

**Dharambir Vs Joint Director of Education and Others
Dharam Veer Vs State of U.P. and Others**

Court: Allahabad High Court

Date of Decision: Jan. 24, 2011

Acts Referred: Uttar Pradesh Secondary Education Service Selection Board Rules, 1998 â€” Rule 14

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sudhir Agarwal, J.

1 All these writ petitions have been filed by the same person, namely, Dharm Veer, arising out of his various claims about salary, seniority etc. in

the capacity of his functioning as a Teacher in Adarsh Uchchattar Madhyamik Vidyalaya, Raunija, Gautam Budh Nagar, (hereinafter referred to as

College""), hence, have been heard, as requested by learned Counsel for the parties, together and are being decided by this common judgment.

2. Writ Petition No. 40268 of 2004 has been filed assailing the order dated 6.12.1997 passed by District Inspector of Schools (hereinafter

referred to as ""DIOS"") approving the ad hoc appointment of Sri Peetam Singh, Respondent No. 4, on the post of Assistant Teacher (L.T. Grade)

in a substantive vacancy caused due to promotion of Sri Prem Narain Sharma as Principal on 1.7.1984. The above appointment has been

approved pursuant to Management"s resolution dated 8.7.1995 and had to continue till a candidate regularly selected for promotion on the post

through U.P. Secondary Education Service Selection Board (hereinafter referred to as the ""Board"") under Rule 14 of U.P. Secondary Education

Service Board Rules available. The College is a recognized institution by the Board of U.P. High School and Intermediate Education, Allahabad

and is governed by U.P. Intermediate Education Act, 1921 (hereinafter referred to as ""1921 Act""), U.P Secondary Education Services Selection

Board Act, 1982 (hereinafter referred to as ""1982 Act"") and U.P. High School and Intermediate Colleges (Teachers and other Employees)

(Payment of Salary) Act, 1971 (hereinafter referred to as 1971 Act).

3. The Petitioner claims to be appointed as Assistant Teacher (L.T. Grade) on 3.9.1985. Regarding Respondent No. 4, Peetam Singh, he has

alleged that he was appointed as Assistant Teacher (J.T.C. Grade) on 1.7.1976, granted C.T. Grade on 1.7.1981 and became entitled to L.T.

Grade only on 1.7.1999 in view of Government Orders dated 11.8.1989 and 4.10.1989 after rendering ten years' satisfactory service in C.T.

Grade. He, therefore, states that the Respondent No. 4 is junior to him as Assistant Teacher (L.T. Grade) and, hence could not be given ad hoc

promotion superseding the Petitioner.

4. Before coming to counter affidavit in writ petition No. 40268 of 2004 and the case of the parties in other writ petitions, it would be appropriate

to have a bird eye view of certain facts relating to appointment of the Petitioner on the post in question. In fact, the matter has a chequered history

involving almost more than dozens of writ petitions filed by Petitioner and others. The details of appointment of Petitioner have been given in brief

in seven writ petition mentioned above, but during the course of arguments as also after perusing the pleadings of parties in various writ petitions, I

find that better facts have been given in an earlier writ petition filed by the Petitioner Dharam Veer and, therefore, the facts contained in the above

writ petitions would be of utmost importance to throw light on the manner in which the Petitioner was appointed.

5. The record of writ petition No. 3318 of 1997 filed by Petitioner has been perused and it would be useful to place own version of Petitioner

about his appointment including the documents which he has placed on record in the above writ petition. A counter affidavit has been filed by

Respondent No. 4 wherein he has disclosed the following facts.

6. In a substantive vacancy caused in the year 1984 on the post of Assistant Teacher (L.T. Grade), one Vijay Kumar Sharma was appointed on

15.8.1984 for a period upto 30.6.1985. Thereafter, he was not allowed to work and insteated the Management claims to have appointed Dharam

Veer, the Petitioner in this case. Vijay Kumar Sharma filed writ petition No. 741 of 1986 before this Court seeking a mandamus to the DIOS for

payment of salary. The above writ petition was initially disposed on 7.1.1986 with an observation as under:

Further salary commencing from January 1986 would also be paid to the Petitioner in the same fashion as is being paid to other Teachers in the

same College.

7. Sri Dharam Veer, the present Petitioner, filed a recall application stating that the aforesaid order has been obtained by suppression of facts

inasmuch he was working and not Vijay Kuamr Sharma. This Court reconsidered the entire matter and passed an order on 11.9.1987 disposing

off the said writ petition observing as under:

On the application being filed by Sri Dharma Veer, this Court remitted the following three issues to the District Inspector of Schools, Bulandshahar

for submission of his report:

(1) Whether the Petitioner's appointment as a teacher in L.T. Grade was for a fixed term which expired on 30th June, 1985.

(2) Whether the Petitioner was continued as a teacher in the grade aforesaid even in the month of July, 1985?

(3) Whether Dharma Veer Singh was appointed in place of the Petitioner after July, 1985?

In pursuance of the order the District Inspector of Schools has sent a reply dated 3.5.1986. His answer to the three questions demolished the case

of Dharma Veer Singh completely. The only thing to be examined is as to whether the Petitioner is to be paid the salary after July, 1985. From the

queries made by the District Inspector of Schools, it appears that the Petitioner Vijay Kumar Sharma is not working in the institution since July,

1985. However, since the Petitioner was entitled to work as a L.T. Grade teacher and if he is still willing to join the post, on which no one, we

understand, has been appointed, the Petitioner may be given the same. The Petitioner will be entitled to get the salary of the post with effect from

the date he joins.

Subject to the above, the writ petition is disposed of.

A copy of this order may be given to the learned Counsel for the parties within 3 days on payment of usual charges.

8. In writ petition filed by Petitioner, i.e., writ petition No. 3318 of 1987, he said that after the end of the period for which Sri Vijay Kumar was

appointed, the vacancy arose again on 1.7.1985. Applications were invited pursuant where to three persons applied for the post, namely, the

Petitioner, Sri Vijay Kumar and one Sri Brij Kishore Sharma. The Petitioner was appointed on the post. Copy of the appointment letter, he has

filed as Annexure-3 to the writ petition No. 3318 of 1987 and it reads as under:

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9. Annexure-4 is copy of the letter submitted by the Petitioner for taking charge and it would be appropriate to reproduce the same also:

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10. It is also said that Petitioner's aforesaid appointment was also upto the end of the session, i.e. 20.5.1986 and it was renewed by Management

with effect from 28.8.1986. Para 7 of the writ petition No. 3318 of 1987 is reproduced as under:

That the Petitioner is regularly discharging duties as teacher and is teaching mathematics classes in the Institution. His appointment was till the end

of Session and since it ended on 20.5.86, the management thereafter renewed it with effect from 28.8.86.

11. He, however, complained that despite the fact that Petitioner was discharging duties, he was not paid salary. On the representations made to

the DIOS, he passed an order on 4.2.1986 informing that Management had no power to make appointment and, therefore, salary cannot be paid

to the Petitioner. Para 9 of the writ petition No. 3318 of 1987 is reproduced as under:

That the management of the Institution wrote several letters to the District Inspector of Schools, Bulandshahar regarding payment of the salary to

the Petitioner. Ultimately by means of the order dated 4.2.86 the District Inspector of Schools apprised the Management that it had no power to

appoint any teacher and, therefore, no salary bill of the Petitioner can be passed.

