basic education or basic schools (Classes I to VIII), corresponding to the students of 6 to 14 years.

17. Learned counsel in support of his submission that state has an obligation to provide grant-in-aid to basic education or basic schools (Classes I to VIII) cited quite a few decisions of this Court. Some of them being *Unnikrishnan*[3], *TMA Pai Foundation*[2], *HP State Recognised Higher Schools Managing Committee*[4] and *Mata Tapeshwari*[12].

18. Dr. M.P. Raju, learned counsel also submits that a classification excluding Classes I to V from Junior High School for the purpose of aid is discriminatory and without any reasonable objective or any rational nexus.

19. Learned counsel argues that the 1978 Act contemplates the Junior High School as including the Junior Basic School, i.e., Classes I to V also wherever the components of Junior Basic Schools and Senior Basic Schools are together leading to Junior High School examination. The schools having the Junior Basic Schools and the Senior Basic Schools either separately or together are under the same Board, i.e., the Board of Basic Education as per the provisions of the 1972 Act. The aid granted to the schools having Classes VIII and below was brought under the statutory scheme of payment of salary through the 1978 Act. Excluding Classes I to V which are part of basic schools in the same school or

[12] State of U.P. v. Committee of Management, Mata Tapeshwari; [(2010) 1 SCC 639]

institution from the operation of the 1978 Act would be irrational. Learned counsel, thus, submits that the view taken in *Vinod Sharma*[1] is the correct view.

20. Having noted the arguments of the learned senior counsel and counsel appearing for the parties, we think that for proper consideration of the arguments advanced before us, it is appropriate to consider the relevant provisions of a few statutory enactments and the rules framed by the Government from time to time.

21. In 1921, the U.P. Intermediate Education Act, 1921 (for short "1921 Act") was enacted to establish the Board of High School and Intermediate Education (for short, "the Board") which took the place of Allahabad University in regulating and supervising the system of the High School and Intermediate Education in Uttar Pradesh and prescribe courses therefor. Section 2(a) of the 1921 Act, as amended in 1975, defines "Board" and Section 2(b) defines "Institution". In Section 2(a), "Board" means the Board of High School and Intermediate Education. The expression "Institution" in Section 2(b) means a recognized Intermediate College, Higher Secondary School or High School, and includes, where the context so requires, a part of an institution. Section 7 deals with the powers of the Board. Under sub-section (3) of Section 7, one of the powers conferred on the Board is to conduct examinations at the end of the High School and Intermediate courses.

22. Educational Code of Uttar Pradesh (Revised 1958 Edition) which has been placed on record is significant. Clauses (x) and (xxvi) of para 1 define "Institution" and "School", respectively, as follows:

> "1(x) Institution means an educational institution. Such insti-tutions are divided into the following two classes ;
>
> (a) Recognised institution means an institution which imparts the course of instruction prescribed or

recognized by the De-partment or the Intermediate Board or a University, and satis-fies one or more of these authorities, as the case may be, in the matter of efficiency. Such an institution is open to periodi-cal inspections by an officer or officers of the Department and its students are eligible for admission to public examinations conducted by the Department, or the Intermediate Board, or a University;

(b) Unrecognised institution means an institution that does not come under the above definition of recognised institutions;

(xxvi) School means a recognized institution which follows the curriculum prescribed by the Department or the Intermediate Board. There are several types of schools as follows :

(a) Nursery School means a school where children of pre-basic stage, i.e. from about three to six years of age are taught,

(b) Junior Basic School means a school teaching children generally between 6 and 11 years of age in Classes I to V (i.e. primary section),

(c) Senior Basic School or Junior High School means either a school preparing students for the Junior High School Examination of the Department or a school teaching Classes I to VIII or VI to VIII (middle section),

Note - Basic Schools include both Senior or Junior Basic Schools as well as single schools with classes I to VIII.

(d) Higher Secondary School means a school which with or without lower classes maintains Classes IX and X and/or XI and XII and prepares students for the High School and/or Intermediate Examinations of the Intermediate Board or a University;"

A 23. The 1971 Act was enacted to regulate the payment of salaries to teachers and other employees of High Schools and Intermediate Colleges receiving aid out of the state funds and to provide for matters connected therewith. Section 2(b) of the 1971 Act defines "Institution", which means recognized B institution for the time being receiving maintenance grant from the State Government and includes a Sanskrit Mahavidyalaya or a Sanskrit Vidyalaya receiving maintenance grant from the State Government. Section 2 also defines expressions such as "Management", "Teacher", "Employee" and "Salary". The C residuary definition clause, viz., Section 2(h) of the 1971 Act, says that other words and expressions in the 1921 Act shall have the meaning assigned to them if not defined under the Act. Section 5 of the 1971 Act provides for procedure for payment of salary in the case of certain institutions. D