12. The order of DIOS, filed as Annexure 7 to the writ petition no 3318 of 1987, states as under:

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tkuk gSA izcU/k lfefr dks Li""V ekSfyd fDr inkSa ij lh/kh HkrhZ }kjk fu;qfDr djus dk vf/kdkj ugha gSA vkidks fofnr gks fd vkids fo|ky; esa

vkj{kr lewg v;/kid ds vkesyuA bls mijUr Hkh vki vius Lrj ls ;fn fdLh Li""V ekSsfyd fDr in v;/kid dh fu;qfDr djrs gSa rks ;g "kklukns"kkSa @

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Hkqxrku dk mRrjnkf;Ro bl dk;kZy; dk ugha gSA Ã-Ã¿Ã½i;k crk;sa fd fdl fu;ekUrjxZr vkus ;g dk;Zokgh dh gSA

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13. It is this order of DIOS which was challenged by the Petitioner in writ petition No. 3318 of 1987 and he also sought a writ of mandamus

commanding the Respondents to pay him salary.

14. In view of the judgment dated 11.9.1987 in writ petition No. 741 of 1986, the writ petition No. 3318 of 1987 filed by the present Petitioner

was dismissed on 3.8.1989 as under:

Having heard counsel for the parties and in view of the decision in W.P. No. 741 of 1986, there are no merits in this case.

Dismissed.

15. Against the decision of this Court dismissing Petitioner's writ petition on 3.8.1989, he preferred Civil Appeal No. 8305-06 of 1995.

16. The Apex Court initially passed an interim order on 20.11.1989 to the following effect:

If the Petitioner has been working since 9th September 1989, the Respondent will pay to the said Petitioner his salary. This order is made as an

interim order. Some manager on behalf of the management of the school has appeared today. The Respondent will pay the salary to the teacher

within four weeks from today. Affidavit in opposition will be filled within four weeks and the reply affidavit within two weeks from today.

Thereafter, the matter will come up for final disposal on 23.1.1990.

The order dated 11.9.1987 in writ petition No. 741/86 Vijay Kumar Sharma v. State of U.P. Passed by the High Court as also the order of 6th

January, 1996 in the same matter are stayed.

17. The appeal was disposed of by Apex Court vide judgment dated 4.9.1995 stating as under:

Leave granted.

We have heard the counsel for the parties. The only controversy in this case is whether the Appellant is entitled for salary for the period during

which he had worked .Though the controversy has been raised as to whether he was validly appointed in accordance with the proceedings

prescribed by the appropriate rules, it is not necessary for us to go into that controversy as it is not the question in issue. The District Inspector of

Schools, Bulandshahar in his report dated February 1, 1989 had stated that he had inspected the Adarsh Higher Secondary School, Raunija on

January 25, 1989 and found that the Appellant had been working since September 3, 1985 as teacher since the reserved teacher, viz.. Kanchi Mal

Gupta, had not joined and one Vijay Kuamr has also left the post. Consequently, since the Maths Teacher post was vacant and the Appellant had

been working ever since September 3, 1985, the Appellant is entitled to the payment of salary.

Ms. Rachna Gupta, the learned Counsel appearing for the Respondent-Management, had stated that the Manager and the Appellant had colluded

and got double payment. Salary had been duly paid pursuant to the direction of this Court. But he was paid by the Management itself for period

from September 1985 to June 1988. If that is so, it would be open to the Management, in consultation with the District Inspector of Schools to

have it verified whether the salary in fact was paid to the Appellant for period in question. If he was already received it, he is not entitled to the

salary now for the same period. We also direct that Appellant's entitlement to continue in service according to the rules be decided by the

appropriate authority and the post would be filled in accordance with rules. In case the Appellant becomes over-aged for considerations,

necessary relaxation will be given and he will be considered along with the candidates to be interviewed by the appropriate Committee in

accordance with the rules.

The appeal are accordingly disposed of. No costs.

18. In view of the decision of the Apex Court, it was incumbent upon the educational authorities to consider the question as to whether the

Petitioner was entitled to continue in service according to Rules and whether the post had been filled in accordance with rules, but DIOS without

looking into these aspects of the matter, simply passed an order on 27.1.1996 according approval to the appointment of Petitioner. This order was

later on stayed by Deputy Director of Education, Region-I, Meerut on 5.11.1996. Aggrieved by order dated 5.11.1996, the Petitioner Dharam

Veer, preferred writ petition No. 2541 of 1997 wherein the following interim order was passed on 21.1.1997:

Learned Standing counsel representing Respondents Nos. 1 and 2 and Mr. Vinod Sinha who accepts notice on behalf of Respondents No. 3 pray

for and are granted a weeks" time to file counter affidavit. Rejoinder affidavit may be filed within one week thereafter. List it on 4.2.1997 for

admission as also for consideration of stay matter.

Until further orders the Respondents will allow the Petitioner to continue in service and payments of salary will be subject to further orders of this

writ petition.

19. The interim order dated 21.1.1997 in writ petition No. 2541 of 1997 which was filed against Joint Director of Education"s order dated dated

5.11.1996, though directed for permitting the petition to continue but regarding payment of salary, it was observed that the same would be subject

to the further orders in the writ petition. In the circumstances, the DIOS passed an order dated 27.5.1997 declining to pay salary.

20. The Petitioner, then made a representation to DIOS and, thereafter, filed writ petition No. 28630 of 1997 which was disposed of on 2.9.1997

with the following order:

Heard learned Counsel for the parties.

If the Petitioner is still working in the school, his salary will be paid within a period of four weeks from date of presentation of a certified true copy

of this order before the authorities concerned.

With these observation the writ petition is disposed. Then will be no order, as to costs.

21. Pursuant to the judgment dated 2.9.1997, Deputy Director of Education, Meerut passed an order on 20.9.1997 for payment of salary to the

Petitioner.

22. Thereafter, the DIOS granted approval by his order dated 6.12.1997 to the promotion of Peetam Singh, Respondent No. 4, as Assistant

Teacher (L.T. Grade) with effect from 1.7.1984. The Petitioner made a representation claiming himself senior to Respondent No. 4 vide

representation dated 19.1.1998 and, thereafter, filed writ petition No. 6474 of 1998 which was disposed of on 26.2.1998 with the following

order:

The Petitioner has challenged the promotion of Respondent No. 4 to the post of L.T. Grade teacher in Adarsh Uchchattar Madhyamik Vidyalaya,

Raunija, Gautam Budh Nagar.

The District Inspector of Schools rejected the claim of the Petitioner. The Petitioner has submitted a representation before the Joint Director of

Education Ist Region, Meerut. In paragraph 13 of the writ petition it is stated that the said representation has yet not been decided by Respondent

No. 1.

There is no reason that Respondent No. 1 shall not dispose of the said representation expeditiously. In case the Petitioner produce certified copy

of this order and true copy of the writ petition before Respondent No. 1, he shall dispose of the said representation by a reasoned order after

affording an opportunity of hearing to the Petitioner, the Committee of Management, and Principal of the Institution possibly within two months

from the date of submission of the certified copy of this order before him.

The writ petition is accordingly disposed of finally.

23. The Joint Director of Education, Meerut, by order dated 22.12.1998, stayed DIOS's order dated 6.12.1997 whereagainst a recall application

was filed by Peetam Singh, Respondent No. 4, but the same was rejected and stay order was maintained by order date 25.10.1999 passed by

Joint Director of Education, Meerut Manda. Sri Peetam Singh, Respondent No. 4, filed writ petition No. 54078 of 1999 wherein an interim order

was passed on 22.12.1999 with the following direction:

The order dated 25.10.1999 does not in any way affect the payment of salary of the Petitioner whatever the salary was being paid to the Petitioner

prior to passing of the impugned order dated 25.10.1999, shall be paid to the Petitioner as and what it fall due.

24. Without deciding the question of entitlement of Petitioner to continue as directed by this Court, the educational authorities, it appears, confined

themselves to some subsequent events in purported compliance of this Court's order dated 26.2.1998 passed in writ petition No. 6474 of 1998.

25. Joint Director of Education passed an order on 26.5.1999 regarding seniority whereagainst the Petitioner, Dharam Veer, filed writ petition No.

37299 of 1999. The aforesaid writ petition was, however, ultimately, dismissed on a statement made by learned Counsel for the Petitioner on

14.2.2005 that the writ petition has rendered infructuous and accordingly, this Court dismissed the above writ petition as infructuous on

14.2.2005.

26. A seniority list was prepared in which the Petitioner was shown at Sl. No. 2 while Sri Peetam Singh, Respondent No. 4, was shown at Sl. No.

4 and one Sheesh Pal Singh was shown at Sl. No. 5. The above seniority list was prepared by Authorized Controller of the College on 12.3.2001.

27. DIOS further without going into the question of entitlement of Petitioner regarding continuance on the post in accordance with rules passed an

order on 22.4.2002 giving approval for grant of the selection grade scale to the Petitioner on completion of ten years of service in the light of the

Government Order dated 10.7.1998 and 7.10.1998 with effect from 3.9.1995.

28. Sri Sheesh Pal Singh disputed the above seniority and filed writ petition No. 16417 of 2002 which was disposed of finally vide judgment dated

2.4.2002 directing competent authority to consider and decide representation of Sheesh Pal Singh after giving opportunity to all concerned parties.

29. Sheesh Pal Singh submitted representation on 30.5.2002 which was decided on 22.8.2003 by the Joint Director of Education, Meerut and he

redrawn seniority showing Petitioner Dharam Veer below Sri Peetam Singh, Sheesh Pal Singh etc. observing that the Petitioner, Dharam Veer's

appointment has not been approved so far, though he is getting salary on the post of Assistant Teacher (L.T. Grade) pursuant to Apex Court's

order dated 4.9.1995. This order, it appears, to have been passed by the Joint Director of Education on 22.8.2003 without giving any opportunity

of hearing to Petitioner, Dharam Veer, whereagainst he filed representation dated 8.9.2003.

30. The request of the Petitioner for re-consideration of matter of seniority was turned down by Joint Direction of Education by order dated

9.6.2005 whereagainst he preferred writ petition No. 69386 of 2005 seeking following reliefs:

(i) a writ, order or direction in the nature of certiorari call for the record of the case and quash the impugned order dated 29.6.2005 and

22.8.2003 passed by the Respondent No. 4 (Annexure-Nos. 13 and 9 respectively to the writ petition).

(ii) a writ, order or direction in the nature of Mandamus Commanding the Respondent No. 2 to decide the Seniority of the Petitioner and other

teachers of the said institution, Adarsh Uchchattar Madhyamik Vidyalaya, Raunija, Gautam Budh Nagar.

(iii) ...

(iv) ...

31. The DIOS also passed an order on 16.9.2005 directing the Authorized Controller of the College to pay arrears of salary to the Petitioner

treating him in selection grade with effect from 1995. It appears that no onwards action was taken by the Management of the College, hence, the

Petitioner filed writ petition No. 67667 of 2005 which was disposed of vide judgment dated 25.10.2005 in the following manner:

Heard learned Counsel for the Petitioner and the learned standing counsel for the Respondent Nos. 1, 2 & 3. The Petitioner was extended the

benefit of selection grade by order of District Inspector of Schools dated 22.04.2002. A copy whereof is Annexure 3 to the writ petition.

However, Petitioner contends that the arrears in respect of grant of selection grade with effect from the date from which the Petitioner is entitled

has not been paid so far. The Petitioner approached the District Inspector of Schools, who on 16.09.2005 called upon the Prabandh Sanchalak to

proceed in the matter and send the appropriate bill in respect of the claim of the Petitioner along with his comments. In spite of the aforesaid

direction of the District Inspector of Schools, the Petitioner contends that no action has been taken by Prabandh Sanchalak, who is functioning in

the institution. The Respondent No. 4 is directed forthwith to submit his comments with regard to the claim of the Petitioner to the Respondent No.

2 within 15 days from the date of presentation of the certified copy of the order before him and the Respondent No. 2 shall thereafter proceed to

pass appropriate orders in accordance with law within 3 weeks thereafter.

With the aforesaid direction the writ petition is disposed of.

32. Pursuant to the judgment dated 25.10.2005 in writ petition No. 67667 of 2005, a detailed order was passed after considering all the

concerned parties by DIOS on 6.3.2006 observing that since the order dated 22.4.2002 passed by the then DIOS granting selection grade in L.T.

Grade to the Petitioner after ten years of service was not challenged in appeal, hence the Petitioner should be paid all the arrears etc. Still it was

not complied with by the Management, hence, the Petitioner filed writ petition No. 23924 of 2006 seeking the following reliefs:

(i) issue a writ, order or direction in the nature of mandamus, commanding Respondent No. 3 to pay all arrears of pay till today to the Petitioner;

(ii) issue a writ, order or direction in the nature of mandamus commanding the Respondent No. 4 to pay entire due arrears of pay till now to the

Petitioner in compliance with the direction given by the District Inspector of Schools, Gautam Budh Nagar dated 6.3.2006 (Annexure "8" to this

writ petition)

(iii) ...

(iv) ...

33. In the meantime, it appears that Respondent No. 4, Peetam Singh, objected to grant of selection grade to Petitioner, Dharam Veer and filed

his objection which having not been decided, he preferred writ petition No. 24543 of 2006 which was disposed of on 5.5.2006 as under:

The contention of the Petitioner is that the District Inspector of Schools has given the Selection Grade to Sri Dharmveer w.e.f. 1985 as a result of

which he would be placed senior to the Petitioner whereas the Petitioner is in fact senior to the Respondent No. 5. The learned Counsel for the

Petitioner has also submitted that in this regard he has placed his objection before the Joint Director of Education, Respondent No. 2, where the

matter is pending consideration.

In view of the aforesaid, I direct the Joint Director of Education, Meerut Region, Meerut, Respondent No. 2 to decide the application of the

Petitioner after hearing the Committee of Management/Administration of the Educational institution and Sri Dharamveer, the Respondent No. 4 by

a reasoned and speaking order within six weeks from the date of production of a certified copy of this order.