24. The 1972 Act provides for the establishment of a Board of Basic Education and for matters connected therewith. In the Statement of Objects and Reasons, it is stated that the responsibility for primary education has so far rested with Zila E Parishads in rural areas and with Municipal Boards and Mahapalikas in urban areas. The administration of education at this level by the local bodies was not satisfactory, and it was deteriorating day by day. There was public demand for the Government to take immediate steps for improving the F education at this level. Hence, for reorganizing, reforming and expanding elementary education, it became necessary for the State Government to take over its control into its own hands. It further records that in order to strengthen the primary and junior high schools and to increase their usefulness, the Government G was going to assume full responsibility for its control and management. With a view to take effective steps for securing the object of Article 45 of the Constitution, the Government has decided to transfer the control of primary education from the local bodies to the Uttar Pradesh Board of Basic Education H

with effect from the Educational Session 1972-73. Section 2 of the 1972 Act defines various expressions. The expression "basic education", as defined in Section 2(b), means education up to the eighth class imparted in schools other than high schools or intermediate colleges, and the expression "basic schools" shall be construed accordingly.

25. Section 4 of the 1972 Act provides for the functions of the Board. One of the important functions of the Board, subject to the provisions of the Act, is to organize, coordinate and control the imparting of basic education. On coming into force of the Act, the powers of management, supervision and control over the basic schools under clauses (cc) or (d) of sub-section (2), which before the appointed day belonged to local body, stood transferred in respect of such schools to the Board.

26. In exercise of powers under sub-section (1) of Section 19 of the 1972 Act, the 1975 Rules were framed. In the 1975 Rules, under Rule 2(b), the expression "Junior Basic School" is defined, which means an institution other than High Schools or Intermediate Colleges imparting education up to Class V. The expression "Recognised School" in Rule 2(c) means any Junior Basic School, not being an institution belonging to or wholly maintained by the Board or any local body, recognized by the Board before the commencement of these Rules for imparting education from Class I to V. Rule 4 provides that in every recognized school adequate financial resources shall be made available by the management of such school for its efficient working and adequate facilities shall be provided in accordance with such standard as may be specified by the Board for teaching the subjects in respect of which such school is recognized. Rule 7 provides that subject to the provisions of paras 106 to 114 of the Education Code, so far as they are applicable, free education shall be provided in any recognized school to 25 per cent of the number of students on the rolls of such school.

A 27. The 1978 Rules were framed by the Governor of the state in exercise of the powers under sub-section (1) of Section 19 of the 1972 Act. These Rules came into force w.e.f. 13.02.1978. Clauses (c) and (e) of Rule 2 define "Board" and "Junior High School".

B "Board" means the Uttar Pradesh Board of Basic Education constituted under Section 3 of the 1972 Act.

"Junior High School" means an institution other than high school or intermediate college imparting education to boys C or girls or both from classes VI to VIII (inclusive).

28. The 1978 Act came to be enacted by the Uttar Pradesh Legislature to regulate the payment of salaries to teachers and other employees of Junior High Schools receiving aid out of the state funds and to provide for matters connected D therewith. The Act came into force w.e.f. 01.05.1979. Clause (b), Clause (e), Clause (h) and Clause (i) define "Education officer", "Institution", "Teacher" and "Salary", respectively.

"Education officer" means the District Basic Education E Officer appointed under the 1972 Act and in relation to girls' institution, the District Basic Education Officer (women), and in each case includes any other officer authorized by the State Government to perform all or any of the functions of the Education Officer under this Act.

F "Institution" means a recognized Junior High School for the time being receiving maintenance grant from the State Government.

"Teacher" of an institution means a headmaster or other G teacher in respect of whose employment maintenance grant is paid by the State Government to the institution.

"Salary" of a teacher or employee means the aggregate of the emoluments, including dearness or any other allowance,

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for the time being payable to him at the rate approved for the purpose of payment of maintenance grant.

Clause (j) of Section 2 in the definition clause says that other words and expressions defined in the 1972 Act, not defined in the 1978 Act, shall have the meanings assigned to them in that Act.

29. Section 10 of the 1978 Act provides that the State Government shall be liable for payment of salaries of teachers and employees of every institution due in respect of any period after the appointed day.