The writ petition is disposed of.

34. Pursuant to the judgment dated 5.5.2006 in writ petition No. 24546 of 2006, the Joint Director of Education, Meerut passed order on

20.7.2006 observing that Sri Sheesh Pal Singh was senior to the Petitioner. Challenging this part of the order dated 20.7.2006, the Petitioner filed

writ petition No. 42451 of 2006 seeking the following reliefs:

(i) issue a writ, order or direction in the nature of certiorari, calling for the record and to partially quash the order dated 20.7.2006, passed by the

Jt. Director of Education, Ist Region, Meerut (Annexure "20" to this writ petition) and quash the order, which relates to Sri Shish Pal Singh in writ

petition No. 16417 of 2002 (Varisthta Ka Nirnay Sri Shish Pal Singh, Sa. Aa. Kee Yachika Sankhya 16417/2002 Mei Parit Adesh Dinank 22-

04-2002 Kei Anupalan Mei Mandal Karyalaya Ke Nirnay Dinank 22-08-2003 Ke Dwara Nirnay Kiya Ja Chuka Hei);

(ii) issue a writ, order or direction in the nature of mandamus, commanding the Respondents to promote the Petitioner as Officiating Head Master

of Adarsh Uchchattar Madhyamik Vidyalaya, Raunija, District Gautam Budh Nagar, as the Petitioner is being the senior most teacher;

(iii) issue a writ, order or direction in the nature of mandamus, commanding the Respondents to pay the salary of the Petitioner, month by month,

as given to other teachers and staff of the institution and other emoluments be also given under the Payment of Salaries Act;

(iv) ...

(v) ...

35. The Authorized Controller, thereafter, considering the Petitioner senior to Sri Peetam Singh in view of the various orders passed by the

Educational Authorities, referred to above, recommended by his letter dated 7.2.2007 that he should be given charge of officiating Principal

instead of Peetam Singh pursuant whereeto DIOS sent a letter dated 7.3.2007 seeking certain documents. In the meantime he allowed Sri Peetam

Singh to continue as ad hoc Principal in the College. Aggrieved by letter dated 7.3.2007, the Petitioner filed writ petition No. 16056 of 2007

seeking the following reliefs:

(a) to issue a writ, order or direction in the nature of certiorari, calling for records concerning impugned order dated 07.03.2007 (Annexure No. 1)

passed by Respondent No. 4 and quash the same.

(b) issue a writ of mandamus or other suitable writ, direction or order, commanding the Respondents not to interfere in the working of Petitioner as

officiating Principal, of college in question.

(c) ...

(d) ...

36. This Court passed an interim order dated 26.3.2007 restraining Peetam Singh, Respondent No. 4, from functioning as Officiating Principal of

the institution. Against this interim order, an intra Court appeal, i.e., Special Appeal No. 510 of 2007 was filed by Sri Peetam Singh which was

dismissed on 24.4.2007 observing that all the writ petitions of different parties should be heard together preferably in the first week of May 2007.

37. In the aforesaid writ petition a counter affidavit was filed by DIOS wherein copy of the order dated 27.6.1996 was annexed as Annexure CA-

7 stating that the said order was passed by DIOS in pursuance to the Apex Court's decision dated 4.9.1995 observing therein that the short term

vacancy can be filled in on ad hoc basis in accordance with U.P. Secondary Education Services Commission (Removal of Difficulties) (Second)

Order, 1981 (hereinafter referred to as ""Second Order"")) and that vacancy was advertised by Selection Board on 23.6.1984 as a reserved

vacancy for other backward class and that the candidate directed by DIOS to be appointed in his letter dated 9.8.1985 having not joined, the

Management by resolution dated 3.9.1985 allowed Petitioner to join as Assistant Teacher (L.T. Grade) and they he is liable to be approved. This

order dated 27.6.1996 was stayed by Joint Director of Education, Meerut vide his letter dated 5.11.1996 and the consequential letter dated

5.11.1996 sent by DIOS. The DIOS took stand that neither the Petitioner is qualified to be given charge of post of Principal being B. Sc., B. Ed.

only nor senior most.

38. The Petitioner, thereafter, it appears, claiming charge of the office of Principal on officiating Basis as also salary, made some representation

which was not decided whereafter he filed writ petition No. 25404 of 2007, which was disposed of on 25.5.2005 as under:

Heard learned Counsel for the parties.

Grievance of Petitioner is that salary for the month of March and April, 2007 of the teaching and non teaching staff of Adarsh Uchchttar

Madhyamik Vidyalaya, Raunija, District Gautam Budh Nagar has not been ensured. In term of U.P. Act No. 24 of 1971 District Inspector of

Schools has got ample authority to remedy the situation.

In these circumstances and in this background, District Inspector of Schools, Gautam Budh Nagar is directed to see that final decision is taken in

accordance with law, preferably within period of four weeks from the date of production of certified copy of this order. Whatever decision is taken

same be communicated to Petitioner thereafter.

With these observations writ petition is disposed of.

39. The Petitioner's representation was rejected by DIOS vide order dated 19.6.2005 whereagainst he preferred writ petition No. 61170 of

2007 seeking the following reliefs:

(i) issue a writ, order or direction in the nature of mandamus commanding the Respondent 1,3,4 and Prabandh Sanchalak to ensure the salary of

Petitioner w.e.f. July, 2006 till February 2007 for post of teacher of the institution and w.e.f. 9.2.2007 till date for post of Officiating Principal of

institution within period of specified by this Hon"ble Court.

(ii)

(iii) ...

(iv) issue a writ, order or direction in the nature of certiorari calling for the record concerning the impugned order dated 19.6.2007 passed by the

Respondent No. 1 (Annexure-13) and to quash the same.

40. In this writ petition, counter affidavit filed on behalf of Management of the College states that the Petitioner is absent from duty since July 2006,

hence is neither entitled for salary nor for any other relief.

41. Last one, i.e., writ petition No. 63950 of 2008 is, in fact, a writ of quo warranto questioning functioning of Peetam Singh as officiating Principal

of the College and writ of prohibition restraining him from functioning as such and to hand over charge to the Petitioner. The relief sought by the

Petitioner in this writ petition are as under:

(i) issue a writ, order or direction in the nature of Quo Warranto asking the Respondent No. 8 as to which authority he is holding and working as

Principal of the institution Adarsh Uchchatar Madhyamik Vidyalaya, Raunija, District-Gautam Budh Nagar inspite of the order dated 6.10.2007

passed by the D.I.O.S. Gautam Budh Nagar.

(ii) issue a writ, order or direction in the nature of Prohibition Commanding the Respondent No. 8 (Preetam Singh) from working as officiating

principal/Principal of the institution Adarsh Uchchatar Madhyamik Vidyalaya, Raunija, District- Gautam Budh Nagar.

(iii) issue a writ, order or direction in the nature of Mandamus commanding the Respondents No. 8 to hand over the Key and records of the

institution to the Petitioner.

(iv) issue a writ, order or direction in the nature of Mandamus commanding the Respondents not to interfere in the working of the Petitioner as

Principal of the institution in question.

(v) issue a writ, order or direction in the nature of Mandamus commanding the Respondents to pay the salary to the Petitioner with effect from July

2006 till 8 February 2007 for the post of Assistant Teacher of the institution along with the arrears, and w.e.f. 09.02.2007 till date for the post of

Principal of the Institution with in a short and stipulated period.

(vi) issue a writ, order or direction in the nature of Certiorari to quash the advertisement with respect to the post of principal of the institution made

by the Respondent No. 2 and the name of the Petitioner may be sent for regularization to the State Government.

(vii) ...

(viii) ...

42. This bunch of the writ petitions was listed before me on 6.7.2009 when after hearing the arguments and perusing the written submissions

placed by the Petitioner himself, who has appeared in person, this Court found that the basic question needs to be examined in these matters in

order to further analyze rights of Petitioner regarding seniority in the selection grade, promotion etc. is whether his appointment in 1985 was made

in accordance with law or not. When the Petitioner was required to address the Court on this aspect, he requested for sometime. Hence, this

Court passed the following order on 7.7.2009 in writ petition No. 61170 of 2007:

Heard Sri Dharam Veer, who has appeared in person, Though the case has been called in the revised list, no one appears for Respondents and in

the connected matters for Petitioner.

After some arguments and also submitting written arguments, Sri Dharam Veer, who has appeared in person, seeks some further time to show as

to whether his appointment in 1985 was made in accordance with the procedure prescribed under U.P. Secondary Education Services Selection

Board Act, 1982 and Removal of difficulties Orders issued thereunder.

In the interest of justice, this Court grants him two weeks" time to prepared the matter. Put up/list this case for further hearing on 23.07.2009

alongwith the record of Civil Misc. Writ Petition No. 2741 of 1997.

43. Thereafter, this matter was repeatedly adjourned for one or the other reason and mostly on the request made by the Petitioner himself.

However, the Petitioner did not place anything on record to throw light on the procedure followed, if any, while making his appointment in 1985.

On the contrary, what he attempted to argue is that this issue is not open for examination by this Court since the Apex Court has passed an order

for payment of salary to the Petitioner. This Court is bound by this direction.

44. The Petitioner, in my view, has misguided himself in making the above submission for the reason that the Apex Court's judgment dated

4.9.1995 categorically said, ""We also direct that Appellant's entitlement to continue in service according to the rules be decided by the

appropriate authority and the post would be filled in accordance with rules.

45. Therefore, it is true that since the Petitioner had worked, the Apex Court pursuant to the interim order dated 20.11.1989 allowed payment of

salary to the Petitioner, but took care of directing authorities concerned to decide question of Petitioner's entitlement to continue in service

according to rules. This would have necessitated a strict enquiry in the manner in which the Petitioner was appointed to the post of Assistant

Teacher since only a valid appointment could have entitled him to continue in service with all benefits and not otherwise. Unfortunately, despite the

time having been granted to the Petitioner, as requested by him, he did not place anything on record to show how he was appointed. In the

circumstances, this Court had no option but to look into the earlier writ petitions involving Petitioner's appointment to find out as to what has been

the case of the Petitioner regarding the procedure followed in his appointment and also the nature of his appointment. The facts borne out

therefrom are as under:

46. One Sri Gaya Prasad, working as Assistant Teacher (L.T. Grade) (Mathematics) in the College, left the job in June 1984 causing a substantive

vacancy on the said post. The Management resolved to make ad-hoc appointment and appointed Vijay Kumar Sharma as ad-hoc Assistant

Teacher (L.T. Grade). The aforesaid appointment conveyed to DIOS, who vide letter dated 21.12.1984 noted the said appointment for a period

upto the end of Session i.e. 30.6.1985. The letter of DIOS reads as under:

mijksDr fo""k;d vkids i= fnukad 5 & 12 & 84 dks lanHkZ esa fuosnu gS fd izcU/k lfeFr ds izLrko fnukad 15 & 8 & 84 ds vuqlkj Jh fot; dqekj

"kekZ dh lgk;d v;/kid,y- Vh- osruĀĀĴĴ½e esa dh xBZ rnFkZ fu;qfDr uksV dh tkrh gS ;g fu;qfDr l=kUr rd vFkok v;ksx @ vkjfk{kr lewg ds v;/kidksa

ds dk;ZHkkj xzg.k djus ij Lor% gh lekIr gks tk;sxh A

47. This letter shows that resolution of appointment of Vijay Kuamr Sharma was conveyed by Management to DIOS by letter dated 5.10.1984.

Consequently, payment of salary was made to Sri Vijay Kumar Sharma till 30.6.1985.

48. No further order approving appointment of Sri Vijay Kumar Sharma was issued by DIOS. It is claimed by Committee of Management that on

20.6.1985, a letter was served upon Sri Vijay Kumar Sharma informing him that his services would stand terminated on 20.5.1985.

49. Management, thereafter, sent a letter dated 5.8.1985 requesting the DIOS to permit appointment of an Assistant Teacher (Mathematics) for

the Session 1985-86. The DIOS sent a letter dated 9.8.1985 directing for appointment of one Kachchhimal Gupta, a Reserved Pool Teacher to

absorb in the aforesaid vacancy of Assistant Teacher (L.T. Grade). The Management sent a letter dated 19.8.1985 by registered post requesting

Sri Kachchhimal Gupta to appear before Management along with requisite certificates and testimonials. He did not respond and the institution,

facing great inconvenience for want of Maths Teacher, hence, requested DIOS either to send any other Teacher or permit the College to make an

appointment. This letter sent to DIOS on 3.9.1985.

50. Thereafter another letter sent by Manager on 18.9.1985 stating that the earlier letter sent to Kachchhimal Gupta had been received back

unserved with the postal remark that the addressee was not at home. The Manager again requested DIOS to permit to make arrangement for

concerned teacher till the end of the session concerned and also to make ad-hoc appointment under Removal of Difficulties Order.

51. All these facts are stated in application dated 21.1.1986 filed by Committee of Management in this Court on 22.1.1986 in Writ Petition No.

741 of 1986. The Petitioner, Dharam Veer, also filed an application on 12.5.1989 for recall of the order dated 11.6.1987 in writ petition No. 741

of 1986 and therein he stated in his affidavit that appointment of Vijay Kumar Sharma was not extended after the end of the session on 30.6.1985.

He referred therein about his writ petition No. 3318 of 1987 wherein he had claimed right to continue on the post of Assistant Teacher in the

School and claimed salary.

52. A report of Associate District Inspector of Schools dated 3.5.1986 was submitted to this Court wherein he admitted that Sri Vijay Kumar

Sharma was appointed on ad-hoc basis only till the end of session, i.e., 30.6.1986 and was not allowed to continue thereafter. Sri Dharam Veer

was never appointed in accordance with rules.