30. Section 13-A makes transitory provisions in respect of certain upgraded institutions. It reads:

> "13-A. Transitory provisions in respect of certain upgraded institutions.—
>
> (1) Notwithstanding anything contained in this Act, the provisions of this Act shall, *mutatis mutandis* apply, to an institution which is upgraded to High School or Intermediate standard and, to such teachers and other employees thereof in respect of whose employment maintenance grant is paid by the State Government to such institution.
>
> (2) For the purposes of this section the reference to the students wherever they occur in section 5, shall be construed as reference to the students of classes up to junior High School level only."

31. Section 15 empowers the State Government to remove difficulties in giving effect to the provisions of the Act. The provision reads:

> "15. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act or by reason of anything contained in this Act, the State

A Government may as occasion requires, by notification make such incidental or consequential provisions including provisions for adapting or modifying any provision of this Act or of the Uttar Pradesh Basic Education Act, 1972, or the rules made thereunder, but
B not affecting the substance, as it may think necessary or expedient for the purposes of this Act.

(2) No order under sub-section (1) shall be made after the expiration of a period of the three years from the
C appointed day.

(3) Every order made under sub-section (1) shall be laid, as soon as may be, before both the Houses of the State Legislature."

D 32. Section 17 empowers the State Government to make rules for carrying out the purposes of this Act.

33. As would be seen, the 1978 Act makes the State Government liable for payment of salaries of teachers and employees of every recognised Junior High School receiving
E maintenance grant after the appointed day. Curiously, Junior High School is not defined in the 1978 Act. We have to determine the meaning of the expression "Junior High School" for the purposes of the 1978 Act. But before we do that, a brief comment in respect of state's obligation to grant aid to
F recognised educational institutions imparting basic education corresponding to students of 6 to 14 years may be made. Before insertion of Article 21-A in the Constitution by 86th Amendment Act, 2002 which received the assent on 12.12.2002, this Court in *Unnikrishnan*[3] observed that the
G children up to the age of 14 years have a fundamental right to free education.

34. Article 45 which was under consideration in *Unnikrishnan*[3] reads that *"the State shall endeavour to*

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provide, within a period of 10 years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of 14 years."

35. In paragraph 172 of the Report, the Constitution Bench in *Unnikrishnan*[3] said:

> "172. Right to free education for all children until they complete the age of fourteen years (Art. 45). It is noteworthy that among the several articles in Part IV, only Article 45 speaks of a time-limit; no other article does. Has it no significance? Is it a mere pious wish, even after 44 years of the Constitution? Can the State flout the said direction even after 44 years on the ground that the article merely calls upon it to "endeavour to provide" the same and on the further ground that the said article is not enforceable by virtue of the declaration in Article 37. Does not the passage of 44 years — more than four times the period stipulated in Article 45 — convert the obligation created by the article into an enforceable right? In this context, we feel constrained to say that allocation of available funds to different sectors of education in India discloses an inversion of priorities indicated by the Constitution. The Constitution contemplated a crash programme being undertaken by the State to achieve the goal set out in Article 45. It is relevant to notice that Article 45 does not speak of the "limits of its economic capacity and development" as does Article 41, which inter alia speaks of right to education. What has actually happened is — more money is spent and more attention is directed to higher education than to — and at the cost of — primary education. (By primary education, we mean the education, which a normal child receives by the time he completes 14 years of age.) Neglected more so are the rural sectors, and the weaker sections of the society

A referred to in Article 46. We clarify, we are not seeking to lay down the priorities for the Government — we are only emphasising the constitutional policy as disclosed by Articles 45, 46 and 41. Surely the wisdom of these constitutional provisions is beyond question. This
B inversion of priorities has been commented upon adversely by both the educationists and economists."

Then, in paragraph 175, the Court stated:

"175. Be that as it may, we must say that at least now the
C State should honour the command of Article 45. It must be made a reality — at least now. Indeed, the *National Education Policy 1986* says that the promise of Article 45 will be redeemed before the end of this century. Be that as it may, we hold that a child (citizen) has a
D fundamental right to *free education* up to the age of 14 years."

In paragraph 176 in *Unnikrishnan*[3], the Court said as follows:

E "176. This does not however mean that this obligation can be performed only through the State Schools. It can also be done by permitting, recognising and aiding voluntary non-governmental organisations, who are prepared to impart free education to children. This does
F not also mean that unaided private schools cannot continue. They can, indeed, they too have a role to play. They meet the demand of that segment of population who may not wish to have their children educated in State-run schools. They have necessarily to charge fees from the
G students. In this judgment, however, we do not wish to say anything about such schools or for that matter other private educational institutions *except* 'professional colleges'. This discussion is really necessitated on
H account of the principles enunciated in Mohini Jain v.