53. The Petitioner, Dharam Veer, has referred to his appointment made on 3.9.1985 which has been already detailed above. It is interesting to

note that on the one hand, the Management sent letter to DIOS on 3.9.1985 requesting him to send any other Teacher or permit the Management

to make an appointment and again on 18.9.1985 they informed DIOS that letter sent to Kachchhimal Gupta, Reserved Pool Teacher

recommended by DIOS, has not turned up and the letter sent to him has been received back unserved and again requested DIOS to make

arrangement of the concerned Teacher but in the meanwhile, Petitioner claims that he was already appointed on 3.9.1985 and these two things

cannot stand together and this creates serious doubt to the story set up by Petitioner about his appointment.

54. Be that as it may, even otherwise, it also shows that while making appointment on 3.9.1985, as alleged by Petitioner, the procedure prescribed

in law for such appointment was not at all observed.

55. Despite repeated query made by this Court, the Petitioner could not place any alleged advertisement said to have been made by Management

for filling the post of Assistant Teacher (L.T. Grade) (Mathematics) on ad hoc basis.

56. It would also be appropriate to place on record the averments made by the Petitioner himself in paragraph 4 to 12 of his writ petition No.

2541 of 1997 as under:

4. That one Sri Gaya Prasad, who was functioning as Assistant Teacher in L.T. Grade (Math) left the services of the Institution in the month of

June, 1984, consequently the post held by him fell vacant.

5. That the committee of management, thereafter, notified the aforesaid vacancy to the U.P. Secondary Education Services Commission for being

filled up by way of direct recruitment. It is pertinent to point out that the post in question was reserved for a candidate belonging to back-ward

class.

6. That the Commission, however, failed to make any recommendation for the said post in question and consequently, the committee of

management proceeded to make appointment u/s 18 of the Act.

7. That the Principal of the Institution, namely, Sri Prem Narain Sharma managed to get his real nephew Sri Vijay Kumar Sharma appointed as

Assistant Teacher in L.T. Grade (Mathematics) on 15.8.1984. The appointment of Sri Vijay Kumar Sharma was made for that academic session

i.e. till 30.6.1985.

8. That the committee of management in the end of said academic session removed Sri Vijay Kumar Sharma with effect from 30.6.1985 and after

doing so, it requested the District Inspector of Schools, Bulandshahar either to provide Mathematics teacher or to grant permission to it to appoint

Mathematics teacher on ad hoc basis in L.T. Grade. Reminders were sent in this regard by the committee of management keeping in view the

problems which were being faced by it.

9. That when no action was taken in the matter by the District Inspector of Schools, the Committee of management advertised the post in question

in the news-papers. In pursuance of the said advertisement, the Petitioner alongwith several other candidates applied.

10. That in the meanwhile before any appointment could be made on the post in question by the committee of management, the District Inspector

of Schools recommended the name of one Sri Kanchi Mal Gupta, a reserve-pool teacher for appointment on the said post vide order dated

9.8.1985. On receiving the said recommendation made by the District Inspector of Schools, the committee of management of the Institution wrote

a letter to Sri Kanchi Mal Gupta on 19.8.1985 requesting him to join duties within 7 days from the date of receipt of the said letter. However, Sri

Kanchi Mal Gupta did not come to joint duties in the Institution in question.

11. That thereafter, the committee of management proceeded to hold selection and it ultimately selected the Petitioner for being appointed on the

post of mathematic teacher and further issued direction asking the Petitioner to join the duties. The Committee of Management also informed the

District Inspector of Schools, Bulandshahar about the aforesaid selection and appointment of the Petitioner.

12. That in pursuance of the direction issued by the committee of management, the Petitioner joined his duties as Assistant Teacher in L.T. Grade

on 3rd September, 1985.

57. It would be interesting to notice that in counter affidavit filed by Committee of Management sworn by Sri Dambar Singh, Manager of the

College in writ petition No. 2541 of 1997, it is said that Gaya Prasad was not working as Assistant Teacher (L.T. Grade) (Mathematics) but was

an Assistant Teacher (C.T. Grade). Two post in L.T. Grade were sanctioned by Director of Education in 1981, one in Mathematic and another in

Sanskrit and Geography. The said vacancies were notified to Board and it is said that the same was not reserved for other backward class. It is

also said that no advertisement was issued before the alleged appointment of the Petitioner, Dharam Veer. The factum that some candidates

including the Petitioner had applied pursuant to the said advertisement is also denied. It is said that Petitioner was never appointed in accordance

with the Removal of Difficulties Order, 1981.

58. In the rejoinder affidavit, Petitioner, in general, has denied all these averments without placing anything on record to show and fortify the

averments made by him. He, however, appended a copy of the alleged resolution passed by Committee of Management on 3.9.1985 as Annexure

RA-2 for appointment of Petitioner. It would be appropriate to reproduce the said resolution hereat as that would clarify and throw some light on

the nature and manner of appointment of Petitioner claimed to have been made on 3.9.1985:

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2- Jhgqdeyky flag mik/;{k g- viBuh;

3- Jhizse flag izcU/kd g- viBuh;

4- Jh [kpsjk flag mi izcU/kd g- viBuh;

5- JhMcj flag dks""kk/;{k g- viBuh;

6- JhnqykZizlkn "kekZ insu g- viBuh;

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2- xf.kr v/;kid dh fjdDr dh iwfrZ ij fopkj A

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vkids lkeus mifLFkr gS rFkk esjs }kjk dh x;h dk;Zokgh ds leLr i=tkr Hkh vkids lkeus izLrqr gSaA vc izcU/k lfefr jk; ns fd bl IEcU/k esa D;k fd;k

tk; blds mijUr Jh toj flag dks""kk/;{k us leLr dk;Zokfg;ksa ds i=ksa dk voyksdu fd;k rFkk rhuksa gh mEehnokjksa ds "kSf{kd ;ksX;rk ds ewy

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esa vkrs gSaA blfy, gekjh jk; ds vuqlkj Jh /keZohj dh gesa folky; es lsok djus ds fy, fu;qDr fd;k tk; bl izLrko dk leFkZu Jh [kpsjk flag mi izcU/kd

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dk;ZHkkj xzg.k dj fy;k rks vkidks folky; dh lsok djus ls eqDr dj fn;k tk;sxk vFkok vkidh lsok;sa fnukad 3- 9- 85 ls gh vk;ksx ls fu;qDr v/;kid

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izLrko uEcj&3

vU; fo""K; v/;{k vkKk vuqlkj vU; fo""K; fopkjFkZ u gksus ds dkj.k ehfVax dh dk;Zokgh lekIr dh x;h rFkk izcU/kd egksn; dks izcU/k lfefr ds

lnL;ksa us ;g vkns"K iznku fd;k fd izcU/kd egksn; bl izLrko dh izfrfyfi vfxze dk;Zokgh gsrq ftyk folky; fujh{kd cqyUn"kgj dh lsok esa izsf""kr djsa

rFkk ftyk folky; fujh{kd ls IEidZ LFkkfir djsa A

English Translation (By the Court)

An essential meeting of the Management Committee of A. U. M. Vidyalaya, Raunia, Bulandshahr chaired by Sri Horam Singh was held in the

school premises today on 03.09.1985 which was attended by the following members:

Name Post Signature

- 1 Sri Horam Singh Chairman Illegible
- 2 Sri Hukum Lal Singh Vice Chairman Illegible
- 3 Sri Prem Singh Manager Illegible
- 4 Sri Khachera Singh Deputy Manager Illegible
- 5 Sri Dabar Singh Treasurer Illegible
- 6 Sri Durga Prasad Sharma Ex-officio Illegible

Out of the total 7 members of the committee, 6 members were present. The quorum being complete, the proceeding of the meeting was

commenced.