State of Karnataka (1992) 3 SCC 666 and the challenge mounted against those principles in these writ petitions." A

36. In *TMA Pai Foundation*[2], the eleven-Judge Constitution Bench approved the view of *Unnikrishnan*[3] to the extent it was held in that case that primary education is a fundamental right. Question 9 and its answer (Pg. 590 of the Report) read as under: B

"Q. 9. Whether the decision of this Court in *Unni Krishnan, J.P.* v. *State of A.P.* (except where it holds that primary education is a fundamental right) and the scheme framed thereunder require reconsideration/ modification and if yes, what? C

A. The scheme framed by this Court in *Unni Krishnan case* and the direction to impose the same, except where it holds that primary education is a fundamental right, is unconstitutional. However, the principle that there should not be capitation fee or profiteering is correct. Reasonable surplus to meet cost of expansion and augmentation of facilities does not, however, amount to profiteering." D E

37. The statement by the five–Judge Constitution Bench in *Unnikrishnan*[3] that primary education is fundamental right is echoed in *HP State Recognised Higher Schools Managing Committee*[4] as well. The three–Judge Bench in paragraphs 16 and 17 (pgs. 514-515 of the Report) reiterated the constitutional mandate to the state to provide free education to the children up to the age of 14. The three–Judge Bench said: F G

"16. The constitutional mandate to the State, as upheld by this Court in *Unni Krishnan case* — to provide free education to the children up to the age of fourteen — cannot be permitted to be circumvented on the ground of lack of economic capacity or financial incapacity. H

17. It is high time that the State must accept its responsibility to extend free education to the children up to the age of fourteen. Right to education is equally guaranteed to the children who are above the age of fourteen, but they cannot enforce the same unless the economic capacity and development of the State permits the enforcement of the same. The State must endeavour to review and increase the budget allocation under the head 'Education'. The Union of India must also consider to increase the percentage of allocation of funds for "Education" out of the Gross National Product."

38. With the above constitutional philosophy, let us determine the meaning of the expression "Junior High School" for the purposes of the 1978 Act.

39. There is not much debate that the students of secondary and primary schools are classified in Section 3 of Educational Code (Revised 1958 Edition) as follows:

(a) Pre-basic Stage	....Nursery Education
(b) Junior Basic (Primary) Stage	.....Classes I to V
(c)Senior Basic (Junior High Schools) Stage	...Classes VI to VIII
(d) Higher Secondary Stage:	
I. High School Stage	.....Classes IX and X
II. Intermediate Stage	.....Classes XI and XII

40. On behalf of the appellants, heavy reliance is placed on the definition of "Junior High School" in the 1978 Rules. Does the definition of "Junior High School" in the 1978 Rules control the same expression occurring in the 1978 Act? We do not think so. The definition of "Junior High School" in Rule 2(e) of the 1978 Rules is not incorporated in the 1978 Act either expressly or impliedly. The principle of interpretation that an

expression used in a rule or bye-law framed in exercise of power conferred by a statute must have the same meaning as is assigned to it under the statute has no application in a situation such as the present one where the meaning of an expression occurring in a statute is itself to be determined. Obviously that cannot be done with the help of a rule made under a different statute.

41. Section 2(j) of the 1978 Act says that the words and expressions defined in the 1972 Act and not defined in this Act shall have the meanings assigned to them in the 1972 Act. But, the 1972 Act also does not define the expression "Junior High School", it merely refers to it as examination. Mr. Sunil Gupta, learned senior counsel for the appellants sought to invoke the principle of interpretation of statutes that Rules made under a statute must be treated for all purposes of construction and obligation exactly as if they were in the Act, and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction and obligation. The invocation of this principle is misplaced. Firstly, because we are not concerned with the construction of an expression in the 1972 Act under which the 1978 Rules have been made. Secondly and more importantly, there is no principle that rules made under a different and distinct statute must be treated for the purposes of construction as if they were part of the Act. In our view, the definition of "Junior High School" in the 1978 Rules cannot be judicially noticed for the purposes of construction and obligation of the 1978 Act.

42. We are also not persuaded by the submission of Mr. Sunil Gupta that since the expression "Junior High School" is not defined in the 1978 Act, its meaning can be ascertained from the 1978 Rules by applying the principle that when an expression in a later statute is ambiguous, its meaning can be ascertained from its use and/or meaning in a prior statute or statutory instrument dealing with the same subject matter for

A the present purpose. On the above principle of interpretation, there is not much challenge. The question is of its applicability to the present case. The 1978 Rules are made by the Governor under the 1972 Act, which do not deal with the aspect of payment of salaries to the teachers and the employees of a B recognized school at all. The State Legislature has made a separate enactment, viz., the 1978 Act, for payment of salaries. The definition of "Junior High School" in the 1978 Rules does not exhaust the scope of the expression "Junior High School". Moreover, a prior rule cannot be taken in aid to construe a C subsequent enactment.