1. Deliberation on endorsing the previous proceedings The previous proceedings were read out and endorsed
2. Deliberation on filling the post of mathematics teacher. Proposal No.

Sri Prem Singh, Manager proposed: As known to all I had been authorised in the meeting held on 14.07.1985 that I would sort out the problem of

mathematics teacher at the earliest, on the basis of which I, for engaging a teacher, got an advertisement published on 18.07.1985 to the effect that

the post of mathematics teacher is vacant in our school and that all must fill up their . . . by the end of . . . ; hence applicants having B. Sc., B.

Ed. degrees should submit their applications for the post of mathematics teacher. But after that I also wrote a letter on 05.08.1985 to the District

Inspector of Schools, Bulandshahr requesting him either to provide a mathematics teacher in the school or to give orders to the Management

Committee to engage such a teacher. On the basis of that, D.I.O.S. Bulandshahr, after appointing Sri Kachchhimal Gupta r/o of Village Ushmapur,

Post Khurja, Bulandshahr, sent letter No. Ma.1/Niyukti Memo/85-86 dated 9.8.85. I sent the said registered letter to the said candidate on

19.8.1985 informing him that he had been appointed in the L.T. Grade in our college and asking him to appear along with original certificates of

academic qualifications within 7 days of the receipt of the letter. However, Sri Kachchhimal Gupta neither turned up in the school nor responded to

the letter till today.

Proposal Number - B

In respect of advertisement process carried out by him, Sri Prem Singh, Manager, told the members of the Management Committee: On the basis

of advertisement I received applications accompanied by photostat copies of original certificates from 3 candidates who are

1. Sri Dharamveer Singh s/o Sri Ramji Lal r/o village Agagai, post Dinoul, Dist. Bulandshahr
- 2 Sri Vijay Kumar Sharma s/o Sri Keshav Prasad Kumar Sharma r/o Ushmanpur, Post Chigrauli, Dist. Bulandshahr.

3. Sri Vrij Mohan Sharma, s/o Sri Keshav Prasad Sharma r/o Narsan Khurd, Post Gurukul Pasan, Dist. Saharanpur to whom I sent registered

letters on 27.8.85 requesting to appear for interview on 3.9.85 along with original certificates of educational qualifications. Here are Sri

Dharmveer, Sri Vijay Kumar and Vrij Mohan Sharma present before you all and all the papers relating to the proceedings conducted by me are

put up before you all. Now the Management Committee should give opinion as to what to be done in this respect. After that Sri Jawar Singh,

Treasurer, went through the papers of all the proceedings and scrutinised originals of educational certificates of all the three candidates. After

judging all the three candidates on the basis of replies given by them to so many questions and after causing them to take classes, the members of

the Management Committee held deliberations and decided: Out of the present candidates under the reserved category of Backward Classes in

response to the advertisement dated 23rd June, 1984 of Education Services Commission, Allahabad, Sri Dharamveer s/o Sri Ramji Lal r/o of

village Arai, Post Dinaul, Dist. Bulandshahr is certainly at par in respect of educational qualification but he is much ahead of others in respect of

replies to the questions and his method of teaching is also excellent and up to the satisfaction of the students and apart from this he is Yogi by

caste, which comes under the category of Backward Classes. Hence, in our opinion, Sri Dharamveer be appointed in the service of our school.

This proposal was seconded by Sri Khachera Singh, Deputy Manager, who also gave a suggestion that Sri Dharam Veer be appointed with a

condition that he will be relieved from the service of our school when the teacher of reserved category appointed by the District Inspector of

Schools, Bulandshahr assumes his charge or with the condition that his appointment, effective from 3.9.1985, is on adhoc basis and is to continue

till the joining of a teacher appointed by the Commission/till the end of the session/till the assumption of charge by a candidate falling under the

reservation category.

Proposal No-3

There being no items on the agenda for consideration, the proceeding of the meeting was concluded and the Manager was authorised by the

members of the Management Committee to send photocopy of this proposal to the District Inspector of Schools, Bulandshahr and to contact him.

59. Taking the above facts as stated by the Petitioner about his appointment to be correct, let this Court examine whether such an ad hoc

appointment can be said to have been made in accordance with the procedure prescribed under 1982 Act and Removal of Difficulties Order

issued thereunder. Whether the vacancy of Assistant Teacher (L.T. Grade) is one resulted due to creation of the said post in 1981 or due to

leaving job by Sri Gaya Prasad Gupta, as the case may be.

60. It is not in dispute that the vacancy in 1984 was substantive one and had already been notified to the Board under 1982 Act, but no

recommendation could be made by the Commission/Board upto 30.6.1985. It is also in dispute that one Vijay Kumar Sharma functioned as ad

hoc Assistant Teacher (L.T. Grade) on one of the said post.

61. Now comes the question as to whether appointment of Petitioner was or could be made by following the procedure prescribed in law. When a

substantive vacancy is not filled in from a candidate recommended by the Commission, ad hoc appointment in 1985 could have been made only in

accordance with procedure prescribed in the U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981 (hereinafter

referred to as ""First Order""). Class 5 thereof reads as under:

5. Ad hoc appointment by direct recruitment. -(1) Where any vacancy cannot be filled by promotion under Paragraph 4, the same may be filled by

direct recruitment in accordance with Clauses (2) to (5).

(2) The Management shall as soon as may be, inform the District Inspector of Schools about the details of the vacancy and such Inspector shall

invite applications from the local Employment Exchange and also through public advertisement in at least two newspapers having adequate

circulation in Uttar Pradesh.

(3) Every application referred to in Clause (2) shall, be address to the District Inspector of Schools and shall be accompanied;

(a) by a crossed postal order worth ten rupees payable to such Inspector ;

(b) by a self-addressed envelope bearing postal stamp for purposes of registration.

(4) The District Inspector of Schools shall cause the best candidates selected on the basis of quality point specified in Appendix. The compilation

of quality points may be done on remunerative basis by the retired Gazetted Government servants under the personal supervision of such

Inspector.

(5) If more than one teacher of the same subject or category is to be recruited for more than one institution, the names of the selected teachers and

names of the institutions shall be arranged in Hindi alphabetical order.

The candidate whose name appears on the top of the list shall be allotted to the institution the name whereof appears on the top of the list of the

institution. This process shall be repeated till both the lists are exhausted.

Explanation.-In relation to an institution imparting instruction to women the expression ""District Inspector of Schools"" shall mean the ""Regional

Inspectress of Girl's Schools.