43. It is important to notice here that recognised Junior High Schools can be of three kinds: (one) having Classes I to VIII, i.e., Classes I to V (Junior Basic School) and so also D Classes VI to VIII (Senior Basic School), (two) a school as above and upgraded to High School or intermediate standard and (three) Classes VI to VIII (Senior Basic School) initially with no Junior Basic School (Classes I to V) being part of the said school.

E 44. As regards the first two categories of Junior High Schools, the applicability of Section 10 of the 1978 Act does not create any difficulty. The debate which has centered round in this group of appeals is in respect of third category of the F schools where Classes I to V are added after obtaining recognition to the schools which are recognized and aided for imparting education in Classes VI to VIII. Whether teachers of primary section Classes I to V in such schools are entitled to the benefit of Section 10 of the 1978 Act is the moot question. G As noticed, the constitutional obligation of the state to provide for free and compulsory education of children till they complete the age of 14 years is beyond doubt now. The note appended to clause (xxvi), para 1 of the Educational Code (revised edition, 1958), *inter alia*, provides that Basic Schools include H single schools with Classes I to VIII. In our view, if a Junior

Basic School (Classes I to V) is added after obtaining necessary recognition to a recognized and aided Senior Basic School (Classes VI to VIII), then surely such Junior Basic School becomes integral part of one school, i.e., Basic School having Classes I to VIII. The expression "Junior High School" in the 1978 Act is intended to refer to the schools imparting basic education, i.e., education up to VIII class. We do not think it is appropriate to give narrow meaning to the expression "Junior High School" as contended by the learned senior counsel for the state. That Legislature used the expression Junior High School and not the Basic School as used and defined in the 1972 Act, in our view, is insignificant. The view, which we have taken, is fortified by the fact that in Section 2(j) of the 1978 Act, the expressions defined in the 1972 Act are incorporated.

45. The submission of Mr. P.P. Rao, learned senior counsel for the State of U.P. with reference to the subject School, namely, Riyaz Junior High School (Classes VI to VIII), that the said school was initially a private recognized and aided school and the primary section (Classes I to V) was opened by the management later on after obtaining separate recognition, which was un-aided, the teachers of such primary section, in terms of definition in Rule 2(b) and Rule 4 of the 1975 Rules are not entitled to the benefits of Section 10 of the 1978 Act does not appeal to us for what we have already said above. The view taken by the High Court in the first round in *Vinod Sharma*[1] that Classes I to VIII taught in the institution are one unit, the teachers work under one management and one Head Master and, therefore, teachers of the primary classes cannot be deprived of the benefit of the 1978 Act, cannot be said to be a wrong view. Rather, it is in accord and conformity with the Constitutional scheme relating to free education to the children up to 14 years.

46. Though in the Reference Order, the two-Judge Bench has observed that the High Court in the first round in *Vinod*

A *Sharma*[1] did not appreciate that the education at the primary level has been separated from the Junior High School level and separately entrusted under the different enactments to the Board constituted under Section 3 of the 1972 Act and the same Board exercises control over Junior Basic Schools and
B it was a conscious distinction made by the Legislature between two sets of schools and treat them two separate components and, therefore, *Vinod Sharma*[1] does not take the correct view but we think that the features noted in the reference order do not render the view taken in *Vinod Sharma*[1] bad. We find
C merit in the argument of Dr. M.P. Raju that the schools having the Junior Basic Schools and the Senior Basic Schools either separately or together are under the same Board, i.e., the Board of Basic Education, as per the 1972 Act. Moreover, any other view may render the provisions of the 1978 Act
D unconstitutional on the ground of discrimination. In our considered view, any interpretation which may lead to unconstitutionality of the provision must be avoided. We hold, as it must be, that Junior High School necessarily includes
E Classes I to V when they are opened in a Senior Basic School (Classes VI to VIII) after obtaining separate recognition and for which there may not be a separate order of grant-in-aid by the Government.

47. We accordingly affirm the view taken by the three-
F Judge Bench in *Vinod Sharma*[1]. Our answer to the question is in the affirmative.

48. As the fate of these appeals is dependant on the answer that we have given, we do not think it is necessary to
G send these appeals to the Regular Bench. The appeals are dismissed with no order as to costs.

Bibhuti Bhushan Bose Appeals dismissed.