62. This procedure has been considered in a catena of decisions of this Court as well as the Apex Court. This Court does not intend to add the

bulk of judgments by referring to all such decisions but suffice is to mention that a detailed judgment was rendered by a Full Bench of this Court in

Radha Raizada v. Committee of Management 1994 (2) ESC 345 (FB) and confirming the above Full Bench judgment, Apex Court in Prabhat

Kumar Sharma and others Vs. State of U.P. and others, held that procedure laid down in Removal of Difficulties Order is mandatory and has to

be observed in words and spirit. An appointment made inconsistent with the said procedure is void ab-initio and will not confer either any right

upon the incumbent to hold the post or to continue in service or to claim salary from State exchequer. The relevant observations made by the Apex

Court in Prabhat Kumar Sharma (supra) is as under:

Any appointment made in transgression thereof is illegal appointment and is void and confers no right on the appointees.

63. Again in para 11 of the judgment the Court held as under:

Any appointment in violation thereof is void. As seen prior to the Amendment Act of 1982 the First 1981 Order envisages recruitment as per the

procedure prescribed in para 5 thereof. It is an in-built procedure to avoid manipulation and nepotism in selection and appointment of the teachers

by the Management to any posts in aided institution.

64. This decision has been followed and reiterated recently by the Apex Court in Shesh Mani Shukla Vs. D.I.O.S. Deoria and Others, wherein the

Apex Court has held as under:

It is true that the Appellant has worked for a long time. His appointment, however, being in contravention of the statutory provision was illegal,

and, thus, void ab initio. If his appointment has not been granted approval by the statutory authority, no exception can be taken only because the

Appellant had worked for a long time. The same by itself, in our opinion, cannot form the basis for obtaining a writ of or in the nature of

mandamus; as it is well known that for the said purpose, the writ Petitioner must establish a legal right in himself and a corresponding legal duty in

the State.

65. The Petitioner admits that on 9.8.1985 pursuant to letter sent by Management, DIOS recommended name of one Kachchhimal Gupta,

Reserved Pool Teacher, for absorption/ appointment on the post in question. Committee of Management sent letter on 19.8.1985 to Sri

Kachchhimal Gupta giving him a week's time to contact the Management along with his testimonials for appointment and to join on the post

meaning thereby giving time at least upto 26.8.1985.

66. The Petitioner claims to have been appointed under resolution dated 3.9.1985, i.e., about after about nine days from 26.8.1985. Another letter

of Management sent on 18.9.1985 shows that even on that date, the Management requested DIOS either to himself make appointment or to

permit Management to make appointment. Menating thereby, there could not have been made any appointment till that date. Yet the Petitioner

claims that a resolution was passed on 3.9.1985 appointing the Petitioner.

67. Neither the alleged advertisement is on record pursuant whereto Petitioner applied nor the date of advertisement has been given by Petitioner

nor other details have been given. Even the resolution dated 3.9.1985, which Petitioner has placed on record alongwith his rejoinder affidavit in

writ petition No. 2541 of 1997, shows that the then Manager Kali Singh claims that he had made advertisement pursuant whereto three persons

had applied and he had undergone the process of selection and those documents he placed before the Management which resolved to appoint the

Petitioner on 3.9.1986 and immediately thereafter the Petitioner was appointed. Under Clause 2 of First Order, the power of vested in the

Management in 1985, and this could not have done by the Manager himself.

68. Letter of appointment said to have been issued to Petitioner on 3.9.1985 also shows that the Management informed the Petitioner that it has

requested DIOS to make appointment of a Teacher or to permit Management to make appointment and if DIOS stops, the Petitioner shall not be

allowed to work and it is a kind of a notice giving an opportunity to Petitioner to make his stand clear and under such a letter of appointment. In

any case, this is not at all in conformity with the first Removal of Difficulties Order. In the circumstances this Court has no doubt in its mind that the

Petitioner was never appointed on the post in question in accordance with the procedure prescribed in Removal of Difficulties Orders. In view of

the decision of the Apex Court in Prabhat Kumar Sharma (supra), Shesh Mani Shukla (shukla) and Full Bench decision of this Court in Radha

Raizada (supra), the alleged appointment of the Petitioner would confer no right upon him either to hold the post or to continue in service or to

claim salary.

69. The Petitioner at this stage contended that DIOS by order dated 27.6.1996 has held that appointment of Petitioner was valid and liable to be

approved and that order having not been challenged by any one at any point of time, it would not be open to this Court to take a different view on

this aspect of the matter.

70. It is interesting to notice that order dated 27.6.1996 passed by DIOS was examined by Deputy Director of Education and finding the same to

be incorrect and illegal, he stayed said order by order dated 5.11.1996. This order of Deputy Director of Education (Secondary) was challenged

by Petitioner before this Court in writ petition No. 2541 of 1997 wherein an interim order was passed staying operation of said order. Later on the

Petitioner got the aforesaid writ petition dismissed as infructuous on 23.4.2007. Meaning thereby, the Deputy Director of Education's enquiry

pursuant where to he had passed order on 5.11.1996 got opened again and ought to have resulted in a final order but on account of a lot of writ

petitions and various orders including many orders directing the authorities concerned to decide representations of one or the other party, the real

issue got side tracked and the Petitioner continued to enjoy the benefit of this confusions by claiming salary every time asserting his right on the

basis of the Apex Court decision dated 4.9.1995 which itself required the competent authority to look into the question of validity of appointment

of the Petitioner, i.e., his entitlement to continue on the post in accordance with law.

71. Nothing has been placed on record before this Court showing that Petitioner allowed these questions to be decided by any authority and even

the order of DIOS dated 27.6.1996 does not show that he examined the question as to whether appointment of Petitioner was made in

accordance with procedure prescribed in Clause 5 of First Order which was held mandatory by Full Bench of this Court in Radha Raizada (supra)

as also by Apex Court in Prabhat Kumar Sharma (supra).

72. I am not impressed with the argument of the Petitioner that the question of validity of his appointment cannot be looked into by this Court in

view of Apex Court judgment dated 4.9.1999 since, in my view, this judgment itself leaves it open to be decided by the competent authority as to

whether Petitioner's appointment was valid or not since the question of entitlement of the Petitioner to continue on the post in accordance with law

was directed to be decided by the competent authority which has not been done.

73. Initially, this Court thought it appropriate to require a higher educational authority to look into this aspect of the matter and decide but looking

to last more than 25 years of chequered history of this matter and a spate of litigation, dozens of orders passed by this Court in one or other

matters creating all kind of confusions, most of times due to lack of the assistance of the parties, I find that such option would not only prolong

agony of these parties but may also cause further loss to the public exchequer inasmuch an illegal appointment would continue to burden the public

revenue. Hence, I decided to proceed to consider this question on the basis of material on record and to make the things final at this very stage.

74. The appointment of the Petitioner, itself being wholly illegal and void, as discussed above, the question of allowing him seniority over any one

or selection grade or any other benefit, therefore, does not arise. The Petitioner, therefore, is not entitled for any relief. All these writ petitions are,

therefore, liable to be dismissed.

75. The Respondent-College and DIOS concerned are directed to take immediate steps for filling in the vacancy in question in accordance with

the provisions of 1982 Act forthwith and without any further delay. It may, however, be provided that in case the Petitioner apply for such

recruitment, as observed by the Apex court in its judgment dated 4.9.1995, in case of being overage, the matter of relaxation regarding the age

may be considered by the competent authority in accordance with law.

76. In the result, all the above writ petitions are dismissed. No order as to costs.